

Joint Explanatory Statement to accompany S. 3001, the  
Duncan Hunter National Defense Authorization Act for  
Fiscal Year 2009

## **CONGRESSIONAL DEFENSE COMMITTEES**

The term "congressional defense committees" is often used in this joint explanatory statement. It means the Defense Authorization and Appropriations Committees of the Senate and the House of Representatives.

# **Division A-Department of Defense Authorizations**

## **TITLE I-PROCUREMENT**

### *Procurement overview*

The budget request for fiscal year 2009 included an authorization of \$102,694.3 million for procurement for the Department of Defense.

The House bill would authorize \$102,711.9 million.

The Senate bill would authorize \$104,168.5 million.

The agreement recommends an authorization of \$103,969.9 million. Unless noted explicitly in the joint explanatory statement, all changes are made without prejudice.

### **Budget Items**

#### *Shipbuilding*

The budget request contained \$2.5 billion for the third DDG-1000 class destroyer, \$103.2 million for close out costs associated with discontinuing the LPD-17 amphibious ship production line, and no funding for the DDG-51 class program which had ceased new production funding with the three ships bought in fiscal year 2005. Additionally, the budget request contained \$920.0 million for two Littoral Combat Ships (LCS) and \$348.3 million in the National Defense Sealift Fund (NDSF) designated for advance procurement for the first of a class of Maritime Preposition Force-Future (MPF(F)) aviation vessels.

The agreement would authorize full funding for the third DDG-1000 class destroyer without prejudice to any potential future Department of Defense decision to truncate the DDG-1000 class acquisition program in favor of a return to DDG-51 class destroyers.

However, the agreement would authorize \$349.0 million for surface ship advance procurement which would permit the Navy to acquire major spares for DDG-51 destroyers or buy advance procurement should the Secretary of Defense determine that there is a validated requirement to produce more of these ships.

The agreement also would authorize \$600.0 million in advance procurement to extend the LPD-17 amphibious acquisition program to a total of 11 ships. The Marine Corps considers the tenth and eleventh ships of this class to be vital to the future expeditionary force.

The agreement would authorize the budget request of \$920.0 million for two LCS vessels. Elsewhere in the agreement, we recommend a provision that would delay implementation of the cost cap for the LCS program until fiscal year 2010. We note that the Navy has taken delivery of the first ship of this class and anticipates taking delivery of the second by the end of the calendar year. While these are significant milestones, we remain concerned that the Navy has not taken sufficient actions to control costs for follow-on vessels. Moreover, in repeated testimony before the Committees on Armed Services of the Senate and the House of Representatives, we have been told that a primary benefit of utilizing mid-tier shipyards is that such yards can easily balance commercial and government workload to ensure that the Navy does not have to pay overhead costs to maintain capability during periods of limited government funding. Nevertheless, the Navy has requested, for the second year in a row, an adjustment to the cost cap in order to preserve industrial capability because the Navy is unable to purchase a ship at or below its budgetary estimate and lacks a coherent acquisition strategy for the program. We strongly encourage the Navy to take steps to procure follow-on vessels with required warfighting capability, while prioritizing the aggressive management of cost and the most efficient utilization of the industrial base. Likewise, we direct the Secretary to develop and submit to the Congress a long-term acquisition strategy for LCS vessels with the submission of the fiscal year 2010 budget request.

Finally, consistent with a change in the definition of the vessels appropriately funded within the NDSF, the agreement would transfer \$348.3 million from the NDSF to the Shipbuilding and Conversion, Navy (SCN) account to buy MPF(F) vessels which are non-combatant versions of assault echelon vessels of the Navy's amphibious force.

### **Items of Special Interest**

## *Intelligence, surveillance, and reconnaissance task force*

The Senate report (110-335) accompanying S. 3001 included recommendations for authorization of funding and direction for multiple programs and activities to immediately strengthen intelligence, surveillance, and reconnaissance (ISR) capabilities for deployed forces. Since the publication of that report, the Secretary of Defense established an ISR Task Force to recommend immediate actions to field additional capabilities. The Secretary of Defense subsequently submitted a prior-approval reprogramming request to the Congress of \$1.2 billion for fiscal year 2008 (which Congress approved), and indicated that another \$1.4 billion or more would be requested for fiscal year 2009.

We applaud the Secretary's decisive action. However, based on past experience with countering improvised explosive devices and fielding large numbers of Mine-Resistant Ambush Protected armored vehicles, we are concerned that the Department of Defense will encounter difficulties in executing the approved initiatives as rapidly as needed unless the Department establishes a high-level organization and process to manage, oversee, and report regularly to the Secretary on the initiative. In addition, we expect that additional requirements for immediate ISR support will arise, suggesting the need for sustaining an organization and process for evaluating theater needs and potential solutions.

Therefore, we urge the Secretary of Defense to create and sustain an organization, led by a senior official, to manage the implementation of the ISR initiatives and to evaluate and make recommendations to the Secretary on new ISR requirements as they arise. We request that the Secretary submit a report to the congressional defense and intelligence committees within 30 days of the date of enactment on the Secretary's plans for managing the multi-billion dollar ISR enhancement effort.

## **LEGISLATIVE PROVISIONS ADOPTED**

### **Subtitle A-Authorization of Appropriations**

#### *Authorization of appropriations (secs. 101-105)*

The House bill contained provisions (secs. 101-106) that would authorize the recommended fiscal year 2009 funding levels for procurement for the Army, Navy, Marine Corps, Air Force, Defense-wide activities, and National Guard and reserve equipment.

The Senate bill contained provisions (secs. 101-104) that would authorize the recommended fiscal year 2009 funding levels for procurement for the Army, Navy, Marine Corps, Air Force, and Defense-wide activities.

The agreement includes the House provisions with technical amendments.

## **Subtitle B-Army Programs**

### *Separate procurement line items for Future Combat Systems program (sec. 111)*

The House bill contained a provision (sec. 111) that would require, beginning with the fiscal year 2010 President's budget request, separate procurement lines for five classes of equipment planned for procurement under the Future Combat Systems (FCS) program. These classes would be FCS manned ground vehicles, FCS unmanned ground vehicles, FCS unmanned aerial vehicles, FCS unattended ground systems, and other FCS elements.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the use of dedicated procurement line items for the FCS program beginning with the Fiscal Year 2011 President's Budget Request submitted to Congress under section 1105(a) of title 31, United States Code.

### *Clarification of status of Future Combat Systems program lead system integrator (sec. 112)*

The House bill contained a provision (sec. 112) that would prohibit the Army from awarding a contract for low-rate initial production or full-rate production for major elements of the Future Combat Systems (FCS) program to entities serving in the role of a lead systems integrator for the FCS program.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would amend section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to clarify the prime contractor for the Future Combat Systems program is a lead system integrator under such section and will remain so until 45 days after the Secretary of the Army certifies in writing that such contractor is no longer serving as a lead system integrator. The specific functions performed by the prime contractor for the FCS program under the current FCS program contract, including major roles in system and subsystem integration, requirements definition, program scope

adjustments, and program management, constitute "acquisition functions closely associated with inherently governmental functions" for the purposes of this provision. The provision would also clarify the definition of "new contract" to include certain FCS contract modifications.

*Restriction on obligation of funds for Army tactical radio pending report (sec. 113)*

The House bill contained a provision (sec.113) that would restrict obligation of 25 percent of the total funds authorized for Army tactical radio systems pending a report on Army tactical radio system fielding plans from the Assistant Secretary for Defense for Networks and Information Integration.

The Senate bill contained no similar provision.

The agreement includes the House provision with a technical amendment.

The agreement specifies that the restriction on obligation of funds in paragraph (b) of the provision refers only to Army radios procured through the following Other Procurement, Army budget lines: "SINCGARS family," and "Radio, Improved HF (COTS) family."

*Restriction on obligation of procurement funds for Armed Reconnaissance Helicopter program pending certification (sec. 114)*

The House bill contained a provision (sec. 114) that would limit the obligation of funds for the Armed Reconnaissance Helicopter (ARH) for fiscal year 2009 to not more than 20 percent of the authorized amounts until 30 days after the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD-ATL) certifies to the congressional defense committees that the ARH has satisfactorily completed a Limited User Test and has been approved by the USD-ATL to enter production.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would add requirements for the ARH program to achieve certification as required by section 2433 of title 10, United States Code, and restructuring of its acquisition strategy.

*Stryker Mobile Gun System (sec. 115)*

The Senate bill contained a provision (sec.111) that would require the Secretary of Defense, through the Director of Operational Test and Evaluation (DOT&E), to ensure that the

Stryker Mobile Gun System (MGS) is subject to testing to confirm the efficacy of any actions taken to mitigate operational deficiencies identified in Initial Operational Test and Evaluation and Live Fire Test and Evaluation. The provision would also require the Secretary of the Army to provide quarterly updates to the congressional defense committees on the status of the corrective measures and expand section 117(a) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to future fiscal years.

The House bill contained no similar provision.

The agreement includes the Senate provision with a clarifying amendment that updates the provision based on developments relating to the program since Senate committee action.

We remain concerned by the Army's deployment of low-rate initial production Stryker MGS vehicles to Iraq given the performance and survivability issues noted during testing and urge the Army to take the actions necessary to ensure Stryker MGS vehicles meet all requirements before deploying any additional Stryker MGS vehicles to theater.

## **Subtitle C-Navy Programs**

*Refueling and complex overhaul of the U.S.S. Theodore Roosevelt (sec. 121)*

The House bill contained a provision (sec. 121) that would provide a one-time exemption to the normal full funding policy to allow for contracting of a 3 year incrementally-funded aircraft carrier refueling complex overhaul (RCOH) from the Shipbuilding and Conversion, Navy (SCN) account. This language would provide the Navy with the authority to commence the refueling overhaul in fiscal year 2009.

The Senate bill contained a similar provision (sec. 132).

The agreement includes a provision incorporating this one-time exemption.

*Littoral Combat Ship (LCS) program (sec. 122)*

The House bill contained a provision (sec. 123) that would amend section 124 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), as amended by section 125 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), to permit the Secretary of the Navy to make adjustments in the cost cap for the Littoral Combat Ship (LCS) to reflect: (1) economic inflation, up to a total of \$10.0 million per ship; and (2) cost increases or decreases for

insertion of new technology, owing to lower life cycle costs or increased capability required to meet emerging threats.

The Senate bill contained no similar provision.

The agreement includes a provision that would amend section 125 of the National Defense Authorization Act for Fiscal Year 2008 to delay implementation of the existing cost cap until fiscal year 2010.

*Report on F/A-18 procurement costs, comparing multiyear to annual (sec. 123)*

The House bill contained a provision (sec. 124) that would require the Secretary of Defense to submit a report on F/A-18 procurement, comparing multiyear procurement costs to those of annual procurements. The provision would also authorize the Secretary of the Navy to obligate up to \$100.0 million from within F/A-18 procurement funds to pay for cost reduction initiatives, either for single year procurement or multiyear procurement.

The Senate bill contained no similar provision.

The agreement includes a requirement that the Secretary of Defense submit a report comparing F/A-18 annual and multiyear procurement alternatives, and that he submit appropriate certifications required by section 2306b of title 10, United States Code if he finds that a multiyear procurement is the preferable alternative.

*Authority for advanced procurement and construction of components for the Virginia-class submarine program (sec. 124)*

The Senate bill contained a provision (sec. 131) that would modify the multiyear authority provided in section 121 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).

The House bill contained no similar provision.

The agreement includes the Senate provision.

## **Subtitle D-Air Force Programs**

*Maintenance of retired KC-135E aircraft (sec. 131)*

The House bill contained a provision (sec. 132) that would require the Secretary of the Air Force to maintain a minimum of 46 KC-135E tanker aircraft in Type-1000 storage, rather than all of those KC-135E tanker aircraft that have been or would be retired under section 135(b) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364).

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that requires the Secretary of the Air Force maintain at least 74 aircraft in Type-1000 storage.

*Repeal of multi-year contract authority for procurement of tanker aircraft (sec. 132)*

The House bill contained a provision (sec. 133) that would repeal section 135 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136) that, among other things, authorized multi-year procurement of up to 80 aircraft as part of a tanker leasing pilot program to acquire 100 tanker aircraft, with 20 coming from a long-term lease.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Report on processes used for requirements development for KC-(X) tanker aircraft (sec. 133)*

The House bill contained a provision (sec. 134) that would require the Secretary of the Air Force to report on: (1) an evaluation of the process for deriving KC-(X) requirements; (2) the justification for using the KC-135R as the comparative baseline for the KC-(X) competition; and (3) and evaluation of potential aerial refueling platforms derived from commercial aircraft in the range of maximum gross take-off weights from 750,000 to 1,000,000 pounds.

The Senate bill contained no similar provision.

The agreement includes the House provision amended to require the Secretary of Defense to report on:

(1) an examination of the requirements for aerial refueling, including an explanation for the use of the KC-135R as the baseline for the last KC-(X) solicitation; and

(2) a summary of commercial derivative or commercial, off-the-shelf aircraft available for use as potential aerial refueling platforms using aerial refueling capabilities within the capability bands identified within the KC-(X) Analysis of Alternatives.

The agreement also includes a requirement that the Secretary of Defense reassess the requirements for aerial refueling that have been most recently validated by the Joint Requirements Oversight Council, and submit the complete results of that reassessment to the congressional defense committees.

*F-22A fighter aircraft (sec. 134)*

The Senate bill contained a provision (sec. 151) that would authorize \$497.0 million for Aircraft Procurement, Air Force (APAF) for either (1) advance procurement for F-22A aircraft in fiscal year 2010; or (2) winding down the production line for F-22A aircraft. The next President of the United States would have to decide which alternative would be in the best interests of the Nation and submit a certification of that decision to the congressional defense committees before any of these funds could be spent.

The House bill contained no similar provision.

The agreement authorizes \$523.0 million in APAF for advance procurement for the F-22A aircraft. The agreement also includes a provision that would prohibit obligating more than \$140.0 million of those funds until the next President of the United States: (1) decides whether continuing F-22 production or terminating production would be in the best interests of the Nation; and (2) submits a certification of that decision before March 1, 2009, to the congressional defense committees.

## **Subtitle E—Joint and Multiservice Matters**

*Annual long-term plan for the procurement of aircraft for the Navy and the Air Force (sec. 141)*

The Senate bill contained a provision (sec. 171) that would require the Secretary of Defense to submit an annual long-term plan for procurement of aircraft for the Departments of the Navy and Air Force. The provision would require that the plan project procurement, inventories, retirements, and losses for the following 30-year period.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Report on body armor acquisition strategy (sec. 142)*

The House bill contained a provision (sec. 141) that would require the Secretary of Defense to establish an executive agent for individual body armor and associated components and establish a procurement budget line item for body armor and personnel protection enhancements. This provision would also require the Under Secretary of Defense for Acquisition, Technology, and Logistics to report to the congressional defense committees by March 15, 2009, detailing an assessment of the body armor industrial base and a strategic plan for its sustainment, and to specify the objective technical capabilities intended for the body armor system.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the Secretary of Defense to submit a report to the congressional defense committees, not later than 120 days after enactment, that includes an assessment of the feasibility and advisability of establishing a dedicated procurement line item for body armor; an assessment of the feasibility and advisability of designating one executive agent for the acquisition of body armor for the military departments; and an assessment of all current initiatives implemented by the Secretary of Defense and the military departments that provide improvements to the body armor acquisition process.

*Small arms acquisition strategy and requirements review (sec. 143)*

The House bill contained a provision (sec. 142) that would require the Comptroller General of the United States Government Accountability Office to audit the Department of Defense small arms requirements generation process and report to the congressional defense committees by October 1, 2009, on any statutory, regulatory, or procedural barriers that may affect the ability of the military services to rapidly field small arms. This section would also require the Under Secretary of Defense for Acquisition, Technology, and Logistics to provide a report to the congressional defense committees that details small arms inventory, research and development programs, joint acquisition strategy, an analysis of any ongoing small arms capability gap assessments.

The Senate bill contained a similar provision (sec. 112) that would require the Secretary of the Army to submit a report on the Army's small arms Capabilities Based Assessment. The provision would also recommend that in the event the Army requires a new individual weapon, that the acquisition of such weapons should result from a full and open competition. The provision would also require that the Secretary of Defense submit a report on the feasibility and advisability of conducting a full and open competition for carbine-type rifles.

The agreement includes the House provision with an amendment that would require the Secretary of Defense to report to the congressional defense committees on the Department's assessments of small arms requirements, modernization plans, and the United States small arms industrial base. The amendment would further direct that in the event that the Secretary of the Army determines that there is a gap in small arms capabilities and that a new individual weapon is required, the Secretary shall procure the new individual weapon using a full and open competition.

*Requirement for common ground stations and payloads for manned and unmanned aerial vehicle systems (sec. 144)*

The House bill contained a provision (sec. 143) that would require the Secretary of Defense to establish a policy for acquisition of intelligence, surveillance, and reconnaissance payloads and ground stations for manned and unmanned aerial vehicle systems that would have as its objective obtaining commonality throughout the Department.

The Senate bill contained no similar provision.

The amendment contains the House provision with a clarifying amendment.

*Report on future jet carrier training requirements of the Navy (sec. 145)*

The House bill contained a provision (sec. 144) that would require the Secretary of the Navy to submit a report to the congressional defense committees within 120 days after the date of enactment of this Act on future jet carrier training requirements.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

### **Legislative Provisions Not Adopted**

*Rapid acquisition fund*

The House bill contained a provision (sec. 106) that would authorize funds for a rapid acquisition fund.

The Senate bill did not contain a similar provision.

The agreement does not include the House provision.

*Applicability of previous teaming agreements for Virginia-class submarine program*

The House bill contained a provision (sec. 122) that would amend the multiyear contracting authority contained in section 121 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to require that the Secretary of the Navy certify that the contract to be awarded under such authority comports with the Team Agreement between the two submarine building yards, dated February 16, 1997, which was submitted to the Congress on March 31, 1997.

The Senate bill contained no similar provision.

The agreement does not include the House provision.

*Limitation on retiring C-5 aircraft*

The House bill contained a provision (sec. 131) that would repeal section 132 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136) relating to a prohibition on retiring C-5A aircraft until certain testing had been completed. Instead, the provision would prohibit retiring C-5A aircraft until 45 days after the Secretary of the Air Force had submitted a certification that retiring aircraft would not increase operational risk, and a cost analysis assessing different approaches for meeting strategic airlift requirements.

The Senate bill contained no similar provision.

The agreement does not include the House provision.

## **TITLE II-RESEARCH, DEVELOPMENT, TEST, AND EVALUATION**

### **Budget Items**

*Research, Development, Test and Evaluation overview*

The budget request included \$79.7 billion in Research, Development, Test and Evaluation for the Department of Defense.

The House bill would authorize \$79.8 billion.

The Senate bill would authorize \$79.8 billion.

The agreement would authorize \$77.8 billion.

Unless noted explicitly in the statement of managers, all changes are made without prejudice.

*Network science, technology and experimentation center*

The budget request included \$10.0 million in PE 61104A for the establishment of a network science and technology research center. This is an example of the Army's continued commitment to investments in basic research, especially in the face of severe budget constraints due to the current operations and reset of the force. In particular, it is widely expected that new investments in network science can lead to significant enhancements in operational capabilities.

The fact that the current Army plan for this effort calls for the majority of funding to go to the establishment of a single research center is a cause for concern. The National

Research Council's 2007 report entitled "Strategy for an Army Center for Network Science, Technology, and Experimentation" concluded that, "based on Army needs, the NSTEC [Network Science, Technology, and Experimentation Center] should be a hybrid operation consisting of two or three centralized facilities having interconnectivity to a variety of distributed supporting elements." The current Army proposed plan and budget is not consistent with this recommended hybrid approach.

The Army is directed to ensure that the network science and technology research center be established so as to leverage the benefits of a distributed and networked research community. Clearly, some funding should be retained to support in-house research efforts, but the majority of funding should continue to go to a networked group of investigators selected on the basis of technical merit of proposed research.

The Army is further directed to ensure that none of the \$10.0 million authorized in PE 61104A for the establishment of a network science and technology research center shall be available for the purpose of infrastructure and facilities development. The fact that basic research funding is a precious and scarce resource places a great emphasis on ensuring its use for designated research purposes. Such funds should not be utilized for infrastructure and facilities development, save for the most exceptional circumstances.

### **Items of Special Interest**

#### *Executive helicopter program (VH-71A)*

The budget request included \$1,047.8 million in PE 64273N for continued development of the executive helicopter, VH-71A. The VH-71A program is intended to provide the replacement helicopter for transportation of the President and Vice President of the United States, heads of state, and other dignitaries. The House report (H. Rept. 110-652) observed that the reported cost increases in the program were sufficient to exceed the 25 percent unit cost increase that would invoke the certification requirements levied by section 2433 (e)(2)(A) of title 10, United States Code, commonly referred to as a "Nunn-McCurdy Breach." The House report directed the Secretary of Defense to submit an analysis of potential advantages and disadvantages of conducting a re-competition of the program when the Secretary submits that certification.

The Senate report (S. Rept. 110-335) directed the Secretary of the Navy to submit a VH-71A report to the congressional defense committees outlining VH-71A program:

- (1) performance requirements;
- (2) revised cost estimates;
- (3) causes for cost growth;
- (4) detailed breakout of cost growth related to underestimated requirements; and
- (5) actions being implemented to reduce and control development and production costs.

The Senate report would also prohibit the Secretary from obligating fiscal year 2009 funds for VH-71A Executive Helicopter Development (PE 64273N) for Increment Two efforts until: (1) the Defense Department completes VH-71A unit cost reporting requirements as prescribed by section 2433 of title 10, United States Code; and (2) the Secretary of the Navy submits the VH-71A report described above to the congressional defense committees.

Additionally, the Senate report directed the Secretary to identify alternatives for extending the service life of Increment One aircraft and increasing their utility in the effort to provide greater return on this investment.

The agreement directs the Secretary to submit the reports requested in both the House and Senate reports, removes the prohibition on obligating any fiscal year 2009 funding, and directs the Secretary not to restructure the existing VH-71 contract until the completion of the Nunn-McCurdy certification process.

#### *Missile defense force structure and Joint Capabilities Mix studies*

We note that the Joint Integrated Air and Missile Defense Organization, a component of the Joint Staff, has conducted a number of studies over several years concerning the operational requirements of combatant commanders for upper tier ballistic missile defense. These Joint Capabilities Mix (JCM) studies have consistently concluded that U.S. combatant commanders need about twice as many Standard Missile-3 (SM-3) and Terminal High Altitude Area Defense (THAAD) interceptors as the number planned by the Missile Defense Agency (MDA), just to meet their minimum inventory requirements to defend against existing levels of short- and medium- range ballistic missiles.

We are deeply disappointed that the Department of Defense has not planned or budgeted for even this minimum requirement, and believe that achieving at least this minimum inventory should be the highest priority for MDA. We expect the

Department of Defense to budget accordingly starting with the budget submission for fiscal year 2010.

We are concerned that there is no adequate requirements process in place for MDA to determine the force structure and inventory levels to meet the needs of the combatant commanders. This is a fundamental shortcoming of the Department of Defense's approach to missile defense, and one that needs to be resolved. We expect the Department of Defense to establish an adequate requirements process for missile defense force structure and inventory that ensures that the operational requirements of the regional combatant commanders are fully taken into account in MDA's budget and planning process.

### *Missile defense tests and targets*

We are discouraged to note that the Missile Defense Agency (MDA) Test and Targets program has had another disappointing year. MDA failed to conduct a single intercept flight test of the Ground-based Midcourse Defense (GMD) system during fiscal year 2008, and canceled a planned and budgeted GMD flight test, designated FTG-04. Instead, it conducted a sensor flight test, FTX-03. Over the last several years, MDA has not managed to conduct an average of even one GMD intercept flight test per year, despite the fact that Congress has authorized and appropriated over \$200.0 million per year to conduct two flight tests each year.

In addition, a test of the GMD system was aborted in May 2007 when the target failed to reach the necessary altitude, and a flight test of the Terminal High Altitude Area Defense (THAAD) system was aborted on September 17, 2008, when the target missile failed shortly after launch.

We are disappointed to note that MDA chose to cancel FTG-04 without first consulting with any of the key stakeholders, including the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD/AT&L), the Director of Operational Test and Evaluation (DOT&E), or the Commander of United States Strategic Command.

We direct MDA to consult with these organizations, or their designees, prior to any future decision to cancel a flight test, and to report in writing to the congressional defense committees within 1 week of a decision to cancel such a test, indicating the following information: (1) the reasons for the cancellation; (2) the implications and risks for the testing and development program that will result from cancelling the test; (3) a plan describing how the original objectives of the flight test will still be met, notwithstanding the cancellation; (4) the views and recommendations of the organizations consulted; and (5) any

modifications in the allocation of budget and testing resources as a result of the cancellation of the flight test.

*Upper tier follow-on to Arrow*

The United States is engaged in a cooperative program with Israel to provide an upper-tier follow-on to the Arrow Weapon System for Israel. There are two systems being pursued under this cooperative program: a land-based version of the existing Standard Missile 3 (SM-3) using an AN/TPY-2 forward-based X-band radar, and the development of a new Arrow-3 interceptor. The SM-3 interceptor and the AN/TPY-2 radar, which is derived from the radar for the Terminal High Altitude Area Defense (THAAD) system, have already been developed and demonstrated. The Arrow-3 has not yet been developed, and its design has changed several times.

After a number of changes to Israeli requirements and the planned performance of the Arrow-3 missile, the Missile Defense Agency (MDA) has chosen to pursue development of the Arrow-3 as the primary approach to developing an upper tier missile defense capability for Israel. However, this would be a technically challenging undertaking, involving a number of critical and complex technologies that Israel has never produced previously. Consequently, it is not certain that Israel can succeed in the development of all the Arrow-3 technologies in time to meet Israel's required fielding schedule.

We are concerned that MDA has chosen a technically risky path forward, and is not providing sufficient risk mitigation through the land-based SM-3 option. MDA has indicated it intends to pursue an Arrow-3 development strategy based on knowledge points, with the stated intention of being able to curtail or stop the program if it does not meet its knowledge points on schedule.

However, MDA has not demonstrated an ability to reduce funding for other programs that have not met their knowledge points on schedule. This suggests that an Arrow-3 development program could continue to be the primary path even if it does not meet its knowledge points or its schedule, thus precluding the option of having the proven SM-3 and AN/TPY-2 technology serve as a suitable upper tier option on schedule.

Therefore, we direct the Under Secretary of Defense for Acquisition, Technology, and Logistics to review MDA's proposed approach and submit to the congressional defense committees, no later than April 15, 2009, a report providing a plan for risk mitigation for the U.S.-Israel upper tier program of cooperation that provides a cost-effective path to providing an upper tier missile defense capability for Israel.

## *Wide area airborne surveillance*

The Senate report (110-335) accompanying S. 3001 urged the Department of Defense to rapidly define and acquire next generation wide area airborne surveillance (WAAS) capabilities to augment existing and planned full motion video (FMV) platform deployments, and possibly to help limit the number of additional orbits of FMV aircraft needed in the future.

We are encouraged that the Defense Department at senior levels is focused on the WAAS requirement and the range of potential solutions. However, a number of concerns persist.

While significant funds have been allocated for development of the WAAS collection system, very little money is available for the processing, exploitation, and dissemination of the vast amount of imagery that the WAAS system will produce. This imbalance will prevent effective fielding of a WAAS capability in the timeframe required.

There is confusion as to whether the WAAS system is intended to complement or replace existing and planned deployments of narrow-field-of-view FMV assets. This confusion creates concern and opposition from deployed forces. If it is possible for a WAAS system to substitute for FMV assets, the required performance level (in terms of resolution, frame rate, look angles, and the like) cannot be fielded at least for a period of years. While it is important for the Department to evaluate now what levels of performance might be achievable in subsequent increments of a WAAS program, the near-term focus must be on fielding capabilities that complement existing assets and operate with them in a systems-of-systems network.

In this regard, we are concerned that insufficient attention and resources are being devoted to rapidly fielding a command and control capability that will permit, on a large-scale, integrated operations involving WAAS platforms, FMV assets, and signals intelligence systems across services, national agencies, and various echelons of command. We support the recent initiative by the Air Force WAAS program office to utilize the Network-Centric Collaborative Targeting system, now reaching Initial Operational Capability, as the basis for this important command and control capability.

We direct that, within 90 days of the date on which there is a down select by the WAAS prime integrator, the Deputy Secretary of Defense submit a report to the congressional defense and intelligence committees that characterizes WAAS collection and exploitation requirements, the program increments and funding to meet the requirements, the operational concept for WAAS increments, and the means by which WAAS, FMV systems,

and other sensors will be operated together to support the find, fix, and finish targeting process.

## **Subtitle A—Authorization of Appropriations**

### *Authorization of appropriations (sec. 201)*

The House bill contained a provision (sec. 201) that would authorize appropriations for fiscal year 2009 for the use of the Department of Defense for research, development, test and evaluation.

The Senate bill contained a similar provision (sec. 201).

The agreement includes a provision that would authorize appropriations for fiscal year 2009 for the use of the Department of Defense for research, development, test and evaluation.

### *Authorization for defense science and technology (sec. 202)*

The House bill contained a provision (sec. 202) that would authorize appropriations for fiscal year 2009 for the use of the Department of Defense for science and technology activities.

The Senate bill contained a similar provision (sec. 202).

The agreement includes a provision that would authorize appropriations for fiscal year 2009 for the use of the Department of Defense for science and technology activities.

## **Subtitle B—Program Requirements, Restrictions, and Limitations**

### *Additional determinations to be made as part of Future Combat Systems milestone review (sec. 211)*

The House bill contained a provision (sec. 211) that would amend section 214 of the John Warner National Defense Authorization Act for 2007 (Public Law 109-364) by adding additional determinations to be made by the Secretary of Defense during the Future Combat Systems (FCS) program review.

The Senate bill contained no similar provision.

The agreement includes the House provision.

We intend that the additional determinations required during the FCS program review should be applied with respect to threshold FCS system of system technologies, not surrogates.

### *Analysis of Future Combat Systems communications network and software (sec. 212)*

The House bill contained a provision (sec. 212) that would require the Assistant Secretary of Defense, Networks and Information Integration (ASD NII), to conduct an independent study and report to the congressional defense committees by July 1, 2009, on possible vulnerabilities of the Future Combat Systems (FCS) communications network. The purpose of this study is to inform the review of the FCS program mandated by section 214 of the John Warner National Defense Authorization Act for 2007 (Public Law 109-364).

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would provide the Department with additional time to complete the analysis and require the ASD NII to assess, in coordination with the Director of Operational Test and Evaluation, the synchronization of the funding, schedule, and technology maturity of the Warfighter Information Network-Tactical and Joint Tactical Radio System in programs in relation to the FCS program.

*Future Combat Systems manned ground vehicle selected acquisition reports (sec. 213)*

The House bill contained a provision (sec. 213) that would require the Secretary of the Army to submit to the congressional defense committees selected acquisition reports as defined in section 2432(c) of title 10, United States Code, on each of the eight Future Combat Systems (FCS) manned ground vehicle variants. The reports are required by February 15 of each year from 2009 to 2015.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment that would include any additional manned ground vehicle variants designated in FCS Acquisition Reports after the date of enactment.

*Separate procurement and research, development, test, and evaluation line items and program elements for Sky Warrior unmanned aerial systems (sec. 214)*

The House bill contained a provision (sec. 214) that would require the Secretary of Defense to ensure that the Department of Defense program and budget exhibits for the Army's Sky Warrior unmanned aerial system break out that program into separate program elements and line items.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Restriction on obligation of funds for the Warfighter Information Network-Tactical program (sec. 215)*

The House bill contained a provision (sec. 215) that would restrict obligation of 80 percent of research and development funds authorized for appropriation for the Warfighter Information Network-Tactical, Increment 3 program until 15 days after receipt by the congressional defense committees of certification from the Under Secretary of Defense for Acquisition, Technology and Logistics that the program has an approved acquisition program baseline, a new independent cost estimate, and the Director, Defense Research and Engineering has completed a technology readiness assessment.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that reduces the amount of funding restricted pending the certification from 80 percent to 50 percent and makes other clarifications.

*Limitation on source of funds for certain Joint Cargo Aircraft expenditures (sec. 216)*

The House bill contained a provision (sec. 216) that would require the Secretary of the Army to fund certain expenditures for the Joint Cargo Aircraft (JCA) through procurement or research, development, test and evaluation accounts, rather than from other appropriations accounts.

The Senate bill contained no similar provision.

The agreement included the House provision with an amendment that would modify the provision to place the same requirement on the Secretary of the Air Force.

The report (H. Rept. 110-652) accompanying the House bill noted that, at the time of the report, the Air Force was reporting a unit cost for JCA of \$60.7 million, and was reporting a unit cost for C-130J aircraft of \$56.7 million. After further discussion with the Air Force acquisition officials and clarification of terminology, we believe that a fairer, apples-to-apples comparison of such costs would raise the comparable average procurement unit cost for a C-130J to \$84.2 million, in terms of fiscal year 2007 dollars.

*Requirement for plan on overhead nonimaging infrared systems (sec. 217)*

The Senate bill contained a provision (sec. 211) that would direct the Secretary of the Air Force to develop a comprehensive

plan to conduct and support research, development, and demonstration of technologies that could evolve into the next generation of overhead nonimaging systems. The plan would also include an explanation of how such systems would be tested, including any flight or on-orbit testing as well as how and when the technologies would transition to an acquisition program. In addition, the provision would prohibit appropriation of more than 50 percent of the funds authorized to be appropriated for the third generation infrared surveillance program until the plan is submitted to the congressional defense committees.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would direct the Secretary of Defense and the Director of National Intelligence to conduct the plan. In addition the amendment would add a description of the research, development and demonstration activities, as an additional element to the plan.

#### *Advanced energy storage technology and manufacturing (sec. 218)*

The Senate bill contained a provision (sec. 212) that would require the Department of Defense to develop a technology and manufacturing roadmap for battery technologies.

The House bill contained no similar provision.

The agreement includes a provision that would expand the scope of the roadmapping exercise to include all relevant energy storage technologies, such as, but not limited to, batteries, fuel cells and capacitors. The provision would further add a requirement for the Department to provide a detailed report of the investment levels in energy storage technologies.

The roadmap development should be primarily lead by the Director of Defense Research and Engineering, the Deputy Under Secretary of Defense for Industrial Policy, and Service Acquisition Executives, so that the roadmap accurately reflects technology development, industrial base, program requirements, and cost drivers. It is further expected that Service acquisition program offices with significant energy storage technology requirements, the Joint Defense Manufacturing Technology Panel, the Defense Logistics Agency, and appropriate organizations within the Department of Energy will all participate in the roadmap development. The roadmap should not focus solely on science and technology activities and existing investments.

It is expected that a thorough understanding of resource allocation and current investment in advanced energy storage technologies will help clarify the investment shortfalls and capability gaps that should be emphasized in the technology and

manufacturing roadmap.

*Mechanisms to provide funds for defense laboratories for research and development of technologies for military missions (sec. 219)*

The Senate bill contained a provision (sec. 213) that would authorize the Secretary of Defense to permit laboratory directors to utilize up to 3 percent of laboratory funds for research and development, technology transition, and workforce development activities.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would terminate the authority after 4 years.

The utilization of this authority and its impact on the mission performance and technical capabilities of the laboratories will be closely monitored by the congressional defense committees. All efforts to supply the needed authorities and resources to the defense laboratories to enable them to effectively and efficiently perform their designated missions are supported and encouraged.

*Requirements for certain airborne intelligence collection systems (sec. 220)*

The Senate bill contained a provision (sec. 215) that would require that each airborne collection system within the Department of Defense that is connected to the Distributed Common Ground/Surface System to have the ability to operate with the Network-Centric Collaborative Targeting System, unless the Chairman of the Joint Requirements Oversight Council waives the requirement on a case-by-case basis.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Limitation on obligation of funds for enhanced AN/TPQ-36 Radar System pending submission of report (sec. 221)*

The House bill contained a provision (sec. 236) that would limit the amount of funds provided to the program until the Secretary of the Army provides the congressional defense committees with a plan to transition the Counter-Rockets, Artillery, and Mortars (C-RAM) program to a program of record.

The Senate bill contained no similar provision.

The agreement includes the House provision.

## **Subtitle C-Missile Defense Programs**

*Annual Director of Operational Test and Evaluation  
characterization of operational effectiveness, suitability, and  
survivability of the Ballistic Missile Defense System (sec. 231)*

The Senate bill contained a provision (sec. 234) that would require the annual report of the Director of Operational Test and Evaluation on the testing of the Ballistic Missile Defense System (BMDS) to include a characterization of the operational effectiveness, suitability, and survivability of the BMDS and its elements that have been fielded or tested before the end of the preceding fiscal year.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Independent study of boost-phase missile defense (sec. 232)*

The House bill contained a provision (sec. 221) that would require an independent study of boost-phase missile defense programs, specifically the Airborne Laser and the Kinetic Energy Interceptor. The study would assess a variety of relevant factors and compare the results to non-boost-phase missile defense systems. The provision would require the independent study to be submitted to the congressional defense committees.

The Senate bill contained a similar provision (sec. 235).

The agreement includes the House provision with an amendment that would combine elements of the Senate provision with the House provision.

*Limitation on availability of funds for procurement,  
construction, and deployment of missile defenses in Europe (sec.  
233)*

The House bill contained a provision (sec. 222) that would limit the availability of fiscal year 2009 and future funds for procurement, site activation, construction, preparation of equipment for, or deployment of a long-range missile defense system until the following conditions have been met: (1) the Governments of Poland and the Czech Republic have each signed and ratified the necessary agreements allowing for such deployment; and (2) 45 days have elapsed after Congress receives the independent assessment required in section 226 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181). The provision would also limit the availability of funds for the acquisition and deployment of operational interceptor missiles for the planned European deployment until

the Secretary of Defense certifies, after receiving the views of the Director of Operational Test and Evaluation, that the interceptor has demonstrated, through successful, operationally realistic flight testing, a high probability of working in an operationally effective manner and the ability to accomplish its mission.

The Senate bill contained a similar provision (sec. 232), with the differences being that it would: (1) limit the effect of the general limitation to the availability of fiscal year 2009 funds; (2) clarify that each host nation would need to give final approval to any missile defense agreements concerning the deployment of missile defense components on its territory; and (3) authorize the initial long lead procurement funds for the proposed European interceptors, since the long-lead components are 100 percent common to the three-stage variant of the interceptor.

The agreement includes a combined provision that would limit the availability of fiscal year 2009 and future funds for procurement, site activation, construction, preparation of equipment for, or deployment of a long-range missile defense system until the following conditions have been met: (1) in the case of the proposed midcourse radar element, the host nation has signed and ratified the agreements needed to allow for the deployment of such radar in the host nation; (2) in the case of the proposed long-range missile defense interceptor element, the condition in paragraph (1) has been met, and the host nation has signed and ratified the agreements needed to allow for the deployment of such interceptor element in the host nation; and (3) 45 days have elapsed after Congress has received the report required by section 226(c)(6) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181). The provision would also limit the availability of fiscal year 2009 funding for acquisition (other than initial long-lead funding) or deployment of the proposed interceptor until the Secretary provides the certification required in both bills.

*Review of the ballistic missile defense policy and strategy of the United States (sec. 234)*

The Senate bill contained a provision (sec. 231) that would require the Secretary of Defense to conduct a review of the ballistic missile defense policy and strategy of the United States. The provision would require the Secretary to submit a report to Congress not later than January 31, 2010, setting forth the results of the review.

The House bill contained no similar provision.

The agreement includes the Senate provision with an

amendment that would add several elements to be required in the review.

*Airborne Laser System (sec. 235)*

The Senate bill contained a provision (sec. 233) that would require the Director of Operational Test and Evaluation (DOT&E) to assess and report on the operational effectiveness, suitability, and survivability of the Airborne Laser (ABL) System. The provision would also limit the availability of funds for procurement of a second or subsequent ABL aircraft until the Secretary of Defense, after receiving the DOT&E assessment, submits a certification that the ABL system has demonstrated a high probability of being operationally effective, suitable, survivable, and affordable.

The House bill contained a provision (sec. 221) that would, among other things, prohibit the use of funds to acquire a second ABL aircraft until 60 days after Congress receives an independent study on boost-phase missile defense programs required by the provision.

The agreement includes the Senate provision with an amendment that would incorporate the House funding prohibition into the Senate provision.

*Activation and deployment of AN/TPY-2 forward-based X-band radar (sec. 236)*

The Senate bill contained a provision (sec. 237) that would authorize the use of up to \$89.0 million in funds for defense-wide research, development, test, and evaluation for the activation and deployment of an AN/TPY-2 X-band radar to a classified location. It would also require the Secretary of Defense to submit a report to Congress on such deployment before the funds would be available for the deployment.

The House bill contained no similar provision.

The agreement includes the Senate provision.

## **Subtitle D-Reports**

*Biennial reports on joint and service concept development and experimentation. (sec. 241)*

The Senate bill contained a provision (sec. 252) that would reduce the reporting requirement on Department of Defense concept development and experimentation activities and include reporting on related activities of the military services.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would clarify the reporting requirements.

The joint and service level for concept development and experimentation activities can support efforts at innovation and transformation in doctrine, training, materiel acquisition and other areas of Departmental activity. As the executive agent for joint warfighting experimentation, the Commander of United States Joint Forces Command has a unique ability and responsibility to use the results of the Department's various concept development and experimentation activities to advocate for the transformation of investment strategies, defense acquisition policies, requirements generation, doctrine development, and force structure to enhance joint warfighting capabilities.

*Report on the participation of the historically black colleges and universities and minority serving institutions in research and educational programs and activities of the Department of Defense (sec. 242)*

The House bill contained a provision (sec. 232) that would require an assessment of the Historically Black Colleges and Universities (HBCU/MI) and Minority Serving Institutions program.

The Senate bill contained no similar provision.

The agreement includes a provision that would require an independent assessment of the participation of HBCU/MI, Hispanic Serving Institutions, Tribal Colleges and Universities, and other minority postsecondary institutions in Department of Defense research, training, and educational activities.

At a time when the Department and the nation are facing a shortage of personnel in growing areas of science and engineering, this community of educational institutions and the population they serve can make a valuable contribution to the missions of the Department of Defense.

*Report on Department of Defense response to findings and recommendations of the Defense Science Board Task Force on Directed Energy Weapons (sec. 243)*

The Senate bill contained a provision (sec. 255) that would require the Department of Defense to report on responses to the findings and recommendations of the Defense Science Board Task Force on Directed Energy Weapons.

The House bill contained no similar provision.

The agreement includes the Senate provision with a clarifying amendment.

## **Subtitle E-Other Matters**

*Modification of systems subject to survivability testing oversight by the Director of Operational Test and Evaluation (sec. 251)*

The House bill contained a provision (sec. 231) that would clarify the responsibilities of the Secretary of Defense and the Director of Operational Test and Evaluation with respect to oversight and reporting on survivability testing for personnel protective equipment and other defense systems.

The Senate bill contained a similar provision (sec. 251).

The agreement includes the House provision with an amendment that would allow the Secretary of Defense to authorize the Director of Operational Test and Evaluation to perform statutorily mandated monitoring and reporting on a broader range of defense systems. The amendment makes additional clarifying amendments to sections 2366 and 139 of title 10, United States Code. This provision will enable the Secretary and Director to have appropriate levels of oversight of systems that require survivability and lethality testing, including certain items of personnel protective equipment and non lethal weapons. It is expected that the acquisition and testing community should continue to work together to develop and adequately test systems to validate their operational effectiveness, suitability and survivability, but still deliver new capabilities in a rapid and efficient fashion.

*Technology-neutral information technology guidelines and standards to support fully interoperable electronic personal health information for the Department of Defense and Department of Veterans Affairs (sec. 252)*

The House bill contained a provision (sec.233) that would amend section 1635 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to add additional reporting requirements to the annual report required by that section. The provision would also require the Director of the Department of Defense-Department of Veterans Affairs Interagency Program Office to report within 12 months after the date of enactment of this Act on the development of information technology infrastructure guidelines and standards for use by the Departments of Defense and Veterans Affairs to enable fully interoperable electronic personal health information.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would eliminate the requirement for reporting to the appropriate congressional committees on the specific guidelines and standards developed or adopted under this provision.

The Department of Defense and Department of Veterans Affairs should, to the extent practicable, pursue guidelines and standards that are consistent with other similar ongoing federal efforts and with relevant guidance and directives for the development of information technology (IT) systems in the Department of Defense and Department of Veterans Affairs.

Within the Department of Defense, the medical IT community should work closely with Assistant Secretary of Defense for Networks and Information Integration and the Business Transformation Agency, both of which have valuable experience in evaluating and selecting standards for large-scale enterprise systems.

*Assessment of technology transition programs and repeal of reporting requirement. (sec. 253)*

The House bill contained a provision (sec. 234) that would require the Department of Defense to assess the feasibility of consolidating various technology transition accounts into a unified effort. The House provision would also repeal the requirement for the Technology Transition Initiative (TTI).

The Senate bill contained a provision (sec. 253) which would repeal the recurring reporting requirement relating to the TTI program.

The agreement includes a provision which requires the Under Secretary of Defense for Acquisition, Technology and Logistics (USD (AT&L)) to assess the feasibility of consolidating technology transition accounts into one account to be managed at the Department-level. The agreement also requires the USD (AT&L) to submit a report to Congress on the aforementioned assessment and include recommendations concerning the streamlining and improvement of technology transition activities throughout the Department. Finally, the agreement repeals the Department's annual TTI reporting requirement.

Efficient technology transition is a mainstay of the Department's ability to deliver military advantage to the operational force. Continued employment of the current regime of initiatives and programs may not be the most effective approach to transitioning promising technologies to the force. The USD (AT&L) is expected to characterize the limitations of the existing transition activities and provide recommendations to improve the process of transitioning technologies. The

overall goals of the various Department of Defense technology transition programs are laudable, but there is a need to better understand the Department's requirements for additional authorities or for the repeal of unnecessary authorities that could improve technology transition.

*Trusted defense systems (sec. 254)*

The House bill contained a provision (sec. 235) that would require the Department of Defense to perform an assessment, develop a strategy, issue interim policy guidance, and provide a report to Congress related to assuring trust in the supply chain for certain defense systems.

The Senate bill contained a related provision (sec. 256) that required an assessment of the capabilities of the Department to assess trust in semiconductor technologies.

The agreement includes a provision that requires the Secretary of Defense to assess the trust in, and vulnerabilities within the supply chain of key electronic components of major defense acquisition programs; to assess methods for verifying trust of DoD semiconductors; to produce a strategy for managing supply chain risk and trust verification for semiconductors; to establish policies necessary to support these activities; and to report to Congress on the assessment and policies.

There is growing concern that major manufacturing for many mission-critical semiconductors have moved offshore, primarily to Asia. The inherent risks associated with procuring electronic components that have been designed, fabricated, tested, or packaged in unsecure facilities abroad demand a well planned and structured response.

Therefore, the Secretary is instructed to coordinate the various current efforts designed to study and protect mission-critical electronic components and create an integrated strategy for managing supply chain risk and ensuring trust of semiconductors used in applications across all services. Only by engaging in consultation with industry, academia and other agencies will the Department be able to fashion the cross-cutting strategy needed to address a challenge that confronts the most complicated and important acquisition programs and threatens every part of the operational force.

*Capabilities-based assessment to outline a joint approach for future development of vertical lift aircraft and rotorcraft (sec. 255)*

The House bill contained a provision (sec. 237) that would require the Secretary of Defense and the Chairman of the Joint

Chiefs of Staff to develop an assessment of a joint approach to developing future vertical lift aircraft and rotorcraft, and to submit a report on that assessment.

The Senate bill contained no similar provision.

The agreement includes the House provision, with the understanding that the current program for modernizing the Marine Corps' heavy lift rotorcraft fleet shall not be subsumed within any joint program office that might emerge from this assessment.

*Executive agent for printed circuit board technology (sec. 256)*

The Senate bill contained a provision (sec. 254) that would require the establishment of an executive agent to oversee Department of Defense activities related to printed circuit board technologies.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that requires the Secretary of Defense to designate an executive agent for printed circuit board and interconnect technologies. The provision specifies roles and responsibilities that the Secretary of Defense will charge to the executive agent.

The Secretary may include further duties, especially as they may pertain to ensuring that the Department maintains and grows its capability for establishing trust in interconnect technologies. While it is critical that the executive agent designated by the Secretary develop a well-planned roadmap which details current and future technologies needed and the logistics network necessary to provide them, the executive agent should also draw together the specific timeline that must be realized and funding that must be obtained to successfully implement the roadmap going forward.

Finally, the provision directs the Secretary of Defense to ensure that the executive agent is properly resourced to implement the task and is supported throughout the military departments.

*Review of conventional prompt global strike technology applications and concepts (sec. 257)*

The House bill contained a provision (sec. 238) that would limit the use of funds for conventional prompt global strike (PGS) in fiscal year 2009 to only those activities expressly delineated in the expenditure plan for fiscal years 2008 and 2009, which was required by section 243 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) or

activities otherwise expressly authorized by Congress. The expenditure plan was transmitted to the congressional defense committees on March 24, 2008. The provision would also require the Secretary of Defense to submit a report on PGS concepts with the fiscal year 2010 budget request.

The Senate bill contained a similar provision (sec. 1054) that would direct the Secretary of Defense, in consultation with the Secretary of State, to conduct a review of the prompt global strike technologies that will be demonstrated beginning in fiscal year 2010. The report would set forth the cost of the demonstration, identify any legal, treaty, or policy related issues that might be associated with the concept demonstrated or the demonstration itself, and whether and to what extent there is a possibility that the concept or the demonstration itself could be confused with a nuclear weapons system. In addition, the report would set forth a description of the types of targets against which the concept demonstrated might be used. The report would be submitted to the congressional defense committees no later than 30 days after the date on which the budget is submitted.

The agreement includes the Senate provision with an amendment that would limit the use of funds for conventional PGS in fiscal year 2009. The amendment would also direct the Secretary of Defense to submit a report to the congressional defense committees that describes the technologies planned to be developed during fiscal year 2009 and how those technologies relate to PGS options and concepts. The due date for this report would be April 1, 2009.

In addition, the amendment would modify the review and assessment to be conducted by the Secretary of Defense in consultation with the Secretary of State, to include recommendations that would mitigate such risk in the assessment as to whether a PGS concept could be misconstrued as a nuclear weapon or delivery system. The amendment would further modify the assessment to include an assessment of the intelligence needed to support the use of any PGS concept. A report on this review and assessment would be due no later than September 1, 2009.

We note that the Department of Defense has expressed interest in examining biconic technology as part of an alternative re-entry system/warhead engineering and delivery vehicle options/development but included no plan to manufacture a biconic vehicle in the expenditure plan for fiscal years 2008 and 2009. As a result no funds are available in fiscal year 2009 to manufacture such a vehicle.

We note that the Department is approaching a PGS concept definition milestone in the fiscal year 2010 timeframe. We

encourage the Department to weigh carefully all aspects of PGS concept alternatives, including the technical, cost, operational, and policy considerations associated with each option.

We note that the National Research Council of the National Academy of Sciences has recently completed a report titled "U.S. Prompt Global Strike: Issues for 2008 and Beyond." This report was prepared at the request of Congress. The Department should review this and other PGS related reports as part of the process to determine which PGS concept alternatives to pursue.

We direct the Secretary to submit a copy of the report to the Committee on Foreign Affairs of the House of the Representatives and the Committee on Foreign Relations of the Senate.

### **Legislative Provisions Not Adopted**

#### *Assured funding for certain information security and information assurance programs of the Department of Defense*

The Senate bill contained a provision (sec.214) that would provide a source of funding for a new technology development activity for information security.

The House bill contained no similar provision.

The agreement does not include the provision.

#### *Study on space-based interceptor element of ballistic missile defense system*

The Senate bill contained a provision (sec. 236) that would require an independent entity to conduct an assessment of the feasibility and advisability of developing a space-based interceptor element to the ballistic missile defense system.

The House bill contained no similar provision.

The agreement does not include the Senate provision.

#### *Visiting National Institutes of Health senior neuroscience fellowship program*

The House bill contained a provision (sec. 239) that would establish a visiting National Institutes of Health neuroscience fellowship within the Department of Defense.

The Senate bill contained no similar provision.

The agreement does not include the provision.

Neuroscience can play an important role in improving capabilities in combat casualty care, addressing traumatic brain injuries and post traumatic stress disorders, decision making,

and human-machine interfaces, among other areas. The Department of Defense is directed to continue to support research in this area, including expanding collaboration with the National Institutes of Health on research, personnel exchanges, technology transition, and other activities.

## **TITLE III-OPERATION AND MAINTENANCE**

### **Subtitle A-Authorization of Appropriations**

*Operation and maintenance funding (sec. 301)*

The House bill contained a provision (sec. 301) that would authorize fiscal year 2009 funding levels for all operation and maintenance accounts.

The Senate bill contained a similar provision (sec. 301). The agreement includes this provision.

### **Subtitle B-Environmental Provisions**

*Authorization for Department of Defense participation in conservation banking programs (sec. 311)*

The House bill contained a provision (sec.311) that would authorize the Department of Defense to participate in conservation mitigation bank programs.

The Senate bill contained a similar provision (sec. 2811). The agreement includes the House provision.

*Reimbursement of Environmental Protection Agency for certain costs in connection with Moses Lake Wellfield Superfund Site, Moses Lake, Washington (sec. 312)*

The House bill contained a provision (sec. 312) that would authorize the Department of Defense to reimburse the Environmental Protection Agency for certain costs in connection with Moses Lake Wellfield Superfund Site, Moses Lake, Washington.

The Senate bill contained a similar provision (sec. 312).

The agreement includes the House provision.

*Expand cooperative agreement authority for management of natural resources to include off-installation mitigation (sec. 313)*

The House bill contained a provision (sec. 313) that would

expand the authority of the Department of Defense to enter cooperative agreements for the management of natural resources to cover off-installation mitigation efforts.

The Senate bill contained a similar provision (sec. 311). The agreement includes the House provision.

*Expedited use of appropriate technology related to unexploded ordnance detection (sec. 314)*

The House bill contained a provision (sec. 314) that would require research on, deployment of, and training with unexploded ordnance (UXO) detection instrument technologies.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the expedited operational use of appropriate UXO detection technologies developed inside or outside the Department of Defense and further require the Secretary of Defense to report on activities related to the development and deployment of UXO detection technologies.

*Closed loop re-refining of used motor vehicle lubricating oil (sec. 315)*

The House bill contained a provision (sec. 315) that would require a report on Department of Defense policies concerning the sale and disposal of used motor vehicle lubricating oil.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the Secretary of Defense, rather than the Comptroller General to submit the report; extend the deadline for the report to one year; delete the requirement to implement closed loop policies; and make certain clarifying changes.

*Comprehensive program for the eradication of the brown tree snake population from military facilities in Guam (sec. 316)*

The Senate bill contained a provision (sec. 313) that would direct the Department of Defense to establish a comprehensive program to control and, to the extent practicable, eradicate the brown tree snake (*Boiga irregularis*) population from military facilities in Guam and prevent their spread to other areas.

The House bill contained no similar provision.

The agreement includes the Senate provision.

We are concerned about the adverse effects of the brown tree snake on native species on Guam and the ecological and economic risks posed by its inadvertent introduction to other

areas in the Pacific region and the United States. We recommend that the Department of Defense place appropriate emphasis on brown tree snake interdiction and population reduction for the dual purposes of preventing inadvertent introduction outside of Guam and supporting programs to protect and restore native species on Guam. We further recommend that the Department execute this program in cooperation with the Government of Guam and consistent with its Integrated Natural Resources Management Plans.

## **Subtitle C-Workplace and Depot Issues**

*Comprehensive analysis and development of single government-wide definition of inherently governmental function and criteria for critical functions (sec. 321)*

The House bill contained a provision (sec. 322) that would require the Office of Management and Budget, in consultation with appropriate representatives of federal agencies, to conduct a comprehensive analysis of existing definitions of inherently governmental functions and other functions that should be performed by government employees, and to clarify those definitions as determined appropriate.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Study on future depot capability (sec. 322)*

The House bill contained a provision (sec. 323) that would require the Secretary of Defense to provide the Committees on Armed Services of the Senate and the House of Representatives an independent, quantitative assessment of the organic capability that will be required to provide depot-level maintenance in the post-reset environment. The provision would require that the Comptroller General review the report and provide findings within 90 days of submission.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the independent assessment to review budget displays and the current visibility of reported depot workload to Congress.

We were made aware by a recent reprogramming action, FY 08-37 PA, that certain depot maintenance is not being reported in the military departments' depot budget lines. In addition, the military departments' inflexibility in budgeting between depot and operations budget lines may cause them to make less than

optimal budgeting and maintenance workload decisions. The additional study requirement on the adequacy of maintenance workload visibility in reports and budget displays to Congress addresses these concerns.

*Government Accountability Office review of high-performing organizations (sec. 323)*

The House bill contained a provision (sec. 324) that would restrict the authority of the Department of Defense to establish high-performing organizations through business process reengineering.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment requiring the Government Accountability Office to review the Department's use of high-performing organizations.

*Consolidation of Air Force and Air National Guard aircraft maintenance (sec. 324)*

The House bill contained a provision (sec. 326) that would prohibit the Secretary of the Air Force from consolidating Air National Guard with active-duty Air Force maintenance activities and facilities without first consulting with, and obtaining the consent of, the National Guard Bureau. It would require the Secretary of the Air Force to report to the Committees on Armed Services of the Senate and the House of Representatives on the assumptions and criteria used to evaluate the feasibility of consolidation.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the Secretary of the Air Force to submit reports to the Committees on Armed Services of the Senate and the House of Representatives prior to the consolidation of any active and Air National Guard aircraft repair facilities and personnel. Additionally, the agreement would require that an assessment by the Chief of the National Guard Bureau accompany the Secretary of the Air Force's reports and that the Secretary of Defense certify that any consolidation is in the national interest and would not adversely affect Air National Guard missions.

*Report on Air Force civilian personnel consolidation plan (sec. 325)*

The House bill contained a provision (sec. 327) that would prohibit the consolidation of certain civilian personnel

functions.

The Senate bill contained no similar provision.

The agreement contains the House provision with an amendment that would require the Secretary of the Air Force to submit a report on the Air Force civilian personnel consolidation plan. In implementing the plan, we urge the Secretary to ensure that the Air Force retains the capability to manage appropriate personnel management and advisory functions at the large civilian centers where operations missions are complex and may be dependent upon the productivity of locally-managed civilian personnel numbering in the thousands. These large civilian centers include Hill Air Force Base, Utah; Warner Robins Air Force Base, Georgia; Tinker Air Force Base, Oklahoma; and Wright Patterson Air Force Base, Ohio. These large civilian centers are critical to the national security.

*Report on reduction in number of firefighters on Air Force bases (sec. 326)*

The House bill contained a provision (sec. 328) that would require the Secretary of the Air Force to submit a report to Congress on the effects of a reduction in the number of firefighters on Air Force bases.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Minimum capital investment for certain depots (sec. 327)*

The Senate bill contained a provision (sec. 322) that would amend section 332 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) to require the Department of Defense to report the separate levels of capital investment for Navy and Marine Corps depots. The provision would also add the following Army arsenals to the list of covered depots: Watervliet Arsenal, New York; Rock Island Arsenal, Illinois; and Pine Bluff Arsenal, Arkansas.

The House bill contained no similar provision.

The agreement includes the Senate provision.

## **Subtitle D-Energy Security**

*Annual report on operational energy management and implementation of operational energy strategy (sec. 331)*

The House bill contained a provision (sec. 331) that would require the Secretary of Defense to submit an annual operational

energy management report to the congressional defense committees on operational energy consumption and initiatives.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Consideration of fuel logistics support requirements in planning, requirements development, and acquisition processes (sec. 332)*

The House bill contained a provision (sec. 332) that would require the Secretary of Defense to develop a methodology for including the fully-burdened cost of fuel and energy efficiency in planning, capability requirements development, and acquisition processes. This section would require the Secretary, not later than 180 days after the date of enactment of this Act, to prepare an implementation plan and, within three years of enactment, certify to the Congress that the Department has complied with this section's requirements.

The Senate bill contained a similar provision that would require the Under Secretary of Defense for Acquisition, Technology, and Logistics to develop and report on an implementation plan for the incorporation of energy efficiency requirements into key performance parameters for fuel consuming systems.

The agreement includes the House provision with an amendment that would require a progress report after two years of implementation and that the Secretary of Defense notify Congress on the Department's compliance with the requirements of this section.

*Study on solar and wind energy for use for expeditionary forces (sec. 333)*

The House bill contained a provision (sec. 333) that would require the Secretary of Defense to submit a report, not later than March 1, 2009, on the feasibility of using solar energy to provide electricity at forward operating locations.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would add requirements to also study wind energy, the potential for experimenting with solar and wind energy during training, and change the due date of the report to not later than 120 days after enactment of the bill.

*Study on alternative and synthetic fuels (sec. 334)*

The House bill contained a provision (sec. 334) that would require the Secretary of Defense to conduct a study on alternatives to reduce the life cycle emissions of coal-to-liquid fuels.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the Secretary to study alternatives to reduce the life-cycle emissions of alternative and synthetic fuels (including coal-to-liquid fuels).

*Mitigation of power outage risks for Department of Defense facilities and activities (sec. 335)*

The Senate bill contained a provision (sec. 341) that would direct the Secretary of Defense to conduct a comprehensive energy technical and operational risk assessment for mission critical Department installations, facilities, and activities; to develop integrated prioritized plans to eliminate or mitigate risks; and to establish goals to mitigate or eliminate the greatest and most urgent risks. The provision would also require that the Secretary provide the defense committees an annual report on the Department's integrated prioritized plans and progress on efforts to mitigate or eliminate energy risks.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would add consideration of cost effectiveness to the development of risk mitigation plans.

## **Subtitle E-Reports**

*Comptroller General report on readiness of armed forces (sec. 341)*

The House bill contained a provision (sec. 341) that would require the Comptroller General of the United States to submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the readiness of the regular and reserve components of the armed forces.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Report on plan to enhance combat skills of Navy and Air Force personnel (sec. 342)*

The House bill contained a provision (sec. 342) that would require the Secretary of Defense to submit a report on the plans of the Secretary of the Navy and the Secretary of the Air Force

to improve the combat skills of the members of the Navy and the Air Force, respectively.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Comptroller General report on the use of the Army Reserve and National Guard as an operational reserve (sec. 343)*

The House bill contained a provision (sec. 343) that would require the Comptroller General of the United States to submit a report to the Committees on Armed Services of the Senate and the House of Representatives on the use of Army Reserve and National Guard forces as an operational reserve.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Comptroller General report on link between preparation and use of Army reserve component forces to support ongoing operations (sec. 344)*

The House bill contained a provision (sec. 344) that would require the Comptroller General of the United States to analyze and report to the Committees on Armed Services of the Senate and the House of Representatives on the preparation and operational use of the Army's reserve component forces.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Comptroller General report on adequacy of funding, staffing, and organization of Department of Defense military munitions response program (sec. 345)*

The House bill contained a provision (sec. 345) that would require the Comptroller General to report to Congress on the adequacy of the funding, staffing, and organization of the military munitions response program of the Department of Defense.

The Senate bill contained no similar provision.

The agreement includes the House provision.

## **Subtitle F-Other Matters**

*Extension of enterprise transition plan reporting requirement (sec. 351)*

The House bill contained a provision (sec. 351) that would extend through 2013 the requirement in section 2222(i) of title 10, United States Code, for the Secretary of Defense to submit an annual report to the congressional defense committees on the progress of the Department of Defense in transforming and improving its business systems.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Demilitarization of loaned, given, or exchanged documents, historical artifacts, and condemned or obsolete combat materiel (sec. 352)*

The House bill contained a provision (sec. 352) that would require the demilitarization of military equipment donated to museums and other entities under section 2572 of title 10, United States Code.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment to ensure that the Secretary concerned has flexibility to determine the level of demilitarization required.

*Repeal of requirement that Secretary of Air Force provide training and support to other military departments for A-10 aircraft (sec. 353)*

The House bill contained a provision (sec. 353) that would repeal outdated language regarding fleet support and depot maintenance for A-10 aircraft.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Display of annual budget requirements for air sovereignty alert mission (sec. 354)*

The House bill contained a provision (sec. 354) that would require the Secretary of Defense to submit budget justification material that displays funds requested for all programs and activities of the air sovereignty alert mission of the Air Force.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Revision of certain Air Force regulations required (sec. 355)*

The House bill contained a provision (sec. 356) that would

require the Secretary of the Air Force to bring the Air Freight Transportation Regulation Number 5, issued by the Air Mobility Command, into full compliance with Department of Defense transportation regulations requiring commercial best practices.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Transfer of C-12 aircraft to California Department of Forestry and Fire Protection (sec. 356)*

The House bill contained a provision (sec. 357) that would authorize the Secretary of the Army to convey to the California Department of Forestry and Fire Protection, all right, title, and interest of the Federal Government in three C-12 aircraft that the Secretary has determined are surplus to need.

The Senate bill contained no similar provision.

The agreement includes the House provision.

We understand from the Department of the Army and the Department of the Air Force that: (1) these three C-12 aircraft have no residual value to the Army; (2) they are not sufficiently capable that they would represent any value to the Air Force in meeting its emerging needs for manned reconnaissance aircraft; and (3) the Army would otherwise dispose of these aircraft as scrap.

*Limitation on treatment of retired B-52 aircraft for Air Combat Command Headquarters (sec. 357)*

The House bill contained a provision (sec. 360) that would prohibit the Commander of Air Combat Command from obligating more than 80 per cent of the operation and maintenance funds available for Air Combat Command Management Headquarters, Sub-Activity Group 012E until the Secretary of Defense certifies that the future years defense program includes funding for 76 B-52 aircraft.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would prohibit the Commander of Air Combat Command from utilizing more than four of the 18 retired B-52 aircraft, which were retired pursuant to section 131 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) as maintenance ground training aircraft.

*Increase of domestic breeding of military working dogs used by the Department of Defense (sec. 358)*

The House bill contained a provision (sec. 361) that would

establish require the Secretary of Defense to work toward the goal of procuring all military working dogs from domestic breeders.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the Secretary of Defense to identify Department of Defense requirements for military working dogs and take steps to ensure that these requirements are met, including encouraging increased domestic breeding.

### **Legislative Provisions Not Adopted**

#### *Time limitation on duration of public-private competitions*

The House bill contained a provision (sec. 321) that would place a time limit on the duration of public-private competitions for any function performed by Department of Defense employees.

The Senate bill contained no similar provision.

The agreement does not include the provision.

#### *Authority to consider depot-level maintenance and repair using contractor furnished equipment or leased facilities as core logistics*

The Senate bill contained a provision (sec. 321) that would authorize the military departments to count workload performed by government employees using contractor furnished equipment, or in facilities leased to the government, as sustaining a core logistics capability under section 2464 of title 10, United States Code, if that work is being performed pursuant to a public-private partnership as defined by section 2474 of title 10, United States Code.

The House bill contained no similar provision.

The agreement does not include the provision.

#### *Temporary suspension of studies and public-private competitions regarding conversion of functions of the Department of Defense performed by civilian employees to contractor performance*

The House bill contained a provision (sec. 325) that would place a 3-year moratorium on public-private competitions within the Department of Defense.

The Senate bill contained no similar provision.

The agreement does not include the provision.

Over the last decade, the number of contractor employees performing services for the Department of Defense (DOD) has

nearly doubled, while the number of DOD civilian employees has remained essentially unchanged. Shortages of qualified civilian personnel in key functional areas have raised questions about the Department's ability to manage its operations. At the same time, the Department's aggressive effort to privatize functions currently performed by civilian employees has led to turbulence and low morale in some segments of the Department's workforce. In addition, we are concerned that the savings generated from such competitions may not justify the turmoil generated at a time when the military services are stressed by ongoing operations in Iraq and Afghanistan, transformation initiatives, and actions being taken to implement the 2005 base closure and realignment. These problems may be further exacerbated when the process of conducting public-private competitions drags out over a period of years, while the threat of job loss continues to hang over the heads of impacted employees. We believe that these factors require a serious reconsideration of the Department's strategy regarding public-private competitions of functions performed by the Department's civilian employees.

*Exception to alternative fuel procurement requirement*

The House bill contained a provision (sec. 335) that would amend section 526 of the Energy Independence and Security Act of 2007 (Public Law 110-140) to specify that federal agencies are not prohibited from entering into contracts to purchase generally-available fuel that is not an alternative or synthetic fuel or predominantly produced from a nonconventional petroleum source in certain circumstances.

The Senate bill contained no similar provision.

The agreement does not include the provision. 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.

*Study of consideration of greenhouse gas emissions*

The House bill contained a provision (sec. 336) that would require the Secretary of Defense to study processes and methods for the consideration of greenhouse gas emissions in the acquisition process and develop a timeline for the implementation of such processes and methods.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Increased authority to accept financial and other incentives*

*related to energy savings and new authority related to energy systems*

The Senate bill contained a provision (sec. 342) that would authorize the Secretary of Defense to accept financial and other incentives in connection with the construction of an energy system using solar energy or other renewable forms of energy.

The House bill contained no similar provision.

The agreement does not include the provision.

*Recovery of improperly disposed of Department of Defense property*

The Senate bill contained a provision (sec. 343) that would enable the Department of Defense to recover military or Department of Defense property that has been disposed of in violation of applicable statutes and regulatory requirements.

The House bill contained no similar provision.

The agreement does not include the provision.

*Report on options for providing ship repair capabilities to support ships operating near Guam*

The House bill contained a provision (sec. 346) that would require the Secretary of the Navy to submit a report on the best option or options for providing voyage repair capabilities to support United States Navy ships operating at or near Guam.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Sense of Congress that air sovereignty alert mission should receive sufficient funding and resources*

The House bill contained a provision (sec. 355) that would express the sense of Congress that air sovereignty alert mission should receive sufficient funding and resources.

The Senate bill contained no similar provision.

The agreement does not include the House provision.

*Availability of funds for Irregular Warfare Support program*

The House bill contained a provision (sec. 358) that would require as much as \$75.0 million to be made available for the Irregular Warfare Support (IWS) program from funds made available for the Joint Improvised Explosive Device Defeat Organization (JIJEDDO) in fiscal year 2009.

The Senate bill contained no similar provision.

The agreement does not include this provision. However, the agreement does include funding for the IWS program in title XV.

*Sense of Congress regarding procurement and use of munitions*

The House bill contained a provision (sec. 359) that would express the sense of Congress regarding the procurement of military munitions.

The Senate bill contained no similar provision.

The agreement does not include the provision.

## **TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS**

### **Subtitle A—Active Forces**

*End strengths for active forces (sec.401)*

The House bill contained a provision (sec. 401) that would authorize the following end strengths for active-duty personnel of the armed forces as of September 30, 2009: Army, 532,400; Navy, 326,323; Marine Corps, 194,000; and Air Force, 317,050. The House provision included increases of 7,000 and 5,000 for the Army and Marine Corps, respectively, to support those services' growth in ground forces.

The Senate bill contained a similar provision (sec. 401) that would authorize active-duty end strengths of 325,300 for the Navy and 316,771 for the Air Force, and identical end strengths for the Army and Marine Corps.

The agreement includes the House provision.

The Secretary of Defense has stated that he will support the Air Force's request to maintain its active-duty end strength well above the 316,000 level previously approved in connection with its recapitalization planning. While excessive and poorly managed manpower cuts aimed primarily at saving money must be avoided, the Department of Defense must demonstrate in the next budget cycle how it intends to balance these competing, readiness-related goals. We do not oppose the Air Force's efforts to maintain a higher end strength, and expect the Department and the Air Force to work with the Congress in finding appropriate funding sources in 2009.

End strength levels for the active forces for fiscal year 2009 are set forth in the following table:

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FY 2009

Change from

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Service	FY 2008 authorized	Request	Recommendation	FY 2009 request	FY 2008 authorized
Army .....	525,400	532,400	532,400	0	7,000
Navy .....	329,098	325,300	326,323	1,023	-2,775
Marine Corps .....	189,000	194,000	194,000	0	5,000
Air Force .....	329,563	316,600	317,050	450	-12,513
DOD Total .....	1,373,061	1,368,300	1,369,773	1,473	-3,288

*Revision in permanent active duty end strength minimum levels (sec.402)*

The House bill contained a provision (sec. 402) that would establish the following minimum end strengths for active-duty personnel as of September 30, 2009: Army, 532,400; Navy, 326,323; Marine Corps, 194,000; and Air Force 317,050.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would establish a minimum end strength of 325,300 active-duty personnel for the Navy.

Minimum end strength levels for active forces are set forth in the following table:

Service	FY 2008 authorized	FY 2009	Change from
		Recommendation	FY 2008
Army .....	525,400	532,400	7,000
Navy .....	328,400	325,300	-3,100
Marine Corps .....	189,000	194,000	5,000
Air Force .....	328,600	317,050	-11,550
DOD Total .....	1,371,400	1,368,750	-2,650

## **Subtitle B-Reserve Forces**

*End strengths for Selected Reserve (sec.411)*

The House bill contained a provision (sec. 411) that would authorize the following end strengths for Selected Reserve personnel, including the end strengths for reserves on active duty in support of the reserves as of September 30, 2009: the Army National Guard of the United States, 352,600; the Army Reserve, 205,000; the Navy Reserve, 66,700; the Marine Corps Reserve, 39,600; the Air National Guard of the United States, 106,700; the Air Force Reserve, 67,400; and the Coast Guard Reserve, 10,000.

The Senate bill contained a similar provision (sec. 411)

that would authorize an end strength of 106,756 for the Air National Guard of the United States and identical end strengths for the other services.

The agreement includes the Senate provision.

End strength levels for the Selected Reserve for fiscal year 2009 are set forth in the following table:

Service	FY 2008 authorized	FY 2009		Change from	
		Request	Conferee rec- ommendation	FY 2009 request	FY 2008 authorized
Army National Guard . . . . .	351,300	352,600	352,600	0	1,300
Army Reserve . . . . .	205,000	205,000	205,000	0	0
Navy Reserve . . . . .	67,800	66,700	66,700	0	-1,100
Marine Corps Reserve . . . . .	39,600	39,600	39,600	0	0
Air National Guard . . . . .	106,700	106,700	106,756	56	56
Air Force Reserve . . . . .	67,500	67,400	67,400	0	-100
DOD Total . . . . .	837,900	838,000	838,056	0	156
Coast Guard Reserve . . . . .	10,000	10,000	10,000	0	0

*End strengths for reserves on active duty in support of the reserves (sec.412)*

The House bill contained a provision (sec. 412) that would authorize the following end strengths for reserves on active duty in support of the reserve components as of September 30, 2009: the Army National Guard of the United States, 32,060; the Army Reserve, 17,070; the Navy Reserve, 11,099; the Marine Corps Reserve, 2,261; the Air National Guard of the United States, 14,337; and the Air Force Reserve, 2,733.

The Senate bill contained a similar provision (sec. 412) that would authorize end strengths of 29,950 for the Army National Guard of the United States; 16,170 for the Army Reserve; 14,360 for the Air National Guard of the United States; and identical end strengths for the other components.

The agreement includes the House provision with an amendment that would authorize end strengths of 16,170 for the Army Reserve and 14,360 for the Air National Guard of the United States.

End strength levels for reserves on active duty in support of the reserves are set forth in the following table:

Service	FY 2008 authorized	FY 2009		Change from	
		Request	Recommendation	FY 2009 request	FY 2008 authorized

Army National Guard .....	29,204	29,950	32,060	2110	2,856
Army Reserve .....	15,870	16,170	16,170	0	300
Navy Reserve .....	11,579	11,099	11,099	0	-480
Marine Corps Reserve .....	2,261	2,261	2,261	0	0
Air National Guard .....	13,936	14,337	14,360	23	424
Air Force Reserve .....	2,721	2,733	2,733	0	12
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DOD Total	75,571	76,550	78,683	2133	3,112

*End strengths for military technicians (dual status) (sec.413)*

The House bill contained a provision (sec. 413) that would authorize the following end strengths for military technicians (dual status) as of September 30, 2009: the Army Reserve, 8,395; the Army National Guard of the United States, 27,210; the Air Force Reserve, 10,003; and the Air National Guard of the United States, 22,452.

The Senate bill contained a similar provision (sec. 413) that would authorize an end strength of 22,459 for the Air National Guard of the United States, and identical end strengths for the other components.

The agreement includes the House provision.

End strength levels for military technicians (dual status) are set forth in the following table:

Service	FY 2008 authorized	FY 2009		Change from	
		Request	Recommendation	FY 2009 request	FY 2008 authorized
Army Reserve .....	8,249	8,395	8,395	0	146
Army National Guard .....	26,502	27,210	27,210	0	708
Air Force Reserve .....	9,909	10,003	10,003	0	94
Air National Guard .....	22,553	22,452	22,452	0	-101
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DOD Total .....	67,213	68,060	68,060	0	847

*Fiscal year 2009 limitation on number of non-dual status technicians (sec. 414)*

The House bill contained a provision (sec. 414) that would establish the maximum end strengths for the reserve components of the Army and Air Force for non-dual status technicians as of September 30, 2009.

The Senate bill contained an identical provision (sec. 414).

The agreement includes this provision.

*Maximum number of reserve personnel authorized to be on active duty for operational support (sec. 415)*

The House bill contained a provision (sec. 415) that would authorize the maximum number of reserve component personnel who may be on active duty or full-time National Guard duty under section 115(b) of title 10, United States Code, during fiscal year 2009 to provide operational support.

The Senate bill contained an identical provision (sec. 415).

The agreement includes this provision.

*Additional waiver authority of limitation on number of reserve component members authorized to be on active duty (sec. 416)*

The House bill contained a provision (sec. 416) that would amend section 123a of title 10, United States Code, to authorize the President to waive the limitations on the number of reserve component personnel who can be on active duty for operational support to provide assistance in responding to a major disaster or emergency.

The Senate bill contained no similar provision.

The agreement includes the House provision.

## **Subtitle C-Authorization of Appropriations**

*Military personnel (sec. 421)*

The House bill contained a provision (sec. 421) that would authorize appropriations for military personnel.

The Senate bill contained a similar provision (sec. 421).

The agreement includes this provision.

The following are the changes from the budget request for the military personnel accounts:

[Changes in millions of dollars]

Increase in military pay raise.....	324.0
Restore military to civilian conversions—Navy.....	26.8
Restore military to civilian conversions—Air Force.....	38.8
Restore military to civilian conversions—Undistributed.....	35.5
Increase Air National Guard end strength.....	3.3
Increase Army National Guard full-time support positions.....	85.0
Senior Leadership Diversity Commission.....	0.3
Permanent prohibition on charging meals at MTFs.....	1.0
Increase in maximum temporary lodging expenses.....	37.0
Second family housing allowance for dual military couples.....	2.0
Nurse candidate accession bonus and monthly stipend.....	2.0
New bonuses for psychologists and other mental health officers.....	13.0
Additional weight allowance for spouses.....	13.0

Continuation of bonuses for certain service members.....	1.0
Reduction of unobligated military personnel balances.....	-1,038.2
Total.....	-455.5

**Legislative Provision Not Adopted**

*Increased end strengths for Reserves on active duty in support of the Army National Guard and Army Reserve and military technicians (dual status) of the Army National Guard*

The Senate bill contained a provision (sec. 416) that would authorize additional Active Guard and Reserve (AGR) end strength for the Army National Guard and Army Reserve, and additional end strength for Army National Guard military technicians (dual status).

The House bill contained no similar provision.

The agreement does not include the provision.

**TITLE V-MILITARY PERSONNEL POLICY**

**Subtitle A-Officer Personnel Policy  
Generally**

*Mandatory separation requirements for regular warrant officers for length of service (sec. 501)*

The House bill contained a provision (sec. 501) that would amend section 1305 of title 10, United States Code, to provide that regular warrant officers of the Navy, Marine Corps, and Coast Guard who have at least 30 years of total active service that could be credited to the officer shall be retired 60 days after the date the warrant officer completes that service. For regular Army warrant officers, the provision would specify that only years of active service as a warrant officer should be used in calculating 30 years of active service for mandatory retirement.

The Senate bill contained a similar provision (sec. 509).

The agreement includes the House provision.

*Requirements for issuance of posthumous commissions and warrants (sec. 502)*

The House bill contained a provision (sec. 502) that would amend sections 1521 and 1522 of title 10, United States Code, to

replace the condition for a posthumous commission or warrant that the death be in the line of duty with a requirement for a certification by the secretary concerned that, at the time of death, the member was qualified for appointment to the next higher grade.

The Senate bill contained a similar provision (sec. 510).

The agreement includes the House provision with a technical amendment.

*Authorized number of general officers on active duty in the Army and Marine Corps, limited exclusion for joint duty requirements, and increase in number of officers serving in grades above major general and rear admiral (sec. 503)*

The House bill contained a provision (sec. 504) that would amend sections 525 and 526 of title 10, United States Code, to allow an increase of one general officer in the rank of lieutenant general for the Marine Corps.

The Senate bill contained a provision (sec. 501) that would increase from 16.3 percent to 16.4 percent the percentage of general and flag officers in a military service that may be appointed above the grade of major general or rear admiral, and exclude from the limitations of section 525 of title 10, United States Code, those reserve general or flag officers on active duty under orders specifying a period of active duty of not longer than three years.

The agreement includes the House provision with an amendment that would amend section 526 of title 10, United States Code, to increase the authorized number of Army general officers on active duty from 302 to 307, with the increased authorization reserved for Army general officers who serve in acquisition positions and increase the number of Marine Corps general officers on active duty from 80 to 81. The provision would increase from 12 to 65 the number of general and flag officer joint duty assignment positions that the Chairman of the Joint Chiefs of Staff can exclude from the limitations on general and flag officers on active duty, five of which are reserved for general or flag officers who serve in an acquisition position, including one assignment in the Defense Contract Management Agency. The provision would also amend section 525 of title 10, United States Code, to increase from 16.3 percent to 16.4 percent the percentage of general and flag officers in a military service that may be appointed above the grade of major general or rear admiral.

*Modification of authority on Staff Judge Advocate to the Commandant of the Marine Corps (sec. 504)*

The House bill contained a provision (sec. 551) that would amend section 5046 of title 10, United States Code, to require that the Staff Judge Advocate to the Commandant of the Marine Corps serve in the grade of major general.

The Senate bill contained a similar provision (sec. 507) that would also exclude an officer serving in this grade and position from the limitation on the authorized number of officers serving in grades above brigadier general in the Marine Corps.

The agreement includes the Senate provision with a technical amendment.

*Eligibility of reserve officers to serve on boards of inquiry for separation of regular officers for substandard performance and other reasons (sec. 505)*

The Senate bill contained a provision (sec. 506) that would amend section 1187 of title 10, United States Code, to authorize reserve officers to serve as members of boards of inquiry convened to consider whether regular officers should be retained on active duty. This implements a recommendation of the Commission on the National Guard and Reserves regarding elimination of policies which unnecessarily distinguish reserve component personnel from their active duty counterparts and thereby impede full integration.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Delayed authority to alter distribution requirements for commissioned officers on active duty in general officer and flag officer grades and limitations on authorized strengths of general and flag officers (sec. 506)*

The Senate amendment contained a provision (sec. 502) that would amend section 526 of title 10, United States Code, to authorize the Secretary of Defense to designate up to 324 general and flag officer positions as joint duty assignments that would be excluded from the limitation on the number of general and flag officers in each service and would specify the minimum number of officers required to serve in these positions for each service. The provision would realign the number of general and flag officers authorized to serve on active duty in the Army from 302 to 222 officers; in the Navy from 216 to 159 officers; in the Air Force from 279 to 206 officers; and in the Marine Corps from 80 to 59 officers. The provision would also repeal section 721 of title 10, United States Code, which limits

the number of general and flag officers authorized to serve in positions outside their own service. The provision would also establish goals for the number of general and flag officers in the Department of Defense (DOD) and the military services who serve in acquisition positions and who have significant contracting experience.

The House bill contained no similar provision.

The agreement includes the provision with an amendment that would delay implementation until 1 year after the Secretary of Defense submits to Congress a report on the proposed implementation of the provision. The amendment would also amend sections 525 and 526 of title 10, United States Code, to specify the distribution and authorized strength limits of commissioned officers on active duty in general officer and flag officer grades. Finally, the amendment would remove the goals for the number of general and flag officers who serve in acquisition positions as this is addressed elsewhere in this bill.

## **Subtitle B-Reserve Component Management**

*Extension to other reserve components of Army authority for deferral of mandatory separation of military technicians (dual status) until age 60 (sec. 511)*

The House bill contained a provision (sec. 511) that would amend section 10216(f) of title 10, United States Code, to extend to the Secretary of the Air Force the same authority previously granted to the Secretary of the Army to delay mandatory separation of dual status military technicians for years of service or other policy consideration until age 60.

The Senate bill contained a similar provision (sec. 532).

The agreement includes the Senate provision.

*Modification of authorized strengths for certain Army National Guard, Marine Corps Reserve, and Air National Guard officers and Army National Guard enlisted personnel serving on full-time reserve component duty (sec. 512)*

The House bill contained a provision (sec. 512) that would amend section 12011 of title 10, United States Code, to increase the limit on the number of Marine Corps lieutenant colonels authorized to serve on full-time reserve component duty at the end of any fiscal year.

The Senate bill contained a similar provision (sec. 417).

The agreement includes the House provision with an

amendment that would also increase the limit on Army and Air National Guard officers and Army National Guard enlisted personnel serving on full-time reserve component duty.

*Clarification of authority to consider for a vacancy promotion National Guard officers ordered to active duty in support of a contingency operation (sec. 513)*

The House bill contained a provision (sec. 513) that would amend section 14317 of title 10, United States Code, to authorize the promotion of reserve component officers, including National Guard officers, who are recommended for promotion to fill a position vacancy under section 14315 of title 10, United States Code, and who are ordered to active duty in support of a contingency operation.

The Senate bill contained a similar provision (sec. 534).  
The agreement includes the House provision.

*Increase in mandatory retirement age for certain Reserve officers (sec. 514)*

The House bill contained a provision (sec. 514) that would amend sections 12647 and 14702 of title 10, United States Code, to increase the mandatory retirement age from age 60 to age 62 for commissioned officers assigned to the Selective Service System, as National Guard property and fiscal officers, and Army National Guard officers assigned to a headquarters or headquarters detachment of a State.

The Senate bill contained a similar provision (sec. 533).  
The agreement includes the House provision.

*Age limit for retention of certain Reserve officers on active-status list as exception to removal for years of commissioned service (sec. 515)*

The House bill contained a provision (sec. 515) that would authorize the Secretary of the Army and the Secretary of the Air Force to retain Reserve officers in the grade of lieutenant general beyond mandatory retirement for years of service until the officer becomes 66 years of age.

The Senate bill contained no similar provision.  
The agreement includes the House provision.

*Authority to retain Reserve chaplains and officers in medical and related specialties until age 68 (sec. 516)*

The House bill contained a provision (sec. 516) that would

amend section 14703(b) of title 10, United States Code, and section 324(a) of title 32, United States Code, to authorize reserve component chaplains and medical officers to be retained in an active status until the date on which the officer becomes 68 years of age.

The Senate bill contained a similar provision (sec. 535).

The agreement includes the House provision.

*Modification of authorities on dual duty status of National Guard officers (sec. 517)*

The Senate bill contained a provision (sec. 536) that would amend section 325 of title 32, United States Code, to authorize all National Guard officers, not just those in command of National Guard units, to retain their state status while serving on active duty when authorized by the President and with the consent of the Governor or the commanding general of the District of Columbia National Guard as applicable. The provision would also allow the consent or authorization to be given in advance for the purpose of establishing the succession of command of a unit.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Study and report regarding Marine Corps personnel policies regarding assignments in Individual Ready Reserve (sec. 518)*

The House bill contained a provision (sec. 517) that would require the Secretary of the Navy to conduct a study on the policies, procedures, and impact on personnel of the Marine Corps Reserve relating to transfers between the Selected Reserve and Individual Ready Reserve.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Report on collection of information on civilian skills of members of the reserve components of the armed forces (sec. 519)*

The Senate bill contained a provision (sec. 538) that would require the Secretary of Defense to submit a report by March 1, 2009, on the feasibility, uses, and cost effectiveness of collecting information about skills, qualifications, and professional certifications possessed by members of the reserve components.

The House bill contained no similar provision.

The agreement includes the Senate provision.

## **Subtitle C—Joint Qualified Officers and Requirements**

*Joint duty requirements for promotion to general or flag officer (sec. 521)*

The House bill contained a provision (sec. 521) that would amend section 619a of title 10, United States Code, to provide that with certain exceptions, an officer must be designated as a joint qualified officer, rather than a joint specialty officer, in accordance with section 661 of title 10, United States Code, before being eligible for promotion to general or flag officer.

The Senate bill contained a similar provision (sec. 503).

The agreement includes the House provision with a technical amendment.

*Technical, conforming, and clerical changes to joint specialty terminology (sec. 522)*

The House bill contained a provision (sec. 522) that would amend the terminology used in sections 661, 663, 665, and 667 of title 10, United States Code, to correspond with changes made in section 516 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), replacing references to "joint specialty officer" with "joint qualified officer."

The Senate bill contained a similar provision (sec. 505).

The agreement includes the House provision.

*Promotion policy objectives for joint qualified officers (sec. 523)*

The House bill contained a provision (sec. 523) that would amend section 662 of title 10, United States Code, to provide that officers in the grade of major or lieutenant commander and above who are designated as joint qualified officers are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for all officers of the same armed force in the same grade and competitive category.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would retain the current requirement that officers who are serving or have served on the joint staff are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for officers of the same armed

force in the same grade and competitive category who are serving or have served on the headquarters staff of their armed force.

*Length of joint duty assignments (sec. 524)*

The House bill contained a provision (sec. 524) that would amend section 664 of title 10, United States Code, to align prescribed joint duty assignment lengths with the joint qualification system implemented pursuant to section 516 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), to take into account multiple joint experiences in satisfying joint duty assignment requirements.

The Senate bill contained a similar provision (sec. 504).

The agreement includes the House provision.

*Designation of general and flag officer positions on Joint Staff as positions to be held only by reserve component officers (sec. 525)*

The House bill contained a provision (sec. 525) that would amend section 526 of title 10, United States Code, to allow the Chairman of the Joint Chiefs of Staff to exempt up to three reserve general and flag officers from counting against the general and flag officer limitations.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Modification of limitations on authorized strengths of reserve general and flag officers in active status serving in joint duty assignments (sec. 526)*

The Senate bill contained a provision (sec. 531) that would amend section 12004 of title 10, United States Code, to exclude from the limitations on the numbers of reserve general and flag officers in an active status those reserve general and flag officers serving in joint duty assignments. The number of reserve general and flag officers excluded could not exceed 20 percent of the number of authorized flag and general officers authorized for the service concerned.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment to also exclude from the limitations on the numbers of reserve general and flag officers in an active status Marine Corps reserve officers serving in joint duty assignments.

*Reports on joint education courses available through the Department of Defense (sec. 527)*

The House bill contained a provision (sec. 526) that would amend section 10506(a)(3) of title 10, United States Code, to require that service of an officer as the adjutant general of the National Guard of a State be treated as joint duty experience for assignment or promotion to any position designated by law as open to a National Guard general officer. The provision would require the Chief of the National Guard Bureau to issue a report to the Chairman of the Joint Chiefs of Staff and Congress recommending which duty of officers of the National Guard in the Joint Force Headquarters of the National Guard of the States should qualify as joint duty or joint duty experience. The provision would require that the Chairman of the Joint Chiefs of Staff submit three annual reports to Congress on the joint educational courses available through the Department. The provision would also require Commander, United States Northern Command, Commander, United States Pacific Command, and the Chief of the National Guard Bureau, with the approval of the Secretary of Defense, to jointly enter into a memorandum of understanding regarding operational relationships and individual roles and responsibilities during responses to domestic emergencies.

The Senate bill contained no similar provision.

The agreement requires the Chairman of the Joint Chiefs of Staff to report to Congress on the joint education courses available through the Department in 3 successive years starting in 2009.

The Department is requested to expedite review of the findings of the final report to Congress and the Secretary of Defense of the Commission on the National Guard and Reserves, dated January 31, 2008, as required elsewhere in this bill.

## **Subtitle D—General Service Authorities**

*Increase in maximum period of reenlistment of regular members of the armed forces (sec. 531)*

The House bill contained a provision (sec. 531) that would amend section 505(d) of title 10, United States Code, and section 308(a) of title 37, United States Code, to increase from 6 to 8 years the maximum period of reenlistment of regular members of the armed forces.

The Senate bill contained a similar provision (sec. 521).

The agreement includes the House provision with a technical amendment.

*Paternity leave for members of the armed forces (sec. 532)*

The Senate bill contained a provision (sec. 583) that would amend section 701 of title 10, United States Code, to authorize up to 21 days of leave for a male service member whose spouse gives birth to a child. The leave would be in addition to any other leave to which the service member is entitled.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would mandate 10 days of paternity leave for service members, and would authorize the secretaries concerned to implement the benefit by service regulation.

*Pilot programs on career flexibility to enhance retention of members of the armed forces (sec. 533)*

The House bill contained a provision (sec. 532) that would authorize the secretaries of the military departments to conduct pilot programs to evaluate the need for more flexibility in career patterns of a limited number of active-duty officers and enlisted members. Under the pilot programs, selected service members would leave active duty for a period of up to 3 years, and then return to active duty in the same grade and years of service that they held at the time they were inactivated. Time spent while inactivated would not count toward retirement eligibility, computation of retired pay, or years of service.

The Senate bill contained a similar provision (sec. 585) that would provide that the authority to conduct pilot programs would commence January 1, 2009, and end December 31, 2014. The provision would also require the secretaries of the military departments to submit interim reports in 2010 and 2012. The Secretary of Defense would be required to submit a final report no later than March 1, 2015, evaluating all the pilot programs conducted under this authority.

The agreement includes the Senate provision with an amendment that would limit participation in the pilot programs to 20 enlisted personnel and 20 officers per year per service. The amendment would also establish that the pilot program authority would commence January 1, 2009, and that no member of the armed forces could be released from active duty under a pilot program after December 31, 2012. Finally, the amendment would require interim reports from the service secretaries to the congressional defense committees no later than June 1, 2011, and June 1, 2013, and a final report from the Secretary of Defense no later than March 1, 2016.

## **Subtitle E-Education and Training**

*Authorized strength of military service academies and repeal of prohibition on phased increase in midshipmen and cadet strength limit at Naval Academy and Air Force Academy (sec. 540)*

The House bill contained a provision (sec. 541) that would amend sections 6954 and 9342 of title 10, United States Code, to extend the authority of the Secretary of the Navy and the Secretary of the Air Force to increase the size of the Brigade of Midshipmen and the Cadet Wing at the United States Naval Academy and Air Force Academy respectively by up to 100 cadets per year to a maximum of 4,400 cadets.

The Senate bill contained a similar provision (sec. 551) that would provide that the authorized strength of the Brigade of Midshipmen at the United States Naval Academy is 4,400 midshipmen, or such lower number as may be prescribed by the Secretary of the Navy.

The agreement includes the Senate provision with an amendment that would provide that the maximum authorized strengths of the Military Academy, the Naval Academy, and the Air Force Academy are each 4,400 cadets or midshipmen.

*Promotion of foreign and cultural exchange activities at military service academies (sec. 541)*

The House bill contained a provision (sec. 542) that would amend chapters 403, 603, and 903 of title 10, United States Code, to allow the military service academies to support foreign and cultural exchange programs for up to two weeks a year to foster the development of foreign language skills, cross cultural interactions and understanding, and cultural immersion of cadets and midshipmen.

The Senate bill contained a similar provision (sec. 555).

The agreement includes the House provision.

*Increased authority to enroll defense industry employees in defense product development program (sec. 542)*

The House bill contained a provision (sec. 544) that would amend section 7049 of title 10, United States Code, to increase from 25 to 125 the number of defense industry employees who could receive instruction at the Naval Postgraduate School.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Expanded authority for institutions of professional military education to award degrees (sec. 543)*

The House bill contained a provision (sec. 549) that would authorize the President of the National Defense Intelligence College, the President of the National Defense University, the Commandant of the United States Army Command and General Staff College, the Commandant of the United States Army War College, the President of the Naval Postgraduate School, the President of the Naval War College, the President of the Marine Corps University, and the Commander of the Air University, for both the Air Force Institute of Technology and for the Air University, to confer appropriate degrees upon graduates who meet degree requirements. A degree would not be conferred under this authority unless the Secretary of Education has recommended approval of the degree and the college or university is accredited by the appropriate civilian academic accrediting agency or organization.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Tuition for attendance of federal employees at the United States Air Force Institute of Technology (sec. 544)*

The Senate bill contained a provision (sec. 552) that would amend section 9314(c) of title 10, United States Code, to require the United States Air Force Institute of Technology to charge tuition for instruction of civilians from the military departments, other components of the Department of Defense, and other federal agencies, and to use these funds to defray the costs of such instruction.

The House bill contained no similar provision.

The agreement includes the Senate provision with a technical amendment.

*Increase in number of permanent professors at the United States Air Force Academy (sec. 545)*

The Senate bill contained a provision (sec. 508) that would amend section 9331 of title 10, United States Code, to increase from 21 to 25 the number of permanent professors at the Air Force Academy.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would increase from 21 to 23 the number of permanent professors at the Air Force Academy.

*Requirement of completion of service under honorable conditions*

*for purposes of entitlement to educational assistance for reserve component members supporting contingency operations (sec. 546)*

The House bill contained a provision (sec. 545) that would amend section 16164 of title 10, United States Code, to clarify that only service members who separate under honorable conditions are eligible to use the educational benefits under chapter 1607 of title 10, United States Code, for a period of 10 years after separation.

The Senate bill contained a similar provision (sec. 554).

The agreement includes the Senate provision with an amendment that would make this provision effective on the date of enactment of this Act and apply to persons who separate after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) who, as of the date of enactment of this Act, have not used any of their entitlement under chapter 1607 of title 10, United States Code.

*Consistent education loan repayment authority for health professionals in regular components and Selected Reserve (sec. 547)*

The House bill contained a provision (sec. 546) that would equate the maximum limits for loan repayment programs for health professionals in the reserve components under section 16302 of title 10, United States Code, with the maximum limits for loan repayment programs for active-duty health professionals under section 2173 of title 10, United States Code.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Increase in number of units of Junior Reserve Officers' Training Corps (sec. 548)*

The House bill contained a provision (sec. 547) that would require the Secretary of Defense, in consultation with the secretaries of the military departments, to develop and implement a plan to establish and support 4,000 Junior Reserve Officers' Training Corps units by fiscal year 2020. The section would also require the Secretary of Defense to submit a report to the congressional defense committees that would provide information on how the services will achieve this goal, as well as other pertinent information, by March 31, 2009.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment to develop and implement a plan to establish and

support 3,700 Junior Reserve Officers' Training Corps units by fiscal year 2020.

*Correction of erroneous Army College Fund benefit amounts (sec. 549)*

The House bill contained a provision (sec. 548) that would authorize the Secretary of the Army, through the Army Board for Correction of Military Records, to consider, from January 1, 2009, through June 30, 2009, a request for the correction of military records relating to the amount of the Army College Fund benefit to which an applicant may be entitled under an Army incentive program contract. The provision would clarify that the Secretary may pay such amounts as the Secretary considers necessary without regard to any limits on the total combined amounts established for the Army College Fund and the Montgomery G.I. Bill.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would allow consideration of such requests through December 31, 2009.

*Enhancing education partnerships to improve accessibility and flexibility for members of the Armed Forces (sec. 550)*

The House bill contained a provision (sec. 550) that would authorize service secretaries to enter into partnership agreements with educational institutions in the United States for the purpose of developing plans to improve accessibility and flexibility of college courses available to service members; improving the application process for the armed forces tuition assistance programs and raising awareness regarding educational opportunities available to service members; developing curriculum, distance education programs, and career counseling designed to meet the professional, financial, academic, and social needs of service members; and assessing how resources may be applied more effectively to meet the educational needs of service members.

The Senate bill contained no similar provision.

The agreement includes the House provision.

## **Subtitle F—Defense Dependents' Education**

*Continuation of authority to assist local educational agencies that benefit dependents of members of the armed forces and Department of Defense civilian employees (sec. 551)*

The House bill contained a provision (sec. 571) that would authorize \$50.0 million for continuation of the Department of Defense (DOD) assistance program to local agencies that are impacted by enrollment of dependent children of military members and DOD civilian employees. This provision would also authorize \$15.0 million for assistance to local educational agencies with significant changes in enrollment of military and civilian school-aged dependent children due to base closures, force structure changes, or force relocations.

The Senate bill contained a similar provision (sec. 561) that would authorize \$30.0 million and \$10.0 million for each assistance program, respectively.

The agreement includes the Senate provision with an amendment that would authorize \$35.0 million and \$15.0 million for each program, respectively.

*Impact aid for children with severe disabilities (sec. 552)*

The Senate bill contained a provision (sec. 562) that would authorize \$5.0 million for impact aid payments for children with disabilities for continuation of the Department of Defense's assistance to local educational agencies that benefit dependents with severe disabilities.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Transition of military dependent students among local educational agencies (sec. 553)*

The Senate bill contained a provision (sec. 563) that would require the Secretary of Defense to work with the Secretary of Education in any efforts to ease the transition of military dependent students between Department of Defense schools, schools of local educational agencies, and other schools. The provision would authorize the Secretary of Defense to use funds of the Department of Defense Education Activity for this purpose.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would make the authority temporary, expiring on September 30, 2013. The amendment would also allow distance learning and training programs for military students and teachers.

*Calculation of payments for eligible federally connected children under Department of Education's impact aid program (sec. 554)*

The House bill contained a provision (sec. 572) that would amend section 8003(c)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(c)) to allow calculation of impact aid payments for certain local educational agencies to be based on student population data from the current school year rather than the previous school year's population.

The Senate bill contained no similar provision.

The agreement included the House provision with an amendment that would amend the Elementary and Secondary Education Act of 1965 to change the requisite number of federally connected children that attend area schools daily in order for a school district to receive impact aid from 6,500 to 5,000 students in fiscal year 2009.

## **Subtitle G-Military Justice**

### *Effective period of military protective orders (sec. 561)*

The House bill contained a provision (sec. 552) that would amend chapter 80 of title 10, United States Code, to extend a standing military protective order by a military commander until the allegation prompting the protective order is resolved by investigation, courts martial, or other command determined adjudication, or the military commander issues a new order.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would provide that a military protective order issued by a military commander shall remain in effect until the military commander terminates the order or issues a new order.

### *Mandatory notification of issuance of military protective order to civilian law enforcement (sec. 562)*

The House bill contained a provision (sec. 553) that would amend chapter 80 of title 10, United States Code, to require the commander of a military installation to notify appropriate civilian authorities in the event a military protective order is issued against a member of the armed forces when any individual involved in the order does not reside on a military installation.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

### *Implementation of information database on sexual assault incidents in the armed forces (sec. 563)*

The House bill contained a provision (sec. 554) that would require the Secretary of Defense to implement a centralized, case-level database for the collection and maintenance of information regarding sexual assaults involving members of the armed forces.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the Secretary of Defense to submit a report to the Committees on Armed Services of the Senate and the House of Representatives on the status of the Defense Incident-Based Reporting System and an explanation of how this system will relate to the sexual assault database.

## **Subtitle H—Decorations, Awards, and Honorary Promotions**

### *Replacement of military decorations (sec. 571)*

The House bill contained a provision (sec. 561) that would amend chapter 57 of title 10, United States Code, to require the secretary concerned to replace, on a one-time basis and without charge, a military decoration upon the request of the recipient of the military decoration or the next of kin of a deceased recipient.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

### *Authorization and request for award of Medal of Honor to Richard L. Etchberger for acts of valor during the Vietnam War (sec. 572)*

The House bill contained a provision (sec. 562) that would authorize the President to award the Medal of Honor to Richard L. Etchberger, who served in the United States Air Force during the Vietnam War. This section would also waive the statutory time limitation under section 8744 of title 10, United States Code.

The Senate bill contained no similar provision.

The agreement includes the House provision with a technical amendment.

## **Subtitle I—Military Families**

### *Presentation of burial flag to the surviving spouse and children*

*of deceased members of the armed forces (sec. 581)*

The House bill contained a provision (sec. 581) that would amend section 1482 of title 10, United States Code, to authorize the presentation of a burial flag to the surviving spouse of a deceased service member when the surviving spouse is not otherwise entitled to a flag as the person designated to direct the disposition of the remains.

The Senate bill contained a similar provision (sec. 641) that would also authorize the presentation of a burial flag to each child of a deceased service member.

The agreement includes the House provision with an amendment that would authorize the presentation of a burial flag to each child of a deceased service member.

*Education and training opportunities for military spouses (sec. 582)*

The House bill contained a provision (sec. 582) that would authorize the Secretary of Defense to establish programs to assist the spouse of a service member serving on active duty in receiving education and training required for a degree, credential, or professional licensure in order to expand employment and career opportunities for spouses. The provision would also authorize tuition assistance to pursue such education and training.

The Senate bill contained a provision (sec. 571) that would authorize the Secretary to establish programs to provide or make available to spouses of service members on active duty education, training, and financial assistance to facilitate the pursuit of a portable career.

The agreement includes the House provision with an amendment that would clarify that these programs may be used to enable a spouse to pursue a portable career, and would clarify the definition of a portable career.

*Sense of the Congress regarding honor guard details for funerals of veterans (sec. 583)*

The House bill contained a provision (sec. 583) that would express the sense of Congress that the secretaries of the military departments should, to the maximum extent practicable, provide honor guard details for the funerals of veterans.

The Senate bill contained no similar provision.

The agreement includes the House provision.

## **Subtitle J-Other Matters**

*Prohibition on interference in independent legal advice by the Legal Counsel to the Chairman of the Joint Chiefs of Staff (sec. 591)*

The Senate bill contained a provision (sec. 586) that would amend section 156(d) of title 10, United States Code, to prohibit any officer or employee of the Department of Defense from interfering with the ability of the legal counsel to the Chairman of the Joint Chiefs of Staff to give independent legal advice to the Chairman of the Joint Chiefs of Staff and to the Joint Chiefs of Staff.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Interest payments on certain claims arising from correction of military records (sec. 592)*

The House bill contained a provision (sec. 592) that would require the service secretaries to pay interest on claims arising from the correction of a military record that involves setting aside a conviction by court-martial. The provision would apply to any sentence of a court-martial set aside by a corrections board after October 1, 2007.

The Senate bill contained a provision (sec. 582) that would authorize the Secretary of Defense and the service secretaries to provide relief to a member or former member of the armed forces who, in the determination of the Secretary concerned, had suffered imprisonment pursuant to a court-martial conviction as a result of an injustice or error on the part of the Department of Defense or any of its employees acting in their official capacity. The relief provided would include the payment of monies, including interest, from funds available for emergency and extraordinary expenses under section 127 of title 10, United States Code.

The agreement includes the House provision with an amendment that would specify that the interest paid be at a rate determined by the Secretary concerned, unless the Secretary concerned determines that the payment of interest is inappropriate under the circumstances.

*Extension of limitation on reductions of personnel of agencies responsible for review and correction of military records (sec. 593)*

The House bill contained a provision (sec. 593) that would amend section 1559(a) of title 10, United States Code, to change

the termination date for the limitation on reductions of personnel of the service boards of correction of military records from October 1, 2008, to December 31, 2010.

The Senate bill contained no such provision.

The agreement includes the House provision.

The boards for correction of military records perform a vital function in ensuring timely review and disposition of applications for relief under chapter 79 of title 10, United States Code. The Secretary of Defense is directed to submit a report to the Committees on Armed Services of the Senate and House of Representatives no later than July 1, 2009, regarding the operation of the services' boards of correction. The report should discuss the compliance by each service with the statutory timeliness standards for disposition of applications before corrections boards since 2001 and an assessment whether the limitation on personnel reductions in section 1559(a) continue to be necessary to ensure compliance with processing time requirements.

*Modification of matching fund requirements under National Guard Youth Challenge Program (sec. 594)*

The Senate bill contained a provision (sec. 537) that would amend section 509(d) of title 32, United States Code, to clarify that the limitation on assistance provided by the Department of Defense to a State National Guard Youth Challenge Program may not be construed as a limitation on the amount of assistance that may be provided by other sources, nor should contributions from other sources be included in calculating the Department's share of the costs of operating State programs.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Military salute for the flag during the national anthem by members of the armed forces not in uniform and by veterans (sec. 595)*

The Senate bill contained a provision (sec. 1081) that would amend section 301 of title 36, United States Code, to authorize veterans and members of the armed forces not in uniform to render a military salute in the same manner as members of the armed forces in uniform during the playing of the national anthem.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Military Leadership Diversity Commission (sec. 596)*

The House bill contained a provision (sec. 595) that would establish the Senior Military Leadership Diversity Commission to study the diversity within the senior leadership of the armed forces.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would establish the Military Leadership Diversity Commission to conduct a comprehensive evaluation and assessment of policies that provide for opportunities for the promotion and advancement of minority members of the armed forces, including minority members who are senior officers.

*Demonstration project on service of retired nurse corps officers as faculty at civilian nursing schools (sec. 597)*

The House bill contained a provision (sec. 941) that would require the Secretary of Defense to establish a Department of Defense School of Nursing, and would authorize the Secretary to conduct a demonstration project to enable retired military nurses to serve as faculty at civilian nursing schools.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would authorize the Secretary of Defense to conduct a demonstration project to encourage retired military nurses to serve as faculty at civilian nursing schools.

*Report on planning for participation and hosting of the Department of Defense in international sports activities, competitions, and events (sec. 598)*

The Senate bill contained a provision (sec. 584) that would amend section 717 of title 10, United States Code, to include the Military World Games as an international sports competition in which members of the armed forces may be authorized to participate. The provision would increase the maximum amounts from \$3.0 million to \$6.0 million that the Secretary of Defense may apportion among the military departments, and from \$100,000 to \$200,000 for the Coast Guard and Department of Homeland Security, that may be spent during each successive 4 year period beginning on October 1, 2008, for participation in certain international sports competitions. The provision would also require the Secretary to submit to the Committees on Armed Services of the Senate and the House of Representatives not later than October 1, 2009, a report setting forth a comprehensive plan for participation in and planning for hosting of international sports activities, competitions, and events.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would require the report only.

### **Legislative Provisions Not Adopted**

#### *Extension of authority to reduce minimum length of active service required for voluntary retirement as an officer*

The House bill contained a provision (sec. 503) that would extend the period during which the Secretary of Defense may authorize the secretaries of the military departments to lower the years of active service as a commissioned officer required for retirement as an officer from a minimum of 10 years to a minimum of 8 years.

The Senate bill contained no similar provision.

The agreement does not include the provision.

#### *Compensation for civilian President of Naval Postgraduate School*

The House bill contained a provision (sec. 543) that would authorize the Secretary of the Navy to compensate the civilian President of the Naval Post Graduate School as the Secretary prescribes, except that basic pay could not exceed the rate of compensation authorized for Level I of the Executive Schedule.

The Senate bill contained no similar provision.

The agreement does not include the provision.

#### *Advancement of Brigadier General Charles E. Yeager, United States Air Force (Retired), on the retired list*

The House bill contained a provision (sec. 563) that would entitle Brigadier General Yeager to hold the rank of major general on the retired list of the Air Force.

The Senate bill contained no similar provision.

The agreement does not include the provision.

Brigadier General Yeager is an extraordinary American hero. During World War II he distinguished himself in aerial combat over France and Germany by shooting down 13 enemy aircraft including five on one mission. As an Air force test pilot he played a pivotal role in the advancement of aviation. Brigadier General Yeager made history on October 14, 1947, when he became the first man to fly faster than the speed of sound and on December 12, 1953, he also became the first man to fly faster than twice the speed of sound. During the Vietnam War he flew 127 missions over South Vietnam as the Commander of the 405<sup>th</sup> Fighter Wing. He is one of only four individuals to have

received the Special Medal of Honor, the non-combat equivalent of the Medal of Honor.

For these and many other achievements in a remarkable life of leadership, commitment, and achievement in service to the Air Force and the United States, we urge the President to reconsider Brigadier General Yeager's advancement on the retired list and immediately nominate him for promotion to the grade of Major General.

*Advancement of Rear Admiral Wayne E. Meyer, United States Navy (Retired), on the retired list*

The House bill contained a provision (sec. 564) that would authorize and request the President to appoint, by and with the advice and consent of the Senate, Rear Admiral Wayne E. Meyer to the grade of vice admiral on the retired list of the Navy.

The Senate bill contained no similar provision.

The agreement does not include the provision.

The Department of Defense is encouraged to review the military records of Rear Admiral Meyer and to consider whether he should be appointed to the grade of vice admiral on the retired list of the Navy. If the Department concludes that he should be so appointed, the Administration should request legislation authorizing the appointment, with the advice and consent of the Senate.

*Award of Vietnam Service Medal to veterans who participated in Mayaguez rescue operation*

The House bill contained a provision (sec. 565) that would authorize the secretary of a military department to award the Vietnam Service Medal to eligible veterans in lieu of any Armed Forces Expeditionary Medal awarded for participation in the Mayaguez rescue operation of May 12 through May 15, 1975.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Retroactive award of Army Combat Action Badge*

The House bill contained a provision (sec. 566) that would authorize the Secretary of the Army to award the Army Combat Action Badge to individuals who, while a member of the Army, participated in combat between December 7, 1941, and September 18, 2001.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Inclusion of Reserves in providing federal aid for State governments, enforcing federal authority, and responding to major public emergencies*

The House bill contained a provision (sec. 591) that would amend sections 331, 332, and 333 of title 10, United States Code, to clarify that the President's authority to use the armed forces, including units and members of the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, and Coast Guard Reserve, for the purposes delineated in those sections.

The Senate bill contained no similar provision.

The agreement does not include the provision.

This provision was requested by the Department of Defense to give the President the maximum flexibility in employing the armed forces, including the unique capabilities in the Army, Navy, Marine Corps, and Coast Guard Reserves when necessary to respond to major disasters or emergencies. Many State governors have expressed concern about unity of effort of State and federal forces in delivering emergency services to citizens of their states and are concerned that they lack sufficient authority to direct the efforts of federal forces, including personnel and units of the armed forces.

We agree that this proposal has significant merit. The Department of Defense should engage with the community of governors to work out an understanding of unity of effort during domestic terrorist events and public emergencies. This key underlying issue must be addressed to allow this and other promising proposals to be enacted.

*Authority to order Reserve units to active duty to provide assistance in response to a major disaster or emergency*

The House bill contained a provision (sec. 594) that would amend section 12304(b) of title 10, United States Code, to provide that when the President determines that it is necessary to assist in responding to a major disaster or emergency as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service for the Navy, may be authorized to order any unit or member of the Army Reserve, Air Force Reserve, Navy Reserve, Marine Corps Reserve, or Coast Guard Reserve to active duty for not more than 365 days.

The Senate bill contained no similar provision.

The agreement does not include the provision.

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armed forces, including the unique capabilities in the Army, Navy, Marine Corps, and Coast Guard Reserves when necessary to respond to major disasters or emergencies. Many State governors have expressed concern about unity of effort of State and federal forces in delivering emergency services to citizens of their states and are concerned that they lack sufficient authority to direct the efforts of federal forces, including personnel and units of the armed forces.

We agree that this proposal has significant merit. The Department of Defense should engage with the community of governors to work out an understanding of unity of effort during domestic terrorist events and public emergencies. This key underlying issue must be addressed to allow this and other promising proposals to be enacted.

*Limitation on simultaneous deployment to combat zones of dual-military couples who have minor dependents*

The House bill contained a provision (sec. 596) that would authorize a member of the armed forces with minor dependents to request a deferment of deployment to an area for which imminent danger pay is authorized if the member has a spouse who is a member of the armed forces deployed to such an area.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Additional funds to carry out funeral honor functions at funerals for veterans*

The House bill contained a provision (sec. 597) that would provide an additional \$3.0 million for compliance with the funeral honors requirements of section 1491 of title 10, United States Code.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Protection of child custody arrangements for parents who are members of the armed forces deployed in support of a contingency operation*

The House bill contained a provision (sec. 4510) that would amend Title II of the Servicemembers' Civil Relief Act (50 U.S.C. App. 521 et seq.) (SCRA) to provide that a court may not modify or amend any previous judgment or order, or issue a new order, that would change the custody arrangements for a child of a servicemember deployed in support of a contingency operation unless there is clear and convincing evidence that it is in the

best interest of the child. The provision would also provide that a court may not consider the absence of a service member by reason of deployment, or possibility of deployment, in determining the best interest of the child.

The Senate bill contained no similar provision.

The agreement does not include this provision.

It is the sense of Congress that, when addressing the best interests of minor children in child custody cases, judges should, whenever possible, allow service members to return from deployment before issuing a permanent order regarding child custody arrangements.

## **TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS**

### **Subtitle A—Pay and Allowances**

*Fiscal year 2009 increase in military basic pay (sec. 601)*

The House bill contained a provision (sec. 601) that would authorize a pay raise for the members of the uniformed services of 3.9 percent effective on January 1, 2009. This across-the-board pay raise is 0.5 percent above the budget request.

The Senate bill contained an identical provision (sec. 601).

The agreement includes this provision.

*Permanent extension of prohibition on charges for meals received at military treatment facilities by members receiving continuous care (sec. 602)*

The House bill contained a provision (sec. 602) that would amend section 402 of title 37, United States Code, to make permanent the prohibition on charges for meals received at military treatment facilities by certain service members receiving continuous care.

The Senate bill contained a similar provision (sec. 616).

The agreement includes the Senate provision.

*Increase in maximum authorized payment or reimbursement amount for temporary lodging expenses (sec. 603)*

The House bill contained a provision (sec. 604) that would increase the maximum authorized payment or reimbursement rate for temporary lodging expenses from \$180 per day to \$290 per day.

The Senate bill contained no similar provision.

The agreement includes the House provision with a technical amendment.

*Availability of second family separation allowance for married couples with dependents (sec. 604)*

The House bill contained a provision (sec. 605) that would require the service secretaries to pay one member of a married couple, both of whom are members of the uniformed services who are residing together with dependents prior to a qualifying deployment, a full family separation allowance under section 427 of title 37, United States Code, and to pay the other member one-half of such allowance.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the service secretaries to pay each member of a married couple who qualify under this provision a full family separation allowance under section 427 of title 37, United States Code.

*Extension of authority for income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service (sec. 605)*

The House bill contained a provision (sec. 607) that would extend for 1 year the authority to pay income replacement for reserve component members experiencing extended and frequent mobilization for active duty service.

The Senate bill contained a provision (sec. 614) that included an identical extension.

The agreement includes the House provision.

## **Subtitle B—Bonuses and Special and Incentive Pays**

*Extension of certain bonus and special pay authorities for reserve forces (sec. 611)*

The House bill contained a provision (sec. 611) that would extend for 1 year the authority to pay the Selected Reserve reenlistment bonus; the Selected Reserve affiliation or enlistment bonus; special pay for enlisted members assigned to certain high priority units; the ready reserve enlistment bonus for persons without prior service; the ready reserve enlistment and reenlistment bonus for persons with prior service; and the

Selected Reserve enlistment bonus for persons with prior service.

The Senate bill contained an identical provision (sec. 611).

The agreement includes this provision.

*Extension of certain bonus and special pay authorities for health care professionals (sec. 612)*

The House bill contained a provision (sec. 612) that would extend until December 31, 2009, the authority to pay the nurse officer candidate accession bonus; the repayment of education loans for certain health professionals who serve in the Selected Reserve; the accession bonus for registered nurses; incentive special pay for nurse anesthetists; special pay for Selected Reserve health professionals in critically short wartime specialties; the accession bonus for dental officers; the accession bonus for pharmacy officers; the accession bonus for medical officers in critically short wartime specialties; and the accession bonus for dental specialist officers in critically short wartime specialties.

The Senate bill contained a similar provision (sec. 612).

The agreement includes the House provision.

*Extension of special pay and bonus authorities for nuclear officers (sec. 613)*

The House bill contained a provision (sec. 613) that would extend for 1 year the authority to pay the special pay for nuclear-qualified officers extending their period of active duty; the nuclear career accession bonus; and the nuclear career annual incentive bonus.

The Senate bill contained an identical provision (sec. 613).

The agreement includes this provision.

*Extension of authorities relating to payment of other title 37 bonuses and special pays (sec. 614)*

The House bill contained a provision (sec. 614) that would extend for 1 year the authority to pay the aviation officer retention bonus; assignment incentive pay; the reenlistment bonus for active members; the enlistment bonus; the accession bonus for new officers in critical skills; the incentive bonus for conversion to military occupational specialty to ease personnel shortage; the accession bonus for officer candidates; and the retention bonus for members with critical military

skills or assigned to high priority units.

The Senate bill contained a provision (sec. 614) that would extend for 1 year the authority to pay the foregoing bonuses and special pays and income replacement for reserve members experiencing extended and frequent mobilizations.

The agreement includes the House provision.

*Extension of authorities relating to payment of referral bonuses (sec. 615)*

The House bill contained a provision (sec. 615) that would extend for 1 year the authority to pay the health professions referral bonus and the Army referral bonus under sections 1030 and 3252 of title 10, United States Code, respectively.

The Senate bill contained a similar provision (sec. 615).

The agreement includes the House provision.

*Increase in maximum bonus and stipend amounts authorized under nurse officer candidate accession program and Health Professions Stipend Program (sec. 616)*

The House bill contained a provision (sec. 616) that would increase the bonus that may be paid to nurse officer candidates under section 2130a of title 10, United States Code, from \$10,000 to \$20,000, and the monthly stipend that may be paid to such candidates from \$1,000 to \$1,250. The provision would also increase the maximum initial installment of the bonus from \$5,000 to \$10,000.

The Senate bill contained a provision (sec. 553) that would equate the authority for the stipend paid to baccalaureate students in nursing or other health professions under the Health Professions Stipend Program for health care professionals in reserve components with the amount of the stipend paid to participants in the Armed Forces Health Professions Scholarship Program under section 2121(d) of title 10, United States Code.

The agreement includes the House provision with an amendment that includes the provisions of section 553 of the Senate bill, and equates the maximum monthly stipend that may be paid to nurse officer candidates to the stipend paid under section 2121(d) of title 10, United States Code.

*Maximum length of nuclear officer incentive pay agreements for service (sec. 617)*

The House bill contained a provision (sec. 617) that would amend section 312 of title 37, United States Code, to require only that a qualifying agreement to remain on active duty be for

a period of not less than 3 years with the objective of providing more flexibility in administering the nuclear officer continuation pay.

The Senate bill contained a similar provision (sec. 618).  
The agreement includes the House provision.

*Technical changes regarding consolidation of special pay, incentive pay, and bonus authorities of the uniformed services (sec. 618)*

The House bill contained a provision (sec. 618) that would make technical changes to facilitate the utility of provisions included in the initiative to reform special and incentive pays adopted in the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).

The Senate bill contained no similar provision.

The agreement includes the House provision with a technical amendment.

*Use of new skill incentive pay and proficiency bonus authorities to encourage training in critical foreign languages and foreign cultural studies and authorization of incentive pay for members of precommissioning programs pursuing foreign language proficiency (sec. 619)*

The House bill contained a provision (sec. 619) that would amend section 353 of title 37, United States Code, to authorize a skill proficiency bonus of up to \$12,000 annually to a member enrolled in an officer training program and certain Senior Reserve Officers' Training Corps program participants who agree to participate in educational programs aimed at acquiring proficiency in critical foreign languages or expertise in critical foreign cultural studies. The provision would also require the Secretary of Defense to conduct a pilot program through December 31, 2013, that would pay a skill proficiency bonus to members of reserve components who similarly participate in designated foreign language or cultural studies programs.

The Senate bill contained a similar provision (sec. 619) that would create a new section 316a of title 37, United States Code, to authorize the Secretary of Defense to pay incentive pay of up to \$3,000 per year to an individual pursuing foreign language proficiency while enrolled in the Senior Reserve Officers' Training Corps or the Marine Corps Platoon Leaders Class.

The agreement includes the House provision with an amendment that would authorize the Secretary of Defense to pay incentive pay to an individual pursuing foreign language

proficiency in a critical foreign language while enrolled in the Senior Reserve Officers' Training Corps or the Marine Corps Platoon Leaders Class.

*Accession and retention bonuses for the recruitment and retention of officers in certain health professions (sec. 620)*

The House bill contained a provision (sec. 620) that would designate qualified psychologists, registered nurses, and other mental health professionals as determined by the service secretaries, as critically short wartime specialties.

The Senate bill contained a provision (sec. 617) that would add a new section 301f to title 37, United States Code, to authorize a multiyear retention bonus for uniformed psychologists in the maximum amount of \$25,000 per year for up to 4 years. The provision would also add a new section 302m to title 37, United States Code, to authorize an accession bonus for uniformed psychologists of up to \$400,000 for an active-duty commitment of at least 4 years.

The agreement includes the House provision with an amendment that would add the multiyear retention bonus and accession bonus for uniformed psychologists.

## **Subtitle C-Travel and Transportation Allowances**

*Special weight allowance for transportation of professional books and equipment for spouses (sec. 621)*

The House bill contained a provision (sec. 632) that would authorize an additional weight allowance of 200 pounds for shipping materials associated with the employment or community support activities of the service member's spouse.

The Senate bill contained a provision (sec. 632) that would authorize the service secretaries to permit an additional weight allowance of up to 500 pounds for professional books and equipment belonging to spouses of service members changing their permanent duty station. The provision would take effect October 1, 2009.

The agreement includes the Senate provision with an amendment that would make the provision effective upon date of enactment of the Act.

*Shipment of family pets during evacuation of personnel (sec. 622)*

The House bill contained a provision (sec. 633) that would authorize transportation, including payment of shipping and quarantine costs, of two household pets in cases of evacuation from a permanent station located in a foreign area.

The Senate bill contained a similar provision (sec. 631).

The agreement includes the Senate provision with an amendment that would subject the allowances for transportation of family pets to regulations prescribed by the Secretary of Defense that may specify limitations on the types, size, and number of pets for which transportation may be provided or reimbursement paid.

## **Subtitle D—Retired Pay and Survivor Benefits**

*Extension to survivors of certain members who die on active duty of special survivor indemnity allowance for persons affected by required Survivor Benefit Plan annuity offset for Dependency and Indemnity Compensation (sec. 631)*

The House bill contained a provision (sec. 643) that would extend the special survivor indemnity allowance enacted in section 644 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to survivors of certain service members who die on active duty.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Correction of unintended reduction in Survivor Benefit Plan annuities due to phased elimination of two-tier annuity computation and supplemental annuity (sec. 632)*

The House bill contained a provision (sec. 646) that would require the Secretary of Defense to determine if the phased elimination of the two-tier annuity computation system, formerly a part of the Survivor Benefit Plan, and related supplemental survivor annuities, resulted in some Survivor Benefit Plan annuitants receiving a smaller annuity than they would have received if the two-tier computation system had not been eliminated, and to take such actions as necessary to adjust the annuity amounts to eliminate the reduction.

The Senate bill contained no similar provision.

The agreement includes the House provision.

## **Subtitle E-Commissary and Nonappropriated Fund Instrumentality Benefits and Operations**

*Use of commissary stores surcharges derived from temporary commissary initiatives for reserve components and retired members (sec. 641)*

The House bill contained a provision (sec. 651) that would authorize the Secretary of Defense to use the proceeds derived from surcharges imposed in connection with sales of commissary merchandise to members of reserve components, retired members, and others eligible for commissary benefits through use of temporary and mobile equipment to offset the cost of such initiatives.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Enhanced enforcement of prohibition on sale or rental of sexually explicit material on military installations (sec. 642)*

The House bill contained a provision (sec. 654) that would require the Secretary of Defense to establish a Resale Activities Review Board to make recommendations to the Secretary regarding whether material sold or rented, or proposed for sale or rental, on military installations is barred from sale or rental due to its sexually explicit nature.

The Senate bill contained no similar provision.

The agreement includes the House provision.

## **Subtitle F-Other Matters**

*Continuation of entitlement to bonuses and similar benefits for members of the uniformed services who die, are separated or retired for disability, or meet other criteria (sec. 651)*

The House bill contained a provision (sec. 662) that would require the service secretaries to pay the unpaid portions of bonuses to, and prohibit the service secretaries from recouping unearned portions of paid bonuses from, service members or their estates in the case of members who die, other than as a result of their own misconduct, or who are retired or separated under chapter 61 of title 10, United States Code. The provision would also authorize the service secretaries to waive recoupment of unearned bonuses and to pay the unpaid amounts of contracted

bonuses in any circumstance where failing to do so would be against equity and good conscience or contrary to the best interests of the United States.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would clarify that the prohibition against requiring repayment of the unearned portion of any bonus, and the requirement to pay out the remainder of any bonus not yet paid, applies to service members who die while on active duty, or service members who retire or separate due to a disability that is determined to be combat-related as defined in section 1413a(e) of title 10, United States Code.

### **Legislative Provisions Not Adopted**

*Equitable treatment of senior enlisted members in computation of basic allowance for housing*

The House bill contained a provision (sec. 603) that would amend section 403 of title 37, United States Code, to provide that the determination of what constitutes adequate housing for members in the pay grade of E-8 with dependents shall be equivalent to the standard in effect for members in the pay grade of E-9 with dependents.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Stabilization of pay and allowances for senior enlisted members and warrant officers appointed as officers and officers reappointed in a lower grade*

The House bill contained a provision (sec. 606) that would authorize a member of the armed forces who accepts an appointment or reappointment as an officer, without a break in service, to retain the pay and allowances to which the member was entitled in the previous grade if it is more than the pay and allowances to which the member is entitled in the grade to which he is appointed or reappointed.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Guaranteed pay increase for members of the armed forces of one-half of one percentage point higher than employment cost index*

The House bill contained a provision (sec. 608) that would mandate that pay raises for all service members during fiscal years 2010 through 2013 be one-half of 1 percent higher than the

annual rise in the Employment Cost Index.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Increased weight allowance for transportation of baggage and household effects for certain enlisted members*

The House bill contained a provision (sec. 631) that would authorize an additional weight allowance for noncommissioned officers in the grades E-5 through E-9 for shipping household goods during permanent changes in station.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Travel and transportation allowances for members of the reserve components of the armed forces on leave for suspension of training*

The Senate bill contained a provision (sec. 633) that would add a new section 411k to title 37, United States Code, to authorize travel and transportation allowances for service members on active duty for more than 30 days to travel from a temporary duty station to their permanent duty station and back again during times when training is suspended at the temporary duty station for a period of 5 days or more.

The House bill contained no similar provision.

The agreement does not include the provision.

We urge the services to be mindful of training suspensions and minimal staffing periods when devising training schedules for the reserve components. Suspension of training activities for mobilized Reserve and National Guard units must be carefully managed to avoid wasted time and unnecessary absence from home duty stations, particularly during the holiday season.

*Equity in computation of disability retired pay for reserve component members wounded in action*

The House bill contained a provision (sec. 641) that would change the method of calculating retired pay for reserve component members who have been awarded the Purple Heart by crediting the members with a year of active-duty service for each year the members received at least 50 reserve retirement points.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Effect of termination of subsequent marriage on payment of*

*Survivor Benefit Plan annuity to surviving spouse or former spouse who previously transferred annuity to dependent children*

The House bill contained a provision (sec. 642) that would authorize surviving spouses or former spouses, who had previously transferred their Survivor Benefit Plan annuity to a child or children, to reclaim their eligibility for the annuity after the termination of a subsequent marriage if the child or children were no longer eligible for the annuity.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Repeal of requirement of reduction of SBP survivor annuities by Dependency and Indemnity Compensation*

The Senate bill contained a provision (sec. 642) that would eliminate the offset of Survivor Benefit Plan annuities by the amount of Dependency and Indemnity Compensation received from the Department of Veterans Affairs.

House bill contained no similar provision.

The agreement does not include the provision.

*Election to receive retired pay for non-regular service upon retirement for service in an active reserve status performed after attaining eligibility for regular retirement*

The House bill contained a provision (sec. 644) that would allow officers with at least 20 years of active-duty service to retire and join the Selected Reserve and, after serving at least 2 years in the Selected Reserve, to receive retired pay in a higher grade if they are promoted after their active-duty retirement.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Recomputation of retired pay and adjustment of retired grade of Reserve retirees to reflect service after retirement*

The House bill contained a provision (sec. 645) that would amend section 10145 of title 10, United States Code, to require recomputation of retired pay and adjustment of retired grade of non-regular retirees recalled to an active status in the Selected Reserve who complete not less than 2 years of service in that status.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Presumption of death for participants in Survivor Benefit Plan in missing status*

The House bill contained a provision (sec. 647) that would prohibit a determination of presumed death by the Secretary of State for retired service members who are Survivor Benefit Plan annuitants, and who have been kidnapped in Iraq or Afghanistan.

The Senate bill contained no similar provision.

The agreement does not include the provision.

While current law explicitly entitles an active-duty service member to continued pay and allowances upon a determination that the member is missing, retired pay is stopped when a retired service member is determined to be missing, regardless of whether the member is still in a direct employment relationship with the Federal Government. Under the Survivor Benefit Plan, commencement of payment of the survivor benefit annuity may begin upon such a determination. We are sensitive to the fact that the annuity is typically but a portion of full retired pay. The Department of Defense must balance the need to avoid erroneous payments to survivors with the need to protect the interests of survivors in situations where death cannot or should not be presumed. We urge the Department to study whether retired pay should be stopped in the case of retired service members who are still in a direct employment relationship with the Federal Government, and to recommend statutory changes to the Congress, as necessary.

*Eligibility for disability retired pay and separation pay of certain former cadets and midshipmen with prior enlisted service*

The House bill contained a provision (sec. 648) that would extend retroactively the eligibility for disability retired pay and separation pay to cadets and midshipmen with prior enlisted service whose physical disabilities were incurred after January 1, 2000.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Separation pay, transitional health care, and transitional commissary and exchange benefits for members of the armed forces separated under surviving son or daughter policy*

The Senate bill contained a provision (sec. 651) that would entitle service members who are separated under the Department of Defense surviving son or daughter policy to separation pay, transitional health care, and transitional commissary and exchange benefits.

The House bill contained no similar provision.

The agreement does not include the provision. The benefits of this section were included in the Hubbard Act (Public Law 110-317) enacted August 29, 2008.

*Requirements for private operation of commissary store functions*

The House bill contained a provision (sec. 652) that would amend section 2485(a)(2) of title 10, United States Code, to extend the moratorium on studies to compare the cost effectiveness of commissary operations employing federal civilian employees and private sector employees from December 31, 2008, to December 31, 2013.

The Senate amendment contained no similar provision.

The agreement does not include the House provision.

Before initiating a cost comparison study of a commissary store under Office of Management and Budget Circular A-76, we recommend that the Secretary of Defense confirm that the government workforce in question has transitioned to the Defense Commissary Agency's Workforce of the Future and ensure that the private sector competitor has demonstrated experience in grocery store operations.

*Additional exception to limitation on use of appropriated funds for Department of Defense golf courses*

The House bill contained a provision (sec. 653) that would amend section 2491a of title 10, United States Code, to authorize the use of appropriated funds to purchase and maintain golf carts designed to accommodate persons with disabilities and the use of such golf carts on military golf courses.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Use of appropriated funds to pay post allowance or overseas cost of living allowances to nonappropriated fund instrumentality employees serving overseas*

The House bill contained a provision (sec. 656) that would authorize the Secretary of Defense to pay post or cost of living allowances to nonappropriated fund instrumentality employees who are United States citizens and employed full-time at an overseas location utilizing appropriated funds. Appropriated funds may be used to pay such allowances only if they were due to a nonappropriated fund instrumentality employee or former employee since December 1, 2001, but have not been previously paid.

The Senate bill contained no similar provision.

The agreement does not include the provision.

We are aware that there has been some confusion about the requirement for nonappropriated fund entities to pay post allowances at overseas locations when the employee is hired locally. We are also aware that the Department of Defense is reconsidering the current policy that requires post allowances to be paid to nonappropriated fund employees who are locally hired. Given the confusion over the specifics of the policy, we believe that nonappropriated fund entities should be protected from the burden of making additional unexpected retroactive and current payments until the Department's reassessment of the policy is completed. We strongly urge the Secretary of Defense to identify and allocate appropriated funding to pay post allowances to locally hired nonappropriated fund employees at overseas locations and ensure that no nonappropriated fund entity incurs additional cost resulting from confusion over the Department's policy on these matters.

*Study regarding sale of alcoholic wine and beer in commissary stores in addition to exchange stores*

The House bill contained a provision (sec. 657) that would require the Secretary of Defense to conduct a study to evaluate the propriety, patron convenience, and financial utility of including alcoholic wine and beer for sale in, at, or by commissary stores, and to report the findings of this study to Congress. This provision would also authorize the Secretary to conduct a pilot program involving the sale of alcoholic wine and beer in commissary stores.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Bonus to encourage Army personnel and other persons to refer persons for enlistment in the Army*

The House bill contained a provision (sec. 661) that would authorize the Secretary of the Army to train, directly or through a contractor, members of the general public to refer recruit candidates for enlistment. The provision would also provide the Secretary greater flexibility on the timing of referral bonus payments and the use of a contractor to manage the payment of such bonuses.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Providing injured members of the armed forces information concerning benefits*

The House bill contained a provision (sec. 663) that would amend section 1651 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to add additional requirements to the handbook required by that section.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Postal benefits program for members of the armed forces serving in Iraq or Afghanistan*

The House bill contained a provision (sec. 664) that would require the Secretary of Defense, in consultation with the United States Postal Service, to provide a postal benefits program to service members serving in Iraq or Afghanistan, or who are hospitalized in a Department of Defense facility as a result of service in Iraq or Afghanistan.

The Senate bill contained no similar provision.

The agreement does not include this provision.

## **TITLE VII-HEALTH CARE AND WOUNDED WARRIOR PROVISIONS**

### **Subtitle A-Improvements to Health Benefits**

*One-year extension of prohibition on increases in certain health care costs for members of the uniformed services (sec. 701)*

The House bill contained a provision (sec. 701) that would extend until September 30, 2009, the statutory prohibition on increases in any premium, deductible, and copayment under TRICARE; the maximum charge for inpatient care under TRICARE Standard; and the enrollment fee for TRICARE Prime.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Temporary prohibition on increase in copayments under retail pharmacy system of pharmacy benefits program (sec. 702)*

The House bill contained a provision (sec. 702) that would limit the cost sharing requirements for drugs provided through the TRICARE retail pharmacy program to amounts not more than \$3 for generic drugs, \$9 for formulary drugs, and \$22 for non-formulary drugs during fiscal year 2009.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Chiropractic health care for members on active duty (sec. 703)*

The House bill contained a provision (sec. 704) that would require the Secretary of Defense to provide chiropractic services for members of the uniformed services who are entitled to care under section 1074(a) of title 10, United States Code. The provision would also authorize the Secretary to conduct demonstration projects to provide chiropractic services to deployed members of the uniformed services.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the Secretary of Defense, not later than September 30, 2009, to provide chiropractic services to active duty service members at 11 additional Military Treatment Facilities that do not currently provide chiropractic services, the selection of which would be decided by the Department of Defense.

*Calculation of monthly premiums for coverage under TRICARE Reserve Select after 2008 (sec. 704)*

The House bill contained a provision (sec. 705) that would require the Secretary of Defense to recalculate the monthly premium for TRICARE Standard coverage. The premium could not cost more than 28 percent of the total average monthly amount for coverage based on actual cost data for the preceding fiscal year. If the amount calculated based on actual cost data is more than the amount in effect for the month of March 2006, then the Secretary would be required to offer coverage at the March 2006 rate.

The Senate bill contained a provision (sec. 701) that would require the Secretary of Defense to calculate calendar year 2009 monthly premiums for TRICARE Standard coverage based on the actual cost of coverage during calendar years 2006 and 2007. The provision would require the premiums for subsequent years to be calculated using the actual cost of providing benefits during the preceding calendar years.

The agreement includes the Senate provision with an amendment that would stipulate that calendar year 2009 monthly premium calculations must be limited to no more than 28 percent of the total average monthly amount for that coverage, as determined by the cost of providing benefits during calendar years 2006 and 2007, but may not exceed the amount in effect for the month of March 2007. For subsequent years, the premium calculation must be based on the actual cost of providing benefits during the preceding calendar years.

*Program for health care delivery at military installations projected to grow (sec. 705)*

The House bill contained a provision (sec. 706) that would require the Secretary of Defense to develop a plan to establish a program to build cooperative health care arrangements and agreements between military installations projected to grow and local and regional civilian health care systems. The provision would also require the Secretary to implement such a program at each installation participating in the pilot program conducted pursuant to section 721 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375). The Secretary would be required to submit an annual report to the Committees on Armed Services of the Senate and House of Representatives describing the results of the program.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would authorize the Secretary to develop a plan, and that would delete the requirement that the program be implemented at each installation participating in the pilot program under section 721 of Public Law 108-375.

We are encouraged by the Department of Defense's assessment of the pilot programs for health care delivery established by Public Law 108-375 in its July 2007 interim report on the status of these programs. At the two sites selected to test the program, Fort Drum, New York, and Yuma, Arizona, the Department found that "substantive partnerships, significant cooperative health care arrangements, and agreements" have been established between each installation and its local civilian medical community. We urge the Department of Defense to take the best practices learned from these respective programs and use them as a model for future initiatives established under this section.

*Guidelines for combined medical facilities of the Department of Defense and the Department of Veterans Affairs (sec. 706)*

The House bill contained a provision (sec. 707) that would require the Secretaries of Defense and Veterans Affairs to complete a written agreement including, at a minimum, plans for patient priority categories, budgeting, staffing, construction, and physical plant management before a facility could be designated a combined federal medical facility of the Department of Defense and the Department of Veterans Affairs.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would add governance, training, contingency

planning, quality assurance, and information technology to the list of minimum requirements for the written agreement.

## **Subtitle B-Preventive Care**

### *Waiver of copayments for preventive services for certain TRICARE beneficiaries (sec. 711)*

The House bill contained a provision (sec. 711) that would require the Secretary of Defense to waive all TRICARE copayments for preventive services for all beneficiaries who would otherwise pay copayments, and to ensure that a beneficiary pays nothing for preventive services during a year even if the beneficiary has not paid the amount necessary to cover their annual deductible. The provision would also authorize the Secretary to refund the copayment amounts paid by certain Medicare-eligible beneficiaries for preventive services obtained during fiscal year 2009. Covered preventive services would include colorectal screening, breast screening, cervical screening, prostate screening, annual physical exams, and vaccinations.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would expand the list of covered preventive services to include any other services as determined by the Secretary of Defense.

We believe that the Department of Defense should also consult with and consider the recommendations of the U.S. Preventive Services Task Force, as well as consider including screenings for other preventable health care conditions such as osteoporosis.

### *Military health risk management demonstration project (sec. 712)*

The House bill contained a provision (sec. 712) that would require the Secretary of Defense to conduct a demonstration project evaluating the efficacy of providing monetary and non-monetary incentives to assist enrolled beneficiaries to improve and encourage healthy behaviors. The demonstration project must include a wellness assessment with physiological and biometric measures such as blood pressure, glucose level, lipids, and nicotine use. Non-Medicare eligible retired TRICARE Prime beneficiaries and their dependents who reside in the demonstration project service area would be enrolled in the demonstration project.

The Senate bill contained no similar provision.

The agreement includes the House provision with an

amendment that would offer, rather than require, eligible beneficiaries to enroll in the demonstration project, and would add weight to the list of measures to be included in the wellness assessment.

*Smoking cessation program under TRICARE (sec. 713)*

The House bill contained a provision (sec. 713) that would require the Secretary of Defense to establish a smoking cessation program under TRICARE. The program would be made available to all non-Medicare eligible beneficiaries covered under TRICARE. The program would include, at a minimum: pharmaceuticals used for smoking cessation through the mail-order pharmacy program at no cost to the beneficiary if appropriate; access to a 24 hour, 7 days a week toll-free quit line; and access to tobacco cessation materials.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would add counseling as a required program element, and provide for involvement of the military chain of command.

We urge the Department of Defense to look at the work of other nationally recognized programs and consider implementing any appropriate best practices into its program.

*Preventive health allowance (sec. 714)*

The House bill contained a provision (sec. 714) that would require the Secretary of Defense to conduct a demonstration project to evaluate the efficacy of providing an annual preventive health services allowance to eligible service members, in order to increase the use of preventive health services by those service members and their dependents.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would add to the list of preventive health services weight and body mass screening.

*Additional authority for studies and demonstration projects relating to delivery of health and medical care (sec. 715)*

The Senate bill contained a provision (sec. 712) that would authorize the Secretary of Defense to conduct additional studies and demonstrations relating to the delivery of health and medical care, which may include:

- (1) projects to provide awards and incentives to TRICARE covered service members and beneficiaries who obtain

- certain health promotion and disease prevention health care services;
- (2) projects to provide awards and incentives to individual health care professionals to encourage improved quality and effectiveness of health care services;
  - (3) projects to improve the medical and dental readiness of the reserve components; and
  - (4) projects to improve the continuity of health care services for family members of mobilized members of the reserve components, including payment of a stipend for continuation of employer-provided health coverage.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would clarify that health promotion and disease prevention health care services received by members and covered beneficiaries are required to be obtained under the TRICARE program. The amendment would also clarify that personnel incentives available to individual health care professionals should be made available to civilian personnel as well as members of the armed forces.

## **Subtitle C—Wounded Warrior Matters**

*Center of excellence in prevention, diagnosis, mitigation, treatment, and rehabilitation of hearing loss and auditory system injuries (sec. 721)*

The House bill contained a provision (sec. 721) that would require the Secretary of Defense to establish within the Department of Defense a center of excellence in the prevention, diagnosis, mitigation, treatment, and rehabilitation of hearing loss and auditory system injury. The Secretary would be required to collaborate with the Secretary of Veterans Affairs, institutions of higher education, and other appropriate public and private entities to carry out the work of the center.

The Senate bill contained no similar provision.

The agreement includes the House provision.

We note that tinnitus, characterized by ringing in the ears, can be a severely disabling condition that impacts military personnel, particularly those exposed to blasts. The genesis and nature of this condition requires further study, including whether it disproportionately affects military personnel, and its correlation to other combat related neurological conditions.

*Clarification to center of excellence relating to military eye*

*injuries (sec. 722)*

The House bill contained a provision (sec. 722) that would remove the phrase "in combat" from section 1623(d) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to match sections 1621 and 1623 of the same Act.

The Senate bill contained no similar provision.

The agreement includes the House provision.

We direct that not later than 30 days after the date of enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the status of implementation of the Vision Center of Excellence. The report shall include, at a minimum, a description of the mission of the center, the resources and funds available for the center in fiscal years 2009 through 2013, and the planned programs and priorities of the center.

*Center of excellence in the mitigation, treatment, and rehabilitation of traumatic extremity injuries and amputations (sec. 723)*

The House bill contained a provision (sec. 724) that would require the Secretary of Defense and the Secretary of Veterans Affairs to establish a competitive, peer-reviewed research program to conduct peer-reviewed medical research designed to develop scientific information aimed at saving injured extremities, avoiding amputations, and preserving and restoring the function of injured extremities. The Secretary would also be required to submit a report on the plans for establishment, management, and operation of this research program.

The Senate bill contained a similar provision (sec. 1066).

The agreement includes the Senate provision with an amendment that would add conducting research on saving injured extremities, avoiding amputations, and preserving and restoring the function of injured extremities to the responsibilities of the center.

*Additional responsibilities for the Wounded Warrior Resource Center (sec. 724)*

The Senate bill contained a provision (sec. 1064) that would amend section 1616(a) of the Wounded Warrior Act (title XVI of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181)) to require the Secretary of Defense to provide referrals for legal assistance where appropriate to wounded warriors, their families, and primary caregivers.

The House bill contained no similar provision.

The agreement includes the Senate provision.

We note that the intent of this provision is not to create a new entitlement for legal assistance, but to provide a referral service to connect wounded service members and their families with their local judge advocate office or other appropriate entity.

*Sense of Congress on research on traumatic brain injury (sec. 725)*

The Senate bill contained a provision (sec. 1065) that would amend section 1621(c) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to authorize the Secretary of Defense to conduct pilot programs to promote or assess the efficacy of treatment approaches for all forms of traumatic brain injury, to include mild traumatic brain injury.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment to express the sense of Congress that the requirement under section 1621(c)(7) to conduct basic science and translational research on traumatic brain injury includes pilot programs designed to test the efficacy of clinical approaches, including the use of pharmacological agents. The amendment would express support for continued joint research with the National Institutes of Health in this area.

*Extension of Senior Oversight Committee with respect to wounded warrior matters (sec. 726)*

The Senate bill contained a provision (sec. 1067) that would require the Secretary of Defense and the Secretary of Veterans Affairs to jointly take actions to continue the operations of the Senior Oversight Committee established to address concerns related to the treatment of wounded, ill, and injured members of the armed forces and veterans until September 30, 2011.

The House bill contained no similar provision.

The agreement contains the Senate provision with an amendment to require the Secretary of Defense and the Secretary of Veterans Affairs to continue the operations of the Senior Oversight Committee until December 31, 2009, and to report by August 31, 2009, on the future operations of the Senior Oversight Committee.

*Modification of utilization of veterans' presumption of sound*

*condition in establishing eligibility of members of the armed forces for retirement for disability (sec. 727)*

The Senate bill contained a provision (sec. 1061) that would amend sections 1201 and 1203 of title 10, United States Code, to adopt the same presumption of sound condition used by the Department of Veterans Affairs in accordance with section 1111 of title 38, United States Code, that a disability is incurred while on active duty if the disability was not noted at the time of a member's entrance on active duty unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service.

The House bill contained no similar provision.

The agreement includes this provision.

We believe that the Department of Defense and the Department of Veterans Affairs must make consistent determinations as to whether a disability existed before the member's entrance or was aggravated by active military service.

## **Subtitle D-Other Matters**

*Report on providing the Extended Care Health Option program to dependents of military retirees (sec. 731)*

The House bill contained a provision (sec. 732) that would require the Secretary of Defense to submit a report on including autistic dependents of military retirees in the Extended Care Health Option (ECHO) program.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would expand the scope of the report to cover all dependents of retirees who participate in the ECHO program, and clarify that the report should discuss including such dependents for a limited transitional period following retirement.

*Increase in cap on extended benefits under Extended Health Care Option (ECHO) (sec. 732)*

The House bill contained a provision (sec. 733) that would ensure that autistic children of members of the armed forces enrolled in the Extended Health Care Option (ECHO) program would be eligible for a minimum of \$5,000 per month of autistic therapy services.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would replace the monthly cap on services under

the ECHO program with an annual cap of \$36,000.

We are concerned that the needs of military dependent children with autism are not being fully met due to the lack of availability of providers nationwide to provide therapeutic and other support services to children with autism. We expect the demonstration project initiated under TRICARE to go forward, incorporating to the maximum extent practicable, improvements identified by military family members. The demonstration project must complement other essential services to military dependent children with autism, including those authorized in section 587 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181). Those services include assignment of case managers, development of individualized services plans, and establishment of autism support centers.

We direct the Secretary of Defense to report not later than 90 days after the enactment of this Act, and semi-annually thereafter, on the status of implementation of the TRICARE demonstration project, including the numbers of autistic children served, the type and frequency of services provided, the number of available providers by region, and whether reimbursement levels are sufficient to retain qualified providers in the TRICARE networks.

Not later than February 1, 2009, the Secretary shall report to the congressional defense committees on the feasibility of establishing one or more autism support centers, as authorized by Public Law 110-181. The report shall describe the capabilities of such centers to serve military dependent children with autism of all services, the potential efficacy of such centers to meet the needs of military families with children with a diagnosis of autism, as well as the potential for training additional qualified providers of services to children with autism. We believe that each center should utilize medical, educational, and developmental therapies that have been successfully used to treat children with autism.

*Department of Defense task force on the prevention of suicides by members of the armed forces (sec. 733)*

The House bill contained a provision (sec. 735) that would require the Secretary of Defense to conduct a study to identify the mental health risks associated with the performance of military duties.

The Senate bill contained a provision (sec. 581) that would require the Secretary of Defense to develop a comprehensive policy designed to prevent suicide by members of the armed forces.

The agreement includes the Senate provision with an

amendment that would require the Secretary of Defense to establish a task force to examine matters relating to prevention of suicide by members of the armed forces.

*Transitional health care for certain members of the armed forces who agree to serve in the Selected Reserve of the Ready Reserve (sec. 734)*

The House bill contained a provision (sec. 737) that would provide transitional health care benefits to members who separate from active duty and who agree to become a member of the Selected Reserve.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would delete the language related to funding, which is reflected in the tables.

*Enhancement of medical and dental readiness of members of the armed forces (sec. 735)*

The House bill contained a provision (sec. 362) that would authorize \$22.3 million to be appropriated for first term dental readiness, and \$8.5 million to be appropriated for demobilization dental treatment.

The Senate bill contained a provision (sec. 711) that would require the secretary of each military department to provide to members of the Selected Reserve who are assigned to units scheduled for deployment within 75 days after mobilization annual medical screenings, a full physical examination for members who are over the age of 40 every 2 years, and annual dental screenings and dental care required to ensure that a member meets the dental standards required for deployment, all at no cost to the member. The provision would also authorize the secretaries concerned to provide the same services to other members of the Selected Reserve and to a member of the Individual Ready Reserve with a deployment responsibility, if those services are necessary to ensure medical and dental readiness. In addition, the provision would clarify that reserve components may use available operation and maintenance funds to achieve these goals.

The Senate provision would also authorize the Secretary of Defense to waive, in whole or in part, during a time of national emergency, the requirement for members of the Selected Reserve enrolled in the TRICARE dental insurance program to pay copayments for restorative care necessary to meet dental readiness standards, in order to facilitate readiness of a unit or individual scheduled for deployment. Finally, the provision

would require the Secretary of Defense to submit a report on the policies and procedures to ensure medical and dental readiness of service members.

The agreement includes the Senate provision with an amendment that would clarify that waivers of charges determined necessary by the Secretary to ensure the readiness of a unit or individual for deployment should be subject to regulation and limited to dental services required for readiness.

We remind the Department of Defense that readiness includes not only pre-deployment medical and dental work necessary to make the member deployable, but also post-deployment medical and dental care to bring the member back up to readiness standards after they return from a long absence, where such medical and dental care may not have been available.

### **Legislative Provisions Not Adopted**

#### *Prohibition on conversion of military medical and dental positions to civilian medical and dental positions*

The House bill contained a provision (sec. 703) that would prohibit the military departments from converting any military medical or dental position to a civilian medical or dental position on or after October 1, 2008. This provision would also require that any military medical or dental position that has been converted to a civilian medical or dental position from October 1, 2004, through September 30, 2008, be restored to a military medical or dental position if the position is not filled by a civilian by September 30, 2008.

The Senate bill contained a provision (sec. 721) that would repeal subsection (a) of section 721 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), which prohibits the military departments from converting any military medical or dental position through September 30, 2012. The provision would also restore subsections (a) and (b) of section 742 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), which requires certification by the secretary of a military department that any planned conversion will not increase the cost or decrease the quality of care or access to military health care, and requires a review by the Comptroller General of these certifications. The provision would keep the requirement set forth in subsection (b) of section 721 of Public Law 110-181 requiring the military departments to restore any positions converted between October 1, 2004, and September 30, 2008, that have not yet been filled by a civilian back to military positions.

The agreement does not include these provisions.

*Reserve component behavioral health care provider locator and appointment assistance demonstration project*

The House bill contained a provision (sec. 708) that would require the Secretary of Defense to conduct a demonstration project to assess the feasibility and efficacy of providing a behavioral health care provider locator and appointment assistance service to members of the reserve components, and to submit reports on this demonstration project.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Travel for anesthesia services for childbirth for dependents of members assigned to very remote locations outside the continental United States*

The Senate bill contained a provision (sec. 713) that would authorize the Secretary of Defense to pay travel expenses for a dependent of a service member assigned to a very remote location outside the continental United States who requires or elects anesthesia services for childbirth to a location in the United States.

The House bill contained no similar provision.

The agreement did not include the Senate provision.

*National Casualty Care Research Center*

The House bill contained a provision (sec. 723) that would require the Secretary of Defense to designate a National Casualty Care Research Center at the Army Medical Research and Materiel Command, for the purpose of establishing additional linkages between military and civilian casualty research.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Review of policies and processes related to the delivery of mail to wounded members of the armed forces*

The House bill contained a provision (sec. 725) that would require the Secretary of Defense to review the policies and processes related to the delivery of letters, packages, messages, and other communications that are intended as measures of support and are addressed generally to wounded and injured members of the armed forces in military medical treatment facilities and other locations where members of the armed forces are treated and rehabilitated.

The Senate bill contained no similar provision.  
The agreement does not include the provision.

*Post-deployment mental health screening demonstration project*

The House bill contained a provision (sec. 726) that would require the Secretary of Defense to conduct a demonstration project to assess the feasibility and efficacy of providing a face to face post-deployment mental health screening between a service member and a mental health provider.

The Senate bill contained no similar provision.  
The agreement does not include this provision.

*Report on stipend for members of reserve components for health care for certain dependents*

The House bill contained a provision (sec. 731) that would require the Secretary of Defense to submit a report on the extent to which the Secretary has exercised the authority provided in section 704 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).

The Senate bill contained no similar provision.  
The agreement does not include this provision.

*Report on implementation of recommendations contained in report on health effects of exposure to depleted uranium*

The House bill contained a provision (sec. 734) that would direct the Secretary of Defense to submit a report to Congress describing the measures underway to implement the report required by section 716 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364).

The Senate bill contained no similar provision.  
The agreement does not include the House provision.

*Implementation of recommendations of Department of Defense Mental Health Task Force*

The House bill contained a provision (sec. 736) that would require the Comptroller General of the United States to conduct a review of the implementation by the Department of Defense of the recommendations made by the Department of Defense Task Force on Mental Health.

The Senate bill contained no similar provision.  
The agreement does not include the provision.

*Inclusion of service members in inpatient status in wounded*

*warrior policies and protections*

The Senate bill contained a provision (sec. 1062) that would amend section 1602(7) of the Wounded Warrior Act (title XVI of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181)) to include inpatient service members in the definition of a "recovering service member" for purposes of policies and protections for wounded warriors.

The House bill contained no similar provision.

The agreement does not include this provision.

*Clarification of certain information sharing between the Department of Defense and Department of Veterans Affairs for wounded warrior purposes*

The Senate bill contained a provision (sec. 1063) that would amend section 1614(b)(11) of the Wounded Warrior Act (title XVI of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181)) to require the Secretary of Defense and the Secretary of Veterans Affairs to implement a process for transferring medical records of a recovering service member from the Department of Defense to the Department of Veterans Affairs when the transfer is authorized by regulations implementing the Health Insurance Portability and Accountability Act of 1996.

The House bill contained no similar provision.

The agreement does not include the provision.

**TITLE VIII-ACQUISITION POLICY, ACQUISITION  
MANAGEMENT, AND RELATED MATTERS**

**Subtitle A-Acquisition Policy and  
Management**

*Assessment of urgent operational needs fulfillment (sec. 801)*

The House bill contained a provision (sec. 802) that would require the Secretary of Defense to commission an independent study and report on the effectiveness of the processes used by the Department of Defense to identify, prioritize, and meet urgent operational needs.

The Senate bill contained a provision (sec. 813) that would require the expedited review and validation of urgent operational needs documents.

The agreement includes the House provision with an

amendment that would require the independent study and report to make specific recommendations as to how to ensure the expedited review and validation of urgent operational needs documents.

*Implementation of statutory requirements regarding the national technology and industrial base (sec. 802)*

The House bill contained a provision (sec. 805) that would authorize the Secretary of Defense to provide for the application of a domestic industrial base evaluation factor during source selection for a major defense acquisition program.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment requiring the Secretary of Defense to issue guidance regarding the implementation of certain existing statutory requirements regarding the national technology and industrial base. We understand that the Department of Defense currently meets the requirement of section 2440, United States Code, by conducting industrial capabilities assessments.

*Commercial software reuse preference (sec. 803)*

The House bill contained a provision (sec. 806) that would require the Secretary of Defense to ensure that contracting officials reuse commercial computer software, whenever practicable, instead of developing new software.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment requiring the Secretary to ensure that contracting officials reuse commercial or off-the-shelf software, whenever practicable, instead of developing new software.

*Internal controls for procurements on behalf of the Department of Defense by certain non-defense agencies (sec. 804)*

The Senate bill contained a provision (sec. 811) that would modify requirements adopted in previous years for the Inspector General of the Department of Defense (DOD) to conduct joint reviews with the inspectors general of non-defense agencies to determine whether procurements conducted by the non-defense agencies on behalf of DOD have been conducted in compliance with defense procurement requirements.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment streamlining the provision.

## **Subtitle B-Provisions Relating to Major Defense Acquisition Programs**

*Inclusion of major subprograms to major defense acquisition programs under acquisition reporting requirements (sec. 811)*

The Senate bill contained a provision (sec. 801) that would address the inclusion of certain information on major subprograms in reports issued in accordance with the requirements of chapter 144 of title 10, United States Code.

The House bill contained no similar provision.

The agreement includes the Senate provision with a technical amendment.

*Inclusion of certain major information technology investments in acquisition oversight authorities for major automated information system programs (sec. 812)*

The Senate bill contained a provision (sec. 802) that would extend reporting requirements for major automated information system programs to cover certain other major automated information technology investments.

The House bill contained no similar provision.

The agreement includes the Senate provision with a clarifying amendment.

*Transfer of sections of title 10 relating to milestone A and milestone B for clarity (sec. 813)*

The House bill contained a provision (sec. 843) that would reverse sections of title 10 relating to milestone A and milestone B.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment making technical changes to the requirement for milestone A certifications.

*Configuration Steering Boards for cost control under major defense acquisition programs (sec. 814)*

The House bill contained a provision (sec. 846) that would require the Secretary of Defense to report to Congress on certain major defense acquisition programs and to establish Configuration Steering Boards (CSBs) for such programs.

The Senate bill contained a provision (sec. 803) that would require the Secretary to establish CSBs for all major defense

acquisition programs.

The agreement includes the Senate provision with an amendment modifying the membership of CSBs and adding a new restriction on certain changes to programs receiving Milestone B approval during fiscal year 2008.

*Preservation of tooling for major defense acquisition programs (sec. 815)*

The House bill contained a provision (sec. 803) that would require the preservation of all unique tooling associated with the production of hardware for a major defense acquisition program.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would streamline the requirement and the waiver authority, to clarify that the Secretary of Defense may waive the requirement to preserve unique production tooling, or any category of unique production tooling, if he determines that such a waiver is in the best interest of the Department of Defense and so notifies Congress. We note that the Secretary may delegate this authority, as he may delegate any authority provided to him by statute.

## **Subtitle C-Amendments to General Contracting Authorities, Procedures, and Limitations**

*Definition of system for defense acquisition challenge program (sec. 821)*

The House bill contained a provision (sec. 812) that would clarify the meaning of the term "system" for the purpose of the defense acquisition challenge program.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Technical data rights (sec. 822)*

The House bill contained a provision (sec. 814) that would require the Secretary of Defense to issue policy guidance on technical data rights in non-Federal Acquisition Regulation agreements.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment providing the Secretary greater flexibility in the

drafting of the new guidance.

*Revision to the application of cost accounting standards (sec. 823)*

The House bill contained a provision (sec. 815) that would make the cost accounting standards apply to certain federal contracts performed outside the United States.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment requiring the Cost Accounting Standards Board to study the issue and determine whether the application of the standards to contracts or subcontracts outside the United States would benefit the Federal Government.

*Modification and extension of pilot program for transition to follow-on contracts under authority to carry out certain prototype projects (sec. 824)*

The Senate bill contained a provision (sec. 822) that would extend for 4 years the authority for the Secretary of Defense to carry out a pilot program under section 847 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136), and modify such authority.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment extending the authority for 2 years. We direct the Secretary of Defense to report to the congressional defense committees not later than 270 days after the date of the enactment of this Act on the extent to which such authority has been used and, if it has not been used, whether modifications are needed to achieve the purpose of the provision.

*Clarification of status of Government rights in designs of Department of Defense vessels, boats, craft, and components thereof (sec. 825)*

The House bill contained a provision (sec. 841) that would clarify government rights in the designs of Department of Defense vessels, boats, and craft, and components of such vessels, boats, and craft.

The Senate bill contained a similar provision (sec. 1011).

The agreement includes the Senate provision with an amendment to address designs of all Department of Defense vessels, boats, craft, and components, regardless whether they are developed at public or private expense.

## **Subtitle D—Provisions Relating to Acquisition Workforce and Inherently Governmental Functions**

*Development of guidance on personal services contracts (sec. 831)*

The House bill contained a provision (sec. 822) that would require the Secretary of Defense to develop guidance and safeguards for the use of personal services contracts by the Department of Defense.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment cross-referencing the definition of personal services contracts in section 2330(a) of title 10, United States Code.

*Sense of Congress on the performance by private security contractors of certain functions in an area of combat operations (sec. 832)*

The House bill contained a provision (sec. 824) that would require the Secretary of Defense to modify existing regulations to ensure that private security contractors are not authorized to perform inherently governmental functions in an area of combat operations.

The Senate bill contained a similar provision (sec. 841) that would also specify certain functions that constitute inherently governmental functions when performed in highly hazardous public areas.

The agreement includes a provision that expresses the Sense of Congress with regard to the performance of certain functions by private security contractors in an area of combat operations.

*Acquisition workforce expedited hiring authority (sec. 833)*

The House bill contained a provision (sec. 811) that would authorize the Department of Defense to use direct hiring authority for acquisition positions designated by the Secretary of Defense as shortage positions.

The Senate bill contained a similar provision (sec. 851).

The agreement includes the House provision.

*Career path and other requirements for military personnel in the acquisition field (sec. 834)*

The House bill contained a provision (sec. 813) that would

require the Department of Defense to establish policies and issue guidance to ensure the proper development, assignment, and employment of military personnel in the acquisition field.

The Senate bill contained a provision (sec. 502(e)) that would establish minimum numbers of billets for general officers and flag officers serving in acquisition positions and in contracting positions in the military departments.

The agreement includes the House provision with an amendment that would require the Secretary of Defense to ensure that a sufficient number of acquisition and contracting billets are reserved for general and flag officers with appropriate qualifications to ensure the optimum management of the acquisition functions of the Department of Defense. Elsewhere in the bill, we would increase the authorized number of Army general officers serving in acquisition positions by five, and authorize the Chairman of the Joint Chiefs of Staff to exclude from limitations on flag and general officers an additional five positions, one of whom must be assigned to the Defense Contract Management Agency.

## **Subtitle E—Department of Defense Contractor Matters**

### *Ethics safeguards related to conflicts of interest (sec. 841)*

The House bill contained a provision (sec. 821) that would require the Department of Defense to develop a standard policy aimed at preventing personal conflicts of interest by employees of Department of Defense contractors and implement that policy through a standard contract clause.

The House bill also contained a provision (sec. 4404) that would require the Administrator for Federal Procurement Policy to establish uniform, government-wide policies for the prevention of personal and organizational conflicts of interest by contractors and their employees and to implement those policies through a standard clause or a set of standard clauses.

The Senate bill contained a similar provision (sec. 832) that would require the Department of Defense to develop a contract clause addressing financial conflicts of interest of certain contractor employees.

The agreement includes a provision that would combine the requirements of the three provisions into a single, government-wide provision. The provision would require the development of a government-wide policy and a standard clause or set of clauses regarding personal conflicts of interest by contractor employees performing acquisition functions closely associated with

inherently governmental functions. The provision would also require the Administrator for Federal Procurement Policy to consider any additional revisions to the Federal Acquisition Regulation that may be necessary to address personal or organizational conflicts of interest by contractors or their employees.

We note that the Department of Defense Panel on Contracting Integrity is also reviewing these issues and expect the Panel to continue that review.

*Information for Department of Defense contractor employees on their whistleblower rights (sec. 842)*

The Senate bill contained a provision (sec. 833) that would require the Secretary of Defense to prescribe in regulations a policy for informing Department of Defense (DOD) contractor employees of whistleblower rights and protections.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment requiring the Secretary to ensure that DOD contractor employees are informed of their whistleblower rights and protections.

*Requirement for Department of Defense to adopt an acquisition strategy for Defense Base Act insurance (sec. 843)*

The House bill contained a provision (sec. 850) that would require the Secretary of Defense to adopt an acquisition strategy for insurance required by the Defense Base Act (section 1651 of title 42, United States Code) which minimizes the cost of such insurance to the Department and its contractors.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Report on use of off-shore subsidiaries by defense contractors (sec. 844)*

The House bill contained a provision (sec. 852) that would prohibit contractors from using foreign shell companies to employ United States persons to perform Department of Defense contracts.

The Senate bill contained a provision (sec. 823) that would ensure that an offeror for a Department of Defense contract cannot receive a competitive advantage by reducing costs through the use of overseas subsidiaries to avoid U.S. taxes.

The agreement includes the House provision with an

amendment requiring a report by the Comptroller General on the use of foreign shell companies by Department of Defense contractors. We note that the tax issue has already been addressed in section 302 of Public Law 110-245.

*Defense industrial security (sec. 845)*

The House bill contained a series of provisions (sec. 831-833) that would codify certain requirements regarding facility clearances; foreign ownership, control and influence; and congressional oversight of these requirements.

The Senate bill contained no similar provision.

The agreement includes a provision that would make the Secretary of Defense responsible for the protection of classified information disclosed to contractors of the Department of Defense and require certain reports on the manner in which the Secretary carries out this responsibility.

## **Subtitle F—Matters Relating to Iraq and Afghanistan**

*Clarification and modification of authorities relating to the Commission on Wartime Contracting in Iraq and Afghanistan (sec. 851)*

The Senate bill contained a provision (sec. 843) that would ensure that federal retirees serving as members or staff of the Commission on Wartime Contracting in Iraq and Afghanistan may be paid for their work without forfeiting retired pay.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Comprehensive audit of spare parts purchases and depot overhaul and maintenance of equipment for operations in Iraq and Afghanistan (sec. 852)*

The Senate bill contained a provision (sec. 844) that would require the audit agencies of the military departments to conduct thorough audits of spare parts purchases and depot overhaul and maintenance of equipment for operations in Iraq and Afghanistan.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would clarify that this provision may not be construed to require the duplication of audit work that has already been performed by Department of Defense audit agencies.

*Additional matters required to be reported by contractors performing security functions in areas of combat operations (sec. 853)*

The House bill contained a provision (sec. 847) that would amend section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to expand the categories of incidents that must be reported by private security contractors operating in areas of combat operations.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment reemphasizing the requirement for contractors of all federal agencies, pursuant to section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), to comply with regulations prescribed by the Secretary of Defense, other applicable laws and regulations, and orders and directives issued by commanders on the battlefield.

*Additional contractor requirements and responsibilities relating to alleged crimes by or against contractor personnel in Iraq and Afghanistan (sec. 854)*

The House bill contained a provision (sec. 849) that would require the Secretary of Defense to require the reporting of crimes against contractor personnel in Iraq and Afghanistan and to ensure that the victims of such crimes receive appropriate assistance.

The Senate bill contained a similar provision (sec. 842). The Senate provision would amend section 861 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to ensure that reporting and victim assistance requirements would apply to contractors of all federal agencies.

The agreement includes the Senate provision with an amendment combining the reporting and assistance requirements of the two provisions.

*Suspension of statutes of limitations when Congress authorizes the use of military force (sec. 855)*

The Senate bill contained a provision (sec. 1083) that would amend the wartime suspension of the statute of limitations in section 3287 of title 18, United States Code, to apply in cases where Congress has enacted a specific authorization for the use of the armed forces.

The House bill contained no similar provision.

The agreement includes the Senate provision.

## **Subtitle G—Governmentwide Acquisition Improvements**

### *Short title (sec. 861)*

The House bill contained a provision (sec. 4001) that would provide a short title for Division D of the House bill.

The Senate bill contained no similar provision.

The agreement includes a provision that would provide a short title for the government-wide acquisition subtitle of Title VIII.

### *Limitation on length of certain noncompetitive contracts (sec. 862)*

The House bill contained a provision (sec. 4102) that would limit the length of contracts entered on a noncompetitive basis because of urgent and compelling circumstances.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would limit such contracts to a period of no longer than one year and apply the limitation to contracts in excess of the simplified acquisition threshold.

### *Requirements for purchase of property and services pursuant to multiple award contracts (sec. 863)*

The House bill contained a provision (sec. 4103) that would: (1) extend on a government-wide basis certain requirements already applicable to the Department of Defense for purchases under multiple award contracts; and (2) establish public notice requirements for sole source purchase under such contracts.

The Senate bill contained no similar provision.

The agreement includes the House provision with a technical amendment.

### *Regulations on the use of cost-reimbursement contracts (sec. 864)*

The House bill contained a provision (sec. 4201) that would require the issuance of government-wide regulations to minimize the inappropriate use of cost-reimbursement contracts.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would streamline reporting requirements and

simplify the provision.

*Preventing the abuse of interagency contracts (sec. 865)*

The House bill contained a provision (sec. 4202) that would require the Office of Management and Budget to establish guidelines for the use of interagency acquisitions.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Limitations on tiering of subcontractors (sec. 866)*

The House bill contained a provision (sec. 4204) that would extend on a government-wide basis certain regulatory requirements already applicable to the Department of Defense with respect to excessive pass-through charges on contracts.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Linking of award and incentive fees to acquisition outcomes (sec. 867)*

The House bill contained a provision (sec. 4205) that would extend on a government-wide basis certain requirements already applicable to the Department of Defense regarding the linking of award and incentive fees to acquisition outcomes.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment clarifying that the Department of Defense will continue to be subject to guidance on award and incentive fees issued pursuant to section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364).

*Minimizing abuse of commercial services item authority (sec. 868)*

The House bill contained a provision (sec. 4206) that would extend on a government-wide basis certain regulatory requirements already applicable to the Department of Defense with respect to: (1) the purchase of commercial services; and (2) the use of time and materials contracts.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment deleting the requirement with respect to time and

materials contracts.

*Acquisition workforce development strategic plan (sec. 869)*

The House bill contained a provision (sec. 4301) that would establish an acquisition workforce development fund for civilian agencies, similar to the fund already in place for the Department of Defense.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment requiring the Administrator for Federal Procurement Policy to develop a strategic plan for funding improvements to support the development of the civilian acquisition workforce.

*Contingency contracting corps (sec. 870)*

The House bill contained a provision (sec. 4302) that would establish a government-wide contingency contracting corps.

The Senate bill contained a provision (sec. 812) that would establish a contingency contracting corps within the Department of Defense (DOD).

The agreement includes the House provision with an amendment that would ensure that members of the Armed Forces or DOD civilian employees who are members of the government-wide contingency contracting corps may not be deployed without the concurrence of the Secretary of Defense or the Secretary's designee. The provision would also preserve the independent authority of the Secretary of Defense to deploy members of the Armed Forces or DOD civilian employees, including members of the government-wide contingency contracting corps, in support of a contingency operation, as defined in section 101(o)(13) of title 10, United States Code.

*Access of Government Accountability Office to contractor employees (sec. 871)*

The House bill contained a provision (sec. 4403) that would ensure that the Government Accountability Office has access to contractor employees for the purpose of conducting interviews.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Database for federal agency contract and grant officers and suspension and debarment officials (sec. 872)*

The House bill contained a series of provisions (sec. 4502-

4504) that would require the establishment of a government-wide database of information regarding integrity and performance of persons awarded federal contracts and grants.

The Senate bill contained a provision (sec. 831), which would require the establishment of a database of information regarding the integrity and performance of persons awarded Department of Defense contracts.

The agreement includes the Senate provision with an amendment that would require the establishment of a government-wide database and making certain clarifying changes.

*Role of interagency committee on debarment and suspension (sec. 873)*

The House bill contained a provision (sec. 4505) that would establish requirements for the Interagency Committee on Debarment and Suspension.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Improvements to the Federal Procurement Data System (sec. 874)*

The House bill contained a provision (sec. 4509) that would require the Director of the Office of Management and Budget to direct appropriate revisions to the Federal Procurement Data System to facilitate the collection of complete, timely, and reliable data on interagency contracting actions and on other transactions.

The House bill also contained a provision (sec. 4508) that would require the Administrator of General Services to make recommendations to Congress on steps needed to create a centralized, comprehensive federal contracting and federal grant database.

The Senate bill contained no similar provisions.

The agreement includes the House provisions with an amendment that would combine them into a single section.

## **Subtitle H-Other Matters**

*Expansion of authority to retain fees from licensing of intellectual property (sec. 881)*

The House bill contained a provision (sec. 842) that would clarify the authority for the Department of Defense and the Department of Homeland Security to retain fees from licensing of intellectual property.

The Senate bill contained a similar provision (sec. 852)

applicable only to the Department of Defense.

The agreement includes the House provision.

*Report on market research (sec. 882)*

The House bill contained a provision (sec. 845) that would require the Secretary of Defense to submit a report to Congress on market research conducted by the Department of Defense (DOD) to identify commercial or nondevelopmental items that could meet DOD needs.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment streamlining the reporting requirement.

*Report relating to munitions (sec. 883)*

The House bill contained a provision (sec. 848) that would require the Secretary of Defense to report to the congressional defense committees justifying any decision to procure certain categories of ammunition from non-domestic sources and providing a plan to develop a domestic producer as the source for such ammunition by 2012.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment deleting the requirement that the report include a plan to develop a domestic producer for the covered categories of ammunition.

*Motor carrier fuel surcharges (sec. 884)*

The House bill contained a provision (sec. 851) that would require that motor carriers: (1) pass on the amount of all fuel surcharges to the person who bears the cost of such fuel; and (2) make the amount of any fuel-related adjustment publicly available on the internet.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require that: (1) the Secretary of Defense take appropriate steps to ensure that, to the maximum extent practicable, fuel-related adjustments are passed through to the person who bears the cost of the fuel; (2) the steps taken by the Secretary include the use of contract clauses in contracts providing for fuel-related adjustments; and (3) the Secretary publicly disclose any decision by the Department of Defense to pay fuel-related adjustments under such contracts (or a category of such contracts).

*Procurement by State and local governments of equipment for homeland security and emergency response activities through the Department of Defense (sec. 885)*

The Senate bill contained a provision (sec. 1031) that would amend section 381 of title 10, United States Code, to authorize the State and local governments to purchase specialized homeland security and emergency response equipment through the Department of Defense.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Review of impact of covered subsidies on acquisition of KC-45 aircraft (sec. 886)*

The House bill contained a provision (sec. 801) that would require the Secretary of the Air Force to review a ruling by the World Trade Organization (WTO) regarding subsidies to a manufacturer of large commercial aircraft, including a notice and comment process, and take certain actions on the basis of such review.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the Secretary of Defense to review the subsidies issue upon a ruling by the WTO, in consultation with certain other officials and experts without notice and public comment or the requirement to take any action on the basis of the review.

*Report on the implementation of earned value management at the Department of Defense (sec. 887)*

The House bill contained a provision (sec. 844) that would require the Secretary of Defense to study and report to Congress on the implementation of earned value management systems by the Department of Defense and its contractors.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment extending the deadline for the completion of the study and report.

## **Legislative Provisions Not Adopted**

*Authorization of appropriations*

The House bill contained a provision (sec. 4507) that would authorize funds for the Administrator of General Services to

establish a database of information regarding integrity and performance of federal contractors.

The Senate bill contained no similar provision.

The agreement does not include the provision.

#### *Authorization of independent agencies*

The House bill contained a provision (sec. 4506) that would address the participation of independent agencies in the suspension and debarment system.

The Senate bill contained no similar provision.

The agreement does not include the provision.

#### *Comprehensive proposal analysis required during source selection*

The House bill contained a provision (sec. 807) that would require the Secretary of Defense to provide for the consideration of costs borne by a foreign government in the evaluation of a proposal for a major defense acquisition program, a significant portion of which will be performed outside the United States.

The Senate bill contained no similar provision.

The agreement does not include the provision.

#### *Disclosure of CEO salaries*

The House bill contained a provision (sec. 4501) that would require certain contractors to disclose the names and total compensation of their five most highly compensated officers.

The Senate bill contained no similar provision.

The agreement does not include the provision. This issue has already been addressed in section 6202 of the Fiscal Year 2008 Supplemental Appropriations Act (Public Law 110-252).

#### *Limitation on performance of product support integrator functions*

The House bill contained a provision (sec. 823) that would prohibit contractors from performing product support integrator functions.

The Senate bill contained no similar provision.

The agreement does not include the provision.

#### *Mandatory fraud reporting*

The House bill contained a provision (sec. 4402) that would require contractors to report violations of Federal criminal law

or overpayments in connection with the award of performance of contracts.

The Senate bill contained no similar provision.

The agreement does not include the provision. This issue has already been addressed in section 6102 of the Fiscal Year 2008 Supplemental Appropriations Act (Public Law 110-252).

*Minimizing sole-source contracts*

The House bill contained a provision (sec. 4101) that would require federal agencies to develop and implement plans to minimize, to the maximum extent practicable, the use of contracts entered into using procedures other than competitive procedures.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Multiyear procurement authority for the Department of Defense for the purchase of alternative and synthetic fuels*

The Senate bill contained a provision (sec. 821) that would authorize the Secretary of Defense to enter multiyear contracts for the purchase of alternative and synthetic fuels.

The House bill contained no similar provision.

The agreement does not include the provision.

*Prohibition on procurement from beneficiaries of foreign subsidies*

The House bill contained a provision (sec. 804) that would prohibit the Secretary of Defense for entering a contract for the procurement of goods or services from any foreign person whom the United States has alleged, in proceedings under the Agreement on Subsidies and Countervailing Measures, to have received a prohibited subsidy.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Prohibitions on the use of lead systems integrators*

The House bill contained a provision (sec. 4203) that would prohibit the award of new contracts for lead systems integrator functions in the acquisition of major systems.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Protection of contractor employees from reprisal for disclosure*

*of certain information*

The House bill contained a provision (sec. 4401) that would provide enhanced protections for contractor employees of non-defense agencies who blow the whistle on waste, fraud and abuse in government contracting.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Repeal of requirements relating to the military system essential item breakout list*

The Senate bill contained a provision (sec. 853) that would repeal section 813 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136).

The House bill contained no similar provision.

The agreement does not include the provision.

*Requirement to buy military decorations, ribbons, badges, medals, insignia, and other uniform accoutrements produced in the United States*

The House bill contained a provision (sec. 655) that would require military exchange stores and other nonappropriated fund entities of the Department of Defense (DOD) to purchase military decorations, ribbons, badges, medals, insignia, and other uniform accoutrements produced in the United States, subject to certain exceptions.

The Senate bill contained no similar provision.

The agreement does not include the provision.

We understand that contracts entered by DOD nonappropriated fund entities for the purchase of military decorations, awards and insignia include clauses requiring that such decorations, awards and insignia be manufactured, assembled and produced in the United States unless there are no U.S. manufacturing sources available. We believe that the Secretary of Defense should take steps, including periodic audits, to ensure contractor compliance with the terms and conditions of these contracts, including terms and conditions relating to product quality, conformance with technical specifications, and point of origin.

## **TITLE IX-DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT**

### **Subtitle A-Department of Defense Management**

*Plan required for personnel management of special operation forces (sec. 901)*

The House bill contained a provision (sec. 903) that would require the commander of the special operations command to submit a plan to the congressional defense committees on the personnel management of special operations forces.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment clarifying that the Commander of the United States Special Operations Command shall submit the required report to the Secretary of Defense, who shall provide that report to the congressional defense committees together with any additional comments the Secretary of Defense and the Chairman of the Joint Chiefs of Staff consider appropriate.

*Director of Operational Energy Plans and Programs (sec. 902)*

The House bill contained a provision (sec. 904) that would establish a Director for Operational Energy Plans and Programs within the Office of the Secretary of Defense and senior operational energy officials within each of the military services.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Corrosion control and prevention executives for the military departments (sec. 903)*

The House bill contained a provision (sec. 905) that would require the Assistant Secretary of each military department with responsibility for acquisition, technology, and logistics to designate an employee of the military department to act as the senior official to coordinate department-level Corrosion Prevention and Control Program activities.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would make the annual report provided by the corrosion control and prevention executives of the military departments due to the Secretary of Defense by December 31 each year. We understand that the first report submitted by the corrosion control and prevention executives would be December 2009.

*Participation of Deputy Chief Management Officer of the Department of Defense on Defense Business System Management*

*Committee (sec. 904)*

The House bill contained a provision (sec. 906) that would clarify the role of the Deputy Chief Management Officer of the Department of Defense.

The Senate bill contained a similar provision (sec. 902).

The agreement includes the Senate provision with a clarifying amendment.

*Modification of status of Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs (sec. 905)*

The Senate bill contained a provision (sec. 901) that would amend section 142 of title 10, United States Code, to clarify that the Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense is equivalent to an assistant secretary of defense.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Requirement for the Secretary of Defense to prepare a strategic plan to enhance the role of the National Guard and Reserves (sec. 906)*

The House bill contained a provision (sec. 907) that would require the Secretary of Defense to develop a plan for enhancing the roles of the National Guard and reserves, and submit a report on that plan to the Committees on Armed Services of the Senate and the House of Representatives by April 1, 2009.

The Senate bill contained a similar provision (sec. 1053).

The agreement includes the House provision with a clarifying amendment.

*General Counsel to the Inspector General of the Department of Defense (sec. 907)*

The Senate bill contained a provision (sec. 904) that would provide for a General Counsel to the Inspector General of the Department of Defense who would report only to the Inspector General.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Business transformation initiatives for the military departments (sec. 908)*

The Senate bill contained a provision (sec. 906) that would require the Secretary of each military department, acting through the Chief Management Officer of such department, to carry out a business transformation initiative. The provision would also require each military department to establish an Office of Business Transformation to assist the Chief Management Officer in carrying out the initiative.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment extending the timelines for the initiative and clarifying the responsibilities of the new Office of Business Transformation.

## **Subtitle B-Space Activities**

*Extension of authority for pilot program for provision of space surveillance network services to entities outside United States Government (sec. 911)*

The House bill contained a provision (sec. 911) that would extend the authority to continue the pilot program to provide network surveillance assistance to entities outside the U.S. Government.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Investment and acquisition strategy for commercial satellite capabilities (sec. 912)*

The House bill contained a provision (sec. 912) that would require the Secretary of Defense to conduct an assessment to determine a recommended investment and acquisition strategy for a broad range of commercial satellite capabilities. The report on the strategy would be due February 2009.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would modify the due date of the report to February 1, 2010. The assessment would address fiscal years after 2010.

*Space posture review (sec. 913)*

The Senate bill contained a provision (sec. 911) that would direct the Secretary of Defense, in conjunction with the Director of National Intelligence, to conduct a comprehensive review of the space posture of the United States. The review would cover a 10 year period beginning February 1, 2009. The

Secretary would be required to submit the report no later than December 1, 2009.

The House bill contained no similar provision.

The agreement includes the House provision with an amendment that would add industrial base policy to the list of policies for which the provision requires an assessment of interrelationships.

## **Subtitle C-Chemical Demilitarization Program**

### *Responsibilities for Chemical Demilitarization Citizens' Advisory Commissions in Colorado and Kentucky (sec. 921)*

The House bill contained a provision (sec. 921) that would require the Secretary of the Army to transfer responsibility for the Chemical Demilitarization Citizens' Advisory Commissions in Colorado and Kentucky to the Program Manager for Assembled Chemical Weapons Alternatives.

The Senate bill contained a similar provision (sec. 1431).

The agreement includes the Senate provision with a clarifying amendment.

### *Cost-benefit analysis of future treatment of hydrolysate at Pueblo Chemical Depot, Colorado (sec. 922)*

The House bill contained a provision (sec. 922) that would prohibit the Department of Defense from transporting hydrolysate from the Pueblo Chemical Depot, Colorado, to an off-site location for treatment, storage, or disposal during fiscal year 2009, and would require a report containing a cost-benefit analysis between on-site and off-site methods of disposing of such hydrolysate.

The Senate bill contained no similar provision.

The agreement includes a provision that would require the Secretary of Defense to conduct a cost-benefit analysis of future options for treatment and disposal of hydrolysate at the Pueblo Chemical Depot, Colorado, and to submit a report to Congress, together with the budget request for fiscal year 2010, containing the results of that analysis. The provision would also require the Secretary to provide notification to Congress 60 days prior to commencing any transport of hydrolysate from the Pueblo Chemical Depot to an off-site location during fiscal year 2009, if he decides to conduct such transport after the report is submitted.

## **Subtitle D-Intelligence-Related Matters**

*Technical changes following the re-designation of National Imagery and Mapping Agency as National Geospatial-Intelligence Agency (sec. 931)*

The House bill contained a provision (sec. 931) that would make certain technical changes in the United States Code and other laws to reflect the changing of the name of the National Imagery and Mapping Agency to the National Geospatial-Intelligence Agency.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Technical amendments to title 10, United States Code, arising from enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (sec. 932)*

The House bill contained a provision (sec. 932) that would make certain technical changes in title 10, United States Code, to reflect enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458).

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Technical amendments relating to the Associate Director of the CIA for Military Affairs (sec. 933)*

The House bill contained a provision (sec. 933) that would change section 528(c) in title 10, United States Code, to reflect changing of the title of the position within the Central Intelligence Agency (CIA) from the Associate Director of the CIA for Military Support, to the Associate Director of the CIA for Military Affairs.

The Senate bill contained no similar provision.

The agreement includes the House provision.

## **Subtitle E-Other Matters**

*Enhancement of authorities relating to Department of Defense regional centers for security studies (sec. 941)*

The House bill contained a provision (sec. 942) that would amend section 184(f) of title 10, United States Code, to allow funds authorized under that section to be available for programs that begin in that fiscal year but end in the following one,

starting with fiscal year 2009. The provision would also establish a pilot program providing temporary authority for the Secretary of Defense, with the concurrence of the Secretary of State, to waive reimbursement of certain costs of activities of Regional Centers in connection with the participation of personnel of nongovernmental or international organizations in those activities. The provision would also require the Secretary of Defense to report on the extent of nongovernmental and international organization participation in regional center programs.

The Senate bill contained a similar provision (sec. 1212). The agreement includes the Senate provision.

*Restriction on obligation of funds for United States Southern Command development assistance activities (sec. 942)*

The House bill contained a provision (sec. 944) that would require that the Secretary of Defense, within 30 days after the date of enactment of this Act, to submit to the congressional defense committees a report describing the development assistance activities carried out by the United States Southern Command (SOUTHCOM) and containing a certification that such activities: will not negatively impact the readiness of SOUTHCOM; do not divert resources from funded or unfunded requirements of SOUTHCOM; are not already, or will not be, undertaken by other federal departments or agencies; and are designed, planned, and conducted as derivative activities of SOUTHCOM's warfighting responsibilities under title 10 of the United States Code.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would increase the time permitted for the Secretary of Defense to deliver the required report to the Congressional defense committees to 120 days.

*Authorization of non-conventional assisted recovery capabilities (sec. 943)*

The House bill contained a provision (sec. 945) that would codify authority for Joint Forces Command to act as the Executive Agent for the non-conventional assisted recovery (NAR) capabilities and authorize the Department to develop a personnel recovery program for isolated personnel representing all parts of the U.S. Government.

The Senate bill contained a similar provision (sec. 1207) that would authorize the commander of a combatant command, with the concurrence of the relevant chief of mission, to expend

funds in fiscal years 2009 and 2010 to establish, develop, and maintain NAR capabilities in a foreign country if the commander determines that expenditure of such funds for that purpose is necessary.

The agreement includes a provision that would authorize the commander of a combatant command, with the concurrence of the relevant chiefs of mission, to expend funds in fiscal years 2009 through 2011 to establish, develop, and maintain NAR capabilities and would require a notification to the congressional defense committees of the use of this authority within 72 hours of a combatant commander exercising this authority.

*Report on homeland defense and civil support issues (sec. 944)*

The House bill contained a provision (sec. 946) that would require the Secretary of Defense to submit a report on progress made to address concerns raised by the Government Accountability Office (GAO) related to U.S. Northern Command, and would require Northern Command to perform a number of functions related to State and federal domestic response planning, capabilities, and coordination.

The Senate bill contained a related provision (sec. 905) that would express the sense of the Congress concerning the importance of establishing and assigning to U.S. Northern Command forces for the mission of managing the consequences of an incident in the United States homeland involving a chemical, biological, radiological, or nuclear device, or high-yield explosives (CBRNE). The provision would also require reports on progress toward achieving that goal, including progress in addressing concerns raised by GAO related to U.S. Northern Command.

The agreement includes a provision that would require the Secretary of Defense to submit a report to the congressional defense committees on progress made to address the concerns raised by GAO related to U.S. Northern Command, including improved coordination with other agencies, and on plans and progress to establish CBRNE consequence management response forces.

*Report on National Guard resource requirements (sec. 945)*

The House bill contained a provision (sec. 947) that would require the Chief of the National Guard Bureau to submit to the Secretary of Defense, not later than 6 months after the date of enactment of this Act, a report on the effectiveness of the implementation of the various provisions in title XVIII of the

National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) and assessing the adequacy of Department of Defense funding for the resource requirements of the National Guard. The Secretary of Defense would be required to submit the report, with any explanatory comments the Secretary considers necessary, to Congress not later than 30 days after the Secretary receives the report.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the Chief of the National Guard Bureau to submit to the Secretary of Defense a report on the extent to which the various provisions in title XVIII of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) have been effective in giving the Chief of the National Guard Bureau the proper set of authorities and resources to perform the responsibilities and duties of the Chief.

### **Legislative Provisions Not Adopted**

#### *Revisions in functions and activities of Special Operations Command*

The House bill contained a provision (sec. 901) that would revise the statutory authority governing special operations activities.

The Senate bill contained no similar provision.

The agreement does not include the provision.

#### *Requirement to designate officials for irregular warfare*

The House bill contained a provision (sec. 902) that would require the Secretary of Defense to designate an Assistant Secretary of Defense to be responsible for overall management and coordination of irregular warfare activities. The provision would also require the establishment of a single executive agent for such activities.

The Senate bill contained no similar provision.

The agreement does not contain this provision.

We note that the Secretary of Defense has authorized a review of the management and execution of both current and future irregular warfare activities throughout the Department of Defense. We understand that the Secretary will soon approve a Department Directive pertaining to irregular warfare activities. We applaud the review effort, await the completion of the approval process, and direct the Secretary to provide the

results of that review to the congressional defense committees no later than 30 days after approval.

*Redesignation of the Department of the Navy as the Department of the Navy and Marine Corps*

The House bill contained a provision (sec. 908) that would redesignate the Department of the Navy as the Department of the Navy and Marine Corps and would redesignate the position of the Secretary of the Navy as the Secretary of the Navy and Marine Corps.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Support to committee to review*

The House bill contained a provision (sec. 909) that would require the Secretary of Defense to provide certain information to the House Committee on Armed Services within 15 days after receiving a request.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Requirement for certain officers of the armed forces on active duty in certain intelligence positions*

The Senate bill contained a provision (sec. 921) that would require that the principal deputy to the senior service intelligence officer be a commissioned officer of the armed forces on active duty.

The House bill contained no similar provision.

The agreement does not include the provision.

*Transfer of management of Intelligence Systems Support Office*

The Senate bill contained a provision (sec. 922) that would transfer management of the Intelligence Systems Support Office and other projects and activities currently conducted by the Office of the Under Secretary of Defense for Intelligence to other components of the Department of Defense.

The House bill contained no similar provision.

The agreement does not include the provision.

*Program on advanced sensor applications*

The Senate amendment contained a provision (sec. 923) that would transfer management oversight of the Advanced Sensor

Applications Program (ASAP) to the Under Secretary of Defense for Acquisition, Technology and Logistics and mandate other aspects of the management of the program.

The House bill contained no similar provision.

The Senate recesses.

The Deputy Secretary of Defense sent a letter to the congressional defense and intelligence committees, dated July 22, 2008, outlining certain changes in the Department's position on the ASAP effort. The conferees agree that the revised funding and management approach described in the Deputy Secretary's letter should help ensure that the Department abides by congressional intent without the need for immediate legislative intervention.

The conferees agree to authorize \$20.0 million for the ASAP program for fiscal year 2009.

Additional direction on the ASAP program is contained in the classified annex to this report.

*Findings and sense of Congress regarding the Western Hemisphere Institute for Security Cooperation*

The House bill contained a provision (sec. 943) that would express the sense of congress that the Western Hemisphere Institute for Security Cooperation is one of the most effective mechanisms that the United States has to build relationships with future leaders throughout the Western Hemisphere, influence the human rights records and democracy trajectory of countries in the Western Hemisphere, and mitigate the growing influence of non-hemispheric powers.

The Senate bill contained no similar provision.

The agreement does not include this provision.

## **TITLE X-GENERAL PROVISIONS**

### **Subtitle A-Financial Matters**

*General Transfer authority (sec. 1001)*

The House bill contained a provision (sec. 1001) that would allow the Secretary of Defense to make transfers between any amounts of authorizations for fiscal year 2009 in division A of this Act. This section would limit the total amount of transferred under this authority to \$4.0 billion. This section would also require prompt notification to Congress of each transfer made.

The Senate bill contained a similar provision (sec. 1001)

that would provide \$5.0 billion in transfer authority.

The agreement provides for transfer authority of \$4.2 billion.

*One-time shift of military retirement payments (sec. 1002)*

The House bill contained a provision (sec. 1004) that would shift a portion of the military retirement payments disbursed in September 2013 to October 2013. The provision would also require the Secretary of Defense to transfer \$40.0 million from the National Defense Stockpile Transaction Fund.

The Senate bill contained no similar provision.

The agreement contains this provision.

*Management of purchase cards (sec. 1003)*

The House bill contained a provision (sec. 1005) that would require new safeguards and internal controls for the use of purchase cards by the Department of Defense.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the Secretary of Defense to report to Congress on the steps that the Department of Defense has taken or plans to take to implement the recommendations of a Government Accountability Office report on actions needed to strengthen internal controls for the use of purchase cards (GAO report 08-333).

*Codification of recurring authority on United States contributions to the North Atlantic Treaty Organization common-funded budgets (sec. 1004)*

The Senate bill contained a provision (sec. 1003) that would authorize the U.S. contribution to the North Atlantic Treaty Organization (NATO) common-funded budgets for fiscal year 2008, including the use of unexpended balances.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that provides permanent authority for amounts contributed by the Secretary of Defense in any fiscal year for the NATO common-funded budgets to exceed the maximum amount that would otherwise be applicable under the fiscal year 1998 baseline limitation set out in the Senate resolution of ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic. The amendment also requires the Secretary of Defense to report annually to Congress regarding U.S. contributions to

the NATO common-funded budgets.

*Incorporation of funding decisions into law (sec. 1005)*

The House bill contained a provision (sec. 1431) that would state that Executive Order No. 13457 shall not apply to this Act.

The Senate bill contained a provision (sec. 1002) that would incorporate the funding tables into the Act.

The agreement includes the Senate provision with a clarifying amendment that would incorporate the authorized amounts in funding tables into the Act. For the purposes of this provision, a funding table means a list of specific programs, projects and activities, and the dollar amounts and adjustments to budget activities corresponding to such programs, projects, and activities, but does not include a table included in the joint explanatory statement in compliance with Rule XLIV of the Standing Rules of the Senate or Rule XXI of the Rules of the House of Representatives.

The Government Printing Office (GPO) has informed us that incorporating the funding tables into bill language would add 3 full days to the time required to prepare a bill for floor consideration, even if the GPO does not have other high priority work to accomplish at the time. This delay is in addition to the day and a half it would require for the committee staff to prepare the funding tables in a form that could be processed by GPO, and to ensure the accuracy of GPO's work. With only 3 days left for the House and the Senate to consider the bill before the scheduled end of this year's session of Congress, we have determined that incorporating the funding tables into bill language was not an option that was available to us.

## **Subtitle B-Policy Relating to Vessels and Shipyards**

*Conveyance, Navy drydock, Aransas Pass, Texas (sec. 1011)*

The House bill contained a provision (sec. 1011) that would authorize the Secretary of the Navy to convey the floating drydock AFDL-23, located at Aransas Pass, Texas, to Gulf Copper Ship Repair, the company currently leasing the drydock from the Navy. The Secretary would be allowed to place such terms and conditions on the transfer as he feels appropriate, and the company would be required to compensate the Federal Government for the fair market value of the drydock, as determined by the Secretary.

The Senate bill contained no similar provision.  
The agreement includes the House provision.

*Report on repair of naval vessels in foreign shipyards (sec. 1012)*

The House bill contained a provision (sec. 1012) that would amend section 7310 of title 10, United States Code, to require the Secretary of the Navy to submit a report at least 30 days before conducting repair work on any vessel in a shipyard outside the United States or Guam.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the Secretary to provide a report, with the submission of the President's budget, regarding any ship repair work conducted on any vessel in a shipyard outside the United States or Guam during the previous year.

*Report on plan for disposal of certain vessels stricken from the Naval Vessel Register (sec. 1013)*

The House bill contained a provision (sec. 1015) that would require the Secretary of the Navy to submit a report within 30 days to the congressional defense committees on the contribution of scrapping vessels larger than 50,000 tons displacement to the domestic market for steel and other metals.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would allow the Secretary 180 days to complete the report.

*Reimbursement of expenses for certain Navy mess operations (sec. 1014)*

The Senate bill contained a provision (sec. 1012) that would authorize the Secretary of Defense to fund from agency operating accounts the cost of meals on United States naval and naval auxiliary vessels for non-military personnel. For the purposes of this provision, this includes nongovernmental organization and host and partner nation participants in civil-military operations and foreign national patients treated during the conduct of civil-military operations, as well as their escorts.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would place an annual limit of \$1.0 million on such costs and would require an annual report on the

Department's use of this authority.

*Policy relating to major combatant vessels of the strike forces of the United States Navy (sec. 1015)*

The House bill contained a provision (sec. 1013) that would amend the section 1012(c)(1) of the National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-181) to add all amphibious ships larger than 15,000 dead weight ton light ship displacement to the definition of major surface combatants in that section. Section 1012 stated that it is the policy of the United States to construct major surface combatants of the strike forces of the United States with integrated nuclear power systems.

The Senate bill contained no similar provision.

The agreement includes the House provision.

## **Subtitle C-Counter-Drug Activities**

*Extension of reporting requirement regarding Department of Defense expenditures to support foreign counter-drug activities (sec. 1021)*

The House bill contained a provision (sec. 1021) that would extend, by 1 year, the requirement for the Secretary of Defense to submit a report detailing the expenditure of funds by the Department during fiscal year 2008 in direct and indirect support of the counterdrug activities of foreign governments.

The Senate bill contained no similar provision.

The agreement includes the House provision with a technical amendment.

*Extension of authority for joint task forces to provide support to law enforcement agencies conducting counter-terrorism activities (sec. 1022)*

The House bill contained a provision (sec. 1022) that would extend the authority provided in section 1022(b) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136), which expires at the end of fiscal year 2008, through fiscal year 2009. The current authority provides that a joint task force of the Department of Defense, which is providing support to law enforcement agencies conducting counterdrug activities, may also provide, subject to all applicable laws and regulations, these law enforcement agencies with support for their counterterrorism activities.

The Senate bill contained a nearly identical provision

(sec.1021).

The agreement includes the provision.

The agreement directs the Deputy Assistant Secretary of Defense for Counternarcotics, Counterproliferation and Global Threats to provide an annual briefing about the use of this authority to the congressional defense committees.

*Extension of authority to support unified counter-drug and counterterrorism campaign in Colombia and continuation of numerical limitation on assignment of United States personnel (sec. 1023)*

The House bill contained a provision (sec.1023) that would extend the authority provided in section 1021 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375) to use counterdrug funds to support the Government of Colombia's unified campaign against narcotics cultivation and trafficking, and against terrorist organizations involved in such drug trafficking activities through fiscal year 2009.

The Senate bill contained a nearly identical provision (sec.1022).

The agreement includes the provision.

*Expansion and extension of authority to provide additional support for counter-drug activities of certain foreign governments (sec. 1024)*

The House bill contained a provision (sec. 1024) that would extend by 1 fiscal year the duration of authority for assistance under section 1033 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1998 (Public Law 105-85), as amended by section 1021 of the NDAA for FY 2004 (Public Law 108-136), section 1022 of the John Warner NDAA for FY 2007 (Public Law 109-364), and section 1022 of the NDAA for FY 2008 (Public Law 110-181); would expand the list of countries that could qualify for assistance under section 1033 to include three West African countries; and would increase the funding limitation under section 1033 from \$60.0 million to \$65.0 million for fiscal year 2009.

The Senate bill contained no similar provision.

The agreement includes a provision that would extend by one fiscal year the duration of this authority; would expand the list of countries that could qualify for assistance under section 1033 to include: El Salvador, Guinea-Bissau, Honduras, and Senegal; and would increase the funding limitation under section 1033 from \$60.0 million to \$75.0 million for fiscal year

2009.

*Comprehensive Department of Defense strategy for counter-narcotics efforts for United States Africa Command (sec. 1025)*

The House bill contained a provision (sec.1025) that would require the Secretary of Defense, in consultation with the Secretary of State, to prepare a counterdrug plan for all eligible governments under section 1033 of the National Defense Authorization Act for fiscal year 1998 (Public Law 105-85) for fiscal year 2009 and updates thereafter, as well as a region-wide, counterdrug plan for Africa, with a special emphasis on West Africa and the Maghreb.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would expand the scope of this reporting requirement to include the remainder of the African continent.

*Comprehensive Department of Defense strategy for counter-narcotics efforts in South and Central Asian regions (sec. 1026)*

The House bill contained a provision (sec.1026) that would require the Secretary of Defense to submit a report to the congressional defense committees that outlines the Department's role, missions, objectives, and budget in support of the overall U.S. Government counternarcotics strategy and activities in the south and central Asian regions and other geographically proximate countries.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment which would provide the Department with additional time to complete the report, as well as a technical change.

## **Subtitle D—Miscellaneous Authorities and Limitations**

*Enhancement of the capacity of the United States Government to conduct complex operations (sec. 1031)*

The Senate bill contained a provision (sec. 1032) that would authorize the Secretary of Defense to establish a Center for Complex Operations. The center would facilitate the activities of a consortium composed of education and training institutions from across the U.S. Government in order to increase unity of effort in complex operations.

The House bill contained no similar provision.

The agreement contains the Senate provision with an amendment clarifying that the Secretary of Defense will seek the concurrence of the Secretary of State to the extent that the activities of the Center involve foreign government or militaries, international organizations or international nongovernmental organizations.

*Crediting of admiralty claim receipts for damage to property funded from a Department of Defense working capital fund (sec. 1032)*

The Senate bill contained a provision (sec. 1033) that would provide that payments received by the United States in settlement of an admiralty claim for damage or loss to property that is operated and maintained using monies from a Department of Defense working capital fund account would be credited to the working capital fund which was used to operate and maintain the damaged or lost property.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Minimum annual purchase requirement for charter air transportation services from carriers participating in the Civil Reserve Air Fleet (sec. 1033)*

The Senate bill contained a provision (sec. 1034) that would authorize the Secretary of Defense to guarantee higher minimum levels of business than are currently authorized by law to United States air carriers participating in the Civil Reserve Air Fleet (CRAF).

The House bill contained no similar provision.

The agreement includes the Senate provision, amended to provide authority to the Secretary to guarantee minimum levels of business to CRAF participants operating passenger travel contracts only.

*Semi-annual reports on status of Navy Next Generation Enterprise Networks (NGEN) program (sec. 1034)*

The Senate bill contained a provision (sec. 1035) that would modify the termination date of the base contract for the Navy-Marine Corps Intranet (NMCI) program.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment establish a semi-annual reporting requirement on the Navy's transition between the NMCI and NGEN programs.

The NGEN program represents one of the largest, farthest reaching, and complex acquisition programs and technology deployments for the Navy and Marine Corps in the next decade. We note with concern the lack of planning and oversight that the Department of Defense has dedicated to the requirements generation, acquisition strategy development, outreach to industry, contracting mechanisms, realistic testing, and transition planning for the NGEN program. The lack of transparency and dialogue with industry about the acquisition strategy for NGEN and the planned transition of assets and intellectual property currently associated with the NMCI program is a continuing concern.

The Secretary of Defense is directed to keep the congressional defense committees well informed about the development of acquisition and transition strategies for NGEN. It is expected that the semi-annual reporting requirement in this provision will provide an efficient mechanism to support that dialogue.

*Sense of Congress on nuclear weapons management (sec. 1035)*

The Senate bill contained a provision (sec. 1038) that would find that the unauthorized transfer of nuclear weapons from Minot Air Force Base, North Dakota, to Barksdale Air Force Base, Louisiana, in August 2007; the unauthorized transfer of classified intercontinental ballistic missile parts, discovered in March 2008; and a lack of training and staffing for nuclear matters, demonstrate a lack of attention by the Department of Defense (DOD) to nuclear issues in general. In addition, the provision would set forth the sense of Congress that safety and security of nuclear weapons and related equipment should be a high priority for the United States; that the President should take steps to nominate an individual to fill the position of the Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs; and that the Secretary of Defense should establish a senior position in the DOD Office of Policy at an assistant secretarial or deputy under secretarial level with responsibility for nuclear policy issues.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would add an additional finding to the provision. The amendment would set forth the sense of the Congress that maintaining the safety and security of nuclear weapons would be more easily achieved if greater attention were paid to the nuclear matters in the Offices of the Secretary of Defense, the Under Secretary of Defense for Policy and the Under Secretary of Defense for Acquisition, Technology, and Logistics. The

amendment would also set forth the sense of the Congress that the Secretary of Defense should clarify lines of responsibility and accountability for nuclear weapons matters.

*Sense of Congress on joint Department of Defense-Federal Aviation Administration executive committee on conflict and dispute resolution (sec. 1036)*

The Senate bill contained a provision (sec. 1039) that would express the sense of the Congress that the Secretary of Defense should seek an agreement with the Administrator of the Federal Aviation Administration to establish a Joint Executive Committee to serve as the focal point for dispute resolution and policy development, and as a mechanism for identifying solutions to a range of mutual issues.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Sense of Congress on sale of new outsize cargo, strategic airlift aircraft for civilian use (sec. 1037)*

The Senate bill contained a provision (sec. 1040) that would encourage the Secretary of Defense, in consultation with the Secretary of Transportation, to: (1) review the benefits and feasibility of pursuing new production of a commercial C-17 variant to determine whether such capability would be in the national interest; and (2) if he determines it to be in the national interest, take appropriate action with the Federal Aviation Administration to achieve type certification of such aircraft.

The House bill contained no similar provision.

The agreement includes the Senate provision with a clarifying amendment.

## **Subtitle E-Studies and Reports**

*Report on corrosion control and prevention (sec. 1041)*

The House bill contained a provision (sec. 1041) that would require the Department of Defense, through the Office of Corrosion Policy and Oversight, to provide a report to the Senate Committee on Armed Services and the House Committee on Armed Services by February 1, 2009, regarding the potential for improvements in corrosion control and prevention in weapons systems by planning for corrosion control and prevention earlier in the system requirements and acquisition processes.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would change the due date of the report to not later than 120 days after the date of enactment of the Act.

*Study on using Modular Airborne Fire Fighting Systems (MAFFS) in a Federal response to wildfires (sec. 1042)*

The House bill contained a provision (sec. 1042) that would require the Secretary of Defense to carry out a study on how to utilize the Department's Modular Airborne Fire Fighting Systems (MAFFS) in all contingencies where there is a Federal response to wildfires, and how to decrease costs of using MAFFS when supporting National Interagency Fire Center fire fighting operations. The provision would require that the Secretary submit that report to the congressional defense committees within six months of the date of enactment of this Act.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Study on rotorcraft survivability (sec. 1043)*

The House bill contained a provision (sec. 1043) that would require the Secretary of Defense and the Chairman of the Joint Chiefs of Staff to conduct a study on rotorcraft survivability.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Report on nuclear weapons (sec. 1044)*

The House bill contained a provision (sec. 1045) that would require the Secretary of Defense, in consultation with the Secretary of State, the Secretary of Energy, and the Director of National Intelligence, to conduct a review of nonstrategic nuclear weapons world wide, and submit a report to Congress setting forth the results of the review. The report would be due 180 days after the date of enactment of this Act.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would modify the scope of the review. The review would cover nuclear weapons world wide and include a description of each country's nuclear weapons arsenal and an assessment of the various risks associated with nuclear weapons deemed to be attractive to terrorists, states, and other non-state actors. For those weapons that are deemed to be attractive to terrorists and state and non-state actors, the review would also include recommendations on mechanisms and procedures to improve the

security of such weapons, monitor and track such weapons, and identify options to transparently and verifiably dismantle and dispose of such weapons. The President shall submit a report that would be due 1 year after the date of enactment of this Act. The report shall be unclassified but may have a classified annex.

*Report on compliance by Department of Defense with Guam tax and licensing laws (sec. 1045)*

The House bill contained a provision (sec. 1047) that would require the Secretary of Defense to report to Congress on steps the Department is taking to ensure that defense contractors performing work on Guam comply with local tax and licensing requirements.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment simplifying the reporting requirement.

*Report on detention operations in Iraq (sec. 1046)*

The Senate bill contained a provision (sec. 1052) that would require the Secretary of Defense to submit a detailed report to the congressional defense committees on detention operations at theater internment facilities and reintegration centers in Iraq. The Senate provision would require that the report contain information on changes in detention policies and procedures intended to incorporate counterinsurgency doctrine, and a description of policies and programs to prepare detainees for reintegration upon their release.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment clarifying the elements to be included as part of the report. We note that the description of how counterinsurgency doctrine has been incorporated at theater internment facilities in Iraq should include the changes, if any, to procedures for reviewing the detention status of individuals under detention at such facilities.

*Review of bandwidth capacity requirements of the Department of Defense and the intelligence community (sec. 1047)*

The Senate bill contained a provision (sec. 1055) that would direct the Secretary of Defense and the Director of National Intelligence to conduct a joint review of the current and future bandwidth capacity requirements of the Department of Defense and the intelligence community over the next 10 years.

The review would also include a discussion of any mitigation concepts, including operational or technical options that might be used to address bandwidth capacity shortfalls. Not later than 1 year after the date of enactment of this Act, the Secretary and the Director would be required to submit a report setting forth the results of the review to the congressional defense committees and the intelligence committees of the Senate and the House of Representatives. The Secretary and the Director should include and fully address in the review all means by which bandwidth is provided, including ground, aerial, and satellite options.

The provision would also direct the Secretary and the Director to establish a formal process, for each major defense acquisition or major system acquisition program, to ensure during the Milestone B or key decision point B phase of the acquisition process, that the bandwidth requirements of each such system can be met.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would expand the assessment of bandwidth capacities and capabilities to include airborne relays and expand the elements of the assessment to include technologies that could increase data transport.

*Review of findings and recommendations applicable to the Department of Defense regarding electromagnetic pulse attack (sec. 1048)*

The House bill contained a provision (sec. 1033) that would extend the duration of the Commission to Assess the Threat to the United States from Electromagnetic Pulse Attack (EMP Commission) by 4 years to 2012, expand its scope and membership, and authorize additional funds.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would direct the Secretary of Defense to submit a report in each odd numbered year until 2015 that sets forth the results of a review of the findings and recommendations of the EMP Commission that are applicable to the Department of Defense (DOD).

We note that an electromagnetic attack on the United States could have a devastating impact on the ability of the DOD and the military services to carry out their missions. The EMP Commission, over the course of 7 years has made extensive findings and recommendations for the Department of Defense and other Executive Branch agencies.

## Subtitle F-Other Matters

*Additional information under annual submissions of information regarding information technology capital assets (sec. 1051)*

The House bill contained a provision (sec. 1061) that would Clarify reporting requirements relating to budget submissions for information technology capital assets.

The Senate amendment contained a similar provision (sec. 331).

The agreement includes a provision that clarifies and reduces the burden on the Department of Defense in terms of reporting on budget requests related to information technology capital assets. The Department should continue to work to ensure that public information on the information technology budget is informative and provides visibility into the use of public funds for these important activities.

*Submission to Congress of revision to regulation on enemy prisoners of war, retained personnel, civilian internees, and other detainees (sec. 1052)*

The House bill contained a provision (sec. 1064) that would prohibit implementation of any successor regulation to Army Regulation 190-8, Enemy Prisoners of War, Retained Personnel, Civilian Internees, and Other Detainees (dated October 1, 1997) until 60 days after the Secretary of Defense submits that successor regulation to the Committees on Armed Services of the Senate and the House of Representatives.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Barnegat Inlet to Little Egg Inlet, New Jersey (sec. 1053)*

The House bill contained a provision (sec. 1067) that would authorize the Secretary of the Army to pay the full cost of removing munitions from the beach at Barnegat Inlet to Little Egg Inlet, New Jersey.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would modify the language regarding reimbursement for any non-federal expenses incurred.

*Standing advisory panel on improving coordination among the Department of Defense, the Department of State, and the United States Agency for International Development on matters of*

*national security (sec. 1054)*

The House bill contained a provision (sec. 1071) that would require the Secretary of Defense, the Secretary of State, and the Administrator of the U.S. Agency for International Development (USAID) to jointly establish an advisory panel to review the roles and responsibilities of the Department of Defense, the Department of State, and the USAID on matters of national security and make recommendations to improve collaboration and coordination.

The Senate bill contained no similar provision.

The agreement contains the House provision with an amendment allowing the Secretary of Defense, the Secretary of State, and the Administrator of the USAID to jointly establish an advisory panel to advise on ways to improve coordination among the Department of Defense, the Department of State, and USAID on matters relating to national security, including reviewing their respective roles and responsibilities.

*Reports on strategic communication and public diplomacy activities of the Federal Government (sec. 1055)*

The House bill contained a provision (sec. 1074) that would require the President to submit to Congress a report on a comprehensive interagency strategy for public diplomacy and strategic communication efforts for the Federal Government.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment. We note that numerous studies from independent commissions, the Government Accountability Office, and the Defense Science Board have indicated a lack of clearly articulated strategic goals for the Federal Government's efforts at strategic communication and public diplomacy. Taken as a whole, these studies point to deficiencies in the U.S. approach to this mission that have not been adequately addressed by previous strategies, or by any other official government initiative. For example, these studies indicate that the Federal Government's approach to strategic communication and public diplomacy has not been effective enough at garnering greater participation from the private sector, academic institutions or other non-governmental organizations. We commend the establishment of the Global Strategic Engagement Center at the Department of State, but note that its role within a whole-of-government approach to strategic communication and public diplomacy still needs to be further clarified.

*Prohibitions relating to propaganda (sec. 1056)*

The House bill contained a provision (sec. 1075) that would prohibit the use of Department of Defense funds for propaganda purposes not specifically authorized by law.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment. We intend the term "publicity or propaganda", as used in the provision, to have the meaning given to such term in decisions of the Government Accountability Office on this subject.

*Sense of Congress on interrogation of detainees by contractor personnel (sec. 1057)*

The House bill contained a provision (sec. 1077) that would require the Secretary of Defense to revise applicable regulations, not later than one year after the date of the enactment of this Act, to prohibit the use of contractor personnel to interrogate detainees.

The Senate bill contained a similar provision (sec. 1036).

The agreement includes the Senate provision with an amendment expressing the Sense of Congress that the interrogation of detainees is an inherently governmental function and that within one year after the date of the enactment of this Act, the Department of Defense should develop the resources needed to ensure that all such interrogations can be conducted by government personnel rather than contractor employees.

*Sense of Congress with respect to videotaping or otherwise electronically recording strategic intelligence interrogations of persons in the custody of or under the effective control of the Department of Defense (sec. 1058)*

The House bill contained a provision (sec. 1078) that would require the Secretary of Defense to ensure that all strategic intelligence interrogations of individuals in Department of Defense (DOD) custody or under detention in a DOD facility are videotaped or otherwise electronically recorded.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would express the Sense of Congress that the Secretary of Defense should take the necessary actions to ensure that all strategic interrogations of individuals in DOD custody or under detention in a DOD facility are videotaped or otherwise electronically recorded.

*Modification of deadlines for standards required for entry to military installations in the United States (sec. 1059)*

The Senate bill contained a provision (sec. 1082) that would amend section 1069 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to extend deadlines for the establishment and implementation of standards for entry to military installations in the United States.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment modifying the deadlines.

*Extension of certain dates for Congressional Commission on the Strategic Posture of the United States (sec. 1060)*

The House bill contained a provision (sec. 1032) that would extend the due date for the final report of the Congressional Commission on the Strategic Posture of the United States from December 1, 2008 to March 1, 2009, and the sunset date for the Commission from June 1, 2009, to September 30, 2009. The provision would also direct the Commission to submit an interim report no later than December 1, 2009.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that that would extend the due date of the final report to April 1, 2009.

The Commission should be prepared to brief Congress on the results of the interim report when it becomes available.

*Technical and clarifying amendments (sec. 1061)*

The House bill contained a provision (sec. 1063) that would make technical and clarifying amendments.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment adding additional technical and clarifying language.

*Notification of Committees on Armed Services with respect to certain nonproliferation and proliferation activities (sec. 1062)*

The Senate bill contained a provision (sec. 1037) that would direct the Departments of Defense, Energy, State, and Commerce, and the Nuclear Regulatory Commission to keep the Committees on Armed Services of the Senate and the House of Representatives fully and currently informed with respect to

their activities to prevent the proliferation of weapons of mass destruction and the Director of National Intelligence to keep the committees currently informed with respect to the current activities of foreign nations that are of significance from the proliferation standpoint.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Assessment of security measures at consolidated center for North American Aerospace Defense Command and United States Northern Command (sec. 1073)*

The House bill contained a provision (sec. 1062) that would prohibit the Secretary of Defense from relocating any mission from Cheyenne Mountain Air Force Station until 30 days after the Secretary submits a report to the congressional defense committees with information concerning any such relocation.

The Senate bill contained no similar provision.

The agreement includes a provision that would require the Secretary of Defense to conduct an assessment of the adequacy of security measures for the consolidated command center for North American Aerospace Defense Command (NORAD) and United States Northern Command (USNORTHCOM), and to report on the results of the assessment by no later than March 1, 2009. The provision would also require the Secretary to ensure that redundant facilities and equipment, along with appropriate manning, are maintained at Cheyenne Mountain Air Force Station until the Secretary of Defense certifies that measures have been instituted that bring the consolidated NORAD/USNORTHCOM command center into full compliance with Protection Level One requirements.

### **Legislative Provisions Not Adopted**

*Strategic Communication Management Board*

The House bill contained a provision (sec. 1031) that would require the Secretary of Defense to establish a Strategic Communication Management Board to provide interdepartmental and interagency coordination for Department of Defense strategic communication efforts.

The Senate bill contained no similar provision.

The agreement does not contain the provision.

*Studies to analyze alternative models for acquisition and funding of interconnected cyberspace systems*

The House bill contained a provision (sec. 1044) that would require the Secretary of Defense to contract for an independent assessment on a variety of issues related to the development, acquisition, and operational use of technologies supporting network centric operations.

The Senate bill contained no similar provision.

The agreement does not include the provision.

This provision contains aspects worthy of future consideration by the Department of Defense, as well as Congress, as they relate to acquisition of information technology systems. For example, the development of a taxonomy for understanding the key components of systems supporting network centric operations is long overdue. The National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) contained a provision (sec. 887) that required the Defense Science Board (DSB) to conduct a study of policies and procedures for the acquisition of information technology. This DSB study will address the majority of issues raised by the House provision, and thus it would be premature to commission another study until those results have been reported back to Congress.

*Study on national defense implications of section 1083*

The House bill contained a provision (sec. 1046) that would require the Department of Defense to study the national defense implications of section 1083 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Study on methods to verifiably reduce the likelihood of accidental nuclear launch*

The House bill contained a provision (sec. 1048) that would direct the Secretary of Defense to carry out a study to evaluate procedural and physical options to introduce time delays into the nuclear weapons launch procedures of the United States, Russia, and China.

The Senate bill contained no similar provision.

The agreement does not include the House provision.

*Sense of Congress honoring the Honorable Duncan Hunter*

The House bill contained a provision (sec. 1051) that would express the sense of Congress honoring the Honorable Duncan Hunter.

The Senate bill contained no similar provision.

The agreement does not include the provision. The material from the provision is incorporated into section 1, the short title of the bill.

*Sense of Congress in honor of the Honorable Jim Saxton, a Member of the House of Representatives*

The House bill contained a provision (sec. 1052) that would express the sense of Congress honoring the Honorable Jim Saxton.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Sense of Congress honoring the Honorable Terry Everett, a Member of the House of Representatives*

The House bill contained a provision (sec. 1053) that would express the sense of Congress honoring the Honorable Terry Everett.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Sense of Congress honoring the Honorable Jo Ann Davis, a Member of the House of Representatives*

The House bill contained a provision (sec. 1054) that would express the sense of Congress honoring the Honorable Jo Ann Davis.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Authorization of appropriations for payments to Portuguese nationals employed by the Department of Defense*

The House bill contained a provision (sec. 1065) that would authorize payments for salary increases based on wage survey data for fiscal years 2006 and 2007 to Portuguese nationals employed by the Department of Defense.

The Senate bill contained no similar provision.

The agreement does not include this provision.

*State defense force improvement*

The House bill contained a provision (sec. 1066) that would amend section 109 of title 32, United States Code, to recognize state defense forces as an integral military component of the United States, and would authorize the Secretary of Defense to coordinate, assist, train, and transfer excess equipment to a

state defense force provided the Secretary determines certain conditions are met.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Sense of Congress regarding the roles and missions of the Department of Defense and other national security institutions*

The House bill contained a provision (sec. 1068) that would express the sense of Congress regarding coordination between the Department of Defense and other national security organizations.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Sense of Congress relating to 2008 supplemental appropriations*

The House bill contained a provision (sec. 1069) that would state the sense of Congress regarding readiness shortfalls.

The Senate bill contained no similar provision.

The agreement does not include this provision.

*Sense of Congress regarding defense requirements of the United States*

The House bill contained a provision (sec. 1070) that would state the sense of Congress regarding the funding of national defense requirements.

The Senate bill contained no similar provision.

The agreement does not include this provision.

*Nonapplicability of the Federal Advisory Committee Act to the Congressional Commission on the Strategic Posture of the United States*

The House bill contained a provision (sec. 1072) that would exempt the Congressional Commission on the Strategic Posture of the United States from the applicability of the Federal Advisory Committee Act (Public Law 92-463) or 5 U.S.C. App.

The Senate bill contained no similar provision.

The agreement does not include this provision.

*Study and report on the use of power management software*

The House bill contained a provision (sec. 1073) that would require a report on the use of power management software.

The Senate bill contained no similar provision.

The agreement does not include the provision.

The strides that the Department of Defense has made in improving energy efficiency across the entire organization are encouraging. The Department is working to increase the fuel efficiency and alternative fuel options of its vast fleet of vehicles, but also developing options for improving the energy efficiency of its extensive information technology (IT) enterprise. IT systems, including all of the desktop computing, servers, routers, and associated equipment consume significant quantities of energy, and any gains of efficiency will likely translate to significant cost savings. The adoption of innovative business practices will also help contribute to the reduction of the energy consumption for these resources. The Department should continue to undertake further measures to reduce energy consumption in its information technology enterprise, and keep industry and academia aware of opportunities for them to support efforts in this area.

*Public disclosure of names of students and instructors at Western Hemisphere Institute for Security Cooperation*

The House bill contained a provision (sec. 1079) that would require the Secretary of Defense to release to the public, upon request, the names, ranks, countries of origin, and other information of students and instructors of the Western Hemisphere Institute for Security Cooperation.

The Senate bill contained no similar provision.

The agreement does not include this provision.

## **TITLE XI-CIVILIAN PERSONNEL MATTERS**

*Authority to waive annual limitation on premium pay and aggregate limitation on pay for federal civilian employees working overseas (sec. 1101)*

The House bill contained a provision (sec. 1101) that would extend for an additional year the authority of a head of a federal agency to waive the limitations on the amount of premium pay that may be given to a civilian employee who performs certain work in an overseas location that falls under the responsibility of the United States Central Command, or in support of a military operation or responding to an emergency declared by the President. The total compensation would be limited to \$212,100 for the calendar year.

The Senate bill contained a provision (sec. 1108) that would authorize the head of an executive agency to waive limitations on the aggregate of basic and premium pay, and on allowances, differentials, bonuses, awards, and similar cash

payments payable during calendar year 2009 to an employee who performs work in an overseas location under the area of responsibility of the Commander, United States Central Command in support of a contingency operation or an operation in response to a declared emergency. The total amount payable may not exceed the total annual compensation payable to the Vice President under section 104 of title 3, United States Code.

The agreement includes the Senate provision with an amendment that would account for the possibility of certain employees no longer working under the area of responsibility of the United States Central Command due to the changes that would accompany the stand up of the United States Africa Command. The amendment would also address the manner in which premium pay caps and aggregate compensation limits are handled.

*Temporary discretionary authority to grant allowances, benefits, and gratuities to personnel on official duty in a combat zone (sec. 1102)*

The House bill contained a provision (sec. 1107) that would provide temporary discretionary authority to federal agencies to grant allowances, benefits, and gratuities comparable to those provided to members of the foreign service to an agency's civilian employees on official duty in a combat zone. This authority would expire in 2011.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Election of insurance coverage by federal civilian employees deployed in support of a contingency operation (sec. 1103)*

The Senate bill contained a provision (sec. 1105) that would authorize federal civilian employees deployed in support of a contingency operation and Department of Defense employees designated as emergency essential to elect to receive automatic life insurance coverage upon notification of deployment or designation. The provision would also authorize such civilian employees to elect optional life insurance or additional optional life insurance within 60 days after the employee's date of notification of deployment or designation.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Extension of authority to make lump-sum severance payments (sec. 1104)*

The House bill contained a provision (sec. 1102) that would

extend until the end of fiscal year 2014 the authority of the Secretary of Defense or the secretaries of the military departments to pay an employee the total amount of severance pay in one lump sum.

The Senate bill contained a similar provision (sec. 1107). The agreement includes the House provision.

*Extension of voluntary reduction-in-force authority of Department of Defense (sec. 1105)*

The House bill contained a provision (sec. 1103) that would extend, from 2010 to 2014, existing authorities under section 3502(f)(5) of title 5, United States Code, to allow an employee who is not affected by a reduction in force (RIF) to volunteer to be separated to protect another employee from being involuntarily separated by RIF procedures.

The Senate bill contained a provision (sec. 1106) that would make permanent the authority under section 3502(f) of title 5, United States Code.

The agreement includes the House provision.

*Enhancement of authorities relating to additional positions under the National Security Personnel System (sec. 1106)*

The Senate bill contained a provision (sec. 1103) that would clarify the authority of the Department of Defense (DOD) to utilize streamlined hiring practices under the National Security Personnel System (NSPS).

The House bill contained no similar provision.

The agreement includes the Senate provision with a clarifying amendment.

The National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) substantially revised the Department's authority under the NSPS legislation, with the objective of restoring the collective bargaining rights of DOD employees. Unfortunately, proposed regulations, issued May 22, 2008, to implement that legislation would restrict such rights by unilaterally removing negotiable issues from the scope of collective bargaining. In particular, the law provided that while unions would not be able to negotiate over the "rate of pay," they would be permitted to bargain over "procedures and appropriate arrangements," as defined in chapter 71 of title 5, United States Code regarding pay. However, the proposed regulations define "rate of pay" so broadly that it would be impossible to negotiate over any procedures or appropriate arrangements. We intend to carefully scrutinize the final regulation when published. Should it fail to comport with the

intent of Congress to restore the collective bargaining rights of DOD employees, we shall revisit the issue in the National Defense Authorization Act for Fiscal Year 2010.

*Expedited hiring authority for health care professionals (sec. 1107)*

The House bill contained a provision (sec. 1105) that would amend section 1599c of title 10, United States Code, to authorize the Secretary of Defense to designate any category of medical or health care professional position within the Department of Defense as a shortage category position, and would authorize the Secretary to recruit and appoint highly qualified individuals directly to those designated positions. This bill would also extend health care hiring authorities under this section until September 30, 2012.

The Senate bill contained a similar provision (sec. 1104).

The agreement includes the House provision.

*Direct hire authority at personnel demonstration laboratories for certain candidates (sec. 1108)*

The House bill contained a provision (sec. 1109) that would authorize the Secretary of Defense to make a limited number of appointments to positions at specified defense laboratories using expedited hiring procedures.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that clarifies that the authority is intended for the purposes of hiring a limited number of qualified candidates with advanced degrees into scientific and engineering positions in specified defense laboratories. There are clear difficulties facing defense laboratories in recruiting and retaining a highly qualified, technical workforce to support their designated national security missions. It is expected that this authority, if aggressively implemented, will assist in addressing these challenges.

*Status reports relating to laboratory personnel demonstration projects (sec. 1109)*

The House bill contained a provision (sec. 1110) that would require status reports on the utilization of personnel authorities granted to the Department of Defense related to the laboratory personnel demonstration program.

The Senate bill contained no similar provision.

The agreement includes the House provision with an

amendment that clarifies that the report should include information on any defense laboratories that are seeking to be newly designated as a demonstration laboratory and the status of those applications. The amendment also clarifies that the designation of a "demonstration laboratory" is distinct from the designation of a "science and technology reinvention laboratory."

*Technical amendment relating to definition of professional accounting position for purposes of certification and credentialing standards (sec. 1110 )*

The House bill contained a provision (sec. 1104) that would amend section 1599d(e) of title 10, United States Code, to update the definition of a "professional accounting position."

The Senate bill contained a similar provision (sec. 1109).  
The agreement includes the Senate provision.

*Exceptions and adjustments to limitations on personnel and reports on such exceptions and adjustments (sec. 1111)*

The House bill contained a provision (sec. 1106) that would authorize the Secretary of Defense to adjust statutory ceilings on management headquarters personnel.

The Senate bill contained a provision (sec. 903) that would repeal the ceilings.

The agreement includes the House provision with an amendment that would establish certain exceptions to the ceilings and authorize the Secretary of Defense to adjust the ceilings.

## **Legislative Provisions Not Adopted**

*Department of Defense strategic human capital plans*

The Senate bill contained a provision (sec. 1101) that would codify the requirement for the Secretary of Defense to submit an annual strategic human capital plan and consolidate the requirements of section 1122 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), section 1102 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), and section 851 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).

The House bill contained no similar provision.  
The agreement does not include the provision.

*Conditional increase in authorized number of Defense Intelligence Senior Executive Service personnel*

The Senate bill contained a provision (sec. 1102) that would increase the authorized number of Defense Intelligence Senior Executive Service personnel, provided that certain conditions are met.

The House bill contained no similar provision.

The agreement does not include the provision.

*Requirement relating to furloughs during the time of a contingency operation*

The House bill contained a provision (sec. 1108) that would require the Secretary of Defense to certify that he has no other legal measures available to avoid issuing furlough notices to civilian employees of the Department of Defense on the basis of a lack of funds during contingency operations.

The Senate bill contained no similar provision.

The agreement does not include the provision.

We expect that execution of a furlough of civilian employees during a contingency operation will be a measure of last resort only, after all other alternative actions are taken or considered, in order to avoid disruption of civilian workforce operations.

## **TITLE XII—MATTERS RELATING TO FOREIGN NATIONS**

### **Subtitle A—Assistance and Training**

*Extension of authority to build the capacity of the Pakistan Frontier Corps (sec. 1201)*

The House bill contained a provision (sec. 1201) that would extend through fiscal year 2010 the authority under section 1206 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) for the Secretary of Defense, with the concurrence of the Secretary of State, to provide up to \$75.0 million in assistance to enhance the ability of the Pakistan Frontier Corps to conduct counterterrorism operations along the border between Pakistan and Afghanistan.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment to extend this authority through fiscal year 2009 and

limit the authorized funding level for such assistance to \$25.0 million. We note that the Department of State intends to seek Foreign Military Financing funding for the Pakistan Frontier Corps program in fiscal year 2009 and encourage the transition of funding for this program from the Department of Defense to the Department of State.

*Availability across fiscal years of funds for military-to-military contacts and comparable activities (sec. 1202)*

The House bill contained a provision (sec. 1202) that would amend section 168(e) of title 10, United States Code, to allow funds authorized under that section in a fiscal year to be used for programs that begin in that fiscal year but end in the following one, starting with fiscal year 2009.

The Senate bill contained a similar provision (sec. 1211).

The agreement includes the Senate provision.

*Availability across fiscal years of funds to pay incremental expenses for participation of developing counties in combined exercises (sec. 1203)*

The House bill contained a provision (sec. 1203) that would amend section 2010 of title 10, United States Code, to allow funds authorized under that section in any fiscal year to be available for programs that begin in that fiscal year but end in the following one, beginning in fiscal year 2009.

The Senate bill contained no similar provision.

The agreement includes the House provision with a technical amendment.

*Extension of temporary authority to use acquisition and cross-servicing agreements to lend military equipment for personnel protection and survivability (sec. 1204)*

The House bill contained a provision (sec. 1204) that would extend the authority granted by section 1202 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), as amended by section 1252 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), through September 30, 2010. This provision would also add two elements to the existing reporting requirement regarding types and disposition of equipment lent to foreign nations but not returned to the United States.

The Senate bill contained a provision (sec. 1206) that would extend the section 1202 authority through September 30, 2013.

The agreement includes the House provision with an amendment to extend the section 1202 authority through September 30, 2011.

*Authority for distribution to certain foreign personnel of education and training materials and information technology to enhance military interoperability with the armed forces (sec. 1205)*

The House bill contained a provision (sec. 1205) that would amend section 1207 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) to extend the authority through fiscal year 2009.

The Senate bill contained a provision (sec. 1202) that would make permanent the authority provided under section 1207 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364).

The agreement includes the Senate provision with an amendment that would require that the annual report on the use of this authority, which is provided to the Committees on Armed Services of the Senate and the House of Representatives, also be provided to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

*Modification and extension of authorities relating to program to build the capacity of foreign military forces (sec. 1206)*

The House bill contained a provision (sec. 1206) that would extend through fiscal year 2010 the authority provided in section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163). The provision would also permit the use of funds provided in a fiscal year for programs to build the capacity of foreign military forces that began in that fiscal year but continued into the next fiscal year.

The Senate bill contained a provision (sec. 1204) that would extend and modify the authority under section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163). The provision would expand the types of security forces eligible to be trained and equipped under this authority and increase the annual limitation on authorized funding from \$300.0 million to \$400.0 million. The provision would also extend the section 1206 authority through September 30, 2011.

The agreement includes the Senate provision with an amendment that would expand the types of security forces eligible to receive assistance under this section to include maritime security forces for the purpose of building capacity to

conduct counterterrorism operations. The amendment would also increase the authorized funding level to \$350.0 million per fiscal year. The amendment would allow funds available in a fiscal year to be used for programs that begin in that fiscal year but end in the next fiscal year. The amendment would extend the section 1206 authority through September 30, 2011.

The train and equip authority under section 1206 was initiated as a pilot program and is generally intended to address emerging needs for building the capacity of foreign military forces, particularly those of developing or other countries that otherwise would be unable to build this capacity on their own. This authority is not intended to duplicate or substitute for other foreign assistance authorities, nor is it intended to sustain train and equip programs over multiple years. We continue to view this authority as provisional and intend to continue to carefully monitor its implementation.

Moreover, as clearly articulated in the conference report accompanying the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), we continue to believe strongly that foreign assistance programs are more appropriately funded through the foreign assistance accounts, as administered by the Department of State, and expect future budget requests to include sufficient funding for foreign military assistance in those accounts.

It is essential that the Department choose projects that strictly meet the criteria stipulated by the authority -- projects that will contribute directly to building the capacity of a foreign country's national military forces to conduct counterterrorist operations or participate in or support military and stability operations in which the United States armed forces are participants. When this authority is used for counterterrorism purposes, nations that face a known terrorist threat, and that do not have the resources to build their military capacity without U.S. assistance, should be given the highest priority.

*Extension of authority and increased funding for security and stabilization assistance (sec. 1207)*

The House bill contained a provision (sec. 1207) that would extend the authority provided under section 1207 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), as amended by section 1210 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), through September 30, 2010.

The Senate bill contained a similar provision (sec. 1205) that would extend the section 1207 authority through September

30, 2011, and increase the authorized annual funding level from \$100.0 million to \$200.0 million.

The agreement includes the Senate provision with an amendment that would extend the 1207 authority through September 30, 2009. The amendment provides that up to \$50.0 million in assistance under section 1207 may be provided to the Republic of Georgia, without that assistance counting against the authorized annual funding limit of \$100.0 million. The amendment also clarifies that Section 1207 authority is not to be used to provide budgetary support to a foreign country.

The Congress established this authority as a temporary measure to allow the Department of Defense to support Department of State efforts to address security and stabilization missions. Budget proposals for the Department of State should provide adequate resources to accomplish those missions without relying on this temporary transfer authority, and we urge the administration to request sufficient funding for the Department of State in future budget submissions.

*Extension and expansion of authority for support of special operations to combat terrorism (sec. 1208)*

The House bill contained a provision (sec. 1208) that would make permanent the authority provided in section 1208 of the Ronald Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375) for the Secretary of Defense to provide assistance to foreign forces, irregular forces, groups or individuals supporting or facilitating military operations by U.S. special operations forces to combat terrorism. The provision would also increase the amount that may be expended during any fiscal year from \$25.0 million to \$35.0 million.

The Senate bill contained a similar provision (sec. 1203) that would extend the section 1208 authority through 2011 and also increase the authorized annual funding level to \$35.0 million.

The agreement includes the Senate provision with an amendment extending this authority through 2013.

*Increase in amount available for costs of education and training of foreign military forces under Regional Defense Combating Terrorism Fellowship Program (sec. 1209)*

The House bill contained a provision (sec. 1209) that would amend section 2249(c) of title 10, United States Code, to increase the authorized annual funding level for the Regional Defense Combating Terrorism Fellowship Program from \$25.0 million to \$35.0 million.

The Senate bill (sec. 1201) contained a similar provision. The agreement includes the Senate provision.

## **Subtitle B-Matters Relating to Iraq and Afghanistan**

### *Limitation on availability of funds for certain purposes relating to Iraq (sec. 1211)*

The House bill contained a provision (sec. 1211) that would prohibit the use of funds authorized by this Act or any other act to establish any military bases in Iraq for the permanent stationing of United States Armed Forces in that country or to establish U.S. control over Iraqi oil resources.

The Senate bill contained a similar provision (sec. 2913) applicable to the use of funds authorized by this Act only.

The agreement includes the Senate provision.

### *Report on status of forces agreements between the United States and Iraq (sec. 1212)*

The House bill contained a provision (sec. 1212) that would require the President to submit a report to the Committees on Armed Services of the Senate and the House of Representatives, the Senate Committee on Foreign Relations, and the House Committee on Foreign Affairs within 90 days after the date of enactment of this Act on any status of forces agreement between the United States and the Republic of Iraq.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

### *Strategy for United States-led Provincial Reconstruction Teams in Iraq (sec. 1213)*

The House bill contained a provision (sec. 1213) that would require the President to establish a strategy for U.S.-led Provincial Reconstruction Teams (PRTs) in Iraq to ensure those PRTs are supporting the operational and strategic goals of coalition forces in Iraq.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would clarify that the strategy established by the President should also ensure that PRTs are developing the capacity of Iraqi government and other civil institutions to assume increasing responsibility for the formulation,

implementation, and oversight of reconstruction and development activities.

*Commanders' Emergency Response Program (sec. 1214)*

The House bill contained a provision (sec. 1214) that would amend section 1202 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), as amended by section 1205 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), to modify the authorized level of funding for the activities of the Commanders' Emergency Response Program (CERP). The provision would authorize \$1.7 billion for the activities of this program in fiscal year 2008, and \$1.5 billion in fiscal year 2009. The provision would also impose a new limitation on the amounts that could be obligated and expended through the CERP in the Republic of Iraq during fiscal year 2009 of twice the amount obligated during calendar year 2008 by the Government of Iraq through the Government of Iraq CERP (I-CERP).

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would amend section 1202 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), as amended by section 1205 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), to authorize \$1.7 billion for the activities of this program in fiscal year 2008, and \$1.5 billion in fiscal year 2009. The provision would also impose a limitation of \$2.0 million on the amount of U.S. CERP funds that could be contributed to any individual humanitarian and reconstruction project in Iraq. The provision would allow the Secretary of Defense to waive this limitation if he determines that a waiver is required to meet urgent humanitarian relief and reconstruction requirements that will immediately assist the Iraqi people. The provision would also require the Secretary, or the Deputy Secretary of Defense, to certify that any project that is funded with U.S. CERP funds at a level of \$1.0 million or more addresses urgent humanitarian relief and reconstruction requirements that will immediately assist the Iraqi people. The amendment would also require certain elements be included in the quarterly CERP reports to the congressional defense committees. The amendment also includes a sense of the Congress that the Government of Iraq should assume increasing responsibility for funding and carrying out projects currently funded by the United States through CERP, and should assume all costs associated with the Sons of Iraq as expeditiously as possible.

*Performance monitoring system for United States-led Provincial Reconstruction Teams in Afghanistan (sec. 1215)*

The House bill contained a provision (sec. 1215) that would require the President to develop and implement a system for monitoring the performance of U.S.-led Provincial Reconstruction Teams (PRTs) in Afghanistan.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would clarify that the PRT-specific work plans, required as part of the performance monitoring system, will include plans for developing the capacity of the Afghan government and other civil institutions to assume increasing responsibility for the formulation, implementation, and oversight of reconstruction and development activities.

*Report on command and control structure for military forces operating in Afghanistan (sec. 1216)*

The House bill contained a provision (sec. 1216) that would require the Secretary of Defense to report on the command and control structure for military forces operating in Afghanistan.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the Secretary of Defense to report on any efforts to modify the chain of command structure for military forces in Afghanistan to better coordinate and de-conflict military operations and achieve unity of command whenever possible in Afghanistan. We welcome the decision to dual-hat the position of Commander, International Security Assistance Force, and Commander, U.S. Forces Afghanistan.

The report required by this section, or the report required by section 1230 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), should identify which offices in the U.S. and NATO ISAF military headquarters are responsible for coordinating counternarcotics operations. That report should also include an assessment of the coordination between U.S. and NATO ISAF military forces, and the Government of Afghanistan to coordinate and de-conflict operations relating to or in support of the counternarcotics activities of the national and provincial governments of Afghanistan and of other Departments and agencies of the United States and other member countries of NATO ISAF.

*Reports on enhancing security and stability in the region along the border of Afghanistan and Pakistan (sec. 1217)*

The House bill contained a provision (sec. 1217) that would add the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives as recipients of the notifications, required under section 1232(b) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), relating to Department of Defense Coalition Support Funds for Pakistan.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the Secretary of Defense to provide copies of the notifications required under section 1232(b) to the Committee on Foreign Relations of the Senate and Committee on Foreign Affairs of the House. The amendment further specifies additional information to be provided in the notification required under section 1232(b) or within 180 days if not submitted as part of the notification.

The amendment to the House provision also requires the Secretary of Defense to provide semi-annually the report required by section 1232(a) on enhancing security and stability in the region along the border of Afghanistan and Pakistan.

In addition, the amendment to the House provision requires the Secretary of Defense to provide a report on the efforts of the Department of Defense to address the findings and implement the recommendations of the report by the Government Accountability Office entitled "Combating Terrorism: Increased Oversight and Accountability Needed Over Pakistan Reimbursement Claims for Coalition Support Funds." The report's recommendations include: that the Department of Defense consistently implement strong guidance concerning reimbursements to the Pakistan Government; that the Department of Defense define and formalize the roles and responsibilities of the Department of Defense's Office of Defense Representative to Pakistan concerning such reimbursements; that the Department of Defense clarify guidance for the Department of Defense Comptroller in connection with such reimbursements; and that the Department of Defense work with the Government of Pakistan to develop procedures to allow the Office of the Defense Representative to Pakistan or other U.S. representatives to conduct greater oversight of such reimbursements.

*Study and report on Police Transition Teams to train, assist, and advise units of the Iraqi Police Service (sec. 1218)*

The House bill contained a provision (sec. 1218) that would require the Secretary of Defense to submit a report within 60 days after the date of enactment of this Act regarding the staffing and funding of Police Training Teams in Iraq.

The Senate bill contained no similar provision.  
The agreement includes the House provision with a clarifying amendment.

## **Subtitle C-Other Matters**

### *Payment of personnel expenses for multilateral cooperation programs (sec. 1231)*

The House bill contained a provision (sec. 1231) that would amend section 1051(a) of title 10, United States Code, to authorize payment by the Secretary of Defense of the travel, subsistence, and personal expenses of defense personnel of developing countries in connection with the attendance of such personnel at multilateral conferences, seminars, or similar meetings when in the national security interests of the United States.

The Senate bill contained a similar provision (sec. 1213).

The agreement includes the Senate provision with a technical amendment.

### *Participation of the Department of Defense in multinational military centers of excellence (sec. 1232)*

The House bill contained a provision (sec. 1232) that would extend through fiscal year 2009 the authority granted by section 1205 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), as amended by section 1204 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), for Department of Defense personnel to participate in North Atlantic Treaty Organization multinational military centers of excellence.

The Senate bill contained a provision (sec. 1214) that would make permanent the authority granted by section 1205 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364).

The agreement includes the Senate provision with a clarifying amendment.

### *Review of security risks of participation by defense contractors in certain space activities of the People's Republic of China (sec. 1233)*

The House bill contained a provision (sec. 1233) that would prohibit the Secretary of Defense from obligating or expending any fiscal year 2009 or other fiscal year funds available to the

Department of Defense (DOD) for classified work under contracts with a company if that company or affiliate is engaged with the People's Republic of China in the development of "ITAR-free" satellites. The restriction could be waived following a certification by the Secretary of Defense in consultation with the Secretary of State. The requirement to implement the restriction would not take effect until 60 days after enactment or if the Secretary of Defense submits a report to the congressional defense committees with a determination that implementation of the requirement does not promote the national interest.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would direct the Secretary of Defense to conduct a review to determine whether there are any security risks associated with the participation by covered contractors in certain space activities of the People's Republic of China. The provision would direct the Secretary of Defense to submit a report to the congressional defense committees setting forth the conclusions of the review by March 1, 2009.

One of the elements of the review to be conducted is whether there have been any incidents with respect to which a determination has been made that an improper disclosure of covered information occurred during the 5 year period preceding the date of enactment. We would urge, in the event that the Secretary determines that such an event has occurred after the date of enactment and before the due date of the report, that any such incident should be included to the extent practicable.

Given the nature of the subject matter in the report we expect it to be classified, but to the extent practicable an unclassified summary should be submitted.

*Report on Iran's capability to produce nuclear weapons (sec. 1234)*

The House bill contained a provision (sec. 1234) that would direct the Director of National Intelligence (DNI) to submit to Congress, 180 days after the enactment of this Act and annually thereafter, an update of the National Intelligence Estimate entitled "Iran: Nuclear Intentions and Capabilities" dated November 2007. The issues to be addressed in the report include, the status of Iran's uranium enrichment program; an estimate of the amount of weapons grade material held by Iran; a description of weaponization and delivery system activities; and an assessment made by US allies of Iran's nuclear weapons capabilities.

The provision would direct the DNI to notify Congress

within 15 days if there were significant changes in the Iranian program.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would direct the DNI to submit an annual report on Iran's capacity to produce nuclear weapons. The first report is due not later than 180 days after the date of enactment of this Act. The report may be submitted in classified form. The amendment would also modify the issues to address the uranium enrichment program and to address plutonium production capabilities. In addition, the President would be required to notify Congress if Iran resumes its nuclear weapons program

The report required by this provision shall be prepared following standard procedures used to produce reports by the national intelligence community and should include dissenting opinions from other intelligence community elements.

*Employment for resettled Iraqis (sec. 1235)*

The House bill contained a provision (sec. 1235) that would create a joint Department of Defense/Department of State program for the purpose of hiring Iraqis, who supported the United States' efforts in Iraq and have resettled in the U.S., as interpreters, translators, and cultural awareness instructors for agencies of the Federal Government.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Extension and modification of updates on report on claims relating to the bombing of the Labelle Discotheque (sec. 1236)*

The Senate bill contained a provision (sec. 1231) that would extend and modify a reporting requirement on the status of negotiations between the Government of Libya and United States claimants in connection with the bombing of the Labelle Discotheque in Berlin, Germany, that occurred in April 1986. The reporting requirement is an extension of section 1225 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163) and section 1261 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would require the next report to be submitted not later than 90 days following the enactment of this Act, and that subsequent reports be submitted every 180 days thereafter. The amendment would further terminate the reporting requirement upon

submission by the Secretary of State to Congress of the certification described in the Libya Claims Resolution Act (Public Law 110-301).

We note the recent enactment of the Libya Claims Resolution Act and are hopeful the cases of the American victims of Libyan-sponsored acts of terrorism can be resolved in short order. We will continue to monitor the implementation of the Libya Claims Resolution Act.

*Report on utilization of certain global partnership authorities (sec. 1237)*

The Senate bill contained a provision (sec. 1232) that would require the Secretary of Defense, in consultation with the Secretary of State, to submit a report not later than December 31, 2010, on the implementation of certain Building Global Partnership authorities.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Modification and repeal of requirement to submit certain annual reports to Congress regarding allied contributions to the common defense (sec. 1238)*

The Senate bill contained a provision (sec. 1051) that would repeal certain requirements for the Secretary of Defense to report annually on allied contributions to the common defense and on costsharing by North Atlantic Treaty Organization (NATO) allies.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would repeal the reporting requirement regarding NATO cost sharing and modify the other reports to require the Secretary of Defense to provide information on allied annual defense spending and contributions to military and stability operations in which United States Armed Forces participate.

### **Legislative Provisions Not Adopted**

*Declaration of policy relating to status of forces agreements between the United States and Iraq*

The House bill contained a provision (sec. 1219) that would declare that it is U.S. policy to ensure that any agreement between the United States and Iraq on the status of U.S. forces requires burdensharing by the Government of Iraq in support of U.S. Armed Forces stationed in Iraq.

The Senate bill contained no similar provision.

The agreement does not include the House provision. We note that the agreement includes a provision (sec. 1508) calling for the United States to initiate negotiations with Iraq on a cost-sharing agreement relating to the costs of combined operations of Iraqi Security Forces and Multi-National Force-Iraq.

*Limitation on certain status of forces agreements between the United States and Iraq*

The House bill contained a provision (sec. 1220) that would prohibit any agreement between the United States and Iraq that obligates the United States to respond to internal or external threats against Iraq from being in force with respect to the United States unless the agreement is approved by Congress, either in the form of a treaty or by an Act of Congress enacted after the date of this Act.

The Senate bill contained no similar provision.

The agreement does not include the House provision. It is well established that any agreement that obligates the United States to come to the defense of another country against internal or external threats must be approved by Congress. There is no need to restate the current state of existing law in this Act.

*Report on long-term costs of Operation Iraqi Freedom and Operation Enduring Freedom*

The House bill contained a provision (sec. 1221) that would require the President to submit to Congress a report estimating the long-term direct and indirect costs of Operations Iraqi Freedom and Enduring Freedom under three different scenarios.

The Senate bill contained no similar provision.

The agreement does not include the provision.

*Waiver of certain sanctions against North Korea*

The Senate bill contained a provision (sec. 1221) that would provide the President with limited authority to waive, with respect to North Korea, the application of sanctions under section 102(b) of the Arms Export Control Act (22 U.S.C. 2799aa-1(b)). The President would be required to notify Congress 15 days in advance of exercising such waiver authority. In addition, the provision would require the President to submit an annual report to Congress listing all the waivers granted during the preceding year and describe in detail the progress being

made by North Korea in implementing the commitments included in the Joint Statement of September 19, 2005, to abandon all nuclear weapons, existing nuclear programs, and all other programs associated with the elimination of the ability of North Korea to develop, deploy, transfer, or maintain weapons of mass destruction or their delivery systems.

The House bill contained no similar provision.

The agreement does not include the provision. A similar provision was included in the Supplemental Appropriations Act for Fiscal Year 2008 (Public Law 110-252).

## **TITLE XIII-COOPERATIVE THREAT REDUCTION WITH STATES OF THE FORMER SOVIET UNION**

### *Specification of Cooperative Threat Reduction programs and funds (sec. 1301)*

The House bill contained a provision (sec. 1301) that would define the Cooperative Threat Reduction (CTR) programs, define the funds authorized to be appropriated in section 301 of the bill, and authorize CTR funds to be available for obligation for 3 years.

The Senate bill contained a similar provision (sec. 1301)

The agreement includes the House provision with a technical amendment.

### *Funding allocations (sec. 1302)*

The House bill contained a provision (sec. 1302) that would authorize \$445.1 million for the Cooperative Threat Reduction (CTR) program.

The Senate bill contained a similar provision that would authorize \$434.1 million (sec. 1302).

The agreement includes the House provision with an amendment that would authorize \$434.1 million for the CTR program, an increase of \$20.0 million above the budget request. In addition, the agreement would reduce the notification period for obligations and expenditures to 15 days from 30 days. The Agreement would also authorize a specific amount for each of the CTR program elements. The agreement authorizes an increase of \$10.0 million for new initiatives including activities in states outside of the former Soviet Union, \$1.0 million for additional expenses associated with the Russian chemical weapons destruction activities, and an increase of \$9.0 million for weapons of mass destruction proliferation prevention in the former Soviet Union.

## **TITLE XIV-OTHER AUTHORIZATIONS**

### **Subtitle A-Military Programs**

#### *Working capital funds (sec. 1401)*

The House bill contained a provision (sec. 1401) that would authorize appropriations for the working capital funds of the Department of Defense, including the Defense Commissary Agency.

The Senate bill contained an identical provision (sec. 1401).

The agreement includes this provision.

#### *National Defense Sealift Fund (sec. 1402)*

The House bill contained a provision (sec. 1402) that would authorize appropriations for the National Defense Sealift Fund.

The Senate bill contained a similar provision (sec. 1402).

The agreement includes this provision.

#### *Defense Health Program (sec. 1403)*

The House bill contained a provision (sec. 1403) that would authorize fiscal year 2009 funds for the Defense Health Program and other programs.

The Senate bill contained a similar provision (sec. 1403).

The agreement includes this provision.

#### *Chemical agents and munitions destruction, Defense (sec. 1404)*

The House bill contained a provision (sec. 1404) that would authorize appropriations for chemical agents and munitions destruction.

The Senate bill contained an identical provision (sec. 1404).

The agreement includes this provision.

#### *Drug Interdiction and Counterdrug Activities, Defense-wide (sec. 1405)*

The House bill contained a provision (sec. 1405) that would authorize fiscal year 2009 funds for drug interdiction and counterdrug activities and other programs.

The Senate bill contained a similar provision authorizing appropriations for drug interdiction and counterdrug activities

(sec. 1405).

The agreement includes the provision.

*Defense Inspector General (sec. 1406)*

The House bill contained a provision (sec. 1406) that would authorize appropriations for the Inspector General of the Department of Defense.

The Senate bill contained an identical provision (sec. 1406).

The agreement includes this provision.

*National Defense Sealift Fund amendments (sec. 1407)*

The House bill contained a provision (sec. 1014) that would change the definition of what vessels would be funded within the National Defense Sealift Fund (NDSF) account, and would strike subsection (J) of section 2218 of title 10, United States Code, which allows the Secretary of Defense to transfer resources within the NDSF if he determines that the action serves the national defense interest.

The Senate bill contained a similar provision (sec. 1432) that would change the definition of what vessels would be funded in the NDSF.

The agreement includes the House provision.

## **Subtitle B-National Defense Stockpile**

*Authorized uses of National Defense Stockpile funds (sec. 1411)*

The House bill contained a provision (sec. 1411) that would authorize \$41.2 million from the National Defense Stockpile Transaction Fund for the operation and maintenance of the National Defense Stockpile for fiscal year 2009. This section would also permit the use of additional funds for extraordinary or emergency conditions 45 days after Congress receives notification.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Revisions to previously authorized disposals from the National Defense Stockpile (sec. 1412)*

The House bill contained a provision (sec. 1412) that would authorize revisions on limitations in National Defense Stockpile (NDS) by amending section 3303(a) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-

261), as amended most recently by section 1412(b) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to increase the Department's disposal authority from \$1.1 billion to \$1.5 billion.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would increase the Department's disposal authority from \$1.1 billion to \$1.4 billion.

We note that in June 2008 the Deputy Under Secretary of Defense for Logistics and Materiel Readiness determined the need to suspend, or limit, the authorized sales of selected materials in the NDS inventory pending a review of critical and strategic materials. This provision is not intended to supersede this determination, but to provide additional authority if the Department's review of materials justifies continued sales.

## **Subtitle C-Armed Forces Retirement Home**

*Authorization of appropriations for Armed Forces Retirement Home (sec. 1421)*

The House bill contained a provision (sec. 1421) that would authorize \$63.0 million to be appropriated for fiscal year 2009 from the Armed Forces Retirement Home Trust Fund for the operation of the Armed Forces Retirement Home.

The Senate bill contained a similar provision (sec. 1421).

The agreement includes the Senate provision.

## **TITLE XV-AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR OPERATION IRAQI FREEDOM AND OPERATION ENDURING FREEDOM**

### **Legislative Provisions Adopted**

*Authorization of additional appropriations for operations in Afghanistan and Iraq for fiscal year 2009 (sec. 1501)*

The House bill contained a series of provisions (sections 1501-1507 and 1509-1515) that would authorize \$70.0 billion in fiscal year 2009 appropriations for military operations in Afghanistan and Iraq.

The Senate bill contained a series of provisions (sections 1501-1512) that would authorize \$19.9 billion in fiscal year 2009 funding for military operations in Afghanistan.

The Senate bill also contained a series of provisions (sections 1601-1613) that would authorize \$49.6 billion in fiscal year 2009 funding for military operations in Iraq.

The agreement includes a provision that would authorize \$66.0 billion in fiscal year 2009 appropriations for operations in Iraq and Afghanistan in accordance with the funding provided in Chapter 2 of title IX of the Supplemental Appropriations Act, 2008 (Public Law 110-252).

The agreement would also authorize \$2.1 billion for an additional six C-17 aircraft.

*Requirement for separate display of budgets for Afghanistan and Iraq (sec. 1502)*

The House bill contained a provision (sec. 1002) that would require the Secretary of Defense, for any annual or supplemental budget request of the Department of Defense, to clearly and separately set forth any funding requested for any U.S. operations in Afghanistan.

The House bill also contained a provision (sec. 1003) that would require a similar separate budget display for operations in Iraq.

The Senate bill contained a similar provision (sec. 1516) that would require a separate budget display for funding of operations in Afghanistan.

The agreement combines the House and Senate provisions into a single provision that would require separate budget displays for operations in Afghanistan and operations in Iraq.

*Joint improvised explosive device defeat fund (sec. 1503)*

The House bill contained a provision (sec. 1507) that would authorize funding for the Joint Improvised Explosive Device Defeat Fund (JIEDDF). This section would require that of the funds appropriated to the Joint Improvised Explosive Device Defeat Fund, \$50.0 million shall be made available for the rapid fielding of additional Aerial Reconnaissance Multi-Sensor platforms for tactical operations in Operation Iraqi Freedom and Operation Enduring Freedom.

The Senate bill contained two similar provisions (sec. 1505 and sec. 1605) both of which would authorize funding for the Joint Improvised Explosive Device Defeat Fund.

The agreement includes a provision authorizing funding for the Joint Improvised Explosive Device Defeat Fund.

We urge the Joint Improvised Explosive Device Defeat Organization (JIEDDO) to direct \$5.0 million each to ongoing Marine Corps and Army efforts to develop specialized improvised

explosive device (IED) dog teams. The Marine Corps program has already deployed IED dog teams embedded with combat forces successfully to Iraq and intends to expand the program. JIEDDO has been funding the development of specialized IED dog team capabilities in the Army (\$2.75 million in fiscal years 2008 and 2009), and the Army is now fielding its first embedded IED dog team with a Brigade Combat team (BCT). However, the Marine Corps needs additional funds to sustain its research and development program, and the Army will be able to field this counter-IED capability to only one BCT in fiscal year 2009 unless JIEDDO provides additional funds or the Army re-prioritizes its military working dog budget. We direct the director of JIEDDO, the Deputy Chief of Staff of the Army for Intelligence, and the Army Provost Marshal General review this situation and notify the Armed Services Committees of the Senate and the House of Representatives of their decision within 30 days of the enactment of this Act.

Further, we also urge JIEDDO to continue funding at a level of not less than \$65.0 million the ongoing efforts of the Irregular Warfare Support office under the Assistant Secretary of Defense for Special Operations/Low Intensity Conflict.

*Science & technology investment strategy to defeat or counter improvised explosive devices (sec. 1504)*

The House bill contained a provision (sec. 1508) that would limit the amount of funds that the Joint Improvised Explosive Device Defeat Organization (JIEDDO) may obligate for science and technology (S&T) efforts until it delivers to Congress a report describing its S&T strategy.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would require the Director of JIEDDO, jointly with the Director for Defense Research and Engineering, to develop and deliver to the congressional defense committees an annual report outlining the Department of Defense's (DOD) investment strategy for S&T to defeat and counter improvised explosive devices (IEDs).

According to DOD Directive 2000.19E, JIEDDO's mission is to "focus (lead, advocate, coordinate) all DOD actions in support of the Combatant Commanders' and their respective Joint Task Forces' efforts to defeat Improvised Explosive Devices as weapons of strategic influence." Even more specifically, it requires the Director of JIEDDO to "integrate all IED Defeat solutions throughout the Department of Defense, seeking Interagency assistance, as necessary, and identifying innovative near-term solutions." While JIEDDO has actively invested in S&T

efforts to support its mission, it has neglected its responsibility to lead, advocate and coordinate the Department's total S&T investment in this area. If JIEDDO does not serve in this coordination role, then the likelihood for duplicative and redundant investment with Service and Defense Agencies investments increases dramatically.

*Limitation on Iraq Security Forces Fund (sec. 1505)*

The House bill contained a provision (sec. 1512) that would authorize fiscal year 2009 appropriations for the Iraq Security Forces Fund (ISFF).

The Senate bill contained a similar provision (sec. 1613).

The agreement includes a provision that would subject funds authorized in this title for the ISFF to the terms and conditions of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181). The funding authorization for this program is contained in section 1501 of this Act. Additional restrictions on the use of the ISFF for infrastructure projects are contained elsewhere in this Act.

*Limitations on Afghanistan Security Forces Fund (sec. 1506)*

The House bill contained a provision (sec. 1513) that would authorize fiscal year 2009 appropriations for the Afghanistan Security Forces Fund (ASFF).

The Senate bill contained a similar provision (sec. 1512).

The agreement includes a provision that would subject funds authorized in this title for the ASFF to the terms and conditions of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181). The funding authorization for the ASFF is contained in section 1501 of this Act.

*Special transfer authority (sec. 1507)*

The House bill contained a provision (sec. 1516) that would authorize the transfer of up to \$4.0 billion of war-related funding authorizations in this title among the accounts in this title.

The Senate bill contained a similar provision (sec. 1514) that would authorize transfers of up to \$3.0 billion.

The agreement includes the House provision.

This special transfer authority is in addition to the general transfer authority contained in section 1001 of this Act, but the same reprogramming procedures applicable to transfers under section 1001 would also apply to transfers under this section.

*Prohibition on use of United States funds for certain facilities projects in Iraq and contributions by Iraq to combined operations and other activities in Iraq (sec. 1508)*

The House bill contained a provision (sec. 1512) that would prohibit the use of certain funds for the acquisition, conversion, rehabilitation, or installation of facilities for the Iraqi Security Forces.

The Senate bill contained a provision (sec. 1616) that would prohibit the use of funds authorized by this Act to pay for any large-scale infrastructure project commenced after the date of enactment of this Act. The provision would also require the United States Government to begin negotiating an agreement with the Government of Iraq to share the costs of combined operations between the Government of Iraq and Multi-National Force Iraq. The provision would further require that the United States Government act to ensure that Iraqi funds are used to pay the costs of training, equipping, and sustaining the Iraqi Security Forces and the costs associated with the Sons of Iraq.

The agreement includes a provision that would prohibit the use of certain funds for the acquisition, conversion, rehabilitation, or installation of facilities for the use of the Government of Iraq, political subdivisions of Iraq, or agencies, departments or forces of the Government of Iraq or its subdivisions. The provision would also require the United States Government to begin negotiating an agreement with the Government of Iraq to share the costs of combined operations between the Government of Iraq and Multi-National Force-Iraq. The provision would further require that the United States Government act to ensure that Iraqi funds are used to pay the costs of training, equipping, and sustaining the Iraqi Security Forces.

### **Legislative Provisions Not Adopted**

*Limitation on use of funds*

The Senate bill contained a provision (sec. 1515) that would require the Secretary of Defense to provide a report to Congress on the allocation of funding for operations in Afghanistan at the line-item level 15 days prior to the obligation of such funds.

The House bill contained no similar provision.

The agreement does not include this provision.

*Treatment as additional authorizations*

The House bill contained a provision (sec. 1517) that would provide that the authorizations in this title are in addition to any other authorizations in this Act.

The Senate bill contained identical provisions relating to funding for military operations in Afghanistan (sec. 1513) and Iraq (sec. 1614).

The agreement does not include this provision.

#### *Limitation on use of funds*

The Senate bill contained a provision (sec. 1615) that would require the Secretary of Defense to provide a report to Congress on the allocation of funding for operations in Iraq at the line-item level 15 days prior to the obligation of such funds.

The House bill contained no similar provision.

The agreement does not include this provision.

## **TITLE XVI-RECONSTRUCTION AND STABILIZATION CIVILIAN MANAGEMENT**

### **Legislative Provisions Adopted**

#### *Short title (sec. 1601)*

The House bill contained a provision (sec. 1601) that would provide that the title may be referred to as the "Reconstruction and Stabilization Civilian Management Act of 2008."

The Senate bill contained no similar provision.

The agreement includes the House provision.

#### *Findings (sec. 1602)*

The House bill contained a provision (sec. 1602) that would contain congressional findings regarding efforts to improve U.S. capacity to prepare, plan for, and conduct stabilization and reconstruction operations.

The Senate bill contained no similar provision.

The agreement includes the House provision.

#### *Definitions (sec. 1603)*

The House bill contained a provision (sec. 1603) that would provide definitions for use in the Act.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Authority to provide assistance for reconstruction and stabilization crises (sec. 1604)*

The House bill contained a provision (sec. 1604) that would amend chapter 1 of part III of the Foreign Assistance Act of 1961 (Public Law 87-195) to provide authority for the President to furnish stabilization or reconstruction assistance to a country or region that is at risk of, in, or is in transition from, conflict or civil strife if the President determines it is in the national security interests of the United States for U.S. civilian agencies or non-federal employees to do so. The provision also provided that funds available for stabilization and reconstruction assistance under this section would be funds made available under any other provision of law and under other provisions of the Foreign Assistance Act and transferred or reprogrammed for the purposes of this section, subject to the procedures applicable to a notification under section 634A of the Foreign Assistance Act.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would allow funds available for stabilization and reconstruction assistance under this section to be limited to funds made available under other provisions of the Foreign Assistance Act and transferred or reprogrammed for the purposes of this section, subject to the procedures applicable to a notification under section 634A of the Foreign Assistance Act.

*Reconstruction and stabilization (sec. 1605)*

The House bill contained a provision (sec. 1605) that would amend the State Department Basic Authorities Act of 1956 (Public Law 84-85) to add a new section establishing within the Department of State the Office of the Coordinator for Reconstruction and Stabilization, and authorize the Secretary of State, in consultation with the Administrator of the U.S. Agency for International Development and the heads of other appropriate U.S. Government agencies, to establish and maintain a Response Readiness Corps to provide assistance in support of reconstruction and stabilization operations.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Authorities related to personnel (sec. 1606)*

The House bill contained a provision (sec. 1606) that would authorize the Secretary of State, or the head of any U.S. agency with respect to personnel of that agency, to extend certain death gratuity, training, and travel expense benefits or privileges, that are provided to members of the Foreign Service under the Foreign Service Act of 1980 (Public Law 96-465) , to any individual assigned, detailed, or deployed to carry out reconstruction and stabilization activities under the Reconstruction and Stabilization Civilian Management Act of 2008.

The Senate bill contained no similar provision.  
The agreement includes the House provision.

*Reconstruction and Stabilization Strategy (sec. 1607)*

The House bill contained a provision (sec. 1607) that would require the Secretary of State, in consultation with the Administrator of the U.S. Agency for International Development, to develop an interagency strategy for responding to stabilization and reconstruction operations.

The Senate bill contained no similar provision.  
The agreement includes the House provision.

*Annual reports to Congress (sec. 1608)*

The House bill contained a provision (sec. 1608) that would require the Secretary of State to report annually to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives on the implementation of the Reconstruction and Stabilization Civilian Management Act of 2008.

The Senate bill contained no similar provision.  
The agreement includes the House provision.

## **Division B-Military Construction Authorizations**

### **Legislative Provisions Adopted**

*Short title (sec. 2001)*

The House bill contained a provision (sec. 2001) that would designate division B of this Act as the Military Construction Authorization Act for Fiscal Year 2009.

The Senate bill contained an identical provision (sec.

2001).

The agreement includes this provision.

*Expiration of authorizations and amounts required to be specified by law (sec. 2002)*

The House bill contained a provision (sec. 2002) that would establish the expiration date for authorizations in this Act for military construction projects, land acquisition, family housing projects, and contributions to the North Atlantic Treaty Organization infrastructure program, as October 1, 2011, or the date of enactment of an act authorizing funds for military construction for fiscal year 2012, whichever is later.

The Senate bill contained an identical provision (sec. 2002).

The agreement includes this provision.

*Effective date (sec. 2003)*

The Senate bill contained a provision that would provide that titles XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, and XXIX of this Act take effect on October 1, 2008, or the date of enactment of this Act, whichever is later.

The House bill contained no similar provision.

The agreement includes the Senate provision.

## **TITLE XXI-ARMY**

### **Legislative Provisions Adopted**

*Authorized Army construction and land acquisition projects (sec. 2101)*

The House bill contained a provision (sec. 2101) that would authorize military construction projects for the active component of the Army for fiscal year 2009.

The Senate bill contained a similar provision (sec. 2101).

The agreement includes this provision.

The authorized amounts are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table included in the joint explanatory statement provides the binding list of specific construction projects authorized at each location.

*Family housing (sec. 2102)*

The House bill contained a provision (sec. 2102) that would authorize new construction and planning and design of family housing units for the Army for fiscal year 2009. It would also authorize funds for facilities that support family housing, including housing management offices and housing maintenance and storage facilities.

The Senate bill contained an identical provision (sec. 2102).

The agreement includes this provision.

*Improvements to military family housing units (sec. 2103)*

The House bill contained a provision (sec. 2103) that would authorize funding for fiscal year 2009 to improve existing Army family housing units.

The Senate bill contained an identical provision (sec. 2103).

The agreement includes this provision.

*Authorization of appropriations, Army (sec. 2104)*

The House bill contained a provision (sec. 2104) that would authorize appropriations for the active component military construction and family housing projects of the Army for fiscal year 2009. This provision would also provide an overall limit on the cost of the fiscal year 2009 military construction and family housing projects authorized for the active-duty component of the Army.

The Senate bill contained a similar provision (sec. 2104).

The agreement includes this provision.

*Modification of authority to carry out certain fiscal year 2008 projects (sec. 2105)*

The House bill contained a provision (sec. 2105) that would cancel the authorization for several fiscal year 2008 military construction projects.

The Senate bill contained no similar provision.

The agreement includes this provision.

*Modification of authority to carry out certain fiscal year 2007 projects (sec. 2106)*

The House bill contained a provision (sec. 2106) that would modify the authorization for several fiscal year 2007 military construction projects.

The Senate bill contained no similar provision.

The agreement includes this provision.

*Extension of authorizations of certain fiscal year 2006 projects  
(sec. 2107)*

The House bill contained a provision (sec. 2107) that would extend the authorization for certain Army fiscal year 2006 military construction projects until October 1, 2009, or the date of enactment of an act authorizing funds for military construction for fiscal year 2010, whichever is later.

The Senate bill contained a similar provision (sec. 2105).  
The agreement includes the House provision.

*Extension of authorizations of certain fiscal year 2005 project  
(sec. 2108)*

The House bill contained a provision (sec. 2108) that would extend the authorization for an Army fiscal year 2005 military construction project at Schofield Barracks, Hawaii, until October 1, 2009, or the date of enactment of an act authorizing funds for military construction for fiscal year 2010, whichever is later.

The Senate bill contained a similar provision (sec. 2106).  
The agreement includes the House provision.

## **TITLE XXII-NAVY**

### **Legislative Provisions Adopted**

*Authorized Navy construction and land acquisition projects  
(sec. 2201)*

The House bill contained a provision (sec. 2201) that would authorize military construction projects for the active component of the Navy and Marine Corps for fiscal year 2009.

The Senate bill contained a similar provision (sec. 2201).  
The agreement includes this provision.

The authorized amounts are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table included in the joint explanatory statement provides the binding list of specific construction projects authorized at each location.

*Family housing (sec. 2202)*

The House bill contained a provision (sec. 2202) that would authorize new construction and planning and design of family housing units for the Navy for fiscal year 2009. It would also authorize funds for facilities that support family housing, including housing management offices and housing maintenance and storage facilities.

The Senate bill contained a similar provision (sec. 2202). The agreement includes the Senate provision.

*Improvements to military family housing units (sec. 2203)*

The House bill contained a provision (sec. 2203) that would authorize funding for fiscal year 2009 to improve existing Navy and Marine Corps family housing units.

The Senate bill contained an identical provision (sec. 2203).

The agreement includes this provision.

*Authorization of appropriations, Navy (sec. 2204)*

The House bill contained a provision (sec. 2204) that would authorize appropriations for the active component military construction and family housing projects of the Department of the Navy for fiscal year 2009. This provision would also provide an overall limit on the cost of the fiscal year 2009 military construction and family housing projects authorized for the active-duty component of the Navy and Marine Corps.

The Senate bill contained a similar provision (sec. 2204). The agreement includes this provision.

*Modification of authority to carry out certain fiscal year 2005 project (sec. 2205)*

The House bill contained a provision (sec. 2205) that would increase the authorization for a Strategic Weapons Facility Pacific project at Bangor, Washington.

The Senate bill contained an identical provision (sec. 2205).

The agreement includes this provision.

*Modification of authority to carry out certain fiscal year 2007 projects (sec. 2206)*

The House bill contained a provision (sec. 2206) that would increase the authorization for projects at the Naval Support Activity, Suitland, Maryland, and at naval Air Station, Whidbey Island, Washington.

The Senate bill contained an identical provision (sec. 2206).

The agreement includes this provision.

### **Legislative Provision Not Adopted**

#### *Report on impacts of surface ship homeporting alternatives*

The House bill contained a provision (sec. 2207) that would prohibit the Secretary of the Navy from issuing a record of decision for the proposed homeporting of additional ships at Naval Station Mayport until at least 30 days after the date on which the Secretary submits a report on the socio-economic impact and economic justification of the preferred alternatives identified in the final environmental impact statement.

The Senate bill contained no similar provision.

The agreement does not include the House provision.

## **TITLE XXIII—AIR FORCE**

### **Legislative Provisions Adopted**

#### *Authorized Air Force construction and land acquisition projects (sec. 2301)*

The House bill contained a provision (sec. 2301) that would authorize Air Force military construction projects for fiscal year 2009.

The Senate bill contained a similar provision (sec. 2301).

The agreement includes this provision.

The authorized amounts are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table included in the joint explanatory statement provides the binding list of specific construction projects authorized at each location.

#### *Family housing (sec. 2302)*

The House bill contained a provision (sec. 2302) that would authorize new construction and planning and design of family housing units for the Air Force for fiscal year 2009. It would also authorize funds for facilities that support family housing, including housing management offices and housing maintenance and storage facilities.

The Senate bill contained an identical provision (sec. 2302).

The agreement includes this provision.

*Improvements to military family housing units (sec. 2303)*

The House bill contained a provision (sec. 2303) that would authorize funding for fiscal year 2009 to improve existing Air Force family housing units.

The Senate bill contained an identical provision (sec. 2303).

The agreement includes this provision.

*Authorization of appropriations, Air Force (sec. 2304)*

The House bill contained a provision (sec. 2304) that would authorize appropriations for the active component military construction and family housing projects of the Air Force for fiscal year 2009. This provision would also provide an overall limit on the cost of the fiscal year 2009 military construction and family housing projects authorized for the active-duty component of the Air Force.

The Senate bill contained a similar provision (sec. 2304).

The agreement includes this provision.

*Extension of authorizations of certain fiscal year 2006 projects (sec. 2305)*

The House bill contained a provision (sec. 2305) that would extend the authorizations for certain Air Force fiscal year 2006 military construction projects until October 1, 2009, or the date of enactment of an act authorizing funds for military construction for fiscal year 2010, whichever is later.

The Senate bill contained an identical provision (sec. 2305).

The agreement includes this provision.

*Extension of authorizations of certain fiscal year 2005 projects (sec. 2306)*

The House bill contained a provision (sec. 2306) that would extend the authorizations for certain Air Force fiscal year 2005 military construction projects until October 1, 2009, or the date of enactment of an act authorizing funds for military construction for fiscal year 2010, whichever is later.

The Senate bill contained a similar provision (sec. 2306).

The agreement includes the Senate provision.

## **TITLE XXIV—DEFENSE AGENCIES**

## **Subtitle A—Defense Agency Authorizations**

### *Authorized defense agencies construction and land acquisition projects (sec. 2401)*

The House bill contained a provision (sec. 2401) that would authorize military construction projects for the defense agencies for fiscal year 2009.

The Senate bill contained a similar provision (sec. 2401). The agreement includes this provision.

The authorized amounts are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table included in the joint explanatory statement provides the binding list of specific construction projects authorized at each location.

### *Energy conservation projects (sec. 2402)*

The House bill contained a provision (sec. 2402) that would authorize the Secretary of Defense to carry out energy conservation projects.

The Senate bill contained a similar provision (sec. 2402). The agreement includes the Senate provision.

### *Authorization of appropriations, defense agencies (sec. 2403)*

The House bill contained a provision (sec. 2403) that would authorize appropriations for the military construction projects of the defense agencies for fiscal year 2009. This provision would also provide an overall limit on the cost of the fiscal year 2009 military construction projects authorized for the defense agencies.

The Senate bill contained a similar provision (sec. 2403). The agreement includes this provision.

### *Modification of authority to carry out certain fiscal year 2007 projects (sec. 2404)*

The House bill contained a provision (sec. 2404) that would amend section 2401 of the Military Construction Authorization Act for Fiscal Year 2007 (division B of Public Law 109-364) to increase the construction authorization for a project at Fort Detrick, Maryland by \$133.0 million.

The Senate bill contained a similar provision (sec. 2404). The agreement includes the House provision.

*Modification of authority to carry out certain fiscal year 2005 projects (sec. 2405)*

The House bill contained a provision (sec. 2405) that would terminate the military construction authorization provided in the Military Construction Authorization Act for Fiscal Year 2005 (division B of Public Law 108-375) for a project at the Defense Fuel Supply Point at Naval Air Station Oceana, Virginia.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Extension of authorization of certain fiscal year 2006 project (sec. 2406)*

The House bill contained a provision (sec. 2406) that would extend the authorization for a fiscal year 2006 military construction project for the Defense Logistics Agency until October 1, 2009, or the date of enactment of an act authorizing funds for military construction for fiscal year 2010, whichever is later.

The Senate bill contained an identical provision (sec. 2405).

The agreement includes this provision.

## **Subtitle B—Chemical Demilitarization Authorizations**

*Authorized chemical demilitarization program construction and land acquisition projects (sec. 2411)*

The House bill contained a provision (sec. 2411) that would authorize military construction projects for the chemical demilitarization program for fiscal year 2009.

The Senate bill contained an identical provision (sec. 2411).

The agreement includes this provision.

The authorized amounts are listed on an installation-by-installation basis in this provision.

*Authorization of appropriations, chemical demilitarization construction, defense-wide (sec. 2412)*

The House bill contained a provision (sec. 2412) that would authorize specific appropriations for each line item contained in the budget request for fiscal year 2009 for the chemical demilitarization construction. This section would also provide

overall limit on the amount the chemical demilitarization office may spend on military construction projects.

The Senate bill contained a similar provision (sec. 2412).

The agreement includes the Senate provision with an amendment making a technical correction.

*Modification of authority to carry out certain fiscal year 1997 project (sec. 2413)*

The House bill contained a provision (sec. 2413) that would modify the authorization for a chemical demilitarization construction project at Pueblo Army Depot, Colorado.

The Senate bill contained an identical provision (sec. 2413).

The agreement includes this provision.

*Modification of authority to carry out certain fiscal year 2000 project (sec. 2414)*

The House bill contained a provision (sec. 2414) that would modify the authorization for a chemical demilitarization construction project at Blue Grass Army Depot, Kentucky.

The Senate bill contained an identical provision (sec. 2414).

The agreement includes this provision.

## **TITLE XXV-NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVESTMENT PROGRAM**

### **Legislative Provisions Adopted**

*Authorized NATO construction and land acquisition projects (sec. 2501)*

The House bill contained a provision (sec. 2501) that would authorize the Secretary of Defense to make contributions to the North Atlantic Treaty Organization Security Investment Program in an amount equal to the sum of the amount specifically authorized in section 2502 of this title and the amount of recoupment due to the United States for construction previously financed by the United States.

The Senate bill contained an identical provision (sec. 2501).

The agreement includes this provision.

*Authorization of appropriations, NATO (sec. 2502)*

The House bill contained a provision (sec. 2502) that would authorize appropriations for the United States' contribution to the North Atlantic Treaty Organization Security Investment Program for fiscal year 2009.

The Senate bill contained an identical provision (sec. 2502).

The agreement includes this provision.

## **TITLE XXVI—GUARD AND RESERVE FORCES FACILITIES**

### **Legislative Provisions Adopted**

*Authorized Army National Guard construction and land acquisition projects (sec. 2601)*

The House bill contained a provision (sec. 2601) that would authorize military construction projects for the Army National Guard for fiscal year 2009.

The Senate bill contained a similar provision (sec. 2601).  
The agreement includes this provision.

The authorized amounts are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table included in the joint explanatory statement provides the binding list of specific construction projects authorized at each location.

*Authorized Army Reserve construction and land acquisition projects (sec. 2602)*

The House bill contained a provision (sec. 2602) that would authorize military construction projects for the Army Reserve for fiscal year 2009.

The Senate bill contained a similar provision (sec. 2602).  
The agreement includes this provision.

The authorized amounts are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table included in the joint explanatory statement provides the binding list of specific construction projects authorized at each location.

*Authorized Navy Reserve and Marine Corps Reserve construction and land acquisition projects (sec. 2603)*

The House bill contained a provision (sec. 2603) that would authorize military construction projects for the Navy Reserve and Marine Corps Reserve for fiscal year 2009.

The Senate bill contained an identical provision (sec. 2603).

The agreement includes this provision.

The authorized amounts are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table included in the joint explanatory statement provides the binding list of specific construction projects authorized at each location.

*Authorized Air National Guard construction and land acquisition projects (sec. 2604)*

The House bill contained a provision (sec. 2604) that would authorize military construction projects for the Air National Guard for fiscal year 2009.

The Senate bill contained a similar provision (sec. 2604).

The agreement includes this provision.

The authorized amounts are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table included in the joint explanatory statement provides the binding list of specific construction projects authorized at each location.

*Authorized Air Force Reserve construction and land acquisition projects (sec. 2605)*

The House bill contained a provision (sec. 2605) that would authorize military construction projects for the Air Force Reserve for fiscal year 2009.

The Senate bill contained a similar provision (sec. 2605).

The agreement includes this provision.

The authorized amounts are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table included in the joint explanatory statement provides the binding list of specific construction projects authorized at each location.

*Authorization of appropriations, National Guard and Reserve (sec. 2606)*

The House bill contained a provision (sec. 2606) that would authorize appropriations for reserve component military construction projects for fiscal year 2009.

The Senate bill contained a similar provision (sec. 2606).

The agreement includes this provision.

*Modification of authority to carry out certain fiscal year 2008 project (sec. 2607)*

The Senate bill contained a provision (sec. 2609) that would amend section 2601 of the Military Construction Authorization Act for Fiscal Year 2008 (division B of Public Law 110-181) to increase the authorization for a project for the Army National Guard at North Kingstown, Rhode Island, by \$5.0 million.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Extension of authorizations of certain fiscal year 2006 projects (sec. 2608)*

The House bill contained a provision (sec. 2607) that would extend the authorizations for certain Guard and reserve fiscal year 2006 military construction projects until October 1, 2009, or the date of enactment of an act authorizing funds for military construction for fiscal year 2010, whichever is later.

The Senate bill contained an identical provision (sec. 2607).

The agreement includes that provision.

*Extension of authorization of certain fiscal year 2005 project (sec. 2609)*

The House bill contained a provision (sec. 2608) that would extend the authorization for an Army National Guard fiscal year 2005 military construction project in California until October 1, 2009, or the date of enactment of an act authorizing funds for military construction for fiscal year 2010, whichever is later.

The Senate bill contained an identical provision (sec. 2608).

The agreement includes this provision.

**TITLE XXVII—BASE CLOSURE AND REALIGNMENT  
ACTIVITIES**

**Subtitle A—Authorizations**

*Authorization of appropriations for base closure and realignment activities funded through Department of Defense base closure account 1990 (sec. 2701)*

The House bill contained a provision (sec. 2701) that would authorize appropriations for fiscal year 2009 for ongoing activities that are required to implement the decisions of the 1988, 1991, 1993, and 1995 base realignment and closure (BRAC) rounds.

The Senate bill contained an identical provision (sec. 2701).

The agreement includes this provision.

*Authorized base closure and realignment activities funded through Department of Defense base closure account 2005 (sec. 2702)*

The House bill contained a provision (sec. 2702) that would authorize military construction projects for fiscal year 2009 that are required to implement the decisions of the 2005 Base Realignment and Closure (BRAC) round.

The Senate bill included a similar provision (sec. 2702).

The agreement includes the Senate provision.

The table included in the joint explanatory statement lists the specific projects authorized at each location.

*Authorization of appropriations for base closure and realignment activities funded through Department of Defense base closure account 2005 (sec. 2703)*

The House bill contained a provision (sec. 2703) that would authorize appropriations for military construction projects for fiscal year 2009 that are required to implement the decisions of the 2005 Base Realignment and Closure (BRAC) round. This provision would also provide an overall limit on the amount authorized for BRAC military construction projects.

The Senate bill contained a similar provision (sec. 2703).

The agreement includes this provision.

The State list contained in this joint explanatory statement is the binding list of the specific amounts authorized at each location.

## **Subtitle B—Amendments to Base Closure and Related Laws**

*Modification of annual base closure and realignment reporting*

*requirements (sec. 2711)*

The House bill contained a provision (sec. 2712) that would modify the annual reporting requirements associated with the 2005 round of the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510).

The Senate bill contained a similar provision (sec. 2704)  
The agreement includes the House provision.

*Technical corrections regarding authorized cost and scope of work variations for military construction and military family housing projects related to base closures and realignments (sec. 2712)*

The House bill contained a provision (sec. 2713) that would make technical corrections to the Base Closure and Realignment Act notification requirements for cost and scope of work variations.

The Senate bill contained a similar provision (sec. 2705)  
The agreement includes the House provision.

## **Subtitle C—Other Matters**

*Independent design review of National Naval Medical Center and military hospital at Fort Belvoir (sec. 2721)*

The House bill contained a provision (sec. 2721) that would direct the Department of Defense to cease construction of the replacement facilities until the Secretary of Defense certifies the following items have been completed: a 90 percent construction design; an independent cost estimate to complete the realignment of the Walter Reed Army Medical Center; and a milestone schedule to complete the proposed realignment.

The Senate bill contained no similar provision.

The agreement includes a provision that would state congressional findings and would require an independent design review of the new medical facilities, a new cost estimate, and a schedule for the transition of operations to the new facilities. The agreement is not intended to cease construction of replacement facilities related to the closure of Walter Reed Army Medical Center.

*Report on use of BRAC properties as sites for refineries or nuclear power plants (sec. 2722)*

The House bill contained a provision (sec. 2722) that would require a study evaluating the feasibility of using military

installations selected for closure under the base closure and realignment process as locations for the construction of petroleum or natural gas refineries or nuclear power plants.

The Senate bill contained no similar provision.

The agreement includes the House provision.

### **Legislative Provision Not Adopted**

*Repeal of commission approach for development of recommendations in any future round of base closures and realignments*

The House bill contained a provision (sec. 2711) that would, with respect to any future base closure round, repeal the independent commission that is provided for under the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510).

The Senate bill contained no similar provision.

The agreement does not include the provision.

## **TITLE XXVIII—MILITARY CONSTRUCTION GENERAL PROVISIONS**

### **Subtitle A—Military Construction Program and Military Family Housing Changes**

*Incorporation of principles of sustainable design in documents submitted as part of proposed military construction projects (sec. 2801)*

The House bill contained a provision (sec. 2801) that would require the Department of Defense to incorporate sustainable design concepts and life cycle analysis into a review of options that would be submitted with the annual budget documents.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Revision of maximum lease amount applicable to certain domestic Army family housing leases to reflect previously made annual adjustments in amount (sec. 2802)*

The House bill contained a provision (sec. 2803) that would increase the maximum lease amount available to Army family housing leases from \$18,620 per unit to \$35,000 per unit.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Use of military family housing constructed under build and lease authority to house members without dependents (sec. 2803)*

The House bill contained a provision (sec. 2804) that would allow service members without dependents to be assigned to quarters leased pursuant to section 2835 of title 10, United States Code. This authority would also allow the conversion of the family housing units, previously provided by the build-to-lease authority, to military unaccompanied housing.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Leasing of military family housing to Secretary of Defense (sec. 2804)*

The House bill contained a provision (sec. 2805) that would allow the Secretary of Defense to lease military family housing in the National Capital Region.

The Senate bill contained a similar provision (sec. 2804).

The agreement includes the Senate provision.

*Improved oversight and accountability for military housing privatization initiative projects (sec. 2805)*

The House bill contained a provision (sec. 2807) that would modify the existing privatization authorities and provide better visibility over, and management of privatization projects. Specifically, it would: require the Department of Defense to partner with the family housing developer; require 100 percent performance and payment bonds; require competition for conveyance actions; repeal the authority to assign service members to privatized family housing; and require additional reporting associated with general and flag officer quarters.

The House bill also contained a provision (sec. 2808) that would require a report on best business practices for the execution of housing privatization initiatives.

The Senate bill contained a provision (sec. 2803) that would require enhanced oversight of, and reporting on, housing privatization projects. The provision would require greater interaction among the government and private entities involved in these projects, establish minimum bonding levels of 50 percent, specify procedures to be used in the case of significant schedule or performance deficiencies, ensure that the Department of Defense maintains a database of entities that achieve unsatisfactory performance ratings on such projects, and require the Department to identify and establish regulations to implement best practices for monitoring the progress and

performance of housing privatization projects.

The agreement includes elements of the House and the Senate provisions.

*Authority to use operation and maintenance funds for construction projects inside the United States Central Command and United States Africa Command areas of responsibility (sec. 2806)*

The House bill contained a provision (sec. 2802) that would extend the current use of operations and maintenance funds to meet urgent military construction requirements outside the United States for 1 year, through fiscal year 2009.

The Senate bill contained a similar provision (sec. 2802) that would exempt projects in Afghanistan from the restriction against the use of this authority at installations where the Department of Defense anticipates having a long term presence. The Senate bill would also modify the quarterly reporting requirement on the use of this authority.

The agreement includes the Senate provision with an amendment that would provide an additional of \$300.0 million of authority for fiscal year 2009 that would be available only for urgent operational requirements in Afghanistan. The agreement would also restrict the use of this authority to the Central Command and Africa Command areas of responsibility.

*Cost-benefit analysis of dissolution of Patrick Family Housing LLC (sec. 2807)*

The Senate bill contained a provision (sec. 2805) that would require the Secretary of the Air Force to submit to the congressional defense committees a cost-benefit analysis regarding the dissolution of the Patrick Family Housing LLC created in connection with the privatization of military family housing at Patrick Air Force Base, Florida, and would prohibit the Secretary from dissolving that entity until this analysis has been submitted.

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that requires the cost-benefit analysis be submitted within 30 days of the date of enactment of this Act, but would not restrict the dissolution of the LLC.

## **Subtitle B-Real Property and Facilities Administration**

*Clarification of congressional reporting requirements for certain real property transactions (sec. 2811)*

The House bill contained a provision (sec. 2811) that would clarify reporting requirements associated with civil works and other real estate transactions.

The Senate bill contained a similar provision (sec. 2812). The agreement contains the Senate provision.

*Authority to lease non-excess property of military departments and Defense Agencies (sec. 2812)*

The House bill contained a provision (sec. 2812) that would modify the Department of Defense's leasing authority and restrict certain uses of that authority. Specifically, the Department would be limited to leases of less than 50 years, and would be limited on the use of proceeds derived from leases. Also, the secretaries concerned would be required to determine that property is not excess and would be required to provide expanded notifications to the congressional defense committees during the course of the lease review process. The House bill would also prohibit the acceptance of in-kind consideration for morale, welfare and recreation activities. Finally, the secretary would be required to submit a report 30 days before the secretary enters into a lease that describes the agreement reached with the local municipality on taxation issues and further describes the proposed lessee payment.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that removes the restrictions on leases over 50 years and on receipt of in-kind consideration related to morale, welfare and recreation activities and makes other technical changes.

*Modification of utility system conveyance authority (sec. 2813)*

The House bill contained a provision (sec. 2813) that would modify the existing utility privatization authorities and provide the secretary concerned the discretion to convey additional, discrete utility elements without competition to an existing utility privatization interest, if certain criteria are met.

The Senate bill contained no similar provision.

The agreement contains the House provision with an amendment to the criteria for conveyances of additional elements of a utility system.

*Defense access roads (sec. 2814)*

The House bill included a provision (sec. 2815) that would require a needs assessment of the improvements needed in cases where the Secretary of Defense determines that a Department of Defense action has caused a significant transportation impact. The House bill would also require the Secretary of Defense to submit to the congressional defense committees and the Committee on Transportation and Infrastructure of the House of Representatives a report that details the significant transportation impacts resulting from actions of the Department of Defense since January 1, 2005.

The Senate bill contained no similar provision.

The agreement includes the House provision.

The current Defense Access Road (DAR) eligibility criteria contained in the Federal-aid Policy Guide of the Federal Highway Administration do not consider the full range of transportation impacts or requirements. We are aware that the criteria currently do not account for safety and security concerns for local roads, even though certain DAR projects have been carried out in the past 5 years in order to correct significant deficiencies threatening the safety of military personnel. The Department of Defense is strongly encouraged to consider incorporating the standards put forth by the Transportation Research Board, which serves as an independent adviser to the President, Congress, and federal agencies on scientific and technical questions, in the Highway Capacity Manual. This manual contains state-of-the-art techniques for estimating road capacity and determining levels of service for transportation facilities and modes. These techniques have been adopted by the Federal Highway Administration as a basis for assessing road requirements based on current congestion and saturation levels for traffic flows on public roads.

*Report on application of force protection and anti-terrorism standards to gates and entry points on military installations (sec. 2815)*

The Senate bill contained a provision (sec. 2841) that would require the Secretary of Defense to submit to the congressional defense committees, not later than February 1, 2009, a report on the implementation of Department of Defense anti-terrorism/force protection (AT/FP) standards for main gates or entry points of military installations.

The House bill contained no similar provision.

The agreement includes the Senate provision.

We recognize the importance of AT/FP measures for

Department of Defense installations and facilities. We are concerned that adequate funding has not been requested to construct permanent facilities and infrastructure, including fences, physical anti-terrorism barriers, large vehicle inspection stations, and reinforced, blast-protected facilities for guards since updated AT/FP standards were adopted by the Department of Defense in 2003. Timely funding of these requirements is necessary to protect the safety and welfare of service members and their families. We expect the Department of Defense to include, in conjunction with this report, funding in the fiscal year 2010 budget and future-years defense program to ensure that main gates and entry points at military installations comply with AT/FP standards.

## **Subtitle C—Provisions Related to Guam Realignment**

*Sense of Congress regarding military housing and utilities related to Guam realignment (sec. 2821)*

The House bill contained a provision (sec. 2822) that would express the sense of Congress that the Special Purpose Entities proposed to support military family members in Guam should closely follow the model and standards associated with the privatized family housing initiative authorized by subchapter IV of chapter 169 of title 10, United States Code. Furthermore, it would express the sense of Congress that the military and civilian utility systems on Guam should be integrated to maximize effectiveness of the overall system.

The Senate bill contained no similar provision.

The agreement contains the House provision with an amendment that would modify the sense of Congress to state that any integration of the utility infrastructure should be subject to appropriate cost-sharing and quality standards.

*Federal assistance to Guam (sec. 2822)*

The House bill contained a provision (sec. 2823) that would express the sense of Congress that the Secretary of Defense, in coordination with the Interagency Group on Insular Affairs, should enter into a memorandum of understanding with the Government of Guam to identify civilian infrastructure associated with the capabilities expansion on Guam.

The House bill also contained a provision (sec. 2824) that would require the Comptroller General to submit a report on the status of interagency coordination related to the realignment of

military forces in Guam.

The Senate bill contained no similar provisions.

The agreement modifies and combines the House provisions.

*Eligibility of the Commonwealth of the Northern Mariana Islands for military base reuse studies and community planning assistance (sec. 2823)*

The House bill contained a provision (sec. 2827) that would authorize the Commonwealth of the Northern Mariana Islands to be eligible to receive military base reuse studies and community planning assistance.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Support for realignment of military installations and relocation of military personnel on Guam (sec. 2824)*

The House bill contained a provision (sec. 2821) that would establish an account for the purposes of centralizing management and oversight of funding related to the realignment of military installations on Guam and the relocation of military personnel to Guam.

The Senate bill contained no similar provision.

The agreement contains the House provision with amendments to the procedures under which the fund would operate. The agreement also states the sense of Congress regarding the participation of United States firms in projects related to this relocation.

## **Subtitle D—Energy Security**

*Certification of enhanced use leases for energy-related projects (sec. 2831)*

The House bill contained a provision (sec. 2841) that would require that, if a proposed enhanced use lease involves a project related to energy production, and the term of the lease exceeds 20 years, the secretary of a military department may not enter into the lease until 30 days after the Secretary of Defense certifies to the congressional defense committees that the lease is consistent with the Department of Defense energy performance goals and the plan required by section 2911 of title 10, United States Code.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Annual report on Department of Defense installations energy management (sec. 2832)*

The House bill contained a provision (sec. 2842) that would require the Secretary of Defense to report on efforts taken to meet the new energy goals set forth in the Energy Independence and Security Act of 2007 (Public Law 110-140) and on efforts to meet certification requirements for sustainable green-building standards for construction and major renovations.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would clarify that the report should describe Department of Defense efforts to meet the requirements in section 433 of Public Law 110-140.

## **Subtitle E-Land Conveyances**

*Land conveyance, former Naval Air Station, Alameda, California (sec. 2841)*

The House bill contained a provision (sec. 2851) that would require the Secretary of the Navy to convey the Former Naval Air Station, Alameda, California, to the Alameda Reuse and Redevelopment Authority, except those lands designated as public benefit conveyances and certain other surplus lands.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would permit rather than require the conveyance of the property and would make other technical changes regarding the form of the consideration for the property to be conveyed.

*Transfer of administrative jurisdiction, decommissioned Naval Security Group Activity, Skaggs Island, California (sec. 2842)*

The House bill contained a provision (sec. 2860) that would direct the Secretary of the Navy and the Secretary of the Interior to negotiate a memorandum of agreement that stipulates the conditions upon which the decommissioned Naval Security Group Activity, Skaggs Island, Sonoma, California would be transferred from the administrative jurisdiction of the Department of the Navy to the United States Fish and Wildlife Service for inclusion in the National Wildlife Refuge System.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Transfer of proceeds from property conveyance, Marine Corps*

*Logistics Base, Albany, Georgia (sec. 2843)*

The Senate bill contained a provision (sec. 2821) that would allow the Secretary of Defense to transfer the proceeds from the sale of the Boyett Village Housing Complex at the Marine Corps Logistics Base Albany, Georgia, into the Family Housing Improvement Fund for carrying out military family housing privatization activities.

The House bill contained no similar provision.

The agreement includes the Senate provision, but does not direct the Department of Defense to comply with the use of proceeds suggested in the Senate report.

*Land conveyance, Sergeant First Class M.L. Downs Army Reserve Center, Springfield, Ohio (sec. 2844)*

The House bill contained a provision (sec. 2855) that would authorize the Secretary of the Army to convey the Sergeant First Class M.L. Downs Army Reserve Center, Springfield, Ohio to the City of Springfield, Ohio for use for municipal government services.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Land conveyance, John Sevier Range, Knox county, Tennessee (sec. 2845)*

The House bill contained a provision (sec. 2856) that would authorize the Secretary of the Army to convey 124 acres known as the John Sevier Range in Knox County, Tennessee, to the State of Tennessee for use as a public firing range and for associated recreational activities.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

*Land conveyance, Army property, Camp Williams, Utah (sec. 2846)*

The House bill contained a provision (sec. 2858) that would authorize the Secretary of the Army to convey 608 acres and 308 acres, respectively, to the State of Utah for military use by the Utah National Guard at Camp Williams, Utah.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would add a condition to the conveyance and make other technical changes.

*Extension of Potomac Heritage National Scenic Trail through Fort Belvoir, Virginia (sec. 2847)*

The House bill contained a provision (sec. 2859) that would authorize the Secretary of the Army to enter into a revocable-at-will easement with the Secretary of the Interior to provide land along the perimeter of Fort Belvoir, Virginia, to be used to extend the Potomac Heritage National Scenic Trail.

The Senate bill contained no similar provision.

The agreement includes the House provision with a clarifying amendment.

## **Subtitle F-Other Matters**

*Revised deadline for transfer of Arlington Naval Annex to Arlington National Cemetery (sec. 2851)*

The House bill contained a provision (sec. 2871) that would extend the current deadline for the transfer of approximately 36 acres of land at the Arlington Naval Annex to the Secretary of the Army for incorporation into Arlington National Cemetery from January 1, 2011, to no later than January 1, 2012.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Acceptance and use of gifts for construction of additional building at National Museum of the United States Air Force, Wright-Patterson Air Force Base (sec. 2852)*

The House bill contained a provision (sec. 2873) that would authorize the Secretary of the Air Force to accept a gift from the Air Force Museum Foundation that would allow construction of the fourth building for the National Museum of the United States Air Force at Wright Patterson Air Force Base, Ohio.

The Senate bill contained no similar provision.

The agreement contains the House provision with an amendment that would require all funds used for design, construction, and contract management of the fourth building to come from gifts, or the proceeds of the investment of those gifts.

*Lease involving pier on Ford Island, Pearl Harbor Naval Base, Hawaii (sec. 2853)*

The House bill contained a provision (sec. 2875) that would direct the Secretary of the Navy to enter into a 2 year lease

with the USS Missouri Memorial Association to use a pier on Ford Island, Hawaii.

The Senate bill contained no similar provision.

The agreement contains the House provision with an amendment that would require as a condition of the lease that the Navy be allowed the use of the ex-USS *Missouri*, and of the property leased to the Association, at no cost.

*Use of runway at NASJRB Willow Grove, Pennsylvania (sec. 2854)*

The House bill contained a provision (sec. 1076) that would limit commercial use of the airfield at NASJRB Willow Grove, Pennsylvania.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Naming of health facility, Fort Rucker, Alabama (sec. 2855)*

The House bill contained a provision (sec. 2876) that would designate a health facility at Fort Rucker, Alabama, as the "Lyster Army/VA Health Clinic."

The Senate bill contained no similar provision.

The agreement includes the House provision.

### **Legislative Provisions Not Adopted**

*Increase in threshold for unspecified minor military construction projects*

The Senate bill contained a provision (sec. 2801) that would amend section 2805(a)(1) of title 10, United States Code, by raising the cost ceiling of a construction project authorized by this section from \$2.0 million to \$3.0 million. This provision would also eliminate the separate threshold for projects intended solely to correct deficiencies that are life-threatening, health-threatening, or safety-threatening.

The House bill contained no similar provision.

The agreement does not include the Senate provision.

*Repeal of reporting requirement in connection with installation vulnerability assessments*

The House bill contained a provision (sec. 2806) that would repeal a reporting requirement regarding installation vulnerability assessments.

The Senate bill contained no similar provision.

The agreement does not include the House provision.

*Modification of land management restrictions applicable to Utah national defense lands*

The Senate bill contained a provision (sec. 2813) that would sunset the restrictions contained in section 2815 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65) on October 1, 2013, and would also clarify the definition of Utah national defense lands in that Act.

The House bill contained no similar provision.

The agreement does not include the provision.

*Permanent authority to purchase municipal services for military installations*

The House bill contained a provision (sec. 2814) that would extend the authority of the Secretary of the Army to purchase local government services for Department of Defense installations from the neighboring local governments to the other military departments. This provision would also make this authority permanent and would restrict the services that could be purchased to refuse collection and disposal.

The Senate bill contained no similar provision.

The agreement does not include the House provision.

*Protecting private property rights during Department of Defense land acquisitions*

The House bill contained a provision (sec. 2816) that would direct officials of the Department of Defense to make every effort to acquire real property by negotiation.

The Senate bill contained no similar provision.

The agreement does not include the House provision.

*Energy and environmental design initiatives in Guam military construction and installations*

The House bill contained a provision (sec. 2825) that would require that facilities constructed to support the military expansion at Guam have energy efficiencies and energy conservation measures incorporated into the overall design process. Specifically, this section would require that military construction projects on Guam incorporate Leadership in Energy and Environmental Design to achieve not less than the U.S. Green Building Council silver standard for new construction.

The Senate bill contained no similar provision.

The agreement does not include the House provision.

*Department of Defense Inspector General report regarding Guam realignment*

The House bill contained a provision (sec. 2826) that would require the Inspector General of the Department of Defense to submit a report to Congress within 180 days of the date of enactment of this Act on the efforts of the Inspector General to address potential waste and fraud associated with the realignment of military forces in Guam.

The Senate bill contained no similar provision.

The agreement does not include the House provision.

*Prevailing wage applicable to Guam*

The House bill contained a provision (sec. 2828) that would make the requirements of subchapter IV of chapter 31 of title 40, United States Code, applicable to military construction of any facilities on Guam.

The Senate bill contained no similar provision.

The agreement does not include this provision.

*Expansion of authority of the military departments to develop energy on military lands*

The Senate bill contained a provision (sec. 2831) that would enable the Secretary of Defense to enter long-term contracts for renewable energy from resources developed on military lands.

The House bill contained no similar provision.

The agreement does not include the provision.

*Land conveyance, Norwalk Defense Fuel Supply Point, Norwalk, California*

The House bill contained a provision (sec. 2852) that would authorize the Secretary of the Air Force to convey 10 acres at the Norwalk Defense Fuel Supply Point to the City of Norwalk, California, for recreational purposes.

The Senate bill contained no similar provision.

The agreement does not include the House provision.

*Land conveyance, former Naval Station, Treasure Island, California*

The House bill contained a provision (sec. 2853) that would direct the Secretary of the Navy to convey the former Naval

Station Treasure Island, California, to the Treasure Island redevelopment authority.

The Senate bill contained no similar provision.

The agreement does not include the House provision.

*Condition on lease involving Naval Air Station, Barbers Point, Hawaii*

The House bill contained a provision (sec. 2854) that would require the Secretary of the Navy and Ford Island Properties/Hunt Development to enter into a memorandum of understanding with the Hawaii Community Development Authority to ensure that the development plan for real property to be conveyed at Barbers Point, Hawaii, conforms to Hawaii Community Development Authority land use controls.

The Senate bill contained no similar provision.

The agreement does not include the House provision.

*Land conveyance, Bureau of Land Management land, Camp Williams, Utah*

The House bill contained a provision (sec. 2857) that would direct the Secretary of the Interior to convey 431 acres to the State of Utah for military use by the Utah National Guard at Camp Williams, Utah.

The Senate bill contained no similar provision.

The agreement does not include this provision.

*Decontamination and use of former bombardment area on island of Culebra*

The House bill contained a provision (sec. 2872) that would amend the Military Construction Authorization Act of 1974 (Public Law 93-166) to remove restrictions on environmental remediation of the former bombardment area on the island of Culebra, Puerto Rico.

The Senate bill contained no similar provision.

The agreement does not include this provision.

*Establishment of memorial to American Rangers at Fort Belvoir, Virginia*

The House bill contained a provision (sec. 2874) that would authorize the Secretary of the Army to permit the American Ranger Memorial Association, Inc., to establish and maintain a memorial at a suitable location at Fort Belvoir, Virginia.

The Senate bill contained no similar provision.

The agreement does not include the House provision.

## **TITLE XXIX—WAR-RELATED AND EMERGENCY MILITARY CONSTRUCTION AUTHORIZATIONS**

### **Subtitle A-Fiscal Year 2008 Projects**

*Authorized Army construction and land acquisition projects (sec. 2901)*

The House bill contained a provision (sec. 2901) that would authorize war-related military construction projects for the Army.

The Senate bill contained a similar provision (sec. 2901). The agreement includes this provision.

The authorized amounts are listed on an installation-by-installation basis in this provision. These authorizations are in addition to the projects and amounts authorized in title XXIX of the Military Construction Authorization Act for Fiscal Year 2008 (division B of Public Law 110-181).

*Authorized Navy construction and land acquisition projects (sec. 2902)*

The House bill contained a provision (sec. 2902) that would authorize war-related military construction projects for the Navy.

The Senate bill contained a similar provision (sec. 2902). The agreement includes this provision.

The authorized amounts are listed on an installation-by-installation basis in this provision. These authorizations are in addition to the projects and amounts authorized in title XXIX of the Military Construction Authorization Act for Fiscal Year 2008 (division B of Public Law 110-181).

*Authorized Air Force construction and land acquisition projects (sec. 2903)*

The House bill contained a provision (sec. 2903) that would authorize war-related military construction projects of the Air Force.

The Senate bill contained a similar provision (sec. 2903). The agreement includes the Senate provision.

The authorized amounts are listed on an installation-by-installation basis in this provision. These authorizations are in addition to the projects and amounts authorized in title XXIX

of the Military Construction Authorization Act for Fiscal Year 2008 (division B of Public Law 110-181).

*Authorized Defense Agencies construction and land acquisition projects (sec. 2904)*

The House bill contained a provision (sec. 2904) that would authorize war-related military construction projects for the defense agencies.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that reduces the amounts authorized.

*Termination of authority to carry out fiscal year 2008 Army projects (sec. 2905)*

The House bill contained a provision (sec. 2905) that would repeal the project authorizations for military construction projects authorized in fiscal year 2008 for which no funds were appropriated.

The Senate bill contained a similar provision (sec. 2904). The agreement includes this provision.

## **Subtitle B-Fiscal Year 2009 Projects**

*Authorized Army Construction and land acquisition projects (sec. 2911)*

The Senate bill contained a provision (sec. 2911) that would authorize \$450.0 million for military construction projects for the Army for fiscal year 2009. The Senate provision would provide additional funding for warrior transition unit facilities, primarily barracks. The funding would be available 14 days after the Secretary of Defense submits a report to Congress with a description and justification of the specific projects to be funded.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Authorized Navy construction and land acquisition projects (sec. 2912)*

The Senate bill contained a provision (sec. 2912) that would authorize \$50.0 million in military construction projects for the Navy for fiscal year 2009. The Senate provision would provide additional funding for warrior transition unit facilities, primarily barracks. The funding would be available

14 days after the Secretary of Defense submits a report to Congress with a description and justification of the specific projects to be funded.

The House bill contained no similar provision.

The agreement includes this provision.

## **DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZATIONS AND OTHER AUTHORIZATIONS**

### **TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS**

#### **Subtitle A—National Security Programs Authorizations**

##### *Overview*

Title XXXI authorizes appropriations for atomic energy defense activities of the Department of Energy for fiscal year 2009, including: the purchase, construction, and acquisition of plant and capital equipment; research and development; nuclear weapons activities; nuclear nonproliferation activities; naval nuclear propulsion; environmental cleanup; operating expenses; and other expenses necessary to carry out the purposes of the Department of Energy Organization Act (Public Law 95-91). This title authorizes appropriations in five categories: (1) National Nuclear Security Administration (NNSA); (2) defense environmental cleanup; (3) other defense activities; (4) defense nuclear waste disposal; and (5) energy security and assurance.

The budget request for atomic energy defense activities at the Department of Energy included \$16.0 billion for atomic energy defense activities, a 5.6 percent increase above the fiscal year 2008 appropriated level. Of the total amount requested:

- (1) \$9.1 billion is for NNSA, of which
  - (a) \$6.6 billion is for weapons activities,
  - (b) \$1.2 billion is for defense nuclear nonproliferation activities,
  - (c) \$828.1 million is for naval reactors, and
  - (d) \$404.1 million is for the Office of the Administrator;

- (2) \$5.3 billion is for defense environmental cleanup;
- (3) \$1.3 billion is for other defense activities; and
- (4) \$247.4 million is for defense nuclear waste disposal.

The budget request also included \$7.6 million for energy security and assurance within energy supply.

We agree to authorize \$16.1 billion for atomic energy defense activities, an increase of \$143.2 million above the budget request.

Of this amount, we authorize:

- (1) \$9.8 billion for NNSA, of which
  - (a) \$6.6 billion would be for weapons activities, a decrease of \$7.0 million below the budget request,
  - (b) \$1.9 billion would be for defense nuclear nonproliferation, an increase of \$648.2 million above the budget request,
  - (c) \$828.1 million would be for naval reactors, the amount of the budget request, and
  - (d) \$404.0 million would be for the Office of the Administrator, the amount of the budget request;
- (2) \$5.3 billion would be for defense environmental cleanup activities, the amount of the budget request;
- (3) \$826.5 million would be for other defense activities, a decrease of \$487.0 million below the amount of the budget request; and
- (4) \$222.4 million would be for defense nuclear waste disposal, a reduction of \$25.0 million below the amount of the budget request.

We agree to authorize \$7.6 million for energy security and assurance, the amount of the budget request.

The following table summarizes the budget request and the authorizations:

### **Legislative Provisions Adopted**

#### *National Nuclear Security Administration (sec. 3101)*

The House bill contained a provision (sec. 3101) that would authorize \$9.3 billion for the activities of the National Nuclear Security Administration (NNSA) for fiscal year 2009, an increase of \$204.7 million above the budget request.

The Senate bill contained a similar provision (sec. 3101) that would authorize \$9.6 billion for the activities of the NNSA for fiscal year 2009, an increase of \$544.6 million above the budget request.

The agreement includes a provision (sec. 3101) that would authorize \$9.8 billion, an increase of \$655.2 million above the budget request.

Within NNSA, the provision would authorize \$6.6 billion for weapons activities, a decrease of \$7.0 million; \$1.9 billion for defense nuclear nonproliferation, an increase of \$648.2 million; \$828.1 million for naval reactors, the amount of the budget request, and \$404.1 million for the Office of the Administrator, the amount of the request.

The budget request included \$6.6 billion for weapons activities. The provision would authorize \$6.6 billion, a decrease of \$7.0 million below the budget request. The budget request included \$10.0 million for the Reliable Replacement Warhead, no funds are provided for this item. The provision would authorize an increase of \$5.0 million above the budget request for weapons dismantlement and disposition and a decrease of \$20.0 million below the budget request for pit manufacturing. Within campaigns, the provision would authorize a reduction of \$5.0 million below the budget request for test readiness, an increase of \$5.0 million above the budget request for enhanced surety, an increase of \$3.0 million above the budget request for enhanced surveillance, an increase of \$14.6 million above the budget request for inertial confinement fusion, and a decrease of \$10.0 million below the budget request for tritium readiness. Within readiness in technical base and facilities, the provision would authorize an increase of \$1.0 million above the budget request, which includes an increase of \$10.0 million above the budget request for the Lawrence Livermore National Laboratory, an increase of \$10.0 million above the budget request for the Pantex Plant, and a decrease of \$19.0 million for the Kansas City Plant. We note that the \$19.0 million reduction for the Kansas City Plant is without prejudice. The provision provides an additional \$23.4 million above the budget request for defense nuclear security.

The budget request included \$1.2 billion for defense nuclear nonproliferation. The provision would authorize \$1.9 billion for defense nuclear nonproliferation, an increase of \$648.2 million, including \$487.0 million transferred from nuclear energy for the mixed oxide fuel fabrication facility. The provision would include an increase of \$25.0 million above the budget request for the Nonproliferation and Verification Research and Development program including technologies to support improved nuclear material forensic and attribution capabilities and seismic research. The provision would authorize a reduction of \$5.8 million for the Nonproliferation and International Security (NIS) program, of which \$5.0 million shall be applied to the Global Initiatives for Proliferation (GIPP) Prevention and the balance shall be applied across the NIS as a reduction for Global Nuclear Energy Partnership activities including GIPP. The provision would authorize an

increase of \$22.0 million above the budget request for the International Nuclear Materials and Cooperation program to secure nuclear weapons and weapons materials outside the United States. Funding for the mixed oxide fuel fabrication facility, \$467.8 million, and \$19.2 million for operations and maintenance for the U.S. surplus fissile materials disposition, has been moved from nuclear energy back to the NNSA to reflect that this is a nonproliferation program. The NNSA is the responsible entity within the Department of Energy to manage nonproliferation programs. The provision would authorize an increase of \$120.0 million above the budget request for the Global Threat Reduction Initiative for highly enriched uranium reactor conversion, to secure domestic research and test reactors, to secure and remove U.S. origin high risk radiological sources, to secure and remove international high risk radiological sources, and to dispose of U.S. origin highly enriched uranium located outside the United States.

The budget request included \$828.1 million for naval reactors. The provision would authorize the amount of the budget request.

The budget request included \$404.1 million for the Office of the Administrator. The provision would authorize the amount of the budget request.

#### *Defense environmental cleanup (sec. 3102)*

The Senate bill contained a provision (sec. 3102) that would authorize \$5.3 billion for environmental defense cleanup activities, the amount of the budget request.

The House bill contained a similar provision (sec. 3102) that would authorize \$5.3 billion, an increase of \$20 million above the budget request.

The agreement includes the Senate provision that would authorize \$5.3 billion, the amount of the budget request.

The agreement would authorize a number of projects not included in the budget request. The Department of Energy (DOE) has identified these projects as unfunded and not included in the budget request but necessary to meet environmental cleanup commitments and requirements. Due to the uncertainty of the appropriations process for fiscal year 2009, the agreement would authorize these additional projects but offset the amount of the cost of the additional projects through the use of prior year balances. This will allow the DOE discretion and flexibility in implementing these additional projects should additional appropriated funds be available. In the event that additional funds are not available, the DOE would retain the flexibility to implement these projects with prior year balances, or through

reprogramming actions should the decision be made to do so. We view implementation of the additional projects as being within the discretion of the Secretary.

Funding for these projects is authorized by site and by account. The increases for the sites and accounts are as follows: Fernald, \$13.5 million; 2012 completion projects at the Hanford Site, \$89.5 million; 2035 completion projects at the Hanford Site, \$45.0 million; Idaho National Laboratory, \$40.0 million; National Nuclear Security Administration (NNSA) sites \$85.101, which includes \$5.0 million for NNSA/SPRU, \$10.0 million for Nevada, \$3.0 million for Sandia National Laboratory, and \$67.1 million for Los Alamos National Laboratory; Oak Ridge reservation, \$25.0 million; Office of River Protection, \$53.0 million; 2035 completion projects at the Savannah River Site, \$58.5 million; Waste Isolation Pilot Project, \$18.7 million; and safeguards and security at the Hanford Site, \$8.2 million.

*Other defense activities (sec. 3103)*

The Senate bill contained a provision (sec. 3103) that would authorize \$826.5 million for other defense activities, a decrease of \$487.0 million.

The House bill contained a similar provision (sec. 3103) that would authorize \$1.3 billion for other defense activities, an increase of \$8.0 million.

The agreement includes the Senate provision.

The amount authorized is a decrease of \$487.0 million from the amount of the budget request. We recommend: \$446.9 million for health, safety, and security, the amount of the budget request; \$186.0 million for legacy management, the amount of the request; \$6.6 million for the Office of Hearings and Appeals; and \$78.8 million for nuclear energy, a decrease of \$487.0 million from the budget request. We recommend that the \$487.0 million included in the budget request for other defense activities for the mixed oxide fuel fabrication facility be transferred to the National Nuclear Security Administration.

*Defense nuclear waste disposal (sec. 3104)*

The House bill contained a provision (sec. 3104) that would authorize \$247.4 million for defense nuclear waste disposal, the amount of the budget request.

The Senate bill contained a similar provision (sec. 3104) that would authorize \$197.4 million for defense nuclear waste disposal, a reduction of \$50.0 million below the budget request.

The agreement includes the House provision with an amendment that would authorize \$222.4 million for defense

nuclear waste disposal, a reduction of \$25.0 million below the budget request.

*Energy security and assurance (sec. 3105)*

The House bill contained a provision (sec. 3105) that would authorize \$7.6 million for energy security and assurance at the Department of Energy.

The Senate bill contained no similar provision.

The agreement includes the House provision.

## **Subtitle B—Program Authorizations, Restrictions, and Limitations**

*Modification of functions of Administrator for Nuclear Security to include elimination of surplus fissile materials usable for nuclear weapons (sec. 3111)*

The Senate bill contained a provision (sec. 3111) that would amend section 2402(b)(1) of title 50, United States Code, by adding a new paragraph assigning responsibility for elimination of surplus fissile materials usable for nuclear weapons to the Administrator for Nuclear Security.

The House bill contained no similar provision.

The agreement includes the Senate provision.

*Limitation on funding for project 04-D-125 Chemistry and Metallurgy Research Replacement facility project, Los Alamos National Laboratory, Los Alamos, New Mexico (sec. 3112)*

The House bill provided full funding for project 04-D-125, the chemistry and metallurgy research replacement (CMRR) facility project at the Department of Energy Los Alamos National Laboratory.

The Senate bill provided \$50.2 million for CMRR, a reduction of \$50.0 million from the budget request.

The agreement includes a provision that would authorize \$100.2 million for the CMRR, the amount of the budget request, but would prohibit the Administrator of the National Nuclear Security Administration (NNSA) from obligating more than \$50.2 million of the CMRR funding until 15 days after the Administrator and the Defense Nuclear Facilities Safety Board have each certified to the congressional defense committees that the issues associated with the design of the safety class systems at the CMRR and seismic related design issues have been resolved.

*Nonproliferation and national security scholarship and fellowship program (sec. 3113)*

The Senate bill contained a provision (sec. 3114) that would direct the Administrator of the National Nuclear Security Administration (NNSA) to establish a nonproliferation scholarship program. The scholarship program would be available to both undergraduate and graduate students in disciplines to be determined by the NNSA administrator. A student would be required to work as a Federal Government employee or as a laboratory employee for 1 year for each year that the student received support under the program.

The House bill contained a similar provision (sec. 3113(a)) that would establish a fellowship program for graduate students in nuclear chemistry.

The agreement includes the Senate provision with an amendment that would direct the NNSA Administrator to establish a scholarship program for nonproliferation and national security programs at the Department of Energy. The provision would authorize \$3.0 million from funds available to the Administrator to be used for the scholarship program in fiscal year 2009.

There is concern that experts in certain technical areas critical to nonproliferation and national security programs, such as radio-chemistry, are increasingly difficult for the NNSA and the Department of Energy laboratories to attract and retain.

*Enhancing nuclear forensics capabilities (sec. 3114)*

The House bill contained a provision (sec. 3113) that would establish a fellowship program for graduate students in nuclear chemistry and direct the Administrator of the National Nuclear Security Administration (NNSA) to prepare and carry out a research and development plan to improve the speed and accuracy of nuclear forensics radiation measurement equipment. In addition, the provision would direct the Secretary of Energy to prepare a research and development plan to support technical forensics and attribution capabilities, including an international database on nuclear material to allow prompt attribution of material or weapons.

The provision would also amend the report on nuclear forensics capabilities required to be submitted by section 3129(b) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to include a requirement to identify any treaty, legislative, or regulatory actions needed to establish the international database. The provision would also direct the Secretary of Defense, in consultation with the

Secretary of Energy and Homeland Security, to submit a report with respect to a nuclear forensics advisory panel.

The provision would also require a series of reports including, a report on the costs of the fellowship program; a research and development plan with the costs to implement the plan; a report on the research and development plan for technical capabilities to enhance forensics and attribution; and a report on the involvement of senior Executive Branch leadership in nuclear terrorism preparedness exercises.

The Senate bill contained a provision (sec. 3114) that would establish a nonproliferation scholarship and fellowship program.

The agreement includes the House provision with an amendment that would direct the Secretary of Energy to establish, prepare and implement a research and development plan to improve nuclear forensics capabilities in the Department of Energy (DOE) and at the DOE national laboratories. The Secretary of Energy should ensure that the House Committee on Science and Technology receives a copy of the report.

In addition, the amendment would amend the report on nuclear forensics capabilities required to be submitted by section 3129(b) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) to include a requirement to identify any treaty, legislative, or regulatory actions needed to establish the international database.

The amendment would also direct the President to submit a report to the appropriate congressional committees on the involvement of senior level Executive Branch leadership in nuclear terrorism exercises including nuclear forensics analysis.

Elsewhere in the agreement there is a separate provision that would establish a scholarship and fellowship program for nonproliferation and national security.

*Utilization of contributions to International Nuclear Materials Protection and Cooperation program and Russian plutonium Disposition program (sec. 3115)*

The House bill contained a provision (sec. 3111) that would establish the authority of the Secretary of Energy, in consultation with the Secretary of State, to enter into agreements with any person, including a foreign government or entity, which the Secretary of Energy considers appropriate, to accept funds to assist with the disposition of excess Russian plutonium as part of the Russian Plutonium Disposition program. Contributed funds would be maintained in a separate account in the Treasury, and would be returned to the donor if not used in

5 years. The provision would also require the Secretary of Energy to submit a report on the receipt and use of funds. The authority provided in the provision would terminate on December 31, 2013.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that would modify existing authority that allows the Department of Energy (DOE) to accept contributions for other nonproliferation programs to allow DOE to accept contributions for the Russian Plutonium Disposition Program and for the International Nuclear Materials Protection and Cooperation Program. The DOE authority to accept contributions for these nonproliferation programs would expire on December 31, 2015.

*Review of and reports on Global Initiatives for Proliferation Prevention program (sec. 3116)*

The Senate bill contained a provision (sec. 3115) that would direct the Administrator of the National Nuclear Security Administration (NNSA) to conduct a review of the Global Initiatives for Proliferation Prevention (GIPP) program and submit a report on the review to the congressional defense committees no later than February 1, 2009.

The report would include a description of the goals for the GIPP program and the criteria for partnership projects together with recommendations regarding the future of projects in Russia and the other countries of the former Soviet Union as well as plans for projects in countries other than the former Soviet Union. In addition, the report would include a plan for completing all projects in the countries of the former Soviet Union by 2012.

The provision would also restrict funds associated with the Global Nuclear Energy Partnership (GNEP).

The House bill contained no similar provision.

The agreement includes the Senate provision with an amendment that would change the due date of the report to October 1, 2009, and that would require a plan and criteria for completing all partnership projects under the program, not just in the countries of the former Soviet Union. In addition, recognizing that each country has different needs and presents different opportunities for partnerships, the agreement does not include a deadline by which projects have to be completed.

The GNEP funding restriction is addressed in a separate provision.

We appreciate the GIPP program information recently provided by the NNSA and the NNSA efforts to continue to strengthen the management, implementation and oversight of the

program. This additional attention and oversight by the NNSA will ensure that the GIPP program achieves its intended nonproliferation objectives, and will address the concerns the Government Accountability Office has raised about the GIPP program. We also are encouraged that NNSA is reducing unobligated and uncosted balances in GIPP program funding and will re-baseline the program by December 2008 as part of its Strategic Plan.

*Limitation on availability of funds for Global Nuclear Energy Partnership (sec. 3117)*

The Senate bill contained a provision (sec. 3115(c)) that would prohibit funds authorized to be appropriated for defense nuclear nonproliferation and available for use in the Global Initiatives for Proliferation Prevention program from being used to support the Global Nuclear Energy Partnership (GNEP).

The House bill contained no similar provision. House Report 110-652 did not support using any defense nuclear nonproliferation funds for GNEP.

The agreement includes the Senate provision with an amendment that would allow no more than \$3.0 million of the funds authorized to be appropriated by section 3101(a)(2) for defense nuclear nonproliferation to be used for projects specifically designed for the GNEP. None of the \$3.0 million amount shall be obligated until 30 days after the Administrator of the National Nuclear Security Administration (NNSA) submits to Congress a report describing in detail the amount proposed to be used for GNEP and the specific activities that would be funded.

The agreement specifies that the \$3.0 million is available to be used for nonproliferation risk assessments relating to the GNEP and related work on export control reviews.

## **Subtitle C-Reports**

*Extension of deadline for Comptroller General report on Department of Energy protective force management (sec. 3121)*

The House bill contained a provision (sec. 3112) that would extend the due date for the Comptroller General to complete a report on the management of the Department of Energy protective forces to March 1, 2009.

The Senate bill contained no similar provision.

The agreement contains the House provision.

*Report on compliance with Design Basis Threat issued by the Department of Energy in 2005 (sec. 3122)*

The Senate amendment contained a provision (sec. 3112) that would direct the Secretary of Energy to submit a report on the progress made by the Department of Energy (DOE) to achieve compliance with the requirements of the 2005 design basis threat (DBT) for each DOE site with Category I nuclear materials. The DBT establishes the physical security requirements for each DOE site. This report would be a follow-on report to the 2006 DBT report, which laid out a plan for each site to either be compliant by 2008 or obtain a waiver. The provision would also direct the Secretary to conduct an assessment of the 2005 DBT and to identify any necessary modifications, updates, or revisions to the 2005 DBT. The committee is concerned that several sites may not be in compliance with the 2005 DBT by the end of 2008.

The House bill contained no similar provision.

The agreement contains the Senate provision.

*Modification of submittal of reports on inadvertent releases of restricted data (sec. 3123)*

The Senate bill (sec. 3113) contained a provision that would amend section 2672 of title 50, United States Code, to make the annual report on inadvertent releases of restricted data due every other year rather than annually. The provision would further amend section 2672 to change the frequency of the report that the Secretary of Energy submits to Congress to identify the plans of various federal agencies to prevent the inadvertent release of restricted data. The provision would modify the frequency of the Department of Energy review of the agencies' plans from periodic, which has been treated by the Secretary as an annual requirement, to once every 2 years.

The House bill contained no similar provision.

The agreement contains the provision.

## **TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

*Authorization (sec. 3201)*

The House bill contained a provision (sec. 3201) that would authorize \$25.5 million for the activities of the Defense Nuclear Facilities Safety Board, the amount of the budget request.

The Senate bill contained a similar provision (sec. 3201) that would authorize \$29.0 million for the activities of the Defense Nuclear Facilities Safety Board, an increase of \$3.5 million above the amount of the budget request.

The agreement includes the House provision.

## **TITLE XXXIV-NAVAL PETROLEUM RESERVES**

*Authorization of appropriations (sec. 3401)*

The House bill contained a provision (sec. 3401) that would authorize \$19.1 million for the operation and maintenance of the Naval Petroleum and Oil Shale Reserves.

The Senate bill contained no similar provision.

The agreement includes the House provision.

## **TITLE XXXV-MARITIME ADMINISTRATION**

### **Legislative Provisions Adopted**

*Authorization of appropriations for fiscal year 2009 (sec. 3501)*

The House bill contained a provision (sec. 3501) for the authorization of appropriations for the Maritime Administration of the Department of Transportation for fiscal year 2009.

The Senate bill contained no similar provision.

The agreement includes the House provision with clarifying amendments for capital improvements at the United States Merchant Marine Academy and maintenance and repair of school ships of the various State Maritime Academies.

*Limitation on export of vessels owned by the Government of the United States for the purpose of dismantling, recycling, or scrapping. (sec. 3502)*

The House bill contained a provision (sec. 3502) that would place limits on the export of vessels owned by the United States government for the purpose of scrapping or recycling in foreign shipyards.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Student incentive payment agreements. (sec. 3503)*

The House bill contained a provision (sec. 3503) that would raise the maximum yearly incentive payment for students at the various state maritime academies from \$4,000 to \$8,000 per year.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Riding gang member requirements (sec. 3504)*

The House bill contained a provision (sec. 3504) that would amend section 1018 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) to require that riding gang members of vessels engaged in the carriage of cargo for the Department of Defense possess a merchant mariners' document issued under chapter 73 of title 46, United States Code, or a transportation security card issued under section 70105 of such title. In addition, the provision clarifies those personnel onboard such vessels at the direction of the Secretary of Defense shall not be classified as riding gang members under section 8106 of title 46, United States Code.

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Maintenance and repair reimbursement program for the maritime security fleet (sec. 3505)*

The House bill contained a provision (sec. 3505) that would direct the Administrator of the Maritime Administration to seek to enter into agreements for the maintenance and repair pilot program as authorized by section 5301 of title 46 United States Code, as amended by section 3503 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163).

The Senate bill contained no similar provision.

The agreement includes the House provision.

*Temporary program authorizing contracts with adjunct professors at the United States Merchant Marine Academy (sec. 3506)*

The House bill contained a provision (sec. 3506) that would grant temporary authority to the Administrator of the Maritime Administration to enter into contracts with Adjunct Professors at the United States Merchant Marine Academy.

The Senate bill contained no similar provision.

The agreement includes the House provision with an amendment that grants temporary authority to the Administrator to transition employees of the Academy's Non-Appropriated Funded Instrumentalities (NAFIs) to the General Schedule. In addition, the amendment would grant authority to the Administrator to

accept and use conditional or unconditional gifts of money or property for the benefit of the Academy.

*Actions to address sexual harassment and violence at the United States Merchant Marine Academy (sec. 3507)*

The agreement includes a provision that would direct the Secretary of Transportation to direct the Superintendent of the United States Merchant Marine Academy to prescribe a policy on sexual harassment and sexual violence applicable to the cadets and other personnel of the Academy.

*Assistance for small shipyards and maritime communities (sec. 3508)*

The agreement includes a provision that would repeal section 3506 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163) and add a new section in chapter 541 of title 46, United States Code, for assistance to small shipyards and maritime communities clarifying the program's intent to provide assistance to projects that would be effective in fostering efficiencies and enhancing employee technical skills.

*Marine war risk insurance (sec. 3509)*

The agreement includes a provision that would extend the authorities granted in section 53912 of title 46, United States Code, to December 31, 2015.

*MARAD consultation on Jones Act Waivers (sec. 3510)*

The agreement includes a provision that would require that the head of any agency responsible for the administration of the navigation or vessel-inspection laws to obtain a determination from the Administrator of the Maritime Administration, acting in the capacity as Director, National Shipping Authority, that sufficient United States flag capacity does not exist to meet national defense requirements prior to any waiver of those laws.

*Transportation in American vessels of government personnel and certain cargoes (sec. 3511)*

The agreement includes a provision to amend section 55305 of title 46, United States Code, to clarify the requirements of that section with respect to the transportation of government personnel and cargo in American vessels.

*Port of Guam improvement enterprise program (sec. 3512)*

The House bill contained a provision (sec. 2829) that would create a Port of Guam Improvement Enterprise Program to provide for the planning, design, and construction of projects for the Port of Guam to improve facilities, relieve port congestion, and provide greater access to port facilities.

The Senate bill contained no similar provision.

The agreement includes the House provision with a technical amendment.