

No. 33

December 6, 2001

## **H.R. 3338 – Department of Defense Appropriation Bill for FY 2002**

Calendar No. 254

Reported with an amendment in the nature of a substitute from the Committee on Appropriations on December 4, 2001, by a vote of 29-0; no written report.

### **NOTEWORTHY**

- By unanimous consent, the Senate will proceed to the consideration of H.R. 3338 today. Several budget points of order lie against the bill as reported, including a point of order for the emergency spending designation of the Byrd supplemental.
- H.R. 3338 provides \$317.2 billion in new spending authority for the Department of Defense for FY 2002, consistent with the budget authority and outlay limits established in the 302(b) allocation, as revised, and is \$26.6 billion more than was appropriated last year.
- The reported bill contains four new divisions, including a \$15 billion supplemental section, authored by Chairman Byrd [see attached itemization]. Recall that last month, Senator Byrd planned to offer a \$15 billion supplemental spending package to H.R. 3090, the stimulus bill, but then announced he would offer a package to the defense bill instead. The bill contains the regular FY 2002 appropriations as reported by the Defense subcommittee, plus these four divisions:
  - The second \$20 billion from the \$40 billion in emergency funding for fighting terrorism, as provided by P.L. 107-38;
  - An additional \$15 billion authored by Chairman Byrd to provide supplemental spending for “homeland defense” and domestic recovery;
  - Various technical corrections; and
  - Language providing an increase in the statutory discretionary spending caps to \$686 billion, reflecting the level agreed upon by members of Congress and the President in early October.
- The President has repeatedly stated he will veto any bill that provides discretionary spending beyond the agreed upon levels.
- H.R. 3338 provides: an average 5-percent military personnel pay raise; \$18.38 billion for the Defense Health Program; \$2.66 billion to procure 13 F-22 fighter aircraft; \$2.97 billion to procure 3 DDG-51 class destroyers; and \$8.3 billion for Ballistic Missile Defense activities.



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## BACKGROUND

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H.R. 3338 makes appropriations for the military functions of the Department of Defense (DoD) for the period of October 1, 2001 through September 30, 2002. Functional areas include the pay, allowances and support of military personnel, operation and maintenance of the forces, procurement of equipment and systems, and research, development, test, and evaluation. Appropriations for military assistance, military construction, family housing, nuclear weapons programs, and civil defense are provided in other bills.

The Subcommittee on Defense Appropriations began hearings on the FY 2002 budget request on February 28, 2001, and concluded them on September 5, 2001, after 11 separate sessions. The subcommittee heard testimony from representatives of the Department of Defense, other Federal agencies, representatives of organizations, and the public.

The House of Representatives passed its bill, H.R. 3338, on November 28, 2001, by a vote of 406-20. That bill contains a new title (Title IX, Counter-Terrorism & Defense Against Weapons of Mass Destruction) with programs funded at \$11.7 billion. The Senate bill does not contain this new title; however, the Senate bill does include a new provision (Section 8111) which provides an additional \$1.3 billion for ballistic missile defense and/or counterterrorism activities. This is consistent with a provision in the FY 2002 Defense Authorization bill (which remains in conference with the House).

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## HIGHLIGHTS

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The bill provides a total of \$317.2 billion in new spending authority for the Department of Defense for FY 2002 (not including the supplemental funds provided by Senator Byrd in Divisions B and C). The recommendation by the Committee meets the budget authority and outlay limits established in the 302(b) allocation, as revised to comport with the agreement reached on October 2, 2001 between the Congress and the President. The bill provides \$26.6 billion more than was appropriated for FY 2001. While the Committee's total 302(b) allocation for Function 050 Defense programs matches the President's requested level, adjustments for Military Construction (an additional \$500 million) and Department of Energy Nuclear Weapons Activities (an additional \$1.2 billion) results in the allocation for the Defense Subcommittee falling \$1.9 billion below the level of the President's amended budget request.

The divisions to the bill as reported to the Senate are: Division A – the Senate substitute as reported by the Defense Subcommittee which contains the regular FY2002 defense appropriations; Division B – the second \$20 billion from the \$40 billion in emergency supplemental funding for fighting

terrorism provided for in P.L. 107-38; Division C – the Byrd \$15 supplemental spending for “homeland defense,” which includes \$7.5 billion for FEMA funds, most of which will go to New York and the other \$7.5 billion divided among several agencies, including \$3.4 billion for the Department of Health and Human Services, \$1.3 billion for the Department of Justice, \$465 million for the Department of Transportation, and \$875 million for the Postal Service [see attachment for further details]; Division D – language providing an increase in the statutory discretionary spending caps to the agreed-upon level of \$686 billion; and Division E – technical corrections.

[Note: A breakdown of the additional \$15 billion Byrd supplemental, and of the emergency supplemental to address the President’s requested programs and funding levels for the use of the second half of the \$40 billion supplemental appropriation (\$7.47 for defense and \$12.53 for nondefense) can be found as attachments at the end of this Legislative Notice.]

## **President’s Response to the Byrd Supplemental**

In response to the \$15 billion in supplemental funds provided by this bill that were not requested by the President, Director of Homeland Security Tom Ridge on November 28 wrote a letter to Majority Leader Daschle, noting that “the level the president has recommended is sufficient to meet the immediate requirements we have identified.” Governor Ridge noted that the \$40 billion emergency funding bill, P.L. 107-38, is what the Administration “is relying on. . . to prosecute the war on terrorism and to protect the homeland.” He added, “Therefore, and in large part because of Congress’s quick, bipartisan response, no additional resources beyond what the President has already requested are needed at this time.”

Governor Ridge noted to Senator Daschle that additional funds probably will be needed in the future, “but we will not know precisely when, where, or in what amount resources will be required until we have clearly defined our objectives and completed our analysis of the needs.” Further, Governor Ridge noted he was responsible for reporting to the President, adding:

“As we identify urgent needs and our top priorities, I will be making specific recommendations for the President. This process has already begun. I am also working with the Office of Management and Budget to prepare a FY 2003 budget request that fulfills critical homeland security priorities. And as part of developing a national strategy, the Office of Homeland Security will coordinate the development of a multi-year, all-agency budget plan that address the nation’s homeland security needs in a systematic, complete, and forward-looking manner. The Administration, of course, looks forward to consulting with the Congress as we develop and begin implementing this strategy.”

## **Budget Points of Order**

Both the House-passed DoD Appropriations bill and the Senate-reported bill are subject to a point of order for exceeding the discretionary spending caps. Congress and the President agreed on

October 2, 2001, to revise the discretionary spending caps to a level of \$686 billion. Language in the bill does that, but the bill still is subject to a 312 (b) point of order for exceeding the discretionary spending limits set out in section 251(c) of the Balanced Budget and Emergency Deficit Control Act.

The bill language providing the additional \$20 billion in emergency spending for response to terrorism, Division B, does not subject the bill to a budget point of order since it conforms to the emergency provisions provided by the Emergency Supplemental, P.L. 107-38. However, note that the package differs both from that requested by the President (see attachment) and from the package approved by the House.

The \$15 billion in supplemental spending authored by Senator Byrd and offered during the full committee markup, Division C, includes an emergency designation. In the Budget Resolution for FY 2001, Congress established a 60-vote threshold for emergency designations in the Senate. If the supplemental title's emergency designation is struck, then the entire bill as reported is subject to a 302(f) point of order for exceeding both the Appropriations Committee 302(a) allocation and the Defense subcommittee's 302(b) allocation.

## **Veto Threat**

Furthermore, the Byrd supplemental title violates the agreement between the Congress and the President of October 2 to hold discretionary spending to \$686 billion plus the \$40 billion in additional spending agreed to immediately after September 11; the bill thus invites a veto. A Statement of Administration Policy on the House Defense Appropriations bill issued on November 28 states, "The President's senior advisers would recommend that the President veto any bill that provides discretionary spending beyond these agreed upon levels."

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## **BILL PROVISIONS**

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### **Title I — Military Personnel**

Funds appropriated under this title pay for basic pay, retired pay accrual, employer's contribution for Social Security taxes, basic allowance for housing, basic allowance for subsistence, special incentive pays, permanent change of station travel, and other personnel costs for uniformed members of the Armed Forces.

- An average 5 percent military pay raise is fully funded by the bill.

- The bill funds 1,387,400 active duty military personnel, consistent with the Senate reported Defense Authorization Act. The Reserve and National Guard personnel levels are appropriated at 864,658, the same as the budget request.
- Out of pocket housing costs are reduced from 15 percent in 2001 to 11.3 percent in 2002, on track to eliminate out of pocket expenses entirely by 2005.
- The Committee directs the Defense Secretary to develop a comprehensive plan to reduce the rate of permanent change of station moves, and reduces that budget by \$317 million.

## **Title II — Operation and Maintenance (O&M)**

O&M provide the resources required by the U.S. Armed Forces, and supporting defense agencies, to prepare for and conduct combat operations and other peacetime missions. These funds are used to purchase fuel and spare parts for training operations, pay supporting civilian personnel, and purchase supplies, equipment, and service contracts for the repair of weapons facilities.

- Overall, the bill provides \$106.44 billion for DoD operation and maintenance. This is \$343.76 million below the budget estimate.
- The Committee provides an increase of \$9.55 billion over the FY 2001 level for operation and maintenance to fund service priority readiness, training and depot support programs.
- The bill provides \$2.24 billion for overseas contingency operations in Southwest Asia, Kosovo and Bosnia, \$600 million less than the budget request. The funds are directly provided to the military service O&M accounts for FY 2002 and beyond, rather than providing money to the overseas contingency operations transfer account, in the expectation that such direct funding will improve financial accountability.
- A total of \$1.29 billion is provided for Environmental Restoration. An additional \$40 million appropriation is provided to address environmental issues at formerly used defense sites.
- The Committee recommends an appropriation of \$44.7 million for overseas humanitarian assistance and disaster relief.
- The bill provides \$357 million for Former Soviet Union Threat Reduction — a cut of \$46 million from the budget request. The Committee recommends that \$15 million be reserved only to support the dismantling and disposal of nuclear submarines in the Russian Far East.
- The Committee recommends \$15.8 million, the requested amount, for security support to the 2002 Winter Olympic Games in Utah.

### **Title III — Procurement**

Funds appropriated under this title provide the resources required to purchase military equipment and hardware, including aircraft, helicopters, ships, missiles, combat vehicles, ammunition, weapons, electronic sensors and communications equipment, and other procurement items.

- The President requested a total of \$60.44 billion for FY 2002 DoD procurement. The Committee recommends \$60.89 billion, which is approximately \$458.74 million above the requested level.
- The Committee recommends an additional \$102.5 million for the procurement of 10 Blackhawk (UH-60) helicopters for the Army National Guard.
- An appropriation of \$2.17 billion is provided for the procurement of Army weapons and tracked combat vehicles, \$102.2 million below the budget request.
- The Committee fully funds the Army's Transformation initiatives.
- The Committee recommends reducing the funding requested for V-22 aircraft purchases to the level approved by the Senate in the FY 2002 Defense Authorization bill. Funding also is reduced for advance procurement, spares, and modernization in a manner consistent with the reduction in aircraft purchase levels.
- The President's budget requests \$559.0 million for the Trident II program. Within this request is \$107 million for the D-5 life extension program. The Committee is not opposed to the program; however, feels it is premature to invest such funding prior to the Department making a clear determination regarding the future of nuclear programs. Therefore, the Committee recommends a \$50 million reduction in the life extension program.
- The President's budget request included funding to begin the conversion of two Trident submarines into the SSGN (nuclear powered guided-missile submarine) configuration. The Committee recommends \$279.4 million, an increase of \$193 million to the budget request, for acceleration of the Trident SSGN conversion program and to preserve the option to convert all four available Trident submarines into SSGNs.
- The bill provides \$783 million to procure 9 MV-22 aircraft.
- The Committee recommends \$2.66 billion to procure 13 F-22 fighter aircraft, the requested level.
- The bill provides \$725 million for increased Prior Year ship costs.
- A total of \$653 million is provided for 72 Patriot PAC-3 missiles.

- The Committee recommends \$3.04 billion to procure 48 F-18E/F fighters.
- The budget request included \$2.87 billion for the procurement of 15 C-17A aircraft in FY 2002. The Committee believes that there is a requirement for increased airlift and an opportunity to achieve savings with a follow-on multi-year procurement. Therefore, the Committee recommends an additional \$143 million in advance procurement funding to initiate a follow-on C-17 multi-year procurement program.
- The Committee denies the entire request of \$93.8 million in advance procurement for the Space-Based Infra-Red System (SBIRS) High, and \$54.3 million in Other Air Force Procurement for the procurement of hardware associated with a backup ground station. The Committee, however, recommends an additional \$50 million in the RDT&E Air Force appropriation for SBIRS (High) to begin to address program deficiencies.
- The Committee recommends an additional \$182.2 million for the procurement of two C-130J aircraft for the Air National Guard.

#### **Title IV — Research, Development, Test, and Evaluation (RDT&E)**

Funds appropriated under this title provide the resources required to conduct a program of research, development, test and evaluation, including research in basic science, applied research, advanced technology development, demonstration and validation, engineering and manufacturing development, and operational systems development.

- The President's FY 2002 budget requests a total of \$47.43 billion for research, development, test and evaluation appropriations (RDT&E). The Committee recommends \$45.99 billion, which is \$1.43 billion below the budget request.
- The President's budget request included \$1.54 billion for the Joint Strike Fighter (JSF) in both the Navy and Air Force research and development budgets. The Committee recommends a reduction of \$247.2 million to the budget request, evenly divided between the Navy and Air Force budget requests, and an additional \$30 million for each service to transition to the engineering and manufacturing development (EMD) phase of the program consistent with the recommendation of the Senate Armed Services Committee.
- The Committee recommends funding for Ballistic Missile Defense (BMD) programs at \$8.3 billion, as follows: The total from RDT&E and Missile Procurement, Army, is appropriated at \$6.99 billion, a reduction of \$1.29 billion from the request. This is consistent with the aggregate level approved in the Senate version of the FY 2002 Defense Authorization bill. In addition, a

general provision (Section 8111) provides \$1.3 billion for missile defense and/or counter-terrorism programs, also consistent with the FY 2002 Defense Authorization bill.

- The bill funds the SBIRS Low program at the Senate-authorized level, which is \$97 million below the President's request.

## **Title VI — Other Department of Defense Appropriations**

- The Committee recommends an appropriation of \$18.38 billion for the Defense Health Program, which is \$477.5 million above the budget request.
- The bill provides the requested amount, \$3.9 billion, to implement the retiree health benefits plan.
- An additional \$387 million is provided for Defense medical research programs, including \$175 million for breast cancer research and \$100 million for prostate cancer research.
- The Committee recommends an appropriation of \$866 million for Drug Interdiction and Counter-Drug Activities, which is \$45.6 million above the budget request.
- The Committee makes the following adjustments to the National Guard and Reserves:
  - Adds \$38.6 million for Army Guard personnel
  - Adds \$66.4 million for Army Guard operation and maintenance programs
  - Adds \$131 million for Air Guard operation and maintenance programs
  - Provides \$100 million for Air Guard B-1 operations
  - Adds \$560.5 million for National Guard and Reserve equipment
  - Adds \$40 million for National Guard counterdrug missions.

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## **ADMINISTRATION POSITION**

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A Statement of Administration Policy was anticipated today. [See also the Highlights section of this Legislative Notice, pp. 2-4, for a discussion of the Administration's position regarding the supplemental spending provided in this bill as reported.]

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## **POSSIBLE AMENDMENTS**

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Amendments were anticipated but none were known at press time.

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Attachments in hard-copy version available in 347 Russell.