



SENATE REPUBLICAN

POLICY COMMITTEE

Legislative Notice

No. 59

May 20, 2008

Senate Amendments to the House Amendments to H.R. 2642 – Vehicle for the Supplemental Appropriations Act for the Department of Defense for Fiscal Years 2008 and 2009

The Appropriations Committee reported the amendments on May 20, 2008 with an explanatory statement.

Noteworthy

- Note: All cost estimates in this notice were those available at press time. They do not include several items adopted in committee which are still awaiting CBO scoring.
- The supplemental provides \$122.8 billion (after rescissions) in additional emergency appropriations for FY08 and \$89.4 billion for FY09 for military operations to support the Global War on Terror and other domestic priorities. This is \$14.7 billion more than the Administration requested for FY08, and \$13.6 billion more than the Administration requested for FY09.
- Title I (Military Construction, International, and Other Security Matters) provides \$10.3 billion (after rescissions) in emergency appropriations for FY08 and \$3.9 billion for FY09. This is \$2.3 billion more than the Administration's request for FY08 and \$143 million less than the request for FY09.
- Title II provides \$4.049 billion in emergency appropriations for the following domestic programs:
 - International Food Aid: Provides \$850 million for International Food Assistance, which is \$500 million above the President's request;
 - Katrina: Provides \$4.6 billion for Katrina for a variety of programs, including Byrne Grants and housing (beyond the \$5.8 billion for levees requested separately by the President);
 - Science Initiative: Provides \$1.2 billion for the science initiative, including \$200 million for NASA, \$200 million for NSF, \$400 million for NIH, and \$400 million for DOE;
 - Highways: Provides \$451 million for Highway Emergency Relief to fund the program's backlog; and

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- Rural Schools: Provides \$400 million for an additional year of Secure Rural Schools payments.
 - Title III provides \$2.3 billion in emergency appropriations for FY08 and \$8.2 billion for FY09 for Hurricane Katrina and other Natural Disasters. This is \$2.4 billion more than the Administration requested for FY08 and \$2.5 billion more than requested for FY09.
 - Titles IV, V, and VI contain, respectively:
 - International Food Aid: Provides \$850 million for International Food Assistance, which is \$500 million above the President's request;
 - Veterans' education benefits as detailed in S. 22, introduced by Senator Webb, costing an estimated \$52 billion over 11 years;
 - 13-week extension of unemployment benefits, costing an estimated \$14.5 billion over 11 years (score does not take into account revenue feedback; with the feedback, total cost is \$11.2 billion); and
 - A provision blocking seven Administration Medicaid regulations, fully offset over ten years. This provision is identical to H.R. 5613, and the Administration has threatened to veto the bill over this provision.
 - Title XI (Defense Matters) provides \$99.5 billion in emergency appropriations for FY08 and \$65.9 billion for FY09 for the Global War on Terror. This is \$549 million below the Administration's request for FY08 and \$40 million below the request for FY09.
 - On May 20, the White House issued a veto threat against the bill based upon multiple provisions, including troop restrictions, the repeal of the Medicare provisions, and the additional domestic spending above the President's request.

Background

Per the request of Congress, the President submitted an emergency supplemental appropriations request for the Global War on Terror with the FY09 budget request in February, including a request for additional emergency funds for FY08. At the time, the Administration requested \$108.1 billion in additional emergency funds for FY08 and \$70 billion in emergency funds for FY09. Previously, \$88 billion was appropriated for FY08 for the Global War on Terror, for a total request of \$196 billion for FY08 supplemental appropriations.

Procedure

Last year's un-passed Military Construction/VA Appropriations bill will serve as the vehicle for the emergency supplemental. The House began consideration of the bill by taking up the appropriations bill as a shell, then striking and replacing the content with two amendments. The

first amendment contains Iraq policy and restriction language and the second amendment contains increased domestic spending and Medicare provisions. These changes were sent to the Senate as messages between the houses, and each amendment will be considered separately. The Senate can disagree to the House amendments and simply send the measure back to the House, or it can concur with the House amendments, or concur with the House amendments with further Senate amendments. Once a motion to concur or concur with an amendment is agreed to, the measure immediately proceeds back to the House, and no further amendments are in order. Each of these motions is fully debatable, making them subject to potential filibuster. If the motion to concur with an amendment is offered, the text of that amendment is open to floor amendments in two degrees in order to fill the amendment tree.

Because the motion is fully debatable, it is expected that a cloture petition will be filed on each amendment, requiring 60 votes to cut off debate. If the motion to concur with amendment is agreed to, no further amendments will be in order, and the measure will immediately return to the House.

Bill Provisions

Title I – Supplemental Appropriations for Military Construction, International, and Other Security Matters

Foreign Agriculture Service: Provides \$850 million for FY08 for humanitarian food aid. In addition, provides \$395 million for food assistance for FY09, as requested by the Administration.

General Administration: Provides \$4 million for FY08 for the Inspector General to review the FBI's use of National Security Letters. The Administration did not request this funding.

Legal Activities: Provides \$1.6 million for FY08 for litigation support services to investigate and prosecute corruption in reconstruction efforts. This is \$2.5 million less than the Administration's request.

United States Attorneys: Provides \$5 million for FY08 for litigation expenses associated with terrorism prosecutions, as requested by the Administration.

United States Marshals Service: Provides \$18.6 million for FY08 for enhanced security at high-threat terrorist trials. This is \$3.7 million more than the Administration's request.

Federal Bureau of Investigation: Provides \$165 million for FY08 for counterterrorism operations, \$63.8 million more than the Administration requested. In addition, provides \$82.6 million for counterterrorism operations for FY09, \$43.5 million more than the Administration's request.

Drug Enforcement Administration: Provides \$22.7 million for FY08 for narco-terrorism initiatives. This is \$14.2 million more than the Administration's request.

Bureau of Alcohol, Tobacco, Firearms and Explosives: Provides \$4 million for FY08 for ATF, as requested by the Administration.

Federal Prison System: Provides \$9.1 million for FY08 to monitor communications of inmates, as requested by the Administration.

Military Construction: Provides \$1.87 billion for the Department's Military Construction.

Military Construction (in millions)	Administration Request	Senate
Army	\$ 1,440.75	\$1,170.2
Navy and Marine Corps	237.5	300.1
Air Force	305	361.9
Defense-Wide	27.6	27.6
Family Housing	11.8	11.8
Total	2,022.65	1,871.6

Department of Defense Base Closure Account: Provides \$1.2 billion for FY08 to fund the base closure request, and to expedite construction of the Walter Reed National Military Medical Center. This is \$787 million more than the Administration's request.

Veterans Affairs, General Operating Expenses: Provides \$120 million for FY08 for administration costs and technology systems associated with the Veterans' Educational Assistance Act of 2008, proposed in this bill. The Administration did not request this funding.

Veterans Affairs, Construction: Provides \$437.1 million for FY08 for the Polytrauma Center Initiative. The Administration did not request this funding.

Administration of Foreign Affairs: Provides \$1.4 billion for FY08 for Diplomatic and Consular Programs. Of this, \$1.095 billion shall be available for diplomatic operations in Iraq. The remaining funds include funding for a consulate in Lhasa, Tibet. This is \$294.3 million less than the Administration's request.

Office of the Inspector General: Provides \$12.5 million for FY08 for the Department of State, Office of the Inspector General. The Administration did not request this funding.

Educational and Cultural Exchange Programs: Provides \$10 million for FY08 for Educational and Cultural Exchange Programs. The Administration did not request this funding.

Embassy Security, Construction and Maintenance: Provides \$76.7 million for FY08 for embassy security. This is \$83.3 million less than the Administration's request.

Contributions to International Organizations: Provides \$66 million for FY08 for U.N. Assistance Missions. This is \$13 million more than the Administration's request.

Contributions for International Peacekeeping Activities: Provides \$383.6 million for FY08 for U.N.-African Union peacekeeping missions. This is \$50 million more than the Administration's request.

International Disaster Assistance: Provides \$240 million for FY08 for International Disaster Assistance related to the international food crisis. The Administration did not request this funding. The Committee directs USAID to urgently and substantially increase food assistance for Haiti to address critical food shortages and malnutrition.

Operating Expenses of the United States Agency for International Development, FY08: Provides \$149.5 million for FY08 for USAID. This is \$108.5 million more than the Administration's request.

USAID, Office of the Inspector General, FY08: Provides \$4 million for FY08 for the USAID Office of the Inspector General. The Administration did not request this funding.

Economic Support Fund: Provides \$1.962 billion for FY08 for the Economic Support Fund. This is \$47 million less than the Administration's request.

Democracy Fund: Provides \$76 million for FY08 for Democracy Fund programs in Iraq and Chad. The Administration did not request this funding.

International Narcotics Control and Law Enforcement: Provides \$520 million for FY08 and FY09 for International Narcotics Control and Law Enforcement activities. Of this, \$350 million is designated for support programs in Mexico. Additionally, any technology purchased for the Merida initiative must be interoperable based on open standards with U.S. equipment and technology. This is \$214 million less than the Administration's request.

Migration and Refugee Assistance: Provides \$330.5 million for FY08 for unmet global refugee needs. This is \$300.5 million more than the Administration's request.

United States Emergency Refugee and Migration Assistance Fund: Provides \$36.6 million for FY08 for the fund. The Administration did not request this funding.

Nonproliferation, Anti-terrorism, Demining and Related Programs: Provides \$10 million for FY08 for protective service and the Comprehensive Test Ban Treaty International Monitoring Program. This is \$5 million more than the Administration's request.

Peacekeeping Operations: Provides \$10 million for FY08 for peacekeeping operations in the Democratic Republic of the Congo. The Administration did not request this funding.

Administration of Foreign Affairs: Provides \$652.4 million for FY09 for Diplomatic and Consular Programs.

Office of the Inspector General: Provides \$57 million for FY09 for Iraq reconstruction oversight.

Embassy Security, Construction and Maintenance: Provides \$41.3 million for FY09 for embassy security, construction, and maintenance costs for facilities in Afghanistan.

Contributions to International Organizations: Provides \$75 million for FY09 for U.N. Assistance Missions.

Contributions for International Peacekeeping Activities: Provides \$150.5 million for FY09 for international peacekeeping missions.

Broadcasting Board of Governors: Provides \$6 million for FY09 for International Broadcasting Operations.

Global Health and Child Survival: Provides \$75 million for FY09 for programs to combat avian influenza.

Development Assistance: Provides \$200 million for FY09 for the Food Security Initiative to promote food security in developing countries.

International Disaster Assistance: Provides \$200 million for FY09 for humanitarian needs in Bangladesh, Iraq, and Afghanistan. **USAID to Haiti:** The Committee directs USAID to urgently and substantially increase food assistance for Haiti to address critical food shortages and malnutrition.

Broadcasting Board of Governors: Provides \$6 million for FY09 for International Broadcasting Operations.

Operating Expenses of the United States Agency for International Development, FY09: Provides \$93 million for FY09 for USAID.

USAID, Office of the Inspector General, FY09: Provides \$1 million for FY09 for the USAID Office of the Inspector General.

Economic Support Fund: Provides \$1.132 billion for FY09 for the Economic Support Fund.

International Narcotics Control and Law Enforcement: Provides \$151 million for FY09 for International Narcotics Control and Law Enforcement activities.

Migration and Refugee Assistance: Provides \$350 million for FY09 for unmet global refugee needs.

Nonproliferation, Anti-terrorism, Demining and Related Programs: Provides \$4.5 million for FY09 for humanitarian demining assistance for Iraq.

Foreign Military Financing Program: Provides \$145 million for FY09 for the Foreign Military Financing Program.

Peacekeeping Operations: Provides \$85 million for FY09 for Peacekeeping Operations in Africa.

General Provisions:

- Section 1301 provides an additional \$70.6 million appropriation to Military Construction, Army for completion of child development center construction.
- Section 1302 provides an additional \$89.2 million appropriation to Military Construction, Navy and Marines for completion of child development center construction.
- Section 1303 provides an additional \$8.1 million appropriation to Military Construction, Air Force for completion of child development center construction.
- Section 1304 provides an additional \$200 million appropriation to Military Construction, Army for acceleration of barracks improvements.
- Section 1305 limits the ability of the VA to collect on debts owed to the United States by any member of the Armed Forces, or a veteran, if that person dies as a result of an injury incurred or aggravated in the line of duty while serving in combat after September 11, 2001. The section shall not apply to any housing and small business benefit programs.
- Section 1401 extends certain authorities necessary to expend Department of State and foreign assistance funds.
- Section 1402 prohibits appropriated funds being spent for infrastructure maintenance in Iraq until the Secretary of State certifies that an asset transfer agreement has been entered into by the Government of Iraq to maintain United States-funded infrastructure in Iraq and anticorruption actions have been taken. Additionally, none of the funds appropriated may be available until the Secretary submits a report detailing the strategy for and anticipated costs associated with Provincial Reconstruction Teams.
- Section 1403 directs the manner in which Afghan economic support funds can be spent and requires anticorruption actions and a report.
- Section 1404 grants limited waiver authority to the President with respect to assistance to North Korea. The waiver authority would allow the implementation of financial assistance to the extent that it assists disablement and disarmament, sales of non-lethal articles on the U.S. Munitions List that may be necessary for disablement or dismantlement, and controlled dual-use equipment that may be necessary to assist in disablement or disarmament activities.
- Section 1405 sets a ceiling on funding to Mexico of \$350 million and limits the funding to combat drug trafficking and related violent crime, judicial reform, and related activities. It also imposes human rights requirements on Mexico to receive the funding.
- Section 1406 requires at least \$100 million of amounts appropriated be made available for Central America, Haiti, and the Dominican Republic to combat drug trafficking with certain conditions and requirements.
- Section 1412 provides \$225 million for food security and assistance to Burma for Cyclone Nargis. \$225 million of this funding shall be offset with unexpended balances in the Millennium Challenge Corporation.
- Section 1413 allows the Secretary of State to waive provisions of 8 U.S.C. Sec. 1182, which makes aliens who have committed certain crimes or acts of terrorism (including membership in terrorist organizations) inadmissible to the U.S. and ineligible for visas, if such activities were undertaken in opposition to apartheid rule in South Africa.

- Section 1414 provides an additional \$300 million in aid to Jordan for border security, Iraqi refugees, and ongoing reforms.

Title II – Supplemental Appropriations for Domestic Matters

Food and Drug Administration: Provides \$275 million for the FDA for food protection, drug safety, science programs, and construction.

Bureau of the Census: Provides \$210 million for the Census for increased costs associated with the 2010 census. The Administration did not request these funds.

Federal Prison System: Provides \$178 million for the Bureau of Prisons for increased costs associated with the prison population. The Administration did not request these funds.

Office of Justice Assistance: Provides \$590 million for state and local law enforcement assistance. Of this \$490 million is for Byrne Justice Assistance Grants, and \$100 million is for local, domestic law enforcement along the Southern border and in High-Intensity Drug Trafficking Areas across the country to deal with narcotics trafficking stemming from the border. Of this amount, \$10 million will be directed to fully fund Project Gunrunner. The Administration did not request these funds.

NASA: Provides \$200 million for the NASA for the space shuttle program. The Administration did not request these funds.

National Science Foundation: Provides \$200 million for the NSF for research activities and STEM scholarship programs. The Administration did not request these funds.

Non-Defense Environmental Cleanup: Provides \$5 million for non-defense environmental cleanup. The Administration did not request these funds.

Uranium Enrichment Decontamination and Decommissioning Fund: Provides \$52 million for the Uranium Enrichment Decontamination and Decommissioning Fund. The Administration did not request these funds.

Science: Provides \$100 million for Science because the FY08 appropriation did not include an increase in Science funding. The Administration did not request these funds.

Environmental and Other Defense Activities: Provides \$243 million for Defense Environmental Cleanup. The Administration did not request these funds.

Employment and Training Administration: Provides \$110 million for state unemployment insurance and employment service operations to reimburse states for the costs of administering the unemployment insurance program. The Administration did not request these funds.

Centers for Disease Control and Prevention: Provides \$26 million for the CDC for the prevention of and response to medical errors. The Administration did not request these funds.

National Institutes of Health: Provides \$400 million for NIH. The Administration did not request these funds.

American Battle Monuments Commission: Provides \$10 million for the ABMC for increased costs of foreign burial grounds. The Administration did not request these funds.

General Provisions:

- Section 2201 provides up to \$10 million for the converter box program from funds made available for consumer education and technical assistance at the Department of Commerce relating to the transition to digital TV programming. The Administration did not request these funds.
- Section 2301 prohibits Department of Energy (DOE) funds from being used to terminate the cooperative agreement numbered DE-FC 26-06NT42073 relating to FutureGen.
- Section 2302 limits the amount of normally-produced nuclear reactor fuel the U.S. imports from Russia until the Russians have fully satisfied a 1993 agreement to deliver nuclear reactor fuel derived from 500 million metric tons of weapons-grade uranium in Russia's nuclear weapons arsenal.
- Section 2401 provides \$600,000 for salaries and expenses account of the Small Business Administration and \$200,000 to veteran's business resource centers that received grants from the National Veterans Business Development Corporation in fiscal years 2006 and 2007.
- Section 2501 recommends an amendment to the Secure Rural Schools and Community Self-Determination Act (PL 106-393) to provide an additional \$400 million for payments to states. The Administration did not request these funds.
- Section 2601 provides \$1 billion for LIHEAP funding. From amounts otherwise made available under FY 2008 but not appropriated, the language provides \$500 million in LIHEAP funds to be distributed under the statutory LIHEAP formula. An additional \$500 million is added as LIHEAP contingency funds. These funds are to be made available to states as if the total appropriated had been less than \$1.975 billion. The contingency funds and any other LIHEAP funds appropriated but not obligated must be released to states within 30 days.
- Section 2602 requires a study by the GAO on past and future minimum wage increases in American Samoa and the Commonwealth of the Northern Mariana Islands.
- Section 2801 provides that an aircraft in operation before April 1, 2008 may continue to be operated under 47528(e)(3) of Title 49, U.S.C. (relating to plane noise exemptions) by an air carrier that purchases or leases that aircraft after April 1, 2008 for the conduct of the same operation.
- Section 2802 extends the insurance policies or insurance reimbursement that the Secretary of Transportation may provide to air carriers to compensate for the increased cost of coverage after September 11. The provision will expire on December 31, 2008, and the amendment extends it to August 31, 2009. No cost estimate is available.

Title III – Supplemental Appropriations for Hurricanes Katrina and Rita, and other Natural Disasters

Farm Service Agency: Provides \$49.413 million for the Emergency Conservation Program. The Administration did not request these funds.

Natural Resources Conservation Service: Provides \$130.5 million for the Emergency Watershed Protection Program. The Administration did not request these funds.

Economic Development Administration: Provides \$75 million for the EDAP for the relocation of the public facilities of the Port of New Orleans. The Administration did not request these funds.

National Oceanic and Atmospheric Administration: Provides \$75 million for NOAA for fishery assistance. The Administration did not request these funds.

Office of Justice Programs: Provides \$75 million for Byrne Discretionary Grants for state and local law enforcement. The Administration did not request these funds.

U.S. Marshals Service: Provides \$50 million to implement and enforce the Adam Walsh Child Protection and Safety Act. The Administration did not request these funds.

Army Corps of Engineers: Provides \$8.759 billion for the Army’s Corps of Engineers.

Corps Funding (in millions)	Senate
Construction	\$5,033
Miss. River and Tributaries	17.7
Operation and Maintenance	338.8
Flood Control	3,368
General Expenses	1.5
Total	\$8,759

Bureau of Land Management: Provides \$125 million for wildland fire management activities. The Administration did not request these funds.

National Park Service: Provides \$15 million for the Historic Preservation Fund for expenses related to Hurricane Katrina. The Administration did not request these funds.

Environmental Protection Agency: Provides \$5 million for state and local tribal assistance grants for the community of Holly Beach, LA. The Administration did not request these funds.

Forest Service: Provides \$325 million for wildland fire management to fund wildland fire suppression. The Administration did not request these funds.

Centers for Medicare and Medicaid Services: Provides \$350 million for grants to hospitals in the gulf coast region to stabilize the workforce for patient care. The Administration did not request these funds.

Military Construction: Provides \$11.5 million for Military Construction for the National Guard to reconstruct a Battalion Supply building at Camp Shelby, MS, which was destroyed by a tornado in 2008. The Administration did not request these funds.

Federal Highway Administration: Provides \$451.1 million for the Federal-Aid Highways Emergency Relief Program for roads and bridges that were damaged in disaster areas from 2005 to the present. The Administration did not request these funds.

Permanent Supportive Housing: Provides \$76 million for permanent supportive housing in Louisiana. The Administration did not request these funds.

Project-Based Rental Assistance: Provides \$20 million for vouchers for project-based rental assistance in Mississippi for low-income hurricane victims. The Administration did not request these funds.

Community Planning and Development: Provides \$50 million for Community Development Block Grant funds for Alabama to cover uncompensated housing damage as a result of Hurricane Katrina. The Administration did not request these funds.

General Provisions:

- Section 3101 provides \$1 million of funds previously provided to the Rural Electrification and Telecommunications Program Account to address electric loan modifications. A corresponding \$1 million of available funds are rescinded.
- Section 3201 recommends that no funds be used to establish a national monument in the Gulf of Mexico Exclusive Economic Zone, and requires a study of any proposed protected areas.
- Section 3401 requires FEMA to provide a single payment for any eligible costs under the Stafford Act for any police station, fire station, or criminal justice facility damaged in Hurricanes Katrina or Rita.
- Section 3402 prohibits FEMA from adjusting the premium rates for flood insurance for all areas located in the St. Louis District of the Mississippi Valley Division of the Corps of Engineers until flood insurance rates maps are updated.
- Section 3601 provides that 49 CFR part 24 shall not apply to the acquisition of certain lands by the National Park Service off the coast of Mississippi (Section 132 of P.L. 110-161).
- Section 3701 allows funds available in the Department of Defense Family Housing Improvement Fund to be used for a family housing privatization project in Gulfport, Mississippi.

Title IV – Veterans Educational Assistance

This title creates a new education benefit for veterans which, according to CBO estimates, would result in new mandatory spending of nearly \$52 billion over 11 years (2008-2018). There is no offset for it in this bill.

Educational Assistance for Service Members Who Serve After September 11, 2001: Creates a new benefit that would cover 36 months of aid (i.e., 8 semesters in a four-year college or university), the amount of which depends upon time spent in service. The full benefit consists of:

- Full tuition for the school of the veteran's choice, capped at the amount of in-state tuition and fees charged by the most expensive public college in the same state as the school where the veteran is enrolled, payable at the start of each semester;
- A monthly housing stipend equal to the basic allowance for housing for an E-5 with dependents in the same zip code as the school; and
- \$1,000 per year for books, supplies, equipment.

These full benefits would vest after 36 months of active duty (including time spent in basic training) or medical discharge. The benefits would be reduced for enlistments of shorter duration:

- 30 months active duty (including basic training): 90 percent of full benefit;
- 24 months active duty (including basic training): 80 percent of full benefit;
- 18 months active duty (excluding basic training): 70 percent of full benefit;
- 12 months active duty (excluding basic training): 60 percent of full benefit;
- 6 months active duty (excluding basic training): 50 percent of full benefit; and
- 90 days active duty (excluding basic training): 40 percent of full benefit.

Other Provisions:

- Where the veteran's tuition exceeds that of the most expensive public university in his or her state, the school in which he or she is enrolled may enter into an agreement with the Veterans Administration to pay for part of the difference; the VA must provide matching funds.
- Benefits under existing Montgomery GI Bill are also increased.
- There is no provision for transferability.
- The title goes into effect August 1, 2009.
- Additionally, provides additional relocation assistance of \$500 to veterans in highly rural areas who physically relocates a distance of at least 500 miles to pursue a program of education.

Title V – Emergency Unemployment Compensation

Section 5000 creates new emergency unemployment compensation (UC) benefits for individuals who have exhausted all rights to regular unemployment benefits and established eligibility (their benefit year) after May 1, 2006. The weekly amount of benefits will be the equivalent of an individual's weekly regular unemployment compensation (UC) benefit (including dependents' allowances). Governors can provide for the new emergency UC benefits (with 100 percent federal funding) prior to providing UC benefits under the existing Extended Benefits (with 50 percent federal funding and 50 percent state funding) program.

Under Section 5002, the new emergency unemployment compensation benefits program will provide up to 13 weeks of unemployment benefits, in addition to the up to 26 weeks provided in the regular federal-state unemployment compensation program. Additionally, if certain high-unemployment situations exist within the state, an additional round of up to 13 weeks of UC benefits shall be made available – resulting in a total of up to 26 weeks of additional UC benefits, on top of a state's up to 26 weeks of regular UC benefits. A state qualifies for this additional funding if:

- The state is in an Extended Benefits (EB) period under existing law. The EB program is currently active only in Alaska. The EB program, like the UC program, is permanently authorized; -OR-
- The state's Insured Unemployment Rate (IUR; defined as the number of weeks of benefits claimed/covered employment) reaches 4 percent in a week (down from the existing requirement of 5 percent), and for the preceding 12 weeks. The supplemental drops the requirement in existing law that to trigger an Extended Benefits period a state's IUR must also be 120 percent of the average of the rates for the same 13-week period in each of the prior 2 years); -OR-
- The state's average rate of total unemployment for the period consisting of the most recent 3 month period equals or exceeds 6 percent. This is lowered from the existing law requirement that the rate of total unemployment must meet or exceed 6.5 percent. The supplemental also drops the requirement that the 3-month period specified above must equal or exceed 110 percent of such average rate in the same 3-month period in the preceding 2 years.

The supplemental provides that eligibility for emergency unemployment compensation benefits can be established up until March 31, 2009. Benefits can continue to be paid to a qualified individual until June 30, 2009.

Title VI – Medicaid and Medicare Provisions

Section 6001(a) - Medicaid Regulation Moratoria:

Concerns over improper state allocation of costs to Medicaid led HHS to generate a number of new rules which are now the target of legislation imposing a moratorium. The seven rules at issue, all promulgated over the last 14 months, will restrict the use of intergovernmental transfers, limit Medicaid payments to governmental providers, clarify and narrow payment policies for certain provisions in the targeted case management final regulation, prohibit federal Medicaid payments for certain school-based administration and transportation services, narrow the definition of rehabilitative services, prohibit federal Medicaid payment for graduate medical education, clarify the definition of outpatient clinic and hospital services, and prohibit elements of regulation related to permissible taxes on healthcare providers. The legislation would impose a moratorium on these rules until April 1, 2009.

However, the language in the moratorium is written extremely broadly to prohibit HHS from taking “any action,” including using federal audit procedures or other administrative action to impose any restriction “relating to” the interim final regulations. That could have the impact of preventing HHS from taking any action to address improper state activities in an area addressed by one of the rules at issue, even if the agency currently has sufficient authority to take that action.

CBO estimates that delaying the rules until April 1, 2009 would cost \$1.65 billion. However, if the rules were withdrawn or permanently delayed, CBO estimates a 5-year year cost of \$17.8 billion and a 10-year cost of \$42.2 billion.

The supplemental will offset the cost of the moratorium by imposing new restrictions on specialty hospitals and expanding a Medicaid asset verification pilot program. CBO estimates the physician-owned specialty hospitals provision will save \$570 million over 5 years and \$2.4 billion over 10 years. (NOTE: This score is from before the mark-up. The savings will likely be reduced to account for amendments adopted during the mark-up.) The provision requiring electronic verification of assets for Medicaid is estimated to save \$1 billion over 5 years and \$4.5 billion over 10 years.

The moratorium passed the House by a vote of 349-62 (H.R. 5613, Vote #209, April 23, 2008).

The Statement of Administration Policy on H.R. 5613 indicated that the President would veto the legislation. The Administration has indicated that it would stay its rules on intergovernmental transfers and graduate medical education funding while negotiating changes to these rules with lawmakers.¹ Those rules represent \$885 million of the \$1.65 billion at issue.

¹ *Congress Daily*, “Leavitt Suggests Interim Deal On Medicaid Rules Possible,” April 29, 2008.

Medicaid Rule Summaries:

Intergovernmental Transfers (IGT):² The rule limits providers operated by units of government to reimbursement that does not exceed the cost of providing covered services to an eligible Medicaid recipient.

Cost: \$770 million for the moratorium. For a permanent repeal, \$9.0 billion over five years and \$22.0 billion over 10 years.

Graduate Medical Education: (GME)³ This proposed rule would clarify that costs and payments associated with Graduate Medical Education programs are not expenditures for medical assistance that are federally reimbursable under the Medicaid program.

Cost: \$115 million for the moratorium. For permanent repeal, \$800 million over 5 years, and \$1.9 billion over 10 years.

School-Based Administrative and Transportation Services:⁴ The rule would bar federal reimbursement for the cost of certain school-based administrative and transportation activities.

Cost: \$500 million for the moratorium. For permanent repeal, \$4.1 billion over five years, and \$10.1 billion over 10 years.

Provider Taxes:⁵ The rule would reduce the permissible level of provider taxes by amending the hold harmless provisions, redefining permissible classes of services, and reducing allowable tax from 6 to 5.5 percent of net patient revenue.

Cost: No savings for the moratorium. For permanent repeal, \$640 million over five years, and an additional \$640 million over ten years.

Targeted Case Management:⁶ Clarifies the situations in which Medicaid will pay for case management activities. The regulation revises current Medicaid regulations to incorporate changes made by section 6052 of the Deficit Reduction Act of 2005.

Coverage for Rehabilitative Services:⁷ Defines allowable services that may be claimed as rehabilitation services.

² Cost Limit for Providers Operated by Units of Government and Provisions To Ensure the Integrity of Federal-State Financial Partnership. 72 Fed. Reg. 29,748 (May 29, 2007). (CMS-2258-FC) Current moratorium expires May 25, 2008.

³ Graduate Medical Education: 72 Fed. Reg. 28,930 (May 23, 2007). (CMS-2279-P) Current moratorium expires May 25, 2008.

⁴ Elimination of Reimbursement Under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School: 72 Fed. Reg. 73,635 (December 28, 2007). (CMS-2287-F) Current moratorium expires May 25, 2008.

⁵ Health Care-Related Taxes: 73 Fed. Reg. 9,685 (February 22, 2008). (CMS-2275-F) Final Rule.

⁶ Optional State Plan Case Management Services: 72 Fed. Reg. 68,077 (Dec. 4, 2007). (CMS 2237-IFC) Interim Final Rule with comment period.

⁷ 72 Fed. Reg. 45,201 (August 13, 2007). (CMS-2261-P) Current moratorium expires June 30, 2008.

Cost: \$125 million for the moratorium. For permanent repeal, \$1.4 billion over five years, and \$3.5 billion over ten years.

Outpatient Hospital Services:⁸ The rule revises the Medicaid definition of hospital outpatient service to match Medicare’s narrower definition.

Cost: \$85 million for the moratorium. For permanent repeal, \$340 million over five years, and \$670 million over ten years.

Section 6001(b) - Access to Nominal Drug Pricing for Certain Clinics and Health Centers:

The provision adds to the list of entities to which drugs can be sold at a nominal price: 1) an entity that is a non-profit under section 501(c)(3) of the tax code or is state-owned or operated; 2) a “covered entity” under Section 340(B)(a)(4) of the Public Health Service Act that does not receive funding as required by that section; 3) an entity at an institution of higher learning whose primary purpose is to provide health care services to students of the institution, or a public or non-profit entity that assists in family planning activities under sec. 1001(a) of the Public Health Service Act (42 USC Sec. 300). This would therefore allow more Planned Parenthood and university health center facilities to receive drugs at a discounted price. The provision would be implemented as if included in the Deficit Reduction Act of 2005 (DRA).

The Medicaid Drug Rebate Program requires drug companies to pay states rebates for all drugs dispensed to Medicaid beneficiaries. The rebate is calculated in part based on “best price.” Best price is defined as the lowest price at which the drug was sold to a private purchaser in the U.S. for retail trade. In order to encourage drug companies to offer discounts to charitable organizations, Congress included the nominal price exception (NPE) in the Medicaid law. The NPE allows manufacturers to exclude from their best price calculations sales that were merely nominal.

The DRA included a provision to limit the use of Medicaid’s NPE for charity care because of perceived abuses by drug companies. The provision, which was intended to provide drug manufacturers with clarity on who should receive nominally priced drugs, specifies four major categories of providers that are eligible for nominally priced drugs:

1. A covered entity described in section 340(B)(a)(4) of the Public Health Service Act (including Title X health clinics);
2. An intermediate care facility for the mentally retarded;
3. A state-owned or operated nursing facility; and
4. Any other facility or entity that the Secretary determines is a safety-net provider to which sales of such drugs at a nominal price would be appropriate based on certain factors.

Under the rule, many university health centers and certain Planned Parenthood facilities were no longer able to get access to family planning drugs at the nominal price.

⁸ Clarification of Outpatient Clinic and Hospital Facility Services Definition and Upper Payment Limit: 72 Fed. Reg. 55,158 (September 28, 2007). (CMS-2213-P) Proposed rule.

Section 6001(c) - Medicaid Asset Verification:

The legislation would require electronic verification of assets for purposes of determining Medicaid eligibility. It would require all states to incorporate into their Medicaid programs a demonstration program from the Supplemental Security Income (SSI) program. The program uses Web-based techniques to identify assets that might otherwise not be discovered through the eligibility-determination process and requires beneficiaries to allow access to their financial information. An applicant or recipient of medical assistance under the Medicaid program must authorize the state to obtain any financial record for that individual that is needed in connection with an eligibility determination. An authorization obtained by the state must meet privacy requirements set forth in the Right to Financial Privacy Act of 1978. Federal matching payments could be withheld for states that do not implement a verification program. States would be required to screen an increasing amount of enrollees each year and reach 100 percent compliance by 2013.

Section 6002 - Limitation on Medicare Exception to the Prohibition on Physician-Owned Hospitals:

Under the physician self-referral law, physicians are prohibited from referring patients to providers of health care services in which they have a financial interest. There are exceptions to this prohibition, however, for referrals to hospitals that serve predominantly rural populations or to a hospital in which the physician's financial interest is in the whole hospital (in contrast to an interest in some discrete component of the hospital). The legislation would eliminate these two exceptions and create a new exception for existing physician-owned hospitals. Physician-owned hospitals would be grandfathered under the new exception if they have a provider agreement on September 1, 2008 and meet certain other requirements. An existing facility could only be expanded (up to a maximum of 100 percent above the baseline number of existing number of beds, procedure rooms, or operating rooms) if the hospital meets certain requirements, including being located in an area which shows rapid growth and sufficient demand and the community has an opportunity to comment.

The legislation imposes a number of requirements on existing facilities to prevent conflicts of interest. Noteworthy requirements include: 1) the hospital must submit to HHS a report containing the identity of the owners, including physician owners, and the extent of the ownership share; 2) physician owners must disclose their ownership interest to patients; 3) the physician ownership is disclosed on the faculty's website and advertising; 4) physicians cannot own more than 40 percent of the total value of the aggregate investment in the hospital or more than the value determined at the date of enactment of the legislation; 5) the hospital distributes investment returns in an amount directly proportional to the investment interest; and 6) physician owners are not given preferential financing or investment terms compared to non-physician owners when acquiring an ownership interest in the facility, and ownership is not contingent on referrals to the facility.

The legislation would also impose new "patient safety" requirements. If the hospital does not have a physician available on the premises at all hours, the hospital must disclose that fact to the patient and get a signed acknowledgment from the patient. The hospital also must have the

capacity to provide assessment and treatment for patients and to transfer patients to alternative hospitals.

CBO estimates the physician-owned hospitals provision will save \$570 million over 5 years and \$2.4 billion over 10 years. (NOTE: This score is from before the mark-up. The savings will likely be reduced to account for amendments adopted during the mark-up.) CBO previously said that the cost savings result from a shift from specialty hospitals to ambulatory surgical centers that bill Medicare at a lower rate, not a reduction in overall medical procedures. CBO wrote that it “expects that a substantial volume of services would migrate to ambulatory surgical centers (ASCs)—particularly to new ASCs—if physician owned specialty hospitals were not available. Because Medicare’s payment rates for services furnished in an ASC are lower than those for services provided in a hospital, that shift would result in savings to the government, even though the volume of services provided might not change.”⁹ CBO said that it was “not aware” of data showing that physician-owned specialty hospitals are billing Medicare for substantially more services than community hospitals. However, other studies have suggested that physician-owned specialty hospitals do increase utilization for certain procedures.¹⁰

Section 6003 - Medicare Improvement Fund:

A new Medicare Improvement Fund is created to “make improvements” in Medicare Part A and B. \$3.34 billion is allocated to the fund during FY 2014.

Section 6004 - Repeal of August 17th Directive on Eligibility of Upper Income Families for SCHIP:

The Appropriations Committee passed in mark-up an amendment that would impose a moratorium on the August 17, 2007 letter¹¹ issued by CMS related to SCHIP “crowd-out.” The moratorium would apply until April 1, 2009 and is paid for by taking funds from the Physician Assistance and Quality Improvement (PAQI) fund. The letter explains the steps that states must take to ensure that their SCHIP programs cover low-income children before expanding to higher income levels. The letter only applies to those states who wish to expand their SCHIP programs above 250 percent of the federal poverty level (FPL). Fewer than 20 states offer coverage above this income threshold. To prevent “crowd-out” of private coverage for public coverage, states must meet certain requirements, including: 1) states must provide assurance they have enrolled at least 95 percent of children eligible for SCHIP or Medicaid in families with income below 200 percent FPL; 2) states must show that private coverage of the SCHIP-eligible population has not declined by more than 2 percent over the prior 5 year period; and 3) states must impose a one-year waiting period before a family can switch from private coverage to SCHIP.

⁹ Congressional Budget Office, Letter to Senator Jon Kyl, December 19, 2007. Available at: <http://www.cbo.gov/ftpdocs/89xx/doc8901/KylLtrSec651ofHR3162.pdf>.

¹⁰ See, e.g., Jean M. Mitchell, *Medical Care Research and Review*, “Utilization Changes Following Market Entry by Physician-owned Specialty Hospitals,” Vol. 64, No. 4, 395-415 (2007).

¹¹ Centers for Medicare and Medicaid Services, Letter to State Health Officials, August 17, 2007. <http://www.cms.hhs.gov/smdl/downloads/SO081707.pdf>

CBO director Peter Orszag recently testified that the provisions in the letter would have a “modest” impact on SCHIP enrollment given the way CMS is implementing the letter and the funding level assumed in CBO’s baseline.¹² The provision that would have the most impact would be the one-year waiting requirement before a family who had private coverage could enroll in SCHIP. CBO estimate the impact of this provision would be a reduction of only 0.1 percent of enrollment.

Furthermore, on May 7, CMS issued another letter clarifying many of the requirements of the August 17 letter.¹³ The letter stated that the additional requirements apply only to new enrollees. Therefore, all children currently enrolled in a state’s program who have family income above 250 percent FPL would be grandfathered into coverage as long as they remain continuously enrolled in the program. Additionally, CMS said that it would accept “different approaches” to show that a state had covered 95 percent of low-income families, including state-specific survey data. Finally, CMS would consider alternative proposals to the one-year waiting requirement if the states can provide justification.

Title VII – Accountability and Competition in Government Contracting

Close the Contractor Fraud Loophole: Chapter 1 contains language identical to H.R. 5712, the Close the Contractor Fraud Loophole Act, passed by the House on April 23, 2008. It ensures that mandatory fraud reporting requirements would apply to U.S. contractors working overseas as well as to contractors working in the U.S.

Government Funding Transparency: Chapter 2 contains language identical to H.R. 3928, the Government Funding Transparency Act of 2007, passed by the House on April 23, 2008. It requires a company or organization receiving more than \$25 million and 80 percent or more of their revenue from federal payments to disclose the salaries of their most highly compensated officers.

Title VIII – Emergency Agriculture Relief

H-2A Visas (Ag Workers): Streamlines work visas for undocumented agriculture workers by creating an “Emergency Agricultural Worker” status that lasts five years (Sec. 1(a)). The program is limited to 1.35 million Emergency Agricultural Workers (EAWs), but spouses and children (certain estimates are up to 1.62 million family members) may also receive legal status without limit (Sec. 101(h)).

¹² Statement of Peter Orszag, Director of the Congressional Budget Office, before the Subcommittee on Health Committee on Energy and Commerce, U.S. House of Representatives, “Covering Uninsured Children in the State Children’s Health Insurance Program,” May 15, 2008. Available at: http://www.cbo.gov/ftpdocs/92xx/doc9234/05-15-SCHIP_Testimony.pdf

¹³ Centers for Medicare and Medicaid Services, Letter to State Health Officials, May 7, 2008. Available at: <http://www.ncsl.org/print/health/CMSUpdateSCHIPLetter.pdf>.

In order to qualify as an EAW, an applicant must meet the following requirements:

- During the 48-month period ending December 31, 2007, EAW applicants must have worked either (1) 863 work hours or 150 work days (for purposes of this section a work day is 5.75 hours of work); the work requirement equates to an average of 215 work hours or an average of 37.5 workdays per year over the 4 year period; or (2) the worker shall have earned at least \$7,000 from agricultural employment (Sec. 1(a));
- Workers must perform 100 work days per year of agricultural employment to maintain EAW status (Sec. 1(e), and waivers for hardship are incorporated); and
- EAWs must pay federal taxes during the time of their EAW legal status (Sec. 102(c)) but there is no requirement that the immigrant pay back taxes for previously performed work during the time the immigrant was unauthorized.

The amendment expressly provides that illegal aliens who have committed social security crimes before receiving their EAW status shall not be subject to prosecution (Sec. 109(a)), including if the immigrant committed the felony of identity theft by using the social security number of another person or by buying or selling social security cards, creating fraudulent social security cards, and possessing social security cards or counterfeit social security cards with intent to sell or alter.

Title IX – Telework Enhancement Act of 2008

Telework Enhancement Act of 2008: The supplemental would require (not later than 180 days after enactment) the head of each executive agency to establish a policy under which eligible federal employees may be authorized to telework, determine the eligibility for all employees of the agency to participate in telework, and notify all employees of their eligibility.

Title X – General Provisions

- Section 8001 recommends a provision that limits the availability of the funds in this title to the current fiscal year, unless expressly provided otherwise.
- Section 8002 recommends a provision designating the funds in this Act as emergencies.
- Section 8003 prohibits the use of funds for government contracts to contractors which avoid payroll tax liability through the use of employees of offshore subsidiaries.
- Section 8004 extends the current EB-5 pilot program from 15 years to 20 years. Congress created an EB-5 pilot program in 1993. Congress permitted the U.S. immigration agency to designate qualified applicants as Regional Centers. A Regional Center is a private enterprise or corporation or a regional governmental agency with a targeted investment program within a defined geographic region. The Regional Center Investment Program allocates 3,000 green cards each year for people who invest in designated Regional Centers. The program is currently due to expire September 30, 2008.

- Section 10006 recaptures approximately 218,000 unused visas. The amendment purports to provide relief for the nation’s nursing shortage by providing, among other things, for an expedited review of nursing applications. The amendment provides for nurse training and retention demonstration grants to encourage individuals to enter into the nursing industry. Eligibility for this program requires that a healthcare entity be comprised of both a healthcare employer and a labor union, operating a joint training program.
- Section 10007 exempts H2-B visa recipients in 2004, 2005, and 2006 from the cap on H2-B workers for a three-year period beginning on October 1, 2007.

Title XI – Supplemental Appropriations for Defense Matters

Title XI, Chapter 1 provides \$99.5 billion for emergency appropriations for the military for FY08. This is \$600 million less than the Administration’s request.

Military Personnel: Provides \$18.065 billion for the Department’s Military Personnel.

Military Personnel (in billions)	Senate
Army	\$ 12.217
Navy	0.894
Marine Corps	1.827
Air Force	1.356
Reserves, Army	0.304
Reserves, Navy	0.073
Reserves, Marine Corps	0.017
Reserves, Air Force	0.005
National Guard, Army	1.370
National Guard, Air Force	0.004
Total	\$18.065

Operation and Maintenance: Provides \$34.425 billion for Operation and Maintenance accounts in support of Operation Iraqi Freedom and Operation Enduring Freedom. This spending provides funds for the incremental cost of ground operations, flying hours, logistics support, fuel, travel, and transportation.

Operation and Maintenance (in billions)	Senate
Army	\$17.224
Navy	2.978
Marine Corps	0.160
Air Force	5.973
Defense-wide	3.658
Army Reserve	0.165

Navy Reserve	0.110
Marine Corps Reserve	0.070
Air Force Reserve	0.166
Army National Guard	0.686
Air National Guard	0.287
Iraq Freedom Fund	0.050
Afghanistan Security Forces Fund	1.400
Iraq Security Forces Fund	1.500
Total	\$34.425

Procurement: Provides \$42.006 billion for procurement in various procurement accounts. This spending provides funds for force protection equipment, the restoration of equipment lost in operations, the recapitalization of equipment used in operations, and the equipping of units supporting upcoming rotations.

Procurement (in billions)	Senate
Army Aircraft	\$0.954
Army Missile	0.561
Army Weapons and Tracked Combat Vehicles	5.463
Army Ammunition	0.345
Army Other	16.337
Navy Aircraft	3.563
Navy Weapons	0.317
Navy and Marine Corps Ammunition	0.304
Navy Other	1.399
Marine Corps Procurement	2.197
Air Force Aircraft	7.104
Air Force Missile	0.067
Air Force Ammunition	0.205
Air Force Other	1.953
Defense-wide	0.408
National Guard and Reserve Equipment	0.825
Total	\$42.006

Research and Development: Provides \$1.745 billion for the Department's Research, Development, Test and Evaluation.

Research and Development (in billions)	Senate

Army	\$ 0.163
Navy	0.366
Air Force	0.399
Defense-Wide	0.817
Total	\$1.745

Revolving and Management Funds: Provides \$1.843 billion for the Department’s Working Capital and Sealift Funds.

Revolving and Management Funds (in billions)	Senate
Working Capital Fund	\$ 1.837
Sealift Fund	0.005
Total	\$1.843

Other Department of Defense Programs: Provides \$1.561 billion for a range of Department programs. This funding includes: \$1.413 billion for Defense Health programs, \$75 million for traumatic brain injury, and \$65 million for drug interdiction and counter-drug activities.

General Provisions:

- Section 11101 limits appropriations in this chapter to FY08.
- Section 11102 provides that these funds are in addition to any appropriations already made for FY08.
- Section 11103 provides that up to \$2.5 billion in funding may be transferred between accounts.
- Section 11104 provides that of the funds made available for Operations and Maintenance, up to \$1.227 billion may be used for the Commanders’ Emergency Response Program to enable military commanders in Iraq and other nations to respond to humanitarian and reconstruction requirements. It also requires the Department to establish minimum guidelines for commanders to follow in monitoring project status and a detailed report on the training provided to troops authorized to manage CERP funds.
- Section 11105 provides for the transfer of up to \$6.5 million from the Defense Cooperation Account to appropriations or other funds as identified by the Secretary of Defense.
- Section 11106 provides that up to \$20 million appropriated for Drug Interdiction and Counter-Drug Activities can be used for the support of activities of the Governments of Afghanistan, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, and Turkmenistan.
- Section 11107 provides for the purchase of up to 20 heavy and light armored vehicles for force protection purposes. Additionally, up to 21 vehicles required for physical security of personnel may be purchased from previously-appropriated funds.
- Section 11108 provides for the transfer of funds from the Mine Resistant Ambush Protected Vehicle Fund.
- Section 11109 provides up to \$150 million to support the development of foreign national counterterrorism capabilities.

Title XI, Chapter 2 provides \$65.96 billion for emergency appropriations for the military for FY09. This is \$39.8 million less than the Administration requested.

Military Personnel: Provides \$1.194 billion for the Department’s Military Personnel.

Military Personnel (in billions)	Senate
Army	\$ 0.839
Navy	0.075
Marine Corps	0.055
Air Force	0.075
National Guard, Army	0.150
Total	\$1.194

Operation and Maintenance: Provides \$54.916 billion for Operation and Maintenance accounts in support of Operation Iraqi Freedom and Operation Enduring Freedom. This spending provides funds for the incremental cost of ground operations, flying hours, logistics support, fuel, travel, and transportation.

Operations and Maintenance (in billions)	Senate
Army	\$37.3
Navy	3.5
Marine Corps	2.9
Air Force	5.0
Defense-wide	2.649
Army Reserve	0.079
Navy Reserve	0.042
Marine Corps Reserve	0.047
Air Force Reserve	0.012
Army National Guard	0.334
Air National Guard	0.053
Afghanistan Security Forces Fund	2.0
Iraq Security Forces Fund	1.0
Total	\$54.916

With respect to the Iraq Security Forces Fund, none of the funding provided may be utilized for salaries or wages for personnel of the Iraqi Security Forces.

With respect to the Iraq Security Forces Fund and the Afghanistan Security Forces Fund, report language requires the Department to submit prior approval reprogramming requests to congressional defense committees for transfers in excess of \$20 million to Infrastructure subactivity groups, or other construction-related projects.

Procurement: Provides \$4.435 billion for procurement in various procurement accounts. This spending provides funds for force protection equipment, the restoration of equipment lost in operations, the recapitalization of equipment used in operations, and the equipping of units supporting upcoming rotations.

Procurement (in billions)	Senate
Army Aircraft	\$0.084
Army Weapons and Tracked Combat Vehicles	0.823
Army Ammunition	0.047
Army Other	1.009
Navy Other	0.028
Marine Corps Procurement	0.565
Air Force Aircraft	0.202
Air Force Other	1.501
Defense-wide	0.177
Total	\$4.435

Research and Development: Provides \$387.8 million for the Department’s Research, Development, Test and Evaluation.

Research and Development (in billions)	Senate
Navy	0.133
Air Force	0.072
Defense-Wide	0.203
Total	\$0.388

Other Department of Defense Programs: Provides \$3.288 billion for a range of Department programs. This funding includes: \$1.1 billion for Defense Health programs, \$188 million for drug interdiction and counter-drug activities, and \$2 billion for the Joint Improvised Explosive Device Defeat Fund.

General Provisions:

- Section 11201 establishes that funds under this chapter are not available until FY09.
- Section 11202 provides that these funds are available for FY09 only, unless otherwise provided.
- Section 11203 provides that up to \$4 billion in funding may be transferred between accounts.
- Section 11204 requires that beginning on December 5, 2008 and every 90 days thereafter, the Secretary of Defense must set forth in a report to Congress a comprehensive set of

performance indicators and measures for progress toward military and political stability in Iraq, including a notional timetable for achieving these goals.

- Section 11205 requires that the Director of OMB submit a report every 90 days detailing, among other assessments, individual transition readiness by unit of Iraq and Afghan security forces, the total cost of training and equipping the Iraq and Afghanistan security forces, and the proposed use of all funds in the Iraq Security Forces Fund and the Afghanistan Security Forces Fund on a project-by-project basis.
- Section 11206 provides that funds available to the Department for operation and maintenance may be used to provide supplies, services, and transportation to coalition forces in Iraq and Afghanistan.
- Section 11207 provides that supervision and administrative costs associated with a construction project funded through operation and maintenance funds may be obligated at the time a construction contract is awarded.
- Section 11208 appropriates \$1.7 billion for the Mine Resistant Ambush Protected Vehicle Fund.
- Section 11209 defines the Congressional Defense Committees.

Title XI, Chapter 3, General Provisions:

Reconstruction Report Language on Cost Sharing: The Committee report requires implementation of a new cost sharing arrangement not later than October 1, 2008. The Secretary of Defense is directed to immediately begin to develop the processes and procedures necessary to institute an equal sharing of cost between the United States and Iraq for all reconstruction projects funded in this title of greater than \$750,000.

- Section 11301 designates each amount in Title XI as an emergency requirement.
- Section 11302 provides for the obligation and expenditure of funds related to activities pursuant to the National Security Act of 1947.
- Section 11303 prohibits the use of funds to contravene laws or regulations promulgated to implement the UN Convention Against Torture.
- Section 11304 requires a report on the U.S. global strategy to combat and defeat al Qaeda and its affiliates, including an analysis of the global threat posed by al Qaeda and recommendations regarding the deployment of U.S. military personnel and equipment to best meet the threat.
- Section 11305 provides that none of the funds appropriated may be obligated to finance programs or activities denied by Congress in FY07 or FY08 for the Department of Defense or to initiate a new start without prior approval.
- Section 11306 increases the amount authorized for the U.S. contribution to NATO from \$362.159 million to \$435.259 million.
- Section 11307 prohibits award fees to any defense contractor in contravention of provisions set out in section 814 of the National Defense Authorization.
- Section 11308 rescinds \$75 million from Defense Health Programs, and \$71.5 million from funds made available for the Joint Improvised Explosive Device Defeat Fund in the Consolidated Appropriations Act, 2008.

- Section 11309 provides that of the funding provided in the Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act of 2007, \$150 million is only for the Joint Rapid Acquisition Cell program and \$10 million is only for the transportation of fallen service members.
- Section 11310 restricts funds available to the Department of Defense on joint basing initiatives until each affected secretary of a military department certifies that joint basing will result in significant cost savings and will not negatively impact the morale of members of the Armed Forces.
- Section 11311 allows Combatant Commanders to use funds available in this title for operation and maintenance to purchase an investment item of not more than \$500,000 to meet operational requirements.

Title XII – Policy Regarding Operations in Iraq

General Provisions:

- Section 12001 requires individual units to be certified “fully mission capable,” according to standards in current directives, 15 days before they can deploy to Iraq.
- Section 12002 limits the maximum amount of time that troops can be deployed to Iraq to a maximum of 365 days (for the Army) or 210 days (for Marines), although the limitation can be ignored if troop levels as a result would fall below the total as of January 9, 2007.
- Section 12003 requires “dwell time” at home of 365 days (for the Army) or 210 days (for Marines) between deployments to Iraq, although the limitation can also be ignored if troop levels as a result would fall below the total as of January 9, 2007.
- Section 12004 prohibits permanent U.S. bases in Iraq and bars the U.S. from exerting control over Iraqi oil resources.
- Section 12005 expresses the sense of Congress that the mission of U.S. forces in Iraq should be transitioned by June 2009 to counterterrorism operations; training, equipping, and supporting Iraqi forces; and force protection.
- Section 12006 restricts future agreements between the U.S. and Iraqi governments. Any agreement “containing a security commitment, arrangement, or assurance” would require either ratification as a treaty or normal legislation.
- Section 12007 prohibits agreements that would put U.S. soldiers under the jurisdiction of Iraqi courts.
- Section 12008 requires a report on the Iraqi budget and its budget execution.
- Section 12009 requires the Iraqi government to subsidize fuel costs for the U.S. military, so that U.S. troops are paying the same price at the pump as Iraqi civilians.
- Section 12010 expands penalties for contracting fraud and other fraud, adds extraterritorial jurisdiction, extends the statute of limitations, and makes it possible to base RICO prosecutions on these crimes.
- Section 12012 prohibits DoD from expending any funds for large-scale reconstruction projects (designed as those exceeding \$2 million in cost) except through the Commanders' Emergency Response Fund (CERP). Additionally, it:

1. Requires that the Secretary of Defense “work with” the government of Iraq to “provide that” the Iraqis will expend funds for other reconstruction projects before DoD can spend money on them from its own budget, except through the CERP.
2. Requires the Secretary of Defense to begin negotiating an agreement with the Iraqis to “share” the costs of combined operations; and
3. As to Iraqi Security Forces, requires the Iraqis to pay for salaries, training, equipping, and sustainment, as well as the costs associated with the Sons of Iraq.

NOTE: Most reconstruction funding is in the State Department budget; most of the Defense Department budget goes to train and equip Iraqi Security Forces; CERP funds are the only funds in the DoD’s budget that are used for typical reconstruction projects.

Title XIII – Military Extraterritorial Jurisdiction Matters

The Title contains the Military Extraterritorial Jurisdiction Expansion and Enforcement Act of 2008, which establishes federal jurisdiction over activities of security contractors overseas.

Additionally, \$3 million is appropriated to conduct a study on phased redeployment of military forces from Iraq over a 12 month period.

Administration Position

The White House issued a Statement of Administration Policy (SAP) on May 20, 2008 on the Senate amendments to H.R. 2642, the House version of the supplemental. The SAP included a veto threat, based on the idea that “an acceptable bill must provide our troops the resources they need, while not tying the hands of our commanders or imposing artificial timelines for withdrawal. The President also made clear that this bill must be fiscally responsible and not exceed the \$108.1 billion request for fiscal year (FY) 2008 that was delivered to Congress months ago. Because Congress has failed to address these criteria as described below, if this bill were presented to the President in its current form, he would veto it.”¹⁴

In addition to opposing the inclusion of domestic spending, the SAP states that the Administration strongly opposes the following provisions:

- “This legislation includes billions of dollars of unrequested domestic spending, all of it in excess of the President’s request of \$108.1 billion for FY 2008. The Administration has offered responsible solutions for domestic concerns that do not require additional government spending, and the Administration urges Congress to adopt that approach. The Administration believes there is a time and place for domestic funding to be debated

¹⁴ <http://www.whitehouse.gov/omb/legislative/sap/110-2/saphr2642-s.pdf>

and considered on its merits, but that is not in a bill focused on the emergency needs of our troops. Last week, the Administration issued a veto threat on the excessive spending added to this bill by the House of Representatives. The committee-reported bill moves even further in the wrong direction, adding another \$10 billion in unrelated spending to the President's request, and numerous authorizing provisions that have no place in a troop funding bill.”

- “The Administration supports enhancements to the Montgomery GI Bill and to that end transmitted a legislative proposal on April 25, 2008 to allow for the transferability of unused education benefits to spouses or dependent children of military personnel. Not only does this legislation lack such transferability, the Administration is also concerned that because of the high benefit for limited service included in this bill, it could harm retention rates within the armed forces. Any additional legislation should reward those who have agreed to serve while strengthening our all volunteer force as outlined by the Secretary of Defense in his letter to the Senate Armed Services Committee. The Administration is supportive of alternative legislation now pending in the Senate and looks forward to addressing these issues with Congress in the context of future legislative activity.”
- “The unemployment rate is 5.0 percent — a low rate by historical and economic standards. The current unemployment insurance program already provides significant assistance; including six months of benefits and extended benefits beyond six months if a state has a high and rising unemployment rate. Increasing and extending unemployment insurance benefits when unemployment is this low would be unprecedented and counterproductive because it would reduce the incentive for workers to find new employment.”
- “...The committee-reported bill would block the Centers for Medicare & Medicaid Services (CMS) from implementing important regulations protecting the fiscal integrity of the Medicaid program, would put billions of dollars of Federal funds at risk, and would turn back progress that has already been made to stop waste, fraud and abuse in Medicaid. It also includes a provision delaying the Administration's efforts to ensure that states prioritize the enrollment of low-income children under the States Children's Health Insurance Program and minimize taxpayer dollars replacing private sector health insurance coverage.”
- “The Administration strongly opposes the Emergency Agriculture Relief Act, which would grant illegal agricultural workers lawful status for up to five years, with the opportunity to seek lawful permanent residence during that period, as long as they have done some farm work somewhere in the world in the last two years.”

Cost

All costs are based on preliminary CBO scoring at the time of publication. The costs do not include scoring of several amendments adopted in committee.

<u>Title:</u>	<u>FY08</u>	<u>FY09</u> (amount in millions)
Title I- Military Construction	\$10,334,664	\$3,896,600
Title II- Domestic Matters	\$4,049,600	\$0
Title III- Hurricanes Katrina and Rita	\$2,156,006	\$8,240,745
Title XI- Defense Matters	\$99,505,877	\$65,921,157
Titles I-III and XI subtotal	\$116,046,147	\$78,058,502
Title IV- Veterans Education Assistance	\$40,000	\$677,000
Title V- Emergency Unemployment	\$6,170,000	\$9,440,000
Title VI- Medicaid and Medicare	\$530,000	\$1,225,000
All Titles- Total	\$122,786,147	\$89,399,502

Possible Amendments

No amendments were known at press time.