

The Commission on Wartime Contracting: Background Information and Chronology

On July 18, 2007, Senate Democratic freshmen introduced a bill to establish an independent, bipartisan Commission on Wartime Contracting to study U.S. wartime contracting in Iraq and Afghanistan. The Commission is intended to increase transparency and accountability significantly and generate important solutions for systematic contracting problems, with the potential to provide improved support to the military while saving taxpayers billions of dollars. The bill, introduced by Senators Jim Webb (D-VA) and Claire McCaskill (D-MO), was inspired by the work of the “Truman Committee” which conducted hundreds of hearings and investigations into government waste during and after World War II that resulted in an estimated savings of more than \$178 billion (in today’s dollars) to the American taxpayer.

Upon the bill’s introduction, Senator Webb stated that “hundreds of billions of dollars have been allocated for reconstruction and stabilization efforts in Iraq alone, creating a strong potential for waste, fraud and abuse. The Commission will be retroactive in terms of accountability and proactive in terms of providing recommendations on wartime contracting. It will also address the widespread use of government contractors instead of American combat troops.” Continuing, Senator Webb stated, “We are outsourcing this war in ways we’ve never seen. Defrauding the government of millions of taxpayer dollars should not be considered ‘the cost of doing business.’ It’s time for Congress to stand up on behalf of the American people and say: ‘We want our money back.’”

This bill was the first joint initiative of freshman senators, including Senators Webb, McCaskill, Amy Klobuchar (D-MN), Bernie Sanders (I-VT), Jon Tester (D-MT), Sherrod Brown (D-OH), Sheldon Whitehouse (D-RI), Ben Cardin (D-MD), and Bob Casey (PA). Majority Whip Senator Dick Durbin, Armed Services Committee Chairman Senator Carl Levin, and Senators Tom Carper, John Kerry, Diane Feinstein, Barbara Boxer, Barack Obama and Tim Johnson also served as co-sponsors of the original amendment, filed as no. 2206, to the National Defense Authorization Act (NDAA) for Fiscal Year 2008. Following a Senate floor debate September 27, 2007, the landmark bipartisan provision won broad bipartisan approval and was incorporated in the defense bill.

Congressmen John Tierney (D-MA) also introduced language similar to the Webb-McCaskill amendment in the House of Representatives in September as a stand-alone bill. The bipartisan, bicameral legislation was supported by key taxpayer watchdog groups including: the Project on Government Oversight, Taxpayers for Common Sense, the Government Accountability Project, OMB Watch, Common Cause, U.S. PIRG, and Iraq and Afghanistan Veterans of America.

The FY2008 NDAA, originally identified as H.R. 1585, was subsequently renumbered H.R. 4986 after H.R. 1585 was vetoed by President Bush December 28, 2007. On January 16, 2008, H.R. 4986 was passed by the House of Representatives and, on January 22, by the Senate.

The bill was signed into law by President Bush January 28, 2008. However, in signing H.R. 4986, the president identified a number of provisions of the Act, including section 841 (which establishes the Commission on Wartime Contracting), that he claimed “purport to impose requirements that could inhibit the president's ability to carry out his constitutional obligations to take care that the laws be faithfully executed, to protect national security, to supervise the executive branch, and to execute his authority as commander in chief.” In his signing statement the president continued, “The executive branch shall construe such provisions in a manner consistent with the constitutional authority of the president.”

Addressing the president’s signing statement in remarks on the Senate floor January 29, Senator Webb questioned why President Bush saw fit to issue a signing statement critical of a bipartisan body intended to make government more accountable to the American taxpayer. “Those of us in Congress have an obligation to the American taxpayer to be proper stewards of their tax dollars,” said Webb. “I look forward to working with the administration and my colleagues in Congress to ensure that the Commission comes to life as quickly as possible.”

The law establishing the Commission defines a broad and substantive mandate. The Commission is required to study, assess and make recommendations concerning wartime contracting for the reconstruction, logistical support, and performance of security functions in Iraq and Afghanistan spanning the period from 2003 to the time of its final report in June 2010. The Commission’s major objectives include a thorough assessment of the systemic problems identified with interagency wartime contracting and the identification of instances of waste, fraud and abuse; and ensuring accountability for those responsible.

Numerous audits, investigations, and congressional hearings have documented the magnitude of the problem. The Defense Contract Audit Agency estimated in 2007, for example, that there were more than \$10 billion in questioned and unsupported costs relating to the Iraq reconstruction and military support contracts valued at \$57 billion that it had reviewed. The agency noted that contracts worth \$300 billion remained to be audited.

Similarly, congressional testimony by the Department of Defense Inspector General (DOD IG) staff in May 2008 revealed that its review of 702 U.S. Army commercial payments in Iraq, Kuwait, and Egypt indicated the Army made an estimate \$1.4 billion in contract and vendor payments that lacked minimum supporting documentation and information for proper payment. When payments were not properly supported, the Army lacked assurance that funds were used as intended. The DOD IG also estimated \$6.3 billion in Army commercial payments had the minimum supporting documents and information for a proper payment, but lacked support needed to comply with various laws and regulations.

To achieve its objectives, the Commission is empowered to hold hearings, take testimony, receive evidence, and provide for the attendance and testimony of witnesses as well as the production of documents.

The Commission is able to secure from any agency of the federal government any information or assistance that it considers necessary to enable it to carry out its mandate to study, assess wartime contracting, and to make recommendations to Congress. The Commission is also empowered to refer to the U.S. Attorney General any violation or potential violation of law it identifies. The Commission is required to provide two annual reports to Congress; an interim due no later than March 1, 2009, and a final report is due no later than June 2010.

Press Releases Related to Passage/Enactment of NDAA 2008

Office of Senator Jim Webb

January 28, 2008

PRESIDENT SIGNS INTO LAW WEBB-McCASKILL COMMISSION ON WAR CONTRACTING ACCOUNTABILITY

Washington, D.C. – The Fiscal Year 2008 National Defense Authorization Act, signed into law by the President today, includes a historic provision to improve accountability in wartime contracting sponsored by Senators Jim Webb (D-VA) and Claire McCaskill (D-MO).

The Webb-McCaskill amendment, introduced jointly last year with the senators' seven Democratic freshman colleagues, creates an independent, bipartisan "Commission on Wartime Contracting" charged with addressing the systemic problems associated with the federal government's wartime-support, reconstruction, and private security contracts in Iraq and Afghanistan.

The provision requires that the Commission be fully established 120 days after passage of the defense bill. The next step in establishing the Commission will be the appointment of eight commissioners by congressional senior leadership and the President. During this process, Senate and House leadership will consult with the chairmen and ranking members of the Armed Services, Foreign Relations, Homeland Security, and Government Reform Committees as required by the legislation.

"I am pleased that our Commission to bring accountability back into our wartime contracting will finally become a reality," said Senator Webb. "I look forward to working with the Administration and my colleagues in Congress to ensure that the Commission comes to life as quickly as possible." The Commission is modeled after the "Truman Committee" which investigated defense contracts during World War II. The creation of then-Senator Harry Truman, the Committee is credited with savings of \$15 billion (1943 dollars) and preventing the loss of life of countless U.S. service members.

"The Commission on Wartime Contracting will build on Senator Truman's legacy," said Webb. "Ultimately, it will play a major role remedying the major problems we find in wartime-support contracting today and save American taxpayer dollars for years to come."

“When America put a new majority in the U.S. Senate it demanded, among other things, accountability for the record fraud, waste and abuse in wartime defense contracting and today, with the President's signature on the defense bill, we take an important, hard fought step toward meeting that demand,” Senator McCaskill said.

Specifically, the Webb-McCaskill provision:

- Establishes an independent, bipartisan eight-member Commission on Wartime Contracting to study federal agency contracting for logistics support, reconstruction, and security functions in Iraq and Afghanistan. The Commission will issue interim and final reports on its findings and recommendations, including an evaluation of which functions are inherently governmental and which functions are appropriate for performance by contractors in a contingency operation, especially whether providing security in an areas of combat operations is inherently governmental.
- Requires an assessment of the extent of waste, fraud, abuse, and mismanagement of wartime contracts, and the extent to which those responsible have been held accountable. The Commission will have the authority to refer to the Department of Justice any violation or potential violation of law it identifies.
- Expands the jurisdiction of the Special Inspector General for Iraq Reconstruction (SIGIR) and a newly-created Special Inspector General for Afghanistan Reconstruction (SIGAR) beyond reconstruction to include security contracting in Iraq and Afghanistan. It also requires an expanded series of audits of wartime contracts by the inspectors general of the Department of Defense and other executive agencies.

A second amendment offered by Senators Webb and McCaskill also was included in the defense bill. It requires the Department of Defense to strengthen its policies regarding private security contractors, such as Blackwater. The amendment directs the Department of Defense to develop procedures to mark contractor vehicles so that they are more easily identifiable by Iraqi civilians and military personnel, keep records of private security personnel, maintain all regulations applying to contractors in a single, accessible location, such as a website; and ensure that private security personnel are briefed on and understand their obligation to comply with applicable U.S., Iraqi, and international laws, and rules on the use of force.

The provision also establishes a process for cultural training of security contractors, as well as training on working with the U.S. military and Iraqi nationals.

Office of Senator Jim Webb

WEBB: COMMISSION ON WARTIME CONTRACTING WILL MOVE FORWARD IN EXPEDITIOUS MANNER

January 29, 2008

President Issues "Signing Statement" to FY08 Defense Authorization Bill Purporting that Commission Inhibits Ability to Wage War

Washington, DC- Senator Jim Webb (D-VA) took to the Senate floor today to dispute President Bush's assertion that the recently approved Webb-McCaskill Commission on Wartime Contracting was beyond the constitutional authority of the Congress.

Stating that the Commission, signed into law last night by the President in the National Defense Authorization Act, will "march forward in an expeditious manner," Webb questioned why President Bush saw fit to issue a signing statement critical of a bipartisan body intended to make government more accountable to the American taxpayer.

In his signing statement, the President singled out four of 2,887 sections in the bill, including the section creating the Wartime Contracting Commission, claiming that they could inhibit the President's ability to execute his authority as commander in chief.

The Commission is modeled after the "Truman Committee" which investigated defense contracts during World War II and was credited with savings of \$15 billion (1943 dollars) in taxpayer dollars. Similarly, the Webb-McCaskill measure is designed to address the systematic problems associated with the federal government's wartime-support, reconstruction, and private security contracts in Iraq and Afghanistan.

"Those of us in Congress have an obligation to the American taxpayer to be proper stewards of their tax dollars," said Webb. "I look forward to working with the Administration and my colleagues in Congress to ensure that the Commission comes to life as quickly as possible."

Senator Webb delivered the following remarks today from the Senate floor, with respect to the Commission on Wartime Contracting and the President's signing statement:

"Yesterday, the President signed into law the National Defense Authorization Act, and with it a Commission on Wartime Contracting, which Senator McCaskill and I jointly introduced early last year. This is a very important piece of legislation.

"It will put into place an independent bipartisan Commission, with a two-year sunset date, jointly selected by Democrats and Republicans in the Senate and the House and by the Administration. This is to be a Commission filled with experts, not of Senators or political people, to examine wartime contracting that has taken place since our invasion of Iraq. It will play a major role in remedying a broad range of fraud, waste, and abuse that we all know has occurred during this period.

“Now, to my surprise, when the President signed this legislation yesterday, he issued a signing regarding the Wartime Contracting Commission, saying, that it ‘purports to impose requirements that could inhibit the President’s ability to carry out his constitutional obligations to take care that the laws be faithfully executed, to protect national security, to supervise the executive branch, and to execute his authority as Commander in Chief.’ He goes on to say, ‘The executive branch shall construe such provisions in a manner consistent with the constitutional authority of the President.’

“In other words, the President of the United States—who has been in charge of the conduct of this war and whose administration has been in charge of executing these contracts, supervising them, making sure that they meet the requirements of fairness in the law—is now saying that he believes that a legislative body can enact a law that he can choose to ignore because he says it would interfere with his responsibility to supervise a war as Commander-and-Chief.

“I am at a total loss here. I am amazed to see this kind of language employed with respect to this legislation.

“The Commission was put into place with broad bipartisan and bicameral support, with the intention of studying systemic problems. I would think that these are the sorts of problems that this President would want to root out.

“The Commission’s historic precedent goes back to the Truman Committee of World War II. Then-Senator Harry Truman wanted to look at wartime waste, fraud, and abuse so that the American government could get a proper handle on the federal spending that was going into mobilization and the projects that were being put on the line. And we certainly didn’t see President Franklin Roosevelt trying to say that the Truman Committee’s work was going to interfere with his ability to conduct World War II.

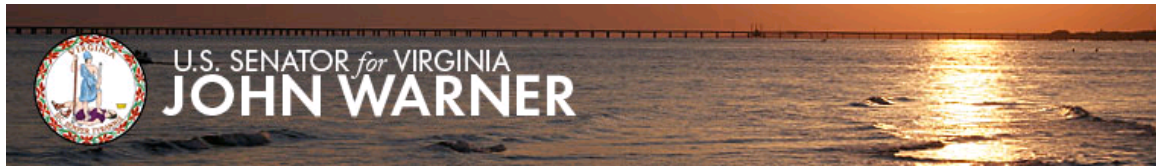
“To the contrary, the President, during that war, saw that this was the type of thing that he needed in order to bring the right sort of supervision and the right sort of accountability that might eliminate waste, fraud, and abuse.

“We don’t quite know what the Administration intends with this sort of language, but I want all my colleagues to be aware of it and to be aware that it potentially is an impingement on the rights of this legislative body—in effect saying that the President has the authority to ignore a law that is now passed, a law that he has now signed.

“We are going to go forward with this Commission. We are going to work with the Administration, we hope, to set it up. We are going to move as rapidly as we can, because the clock is ticking in terms of the statute of limitations on some of the charges that might be filed.

“And I would hope that the people of this country understand that we want to do this for the good of the American people. We have a responsibility to make sure that the nation’s purse strings have been properly taken care of and that we are acting as proper stewards of America’s taxpayers.

“If the Administration would like to explain to us what their constitutional issue is with a piece of legislation that the President has just signed, we would be happy to hear that. In the meantime, we are moving forward with this Commission. It is vitally important to accountability in the government, and I’m very proud to have introduced it. We are marching forward. And with that I yield the floor.”



Warner Secures Funds in FY08 Defense Authorization to Boost Military Construction in VA, Enhance Troop Welfare and Improve Wartime Contracting

Conference Report Agreed to by Senate and House Negotiators

Friday, December 14, 2007

Senator John W. Warner (R-VA) and Senator Jim Webb (D-VA), both members of the Senate Committee on Armed Services, announced today their joint support for the conference report for the National Defense Authorization Act for Fiscal Year 2008 (H.R. 1585). *This vital legislation will increase Virginia’s significant contributions to national security, enhance the welfare of our men and women serving in uniform, and remedy systemic problems in wartime contracting.*

Final passage in the House occurred December 12, and final passage in the Senate occurred December 14. The legislation is now before the president to be signed into law.

“I am pleased to see such substantive and important measures that will give the military the much-needed funding and resources it needs and deserves,” said Warner. “The policies and programs in this legislation send a strong signal of support to our men and women in uniform, and their families, and demonstrate that we value and honor their service – both overseas and here at home.”

H.R. 4986

Introduced Jan 16, 2008

- Passed House Jan 16, 2008
- Passed Senate Jan 22, 2008
- Signed by President Jan 28, 2008

H.R. 1585

Introduced Mar 20, 2007

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| <input checked="" type="checkbox"/> Scheduled for Debate | May 9, 2007 |
| <input checked="" type="checkbox"/> Amendments (579 proposed) | |
| <input checked="" type="checkbox"/> Passed House | May 17, 2007 |
| <input checked="" type="checkbox"/> Passed Senate | Oct 1, 2007 |
| <input checked="" type="checkbox"/> Differences Resolved | Dec 12, 2007 |
| <input checked="" type="checkbox"/> Vetoed by President | Dec 28, 2007 |
| <input type="checkbox"/> Veto Override Attempt in House | - |