



**Legislative Bulletin.....May 21, 2008**

**Contents:**

**H.R. 5658**—National Defense Authorization Act for Fiscal Year 2009

**Summary of the Bills Under Consideration Today:**

**Total Number of New Government Programs:** Numerous

**Total Cost of Discretionary Authorizations:** \$602 billion in FY 2009

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** Increased by \$2 million in FY 2008, but reduced by \$75 million over the FY 2009-FY 2019 period

**Total New State & Local Government Mandates:** Numerous—below the UMRA threshold according to CBO

**Total New Private Sector Mandates:** Numerous—below the UMRA threshold according to CBO

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 1

**H.R. 5658—National Defense Authorization Act for Fiscal Year 2009  
(Skelton, D-MO)**

**Order of Business:** H.R. 5658 is scheduled for consideration on Wednesday, May 21, 2008, subject to a structured rule (H.Res. 1213), making a number of amendments in order. The rule for consideration of H.R. 5658 waives all points of order against the bill and against its consideration (except those for PAYGO and earmarks) and provides two hours of general debate equally divided and controlled by the Chairman and Ranking Member of the Committee on Armed Services. Because of the large number of amendment requests, the Rules Committee has

released the rule for H.R. 5658 but is still compiling amendments. The RSC will distribute a complete summary of amendments as soon as they are available.

**Summary:** H.R. 5658 would authorize \$602 billion for Department of Defense and the national security functions of the Department of Energy. H.R. 5658 includes \$70.0 billion for ongoing military operations in Iraq and Afghanistan. The total authorization is a \$94.3 billion reduction from the level authorized for FY 2008.

**Provisions of Note:**

- ***Earmarks:*** Armed Services [Committee Report 110-652](#), which accompanies H.R. 5658, contains 546 earmarks totaling at least \$9.9 billion (with individual earmarks ranging from \$200,000 to \$3.9 billion). The inclusion of earmarks in this accompanying report violates Presidential [Executive Order \(E.O.\) 13,457](#), which was issued by President Bush on January 29, 2008. E.O. 13,457 states that agencies may not obligate any funds based on the text from committee reports. To circumvent this restriction, H.R. 5658 includes a section which states, “Executive Order 13457, and any successor to that Executive Order, shall not apply to this Act or to the Joint Explanatory Statement submitted by the Committee of Conference for the conference report to accompany this Act.”
- ***Adjusted Personnel Levels:*** H.R. 5658 increases the authorization for personnel in the Army by 7,000 (from 525,400 to 532,400) and the Marine Corps by 5,000 (from 189,000 to 194,000). The bill reduces the authorization for personnel in the Navy by 2,775 (from 329,098 to 326,323) and the Air Force by 12,601 (from 329,651 to 317,000).
- ***Service Member Pay Raise:*** H.R. 5658 would raise the pay rates of members of the armed forces by 3.9%—0.5% higher than the budget request.
- ***Prohibits TRICARE Fee Increase:*** H.R. 5658 would prohibit the Department of Defense (DoD) from increasing premiums and fees associated with TRICARE, the military’s health plan for active duty and retired personnel. The DoD had proposed the increase to slow the growth in military health care costs and restore funding to the Defense Health Program.
- ***KC-45 Tanker:*** H.R. 5658 reduces the requested authorization for the KC-45 tanker program by \$62 million, but specifies that funding shall be authorized without prejudice to the program or the contractor. The bill would also require the Air Force to review the potential impact of any subsidies received by a large aircraft manufacturer that the World Trade Organization has determined were illegal. The Air Force would be required to agree on how to remove the “unfair impact” of an illegal subsidy from the KC-45 procurement process.
- ***Separate Iraq funding:*** H.R. 5658 requires the DoD to request all future budget items that are related to actions in Iraq distinctly and separately from other items in the budget request.

- ***Prohibition Against Permanent Bases:*** H.R. 5658 extends the current ban on the DoD from establishing a permanent military installation in Iraq. To determine whether a base is “permanent,” the bill requires the DoD to set a date when each installation in Iraq will be vacated. If an installation does not have a set exit date, it will be considered a “permanent base.” The latter provision has not been included in previous DoD authorization bills.
- ***Cost Sharing with the Iraqi Government:*** H.R. 5658 alters the way that funds are disbursed from the [Commanders Emergency Response Program](#) (CERP) in Iraq by implementing a cost-sharing requirement. Under the new provision, the U.S. government would have to supply \$2 to the CERP fund for every \$1 supplied by the Iraqi government.
- ***Suspension of Public-Private Competition:*** Section 325 of H.R. 5658 requires the DoD to temporarily suspend public-private competitions (as required by [OMB Circular A-76](#)) for defense contracts until September 30, 2011.
- ***Davis-Bacon Requirement for Restationing to Guam:*** H.R. 5658 initiates the movement of troops from Okinawa, Japan, to the U.S. territory of Guam. To provide funds to facilitate the move, the bill establishes the Guam Defense Policy Review Initiative Account, and stipulates that any funds used from the account must adhere to Davis-Bacon wage requirements.
- ***European Missile Defense Sites:*** H.R. 5658 reduces the requested amount of funding for long-range missile defense sites in Europe by more than half, from a requested level of \$712 million to an authorized level of \$341 million.
- ***Space Test Bed:*** H.R. 5658 eliminates funding for a requested “Space Test Bed,” a space-based ballistic missile defense program.
- ***Third Generation Infrared Surveillance (3GIRS):*** The bill reduces funding for the 3GIRS program by nearly half, from \$149 million to \$75 million. The program develops technology that helps troops identify threats using infrared equipment.

**Authorization Highlights:** This authorization measure sets the spending levels for all DoD programs and sets military strength levels. What follows are highlights of authorization levels of the three divisions (Dept. of Defense, Military Construction, and Dept. of Energy & Others) in the bill.

Division A = Department of Defense Authorizations

Division B = Military Construction Authorizations

Division C = Department of Energy National Security Authorizations and Other Authorizations

**Division A—Procurement**

- **Army**. Aircraft--\$4.91 billion; Missiles--\$2.2 billion; Weapons and Tracked Combat Vehicles--\$3.5 billion; Ammunition--\$2.2 billion; Other Procurement--\$11.2 billion; Joint Improvised Explosive Device Defeat Fund--\$228 million.
- **Navy**. Aircraft--\$16.6 billion; Weapons (including missiles and torpedoes)--\$3.5 billion; Shipbuilding and Conversion--\$12.9 billion; Other Procurement--\$5.4 billion; Ammunition (Navy and Marine Corps)--\$1.1 billion.
- **Marine Corps**. \$1.3 billion
- **Air Force**. Aircraft--\$12.6 billion; Ammunition--\$943 million; Missiles--\$5.5 billion; Other Procurement--\$16.1 billion.
- **Defense-Wide Activities**: \$3.4 billion.

**Division A—Research, Development, Test, and Evaluation**

- **Army**. \$10.6 billion
- **Navy**. \$19.7 billion
- **Air Force**. \$28.2 billion
- **Defense-Wide Activities**. \$21 billion (\$188 million reserved for Operational Test & Evaluation, Defense-Wide).
- **Defense Science and Technology**. Reserves \$12 billion of the above funds for the Defense Science and Technology Program.

**Division A—Funding for Operations and Maintenance**

Army	\$31.7 billion
Navy	\$34.8 billion
Marine Corps	\$5.5 billion
Air Force	\$35 billion
Defense-Wide Activities	\$25.8 billion
Army Reserve	\$2.6 billion
Naval Reserve	\$1.3 billion
Marine Corps Reserve	\$213 million
Air Force Reserve	\$3.2 billion
Army National Guard	\$5.9 billion
Air National Guard	\$5.9 billion
U.S. Court of Appeals for the Armed Forces	\$13 million
Army Environmental Restoration	\$447 million
Navy Environmental Restoration	\$290 million
Air Force Environmental Restoration	\$496 million
Defense-wide Environmental Restoration	\$13 million
Formerly Used Defense Sites Environmental Restoration	\$257 million
Overseas Humanitarian, Disaster, and Civic Aid Programs	\$83 million
Cooperative Threat Reduction Programs	\$445 million
Overseas Contingency Operations Transfer Fund	\$9 million

**Division A—Military Personnel Authorization Levels**

Authorized personnel levels as of September 30, 2009:

Army	532,400
Navy	326,323
Marine Corps	194,000
Air Force	317,050
Army National Guard, Selected Reserve	352,600
Army Reserve, Selected Reserve	205,000
Naval Reserve, Selected Reserve	66,700
Marine Corps Reserve, Selected Reserve	39,600
Air National Guard, Selected Reserve	106,700
Air Force Reserve, Selected Reserve	67,400
Coast Guard Reserve, Selected Reserve	10,000
Army National Guard, Full-Time Duty	32,060
Army Reserve, Full-Time Duty	17,070
Naval Reserve, Full-Time Duty	11,099
Marine Corps Reserve, Full-Time Duty	2,261
Air National Guard, Full-Time Duty	14,337
Air Force Reserve, Full-Time Duty	2,733
Army National Guard, Dual-Status Technicians	27,210
Army Reserve, Dual-Status Technicians	8,395
Air National Guard, Dual-Status Technicians	22,452
Air Force Reserve, Dual-Status Technicians	10,003
Army Reserve, Non-Dual-Status Technicians	No more than 595
Army National Guard, Non-Dual-Status Technicians	No more than 1,600
Air Force Reserve, Non-Dual-Status Military Technicians	No more than 90
Air National Guard, Non-Dual-Status Military Technicians	No more than 350
Total Authorized Personnel Level	2,365,393

- **Maximum numbers of reservists who may be serving at any time on full-time operational support duty:**
  - Army National Guard: 17,000
  - Army Reserve: 13,000
  - Naval Reserve: 6,200
  - Marine Corps Reserve: 3,000
  - Air National Guard: 16,000
  - Air Force Reserve: 14,000
  
- **Authorization of Appropriations for Military Personnel.** \$124.6 billion—increased from \$117.09 billion in FY 2008.

**Division A—Cooperative Threat Reduction with States of the Former Soviet Union**

*From funds allocated for operation and maintenance above:*

- **Strategic Offensive Arms Elimination in Russia.** \$79.9 million
- **Strategic Nuclear Arms Elimination in Ukraine.** \$6.4 million
- **Nuclear Weapons Storage Security in Russia.** \$24.1 million
- **Nuclear Weapons Transportation Security in Russia.** \$40 million
- **Weapons of Mass Destruction Proliferation Prevention in the Former Soviet Union.** \$70.2 million
- **Biological Weapons Proliferation Prevention in the Former Soviet Union.** \$184.4 million
- **Defense and Military Contacts.** \$8.0 million
- **Chemical Weapons Destruction.** \$1 million
- **New Cooperative Threat Reduction Initiatives.** \$10 million
- **Other Assessment/Administrative Support.** \$20.1 million

**Division A—Other Authorizations**

- **Defense Working Capital Funds.** \$198.1 million
- **Defense Working Capital Fund Defense Commissary.** \$1.29 billion
- **National Defense Sealift Fund.** \$1.4 billion
- **Defense Health Program.** \$24.7 billion
- **Chemical Agents and Munitions Destruction.** \$1.48 billion
- **Defense Wide Drug Interdiction.** \$1.06 billion
- **Defense Inspector General.** \$273.8 million
- **Armed Forces Retirement Home.** \$63 million
- **National Defense Stockpile.** Authorizes \$41.1 million from the National Defense Stockpile Transaction Fund for the operation and maintenance of the National Defense Stockpile for FY 2008. Permits the use of additional funds for “extraordinary or emergency conditions” 45 days after a notification to Congress.

**Division A—Authorization of Additional Appropriations for Operation Iraqi Freedom and Operation Enduring Freedom**

**PROCUREMENT:**

- **Army.** Aircraft--\$84 million; Weapons and Tracked Combat Vehicles--\$822 million; Ammunition--\$46.5 million; Other Procurement--\$1.2 billion;
- **Navy.** \$476.2 million
- **Marine Corps.** \$565.4 million
- **Air Force.** Aircraft--\$4.62 billion; Other Procurement--\$1.5 billion
- **Joint Improvised Explosive Device Defeat Fund.** Procurement--\$2.49 billion
- **Rapid Acquisition Fund.** \$102 million
- **Defense-Wide Activities.** Procurement--\$177.2 million

RESEARCH, DEVELOPMENT, TEST, and EVALUATION:

- **Navy.** \$113.2 million
- **Air Force.** \$72 million
- **Defense-wide.** \$202.5 million

OPERATION & MAINTENANCE:

- **Army.** \$37.3 billion
- **Navy.** \$3.5 billion
- **Marine Corps.** \$2.9 billion
- **Air Force.** \$5 billion
- **Defense-Wide Activities.** \$2.64 billion
- **Army Reserve.** \$79.2 million
- **Navy Reserve.** \$42.4 million
- **Marine Corps Reserve.** \$47 million
- **Army National Guard.** \$333 million
- **Air Force Reserve.** \$12.3 million
- **Air National Guard.** \$55.6 million

OTHER AUTHORIZATIONS:

- **Defense Health Program.** \$1.1 billion
- **Drug Interdiction & Counter Drug Activities.** \$188 million
- **Iraq Security Forces Fund.** \$1 billion
- **Afghanistan Security Forces Fund.** \$2 billion
- **Military Personnel.** \$1.19 billion
- **Mine Resistant Ambush Protected Vehicle Fund.** \$2.61 billion

**Division B—Authorization of Appropriations for Military Construction**

- **Army.** \$6 billion
- **Navy.** \$3.99 billion
- **Air Force.** \$1.96 billion
- **NATO Security Investment Program.** \$240.8 million
- **Army National Guard.** \$628.6 million
- **Army Reserve.** \$282.6 million
- **Naval and Marine Corps Reserve.** \$57 million
- **Air National Guard.** \$142.8 million
- **Air Force Reserve.** \$30 million

**Division C—Department of Energy National Security Programs**

- **Weapons Activities.** \$6.6 billion
- **Defense Nuclear Nonproliferation.** \$1.45 billion
- **Naval Reactors.** \$828 million
- **Office of Administrator for Nuclear Security.** \$409 million
- **Defense Environmental Cleanup.** \$5.31 billion

- **Other Defense Activities for National Security.** \$1.32 billion
- **Defense Nuclear Waste Disposal.** \$274 million
- **Energy Security and Assurance Programs.** \$7.6 million

**Division C—Maritime Activities**

- **Operations and Training Activities.** \$117.8 million
- **U.S. Flag Merchant Fleet.** \$193.5 million
- **Maritime Security Reimbursements.** \$3.5 million
- **Assistance to Small Shipyards.** \$25 million
- **Disposal of Obsolete Vessels.** \$18 million

**Possible Conservative Concerns:**

**Earmarks:** Some conservatives may be concerned that H.R. 5658 legislatively circumvents an Executive Order banning earmarks in Committee Reports. Armed Services [Committee Report 110-652](#), which accompanies H.R. 5658, contains 546 separate earmarks totaling at least \$9.9 billion (with individual earmarks ranging from \$200,000 to \$3.9 billion). The inclusion of earmarks in this accompanying report violates Presidential [Executive Order \(E.O.\) 13,457](#), which was issued by President Bush on January 29, 2008. E.O. 13,457 states that agencies may not obligate any funds based on the text from committee reports. To get around this restriction, H.R. 5658 includes a section which states, “Executive Order 13457, and any successor to that Executive Order, shall not apply to this Act or to the Joint Explanatory Statement submitted by the Committee of Conference for the conference report to accompany this Act.” Some conservatives may believe that earmarks should be included in the text of legislation and debated openly on the floor of the House rather than being attached to accompanying Committee Reports which are not openly vetted. Some conservatives may feel that H.R. 5658 prohibits transparency by dismissing the President’s E.O. on earmarks.

**Davis-Bacon Requirement for Restationing to Guam:** Some conservatives may be concerned that H.R. 5658 applies Davis-Bacon wage requirements to work done to facilitate the movement of troops from Okinawa, Japan, to the U.S. territory of Guam.

**European Missile Defense Sites:** Some conservatives may be concerned that H.R. 5658 reduces the requested amount of funding for long-range missile defense sites in Europe by more than half, from a requested level of \$712 million to an authorized level of \$341 million. Some conservatives may contend that long-range missile defense sites in ally European nations are essential to protecting the U.S. from possible rogue nuclear states and should be fully funded.

**Suspension of Public-Private Competition:** Some conservatives may be concerned that H.R. 5658 suspends public-private competition for Department of Defense contracts. Some conservatives may be concerned because public-private competition has historically shown lowered contracting costs while increasing efficiency. Section 325 of H.R. 5658 requires the DoD to temporarily suspend public-private competitions (as required by [OMB Circular A-76](#)) for defense contracts until September 30, 2011.



**Cost to Taxpayers:** CBO estimates that H.R. 5658 would authorize \$602 billion in FY 2009 appropriations, which includes \$70 billion for the ongoing military operations in Afghanistan and Iraq.

CBO also estimates that H.R. 5658 would increase mandatory spending by \$2 million in FY 2008, but would have reduce total mandatory spending by \$75 million over the FY 2009-FY 2019 period as a result of changes made to the military's health care program. To see the complete, 27-page CBO cost estimate, visit [this webpage](#).

**Committee Action:** H.R. 5658 was introduced on March 31, 2008, and referred to the Committee on Armed Services. On April 25, 2008, the bill was referred to each Armed Service's subcommittee, which each held mark-ups, amended the bill, and forwarded to the full committee by voice vote. A full committee mark-up was held on May 15, 2008, and the bill was reported, as amended, by voice vote.

**Administration Position:** A Statement of Administration Policy (SAP) was not available at press time.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, the bill creates several new programs within the Department of Defense.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** According to CBO, some provisions of H.R. 5658 "contain both intergovernmental and private-sector mandates, but CBO estimates that the annual cost of those mandates would not exceed the thresholds established in UMRA (\$68 million for intergovernmental mandates in 2008 and \$136 million for private-sector mandates in 2008, adjusted annually for inflation)."

**Constitutional Authority:** Armed Services [Committee Report 110-652](#), finds constitutional authority in Article I, Section 8, but does not cite a specific clause. House Rule XIII, Section d(1), requires that all committee reports contain "a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution."  
*[emphasis added]*

Article I, Section 8, Clause 1 grants Congress the power to "provide for the common Defence and general welfare of the United States." Article I, Section 8, Clauses 12 through 16 grant Congress the power "To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years; To provide and maintain a Navy; To make Rules for the Government and Regulation of the land and naval forces; To provide for calling forth the Militia to execute the Laws of the Unions, suppress Insurrections and repel Invasions; To provide for organizing, arming, and disciplining, the Militia and for governing such Part of them as may be employed in the Service of the United States..." In addition, Article I, Section 8, Clause 17 provides that Congress shall have the power "To exercise exclusive Legislation in all Cases whatsoever...over all Places purchased by the Consent of the Legislature of the state in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits (House Rule XXI, Clause 9):** Yes. Armed Services [Committee Report 110-652](#) (pages 595-630), lists 546 earmarks totaling at least \$9.9 billion (with individual earmarks ranging from \$200,000 to \$3.9 billion).

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