

UNITED STATES TRANSPORTATION COMMAND



Reporting Period: 27 Jul 19 – 28 Oct 19

Published: 4 Nov 19

LEGISLATIVE ANALYSIS

MARK OSMACK

Certain Uncertainty: Both Chambers returned from an August and early October recess to find the challenges they left frozen before the end of the fiscal year, were waiting in each Member's office in the same "To-Do" pile and nothing had thawed. The 2019 Fiscal Year ended without the passage of the FY20 NDAA which was accompanied by a familiar state of funding: a Continuing Resolution. While a CR prevents a government shutdown, it does not allow for new program starts and certain other program changes as only the previous FY's funding level is approved. However, the CR is not without a deadline either. After 21 November, the CR expires forcing Congress to pass an appropriations bill, extend the CR, or cause a government shutdown.

There is a sense that a CR may be more than a temporary funding source; it may extend beyond December, possibly through the entire the entire FY 20. What's more, the NDAA's 58-year enactment streak is also at risk. Policy and legislation are not siloed, nor protected from other items on legislative calendars, and traditional legislating has largely been in a holding pattern in favor of Congressional inquiries and hearings. With four weeks until the CR expires and six weeks until the end of the Congressional calendar year, it is difficult to believe the NDAA, appropriations, or any other significant legislation would be addressed until January 2020.

National Defense Authorization Act (NDAA): It has been over three months since the House and Senate passed their versions of the NDAA with the two Chambers now working (conferencing) to agree on a final version for a vote. In the elapsed time, discrepancies remain with funding for the border wall most divisive. Democrats have the majority in the House and object to using MILCON funding being utilized for a wall at the southwestern border. Republicans have the majority in the Senate and prefer increasing the agreed upon budget of \$738 billion in order to allocate funds for the border wall without reducing current defense appropriations. Other major friction points are HASC provisions that would:

- Restrict use of force against Iran without Congressional approval
- Provide 12 weeks of paid family leave for the civilian federal workforce
- Provide additional funding of the W76-2 submarine-launched nuclear warhead
- Ban new detainees at Guantanamo and allow transferring prisoners from GITMO to the US mainland

The unfortunate casualty from the investigative season in Washington is the Department of Defense. It is not only current operations, but future programs, that will be strained. Included in the NDAA are production increases and new programs that cannot be initiated until they are funded. These pending programs differ greatly from legacy systems/programs insofar as the latter can continue to exist on a lesser-budget, the former by their nature, cannot. The damages of delayed authorizations will certainly initiate Department belt-tightening but also increase the "flash-to-bang" in military development and potentially delay military strength and technological capacity. Simply stated, delaying the NDAA and associated appropriation funding will hurt well into the future..

A "Skinny" NDAA and TRANSCOM: On 30 October, SASC Chairman Inhofe released a scaled-down version of the NDAA called the "Essential National Security Authorities Act (ENSAA)". Sen Inhofe has been supportive of a pared down version of the NDAA, whereas HASC Chairman Rep Adam Smith's support has

UNCLASSIFIED

receded. What is ultimately at risk is this year’s dual authorization process becoming the norm, not than exception. Rather than passing an all-encompassing bill, the future may be composed of two defense bills; one of basic, easily-palatable provisions (i.e. military pay) and a secondary bill with language that requires real and thorough compromise. Additionally, the prefix of the legislative title itself is curious: “essential”. This can be misleading as there are innumerable vital components within the full NDAA which are not included in the current proposed version. More than a 58-year streak is on the line. The majority of TRANSCOM-related language and a singular, once-a-year defense bill the DOD can rely on, awaits the outcome of conferencing.

Included in this ENSAA is:

- **Military pay raise:** 3.1 percent pay raise for troops in 2019
- **Specialty pays and bonuses:** Specialty pays for troops serving overseas, targeted re-enlistment bonuses for skilled troops, pay authorities for civilians working with the military in combat zones
- **Counter-ISIS authorities:** Ensures that certain ongoing overseas operations in the Middle East and Afghanistan remain funded, such as those targeting the Islamic State group
- **F-35 procurement:** Authorizes the purchase of long-lead items for the F-35
- **LCS maintenance:** Among the military construction projects included is work at Changi Naval Base in Singapore for the littoral combat ship, used to boost the U.S. presence in the South China Sea

TRANSCOM in the NDAA: Several of TRANSCOM’s legislative priorities (MSP re-authorization, cyber authority, DP3, MCRS, vendor vetting, and aviation insurance) are included in the comprehensive NDAA which remains under consideration in the House and Senate. Yet, the “skinny” NDAA, released on 30 Oct, includes none of TRANSCOM’s main legislative priorities. While the Command will likely move forward based on Congressional intent for beginning the Mobility Capabilities and Requirement Study and restructuring our relationship with the Household Goods moving industry, probability is high that the Command will need to revisit several legislative proposals in the FY21 legislative cycle. The House of Representatives has adjourned until 12 Nov, leaving only 16 legislative days in the calendar year to resolve any lingering issues, pass the NDAA and send to the President for signature. This narrow timeline increases the difficulty of passing significant legislation, and makes a pared-down version of the NDAA more likely. We will provide an update on the status of TRANSCOM legislative priorities in our next newsletter.

SENATE ACTIONS ON NOMINATIONS & CONFIRMATIONS:

NAME	POSITION	STATUS
Hon. David Norquist	Deputy SECDEF	Confirmed
Gen John Hyten	Vice Chairman of Joint Chiefs of Staff	Confirmed
Mr. Ryan McCarthy	Secretary of the Army	Confirmed
Ms. Barbara Barrett	Secretary of the Air Force	Confirmed
Mr. Jeffrey Byard	Department of Homeland Security	Withdrawn by POTUS
Ms. Lisa Hershman	DoD Chief Management Officer	SASC Nomination Hearing 29 Oct
Ms. Dana Deasy	DoD Chief Information Officer	SASC Nomination Hearing 29 Oct
VADM Charles Richard	STRATCOM Commander	SASC Nomination Hearing 24 Oct

FY 2020 Defense/Foreign Policy Bills and Status

BILL	HOUSE	SENATE	CONFERENCE
Defense Authorization, FY20	H.R. 2500 H. Rpt. 116-120 Cmte marks 6/12/19 Passed 7/12/19	S. 1790 S. Rpt. 116-48 Cmte marks 5/23/19 Passed 6/27/19	(Ongoing since September)

Defense Appropriations, FY20	H.R. 2740 – Division C H. Rpt. 116-84 Subcmte marks 5/15/19 Cmte marks 5/21/19 Passed 6/19/19	S. 2474 S. Rpt. 116-103 Subcmte marks 9/9/19 Cmte marks 9/12/19	
FY20 Budget Resolution	H.R. 3877 Passed 7/25/19	H.R. 3877 Passed 8/1/19	H.R. 3877 House passed 7/25/19 Senate passed 8/1/19 POTUS signed 8/2/19
FY20 CR (Oct. 1 – Nov. 21, 2019)	H.R. 4378 Passed 9/19/19	H.R. 4378 Passed 9/26/19	H.R. 4378 (P.L. 116-59) House passed 9/19/19 Senate passed 9/26/19 POTUS signed 9/27/19

FY20 NDAA DIRECTED REPORTS TO CONGRESS:

Due Date	Requirement	Description
1 Dec 19	Defense Personal Property Program (DP3) Report to HASC	Extends the comment period for the draft GHC RFP to allow at least 60 days for comments and delay the release of the final RFP until August 15, 2019. Directs the Services to provide a report to the HASC on the Secretaries' plans to improve installation-level relocation services to military families
1 Feb 20 SASC	Comptroller General Review of Mobility in Contested Environments Report to congressional defense cmtes	Requires report on: 1: Evolving strategic mobility reqs and impact upon mobility force structure. 2: Challenges in protecting mobility mission and how security will impact overall warfighting capability (elements protecting mobility not "in the fight" elsewhere. 3: State of mobility readiness/planning regarding training and concept development
1 Feb 20 SASC	Report on Special FAA Regulation Waivers for CRAF*	SECDEF required to notify defense committees on status of all requested SFARs. Requires SECDEF to inform defense cmtes on each DOD approved, denied, and pending SFAR request. SECDEF will also conduct a study on current CRAF-designation process with recommendations
1 Mar 20	Contracted Aerial Refueling Aircraft Report to HASC	Directs the Air Force, in coordination with USTRANSCOM, to provide a report to the HASC assessing the feasibility, affordability, and advisability of expanding the use of contractor-operated aerial refueling aircraft to support Air Force receiver requirements
1 Sep 20	Defense Access Roads (DAR) Project Report to HASC	Directs SECDEF to report on the implementation of the expanded DAR program that addresses the process and the criteria that will be used for selecting projects and a list of projects that have been identified as being eligible for consideration at the time the report is submitted. The list of eligible projects should include the geographic description, impacted military installation, road name or description, purpose, cost, scope, and DOD Form 1391 for each project.
1 Oct 20	Incorporation of Cleared U.S. Flag commercial Ship Operators in Wargames and Exercise brief from Navy to HASC	Directs Navy to brief on any plans to include cleared U.S.-flag commercial ship operators in wargames and exercise

60 days after Enactment	DP3*	USTRANSCOM shall prepare a business case analysis (BCA) for the proposed GHC and brief the congressional defense committees on the BCA and structure of the advisory group
1 Mar 20 HASC	Cybersecurity of the Supply Chain	To what extent the Department has identified and addressed cybersecurity risks to its supply chain
1 Jan 21 HASC	Mobility Capability Requirement Study*	Requires TRANSCOM to submit a report and a briefing to the HASC 1 Jan 21 with an interim update by 1 Jun 20, assessing the operational risk for meeting the mobility requirements of the geographic combatant commanders
HASC	Independent Review of Transportation Working Capital Fund*	Requires SECDEF, in coordination with the Secretaries of the military departments, to contract with independent federally funded R&D center to conduct a review of the TWCF
		*Bill language that is pending conference report approval and POTUS signature

GAO REPORTS:

Start Date:	Title:	Information/Status:
21 May 2019	Financial Oversight of the Foreign Military Sales Transportation Fee	To what extent do Defense Security Cooperation Agency, Defense Finance, Accounting Services policies and procedures: <ul style="list-style-type: none"> • provide reasonable assurance that payments made into the foreign military sales transportation accounts are timely and accurate? • provide reasonable assurance that shipment costs paid from the foreign military sales transportation accounts are allowable? • identify training requirements for personnel involved with the foreign military sales transportation process?
22 May 2019	DP3	What is the fully burdened cost of the existing DP3 to DOD? To what extent has DOD: <ul style="list-style-type: none"> • assessed the impact and estimated the costs and savings of each of the DP3 alternatives under consideration? • sought and incorporated input from key stakeholders, including the motor carrier industry, in developing the DP3 alternatives under consideration? How would each of the DP3 alternatives under consideration impact servicemembers' and their families' needs, including the capacity to complete moves during the peak-season summer months? • done to promote competition for each of the DP3 alternatives under consideration? • sought and incorporated input from key stakeholders, including the motor carrier industry, in developing the DP3 alternatives under consideration?

MISCELLANEOUS INFO:

Please send comments or suggestions to mark.j.osmack.civ@mail.mil Are you traveling to Washington D.C. and need a place to work from, check email, store luggage while? TRANSCOM members can call our Legislative Affairs D.C. team: Maj Tyler "Ty" Marcotte (571) 312-8926/8854 to schedule. The office is a ~7 minute drive from the Pentagon. transcom.scott.tccc.list.la@mail.mil PHONE: (618) 220-4811 (571) 312-8926 (D.C. OFFICE)