



## House Amendment to Senate Amendment to H.R. 695 – Department of Defense Appropriations Act, 2018 (Rep. Frelinghuysen, R-NJ)

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### FLOOR SCHEDULE:

[House Amendment to Senate Amendment to H.R. 695](#), the Department of Defense Appropriations Act, 2018, is expected to be considered on January 30, 2018, under a [closed rule](#).

### TOPLINE SUMMARY:

The bill would fund the Department of Defense at levels set forth in the House-passed FY 2018 omnibus ([H.R.3354 - the Make America Secure and Prosperous Appropriations Act, 2018](#)), appropriate an additional \$1.18 billion in cap-exempt Overseas Contingency Operations (OCO) funding for costs associated with [Operation Freedom's Sentinel](#), and nullify the effects of any sequester ordered to reduce FY 2018 defense spending below the Budget Control Act's (BCA) defense cap for FY 2018.

### COST:

The Congressional Budget Office (CBO) prepared a cost estimate for H.R. 4877, the Department of Defense Appropriations Act, 2018, as introduced. The text of H.R. 4877 is being in used as the House Amendment to the Senate Amendment to H.R. 695. Thus, the cost estimate for H.R. 4877 applies here.

CBO estimates that H.R. 4877 would provide funding at an annualized rate of \$664.1 billion. This figure includes base discretionary defense funding (\$584.04 billion), cap-exempt appropriations designated for OCO (\$75.11 billion), and emergency requirements (\$4.92 billion).

CBO estimates that if the funding levels provided by H.R. 4877 were enacted, defense discretionary budget authority for FY 2018 would exceed the Budget Control Act's (BCA) cap on defense spending by approximately \$35 billion.<sup>1</sup> Exceeding these limits would normally trigger across-the-board cuts to

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<sup>1</sup> This figure does not include defense spending appropriated through the other 11 appropriations bills. When Congress was set to considered [H.J. Res. 124](#) in December 2017 (but which never received a floor vote), a measure providing for full-year DOD appropriations at the same levels here and a continuing resolution for the remaining 11 appropriations bill, [CBO estimated](#) that if all the levels of budget authority provided by [H.J.Res. 124](#) were extended for the remainder of FY 2018, appropriations would exceed the FY 2018 discretionary limit on defense programs by \$69.93 billion and would exceed the limit on nondefense programs by \$3.71 billion. We can assume those figures are accurate here given that H.J.Res. 124 would have appropriated Department of Defense funding at the same rate as H.R. 4877, would have appropriated \$1.18 billion for Operation Freedom's Sentinel (set to be appropriated in H.R. 4877), and would have appropriated \$4.68 billion for missile defense and naval ship repair (which was appropriated in the [December 21, 2017 continuing resolution](#)).

non-exempt programs (i.e., “sequestration”) to offset the breach. However, Section 1008 of the bill would nullify the effects of any sequestration ordered for defense programs in FY 2018.

### CONSERVATIVE VIEWS:

Many conservatives will be pleased that the bill would provide for full year military appropriations. Many conservatives oppose continuing resolutions that apply to defense spending, arguing that they negatively impact military training, readiness, equipment, and personnel.

Some conservatives may be concerned that of the bill’s \$75 billion in OCO funding, approximately \$10 billion would be designated for base budget purposes. OCO funding is cap-exempt, and is supposed to be used exclusively for war fighting purposes.

Some conservatives may be concerned that the bill would appropriate defense funds at a level that would result in a breach of the BCA’s FY 2018 defense cap, and that the funding increase above BCA cap levels would not offset in the bill by spending cuts elsewhere in the budget.

Some conservatives may be concerned that the measure would nullify enforcement of the discretionary spending cap for defense programs in FY 2018.

- **Expand the Size and Scope of the Federal Government?** Yes, the bill provides discretionary funding above existing levels and nullifies the effect of any sequestration order that would otherwise be required under current law.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No, according to the original [Committee Report](#).

## DETAILED SUMMARY AND ANALYSIS:

### DEFENSE APPROPRIATIONS

The bill would appropriate full year funding for the Department of Defense (DOD). It would provide funding at an annualized rate of \$664.1 billion. This figure includes base discretionary defense funding (\$584.04 billion) that is subject to the Budget Control Act (BCA) discretionary spending caps (as increased by the Bipartisan Budget Act of 2015 (BBA15)), cap-exempt appropriations designated for OCO (\$75.11 billion) and emergency requirements (\$4.92 billion). Approximately \$10 billion of the OCO funds is designated for base purposes.

The bill is virtually the same as Division A (“Department Of Defense Appropriations Act, 2018”) of [H.R. 3219, the House-passed Make America Secure Appropriations Act, 2018](#), which was added to [H.R. 3354, the House-passed Make America Secure and Prosperous Appropriations Act, 2018](#). The only substantive differences are that it appropriates an additional \$1.18 billion for costs associated with [Operation Freedom’s Sentinel](#), and would nullify the effects of any sequestration ordered for defense programs in FY 2018.

**Active, Reserve, And National Guard Military Personnel:** Military Personnel would be appropriated approximately \$133 billion, about \$904 million below President Trump’s budget request and \$4.3 billion above the FY 2017 enacted level.

**Military Personnel End Strength:** The bill would provide funding to support end-strength levels 27,800 above those authorized in FY 2017 and 17,000 above President Trump’s budget request.

**Military Pay Raise:** The bill would provide funding to increase pay for all military personnel by 2.4 percent effective January 1, 2018.

**Operation and Maintenance** Operation and Maintenance (O&M) would be appropriated approximately \$192 billion, a level that is about \$3 billion above President Trump's budget request and \$24 billion above the FY 2017 enacted level.

**Sexual Assault Special Victims' Counsel Program:** The bill would provide \$25 million for the Sexual Assault Special Victims' Counsel Program.

**Procurement:** Procurement would be appropriated \$132.5 billion, a level that is \$19 billion above President Trump's budget request and \$24 billion above the FY 2017 enacted level.

**Research, Development, Test and Evaluation:** Research, Development, Test and Evaluation (RDT&E) would be appropriated \$82.7 billion, a level that is \$62 million below President Trump's budget request and \$10 billion above the FY 2017 enacted level.

**Other Department of Defense Programs:** Other Defense Programs would be appropriated \$36 billion, a level that is \$217 million above President Trump's budget request and \$469.8 million above the FY 2017 enacted level.

**Defense Health Program:** The bill would provide \$33.9 billion for the Defense Health Program, a level that is \$267 million above President Trump's budget request and \$150 million above the FY 2017 enacted level.

The primary mission of the Defense Health Program is to "provide for worldwide medical and dental services to active forces and other eligible beneficiaries." Within this total, \$32 billion is for Operations and Maintenance, \$895 million is for Procurement, and \$1.3 billion is for Research, Development, Test, and Evaluation (RDT&E).

As part of RDT&E, the Congressionally Directed Medical Research Program (CDMRP) is funded at \$627.1 million above the president's budget request. According to [CRS](#), "Members of Congress are frequently lobbied to support adding funding to the annual defense appropriation for medical research on a wide variety of diseases and topics." While medical research is a laudable activity, some conservatives may be concerned that many of the programs funded within the CDMRP are not for military-specific conditions and are duplicative of the type of [research done](#) at the National Institutes of Health (NIH). According to [Taxpayers for Common Sense](#), "These programs are clearly earmarks and therefore take money away from other necessary Defense Department functions."

The bill provides research funding for:

- alcohol and substance abuse disorders research
- ALS research alzheimer research
- autism research
- bone marrow failure disease research
- breast cancer research
- cancer research
- Duchenne muscular dystrophy research
- gulf war illness research
- hearing restoration research
- kidney cancer research
- lung cancer research
- lupus research
- multiple sclerosis research
- orthopedic research
- ovarian cancer research
- prostate cancer research
- spinal cord research
- reconstructive transplant research
- tickborne disease research
- traumatic brain injury and psychological health research
- tuberous sclerosis complex research
- vision research
- Global HIV/AIDS prevention
- HIV/AIDS program increase
- Joint warfighter medical research
- Trauma clinical research program

## MAJOR POLICY PROVISIONS:

**2001 AUMF:** The bill would not include a provision adopted during the Appropriations Committee markup of the bill from Rep. Barbara Lee to repeal the 2001 Authorization for Use of Military Force.

**Guantanamo Detainees:** The bill would prohibit funds to transfer or release any detainee held at Guantanamo Bay into the U.S, modify any facility in the U.S. to house any Guantanamo detainee, and prohibit the use of funds to close or transfer the jurisdiction of the Naval Station Guantanamo Bay.

**War Powers Resolution:** The bill would prohibit the use of funds in contravention of the War Powers Resolution. The bill would also specifically prohibit the use of funds in contravention of the War Powers Resolution in Iraq.

**Support for Israel:** The bill would provide \$705.8 million in direct support for Israel, including \$92 million for Iron Dome, \$205 million for upper-tier missile defense, and \$225.1 million for Short Range Ballistic Missile Defense.

**Second Amendment Provisions:** The bill would prohibit funding to implement the U.N. Arms Trade Treaty unless it is ratified by the Senate, and would prohibit the DOD from demilitarizing or disposing of M-1 Carbines, M-1 Garand rifles, M-14 rifles, .22 caliber rifles, .30 caliber rifles, or M-1911 pistols or to destroy small arms ammunition that is not otherwise prohibited for commercial sale by federal law.

**Rosoboronexport:** The bill would prohibit funding for contracts, agreements, grants, loans, or other agreements with the Rosoboronexport company unless certain conditions are met, such as a prohibition on Rosoboronexport contracts with Syria and a requirement that the Russian Federation withdraws armed forces from Ukraine. Rosoboronexport is the Russian state sole-source export company for defense and dual-use products.

**Intelligence:** The bill would prohibit the use of funds for integration of foreign intelligence information unless the information has been lawfully collected and processed during the conduct of authorized foreign intelligence activities and that information pertaining to United States persons shall only be handled in accordance with protections provided in the Fourth Amendment of the United States Constitution as implemented through Executive Order No. 12333.

**FISA:** The bill would prohibit the use of funds for the National Security Agency (NSA) to “conduct an acquisition pursuant to section 702 of the Foreign Intelligence Surveillance Act of 1978 for the purpose of

targeting a United States person; or acquire, monitor, or store the contents of any electronic communication of a United States person from a provider of electronic communication services to the public pursuant to section 501 of the Foreign Intelligence Surveillance Act of 1978.”

**BRAC:** The bill would prohibit the use of funds for Base Realignment and Closure. The administration’s statement of administration policy for the FY 2018 NDAA expressed opposition to such prohibition, which was also contained in that bill.

**Prohibition on Assistance to North Korea:** The bill would prohibit funding from being obligated or expended for assistance to the Democratic People’s Republic of Korea unless specifically appropriated for that purpose.

**Sale of Tobacco Products:** The bill would prohibit the sale of tobacco products in military resale outlets below the most competitive price in the local community.

**Evolved Expendable Launch Vehicle Procurement:** The bill would require that the Evolved Expendable Launch Vehicle (EELV) competitive procurements be open for award to all certified providers of EELV-class systems and that the award shall be made to the provider that offers the best value to the government.

**Grants to the Red Cross and the USO:** The bill would provide \$20 million for the United Service Organizations (USO) and \$24 million to the Red Cross.

**Fisher House:** The bill would provide \$11 million for Fisher Houses that provide free housing to the families of wounded warriors while they are receiving hospital treatment.

**Protectionism:** The bill included protectionist “buy American” provisions for: supercomputers, ball and roller bearings, anchors and chains, flags, and carbon, alloy, and armor steel plate.

The bill also subjects all funds made available by the bill to the Buy American Act, and requires the Secretary of Defense to consider disbarring any individual from contracting with the Department who has been convicted of intentionally misusing a “made in America” label.

**Army Contracting Command—New Jersey:** The bill would prohibit the use of funds to eliminate, restructure, realign, or make disproportionate personnel reductions at Army Contracting Command—New Jersey sites without 30-day notification to Congress. Picatinny Arsenal is located in New Jersey’s 11th Congressional District.

## **COMMITTEE ACTION:**

H.R. 695, the Child Protection Improvements Act of 2017, in its original form, was introduced on January 24, 2017, and referred to the House Committee on the Judiciary. On March 22, 2017, the bill was ordered to be reported by the House Judiciary Committee by voice vote. On May 22, 2017 the bill was reported favorably by the House Judiciary Committee. On May 22, 2017, [the bill](#) was passed by voice vote in the House. On October 16, 2017, the Senate passed the bill with an amendment by unanimous consent.

Rules Committee Print 115-56, reflecting the text of the House Amendment to the Senate Amendment to H.R. 695, replaces the text of the Senate’s amendment with the text of H.R. 4877, the Department of Defense Appropriations Act, 2018.

## **ADMINISTRATION POSITION:**

According to the Statement of Administration Policy, “if H.R. 695 were presented to the President in its current form, his advisors would recommend that he sign the bill into law.”

## **CONSTITUTIONAL AUTHORITY:**

The original Constitutional Authority Statement for H.R. 695 was: “Congress has the power to enact this legislation pursuant to the following: Congress has the power to enact the Child Protection Improvements Act of 2017 pursuant to Article I, Section 8, Clause 18, the Necessary and Proper Clause. The Necessary and Proper Clause supports the expansion of congressional authority beyond the explicit authorities that are directly discernible from the text. Additionally, the Preamble to the Constitution provides support of the authority to enact legislation to promote the General Welfare.”

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