

Defense Primer: Navigating the NDAA

The annual National Defense Authorization Act (NDAA) has a legacy of regular passage. FY2021 marked the 60th consecutive year for which an annual defense authorization was enacted. Many defense policymakers and officials see the bill as a reliable legislative vehicle for a range of policy matters.

The FY2021 NDAA (P.L. 116-283) included 1,482 pages of policy provisions and discretionary authorizations totaling \$731.6 billion. Unlike an appropriations bill, the NDAA does not provide budget authority for the Department of Defense (DOD). Instead, the NDAA establishes or continues defense programs, policies, projects, or activities at DOD and other federal agencies, and provides guidance on how the appropriated funds are to be used in carrying out those authorized activities. This primer provides an overview of the structure and organization of the NDAA.

Organization of the NDAA

The NDAA establishes policy and authorizes appropriations for the DOD, nuclear weapons programs of the Department of Energy, and other defense-related activities. Typically, there is a House legislative vehicle (e.g., H.R. 4350, 117th Congress) as well as a separate Senate vehicle (e.g., S. 2792, 117th Congress); the Senate committee alternative is often proposed as an amendment to the House bill (or vice versa). The bills typically include four divisions related to defense authorizations:

- **Division A.** Department of Defense Authorizations;
- **Division B.** Military Construction Authorizations;
- **Division C.** Department of Energy National Security Authorizations and Other Authorizations; and
- **Division D.** Funding Tables.

Partly because the NDAA is consistently enacted, the bill is frequently used as a vehicle for legislation under the jurisdiction of committees other than the House and Senate Committees on Armed Services (sometimes attached as other divisions).

Legislative Provisions

Divisions A, B, and C are organized by title, subtitle, and section. For example, in Division A, Title I covers Procurement; Title II Research, Development, Test, and Evaluation (RDT&E); Title III Operation and Maintenance (O&M); Title IV Military Personnel Authorizations, and so forth. Individual legislative provisions are assigned section numbers according to title and subtitle. A detailed table of contents (organized by division, title, subtitle, and section number) provides a complete list of items in the bill.

Funding Tables

Division D provides funding tables that specify dollar amounts authorized to be appropriated. The tables are organized by appropriation account and correspond to the associated legislative provisions. Historically, funding designated for Overseas Contingency Operations (OCO) was also specified in Division D, with each OCO table following the table that provides authorization of appropriations for regular, or *base*, budget requirements.

What's in a Committee Report?

In addition to providing the legislative text and funding tables that comprise the NDAA, the House Committee on Armed Services (also known as the House Armed Services Committee, or HASC) and the Senate Committee on Armed Services (also known as the Senate Armed Services Committee, or SASC) each typically produce a committee report to accompany its version of the bill. The reports provide rationale for the committee bill, explain committee actions, and provide further guidance and directives to government agencies. The committee may also prepare a classified annex to the report. Unlike the bill text, committee reports are not considered or amended during floor proceedings.

In practice, the HASC and SASC reports mirror the organization of the bills, providing a section-by-section description of the bill text (by division, title, subtitle, and section). They also include the results of committee roll call votes, additional views of members of the committee, items of special interest (ISIs), cost estimates, and other relevant information, such as a comparison to current law.

Section-by-Section Summaries

The HASC and SASC reports each provide summaries of what each section of the proposed bill would do. Such summaries may provide additional context for the provision and may also express committee concerns or rationale behind inclusion of the provision.

Items of Special Interest

There are generally two types of items of special interest: (1) ISIs that are directive; and (2) Those that are not directive. Directive ISIs, often referred to as *directive report language*, direct an individual (such as a senior DOD official) to take a specified action by a date certain. Although directive report language is not legally binding, agency officials generally regard it as a congressional mandate and respond accordingly.

Nondirective ISIs are statements of the committee's views, concerns, opinions, or rationale for acting. For example, a nondirective ISI may explain why the committee recommends an increase in funding for a particular project,

or may note the committee's support for (or concern over) actions taken by the DOD or military services.

Cost Estimates

House and Senate rules require that a report on a measure that provides new budget authority must contain a statement from the Congressional Budget Office (CBO) projecting the cost of the bill for the first fiscal year affected and the four subsequent fiscal years.

Committee Roll Call Votes

In accordance with House and Senate rules, HASC and SASC reports include an accounting of most roll call votes taken during consideration of the bill in committee. These voting records are generally found in the back of the reports.

Additional or Dissenting Views

Also in accordance with House and Senate rules, committee reports accompanying the NDAA include any additional or dissenting views submitted by a member of the committee in accordance with the time specified in the rules.

Communications from Other Committees

The HASC report also typically includes a record of correspondence from other House committees that state any willingness to forgo a sequential referral of the reported NDAA, notwithstanding any matters contained therein that fall outside of HASC's jurisdiction.

What's in a Conference Report?

The House and Senate commonly establish a conference committee—typically comprised of members of the HASC and SASC—to resolve differences between the chambers' positions on the NDAA and provide the compromise agreement in the form of a conference report. The conference report contains the legislative language the conference committee proposes that the two houses approve.

Included with the conference report is a Joint Explanatory Statement (JES)—sometimes referred to as the statement of managers—that explains the various elements of the conferees' agreement.

The conference report is generally organized in the same manner as each House and Senate proposal—by division, title, subtitle, and section. However, as a result of conference negotiations, provisions from the House and Senate, sections may be renumbered or moved from one title to another. The JES reflects both the original section number assigned to the provision(s) upon passage in the House or Senate, along with the section number assigned to any provision included in the conference agreement.

If the conference agreement does not include a provision that was carried by the House or the Senate, the JES will note that outcome in a section titled, "Legislative Provisions Not Adopted."

In practice, the JES for the NDAA also includes a detailed set of tables. Unlike the tables provided in the legislative text, which depict the requested amount and the conference-

authorized amount, the JES tables also provide the House- and Senate-recommended amounts.

What Are the Different Versions of the Bill?

As the NDAA bills move through the legislative process, various versions of each bill may be available. In a typical legislative cycle, the NDAA may exist in several forms, including the following:

- **Introduced Version.** Typically contains only the legislative proposals requested by the Administration. In the House, it is assigned a bill number and referred to the HASC for consideration. In the Senate, the President's proposal is often introduced and referred to SASC but is not the vehicle the committee acts on.
- **Reported Version (in the House).** Includes the HASC proposal, incorporating the amendments agreed to in the committee markup.
- **Engrossed Version (in the House or Senate).** Reflects changes made via amendments during floor consideration in the respective chamber.
- **Placed on the Calendar in the Senate.** (1) For the House bill, its engrossed version, including all technical and conforming changes; (2) For the Senate bill, the SASC-reported original bill (with text reflecting amendments agreed to in markup).
- **Engrossed Amendment Senate.** If the Senate has taken up and considered the House bill, this is the proposed alternative reflecting changes made during floor consideration, including the text of the alternative proposed by SASC.
- **Enrolled Bill.** Final official copy of the bill passed by both the House and the Senate in identical form and sent to the President for signature.
- **Public Law.** The enacted version of the bill.

CRS Products

CRS In Focus IF10515, *Defense Primer: The NDAA Process*
 CRS In Focus IF10514, *Defense Primer: Defense Appropriations Process*
 CRS Report 98-169, *House Committee Reports: Required Contents*
 CRS Report 98-305, *Senate Committee Reports: Required Contents*
 CRS Report 98-382, *Conference Reports and Joint Explanatory Statements*

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