

1 **SEC. ____ . AIR FORCE FORCE STRUCTURE.**

2 (a) MINIMUM INVENTORY REQUIREMENT.—Section 134(b) of the National Defense
3 Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2037) is amended by
4 striking “report under subsection (e)(2)” and inserting “part of the report under subsection (e)(2)
5 that is required under subparagraph (C) of that subsection”.

6 (b) FIGHTER AIRCRAFT COMPARISON TEST REPORTS.—

7 (1) REPORT FROM DIRECTOR OF OPERATIONAL TEST AND EVALUATION.—The
8 Director of Operational Test and Evaluation shall submit to the congressional defense
9 committees the part of the report required by section 134(e)(1)(B) of the National
10 Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2038)
11 not later than 60 days after the date of the enactment of this Act.

12 (2) REPORT FROM SECRETARY OF THE AIR FORCE.—Not later than 60 days after
13 the date of the submission of the report under paragraph (1), the Secretary of the Air
14 Force shall submit to the congressional defense committees the part of the report required
15 by section 134(e)(2)(C) of the National Defense Authorization Act for Fiscal Year 2017
16 (Public Law 114–328; 130 Stat. 2037).

17 **SEC. ____ . KC-10A AND KC-135 AIRCRAFT INVENTORY.**

18 (a) KC-10A MINIMUM INVENTORY REQUIREMENT.—Section 135 of the William M.
19 (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–
20 283) is amended in subsection (b)—

21 (1) in paragraph (2), by striking “38” and inserting “36”; and

22 (2) by striking paragraph (3).

23 (b) KC-135 MINIMUM INVENTORY REQUIREMENT.—

1 (1) IN GENERAL.—Section 135 of such Act is further amended—

2 (A) by striking subsection (c);

3 (B) by redesignating subsections (d), (e), and (f) as subsections (c), (d),
4 and (e), respectively; and

5 (C) in subsection (d), as redesignated by subparagraph (B)—

6 (i) by striking “EXCEPTIONS.—(1) KC-10A AIRCRAFT.—” and

7 inserting “EXCEPTION.—”; and

8 (ii) by striking paragraph (2).

9 (2) FISCAL YEAR 2022.—During the period beginning on the date of the enactment

10 of this Act and ending on October 1, 2022, the Secretary of the Air Force shall maintain

11 not less than 376 KC-135 aircraft total aircraft inventory. During this period the

12 Secretary of the Air Force is authorized to divest 18 KC-135 aircraft.

13 (c) CONFORMING AMENDMENT.—Section 135 of such Act is further amended in the

14 matter preceding paragraph (1) of subsection (b) by striking “(e)(1)” and inserting “(d)”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would authorize the Air Force to make necessary force structure changes over the FYDP.

The first section of this proposal would permit the United States Air Force to make necessary force structure changes over the current FYDP. The FY17 NDAA states the “Secretary of the Air Force (SecAF) may not retire, prepare to retire, or place in storage or on backup aircraft inventory status any A-10 aircraft” until both the Director of Operational Test and Evaluation (DOT&E) and SecAF submit reports regarding F-35 vs A-10 performance. DOT&E report requirements are twofold: 1) the results and findings of F-35 Initial Operational Test & Evaluation (IOT&E), and 2) the results of a comparison test examining the capabilities of the F-35A and A-10C in conducting close air support (CAS), combat search and rescue (CSAR), and forward air controller airborne (FAC-A) missions. SecAF report requirements include three components: 1) views on the F-35 IOT&E report, 2) a plan for addressing deficiencies and

corrective actions identified in the IOT&E report, and 3) short-term and long-term strategies for preserving USAF capability in CAS, CSAR, and FAC-A missions.

This proposal seeks to modify these requirements based upon delays in F-35 IOT&E. DOT&E is unable to complete the IOT&E portion of their report due to delays in the F-35 Joint Simulator Environment (JSE), thus delaying completion of both DOT&E and SecAF requirements. This proposal directs DOT&E to submit the completed results of the F-35A and A-10C comparison test, while also directing SecAF to provide short-term and long-term strategies for CAS, CSAR, and FAC-A. After a 60-day period following SecAF report submission, the USAF may begin divesting A-10 aircraft and continue force modernization efforts congruent with the *2018 National Defense Strategy's* "Build a More Lethal Joint Force" line of effort.

Section 134(e)(1)(A) of the FY17 NDAA requires DOT&E to submit a report including the results and findings of the IOT&E of the F-35 aircraft program. This portion of DOT&E's report faces continued delays due to challenges building a threat-representative JSE for the F-35. IOT&E efforts paused in 2019 due to JSE complications and are estimated to continue through late-2020 / early-2021. The IOT&E portion of the report cannot be completed until F-35 performance in the JSE is evaluated. Prior to the COVID-19 pandemic, DOT&E estimated the IOT&E portion of the report to be complete no earlier than mid-2021. Effects of the pandemic will likely delay this report even further.

Section 134(e)(1)(B) requires DOT&E to submit a report including the results of a comparison test examining the capabilities of the F-35A and A-10C in CAS, CSAR, and FAC-A missions. This test utilized "matched pair" trials in which both aircraft conducted scenarios in the same airspace, with the same friendly forces, against the same threat types and targets, and at the same time of day or night to the maximum extent possible. Both aircraft employed their best available weapons configurations and executed Service-approved tactics. DOT&E began the comparison test in July 2018 and completed it in March 2019. DOT&E has the data required to complete the comparison test portion of their report and is prepared to present to Congress in a timely fashion pending de-coupling it from the IOT&E results.

Sections 134(e)(2)(A) and 134(e)(2)(B) direct the Secretary of the Air Force to provide views and corrective actions for the IOT&E portion of DOT&E's report. As the IOT&E report is delayed due to the aforementioned circumstances, SecAF is unable to complete these reports in the near future. Section 134(e)(2)(C) directs SecAF to provide short-term and long-term strategies for preserving CAS, CSAR, and FAC-A capabilities for the Air Force. Based in large part upon the DOT&E report of the F-35A and A-10C comparison test, SecAF is able to complete this requirement.

The USAF FY22 President's Budget calls for the decrement of 42 A-10s in FY22 and an additional 21 A-10s in FY23. Under existing FY17 NDAA language, F-35 IOT&E delays will prevent the Air Force from executing these necessary force structure requirements. This proposal permits the Air Force to build a more lethal force and meet the intent of the FY17 NDAA while accounting for unforeseen delays in F-35 IOT&E.

The second section of this proposal would amend FY21 NDAA restrictions on air refueling tanker aircraft. Section 135(b) of the FY21 NDAA established minimum inventory requirements for the KC-10A for FY22 and FY23. Additionally, section 135(c) restricts the Secretary of the Air Force from retiring KC-135 aircraft through the end of FY23. This proposal requests amendment to FY22 KC-10A and KC-135 divestment restrictions and repeal of all FY23 KC-10 and KC-135 divestment restrictions.

This proposal seeks to modify these requirements based on the need to modernize and accelerate toward the USAF future force design. The FY22 President’s Budget maintains aerial refueling total aircraft inventory at or above 479 and meets all Operational Plan (OPLAN) scenarios. Since tanker manpower remains flat, retaining excess legacy tankers from FY22 and beyond provides limited additional tanker capacity for the warfighter, and has a significant impact on KC-46 conversion. The DAF currently has four units in KC-46 conversion and a typical unit has 2-3 years to complete transition. Units cannot fly and maintain two sets of tanker aircraft at fully operationally capable levels.

The Department of the Air Force and United States Transportation Command (USTRANSCOM) agree on the Fiscal Year 2022 tanker force structure and are working together to describe the appropriate level of day-to-day (competition) tanker aircraft requirements, and will continue to address priority of missions across the Joint Force. Realigning theater-assigned tanker aircraft based on changes to United States Central Command (USCENTCOM) posture, adding additional availability based on improvements to Mission Capable Rates, adding additional funds for Air Reserve Component participation, and utilizing the KC-46 when possible to fill operational taskings all combine to make substantially more tanker aircraft available for daily taskings. This should allow additional retirements in FY22 and FY23.

The FY22 President’s Budget calls for the divestment of 14 KC-10s (maintaining 36 TAI) and 18 KC-135s (maintaining 376 TAI) in FY22. This proposal permits the Air Force to fill daily requirements while building a more lethal force and meeting the requirements of the National Defense Strategy.

Budget Implications: The resources impacted by this proposal will be included within the Fiscal Year (FY) 2022 President’s Budget request as savings that will be reinvested to support other programs. If this proposal is not supported, funding will need to be restored in the FY22 Defense Appropriations Bill to maintain the current A-10 fleet size. Funding requirements by budget line item will be provided upon request to both appropriations and authorization committees in coordination with OSD(C).

SAVINGS - RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation	Budget Activity	BLI/SAG	Program Element
A-10	343.94	411.85	480.45	637.12	334.90	Multiple	Multiple	Multiple	Multiple

The Fiscal Year (FY) 2022 President’s Budget request reflects the desires of the Air Force with regard to KC-10 and KC-135 force structure. If this proposal is not supported, the following funds will need to be

restored in the FY22 Defense Appropriations Bill. Funding requirements by budget line item will be provided upon request to both appropriations and authorization committees in coordination with OSD(C).

SAVINGS - RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation	Budget Activity	BLI/SAG	Program Element
KC-10/KC-135	286.7	426.9	131.5	0	0	Multiple	Multiple	Multiple	Multiple

Changes to Existing Law: This proposal would amend section 134 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2037) and section 135 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283) as follows:

National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2037):

SEC. 134. PROHIBITION ON AVAILABILITY OF FUNDS FOR RETIREMENT OF A-10 AIRCRAFT.

(a) Prohibition on Availability of Funds for Retirement.—None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2017 for the Air Force may be obligated or expended to retire, prepare to retire, or place in storage or on backup aircraft inventory status any A-10 aircraft.

(b) Additional Limitation on Retirement.—In addition to the prohibition in subsection (a), the Secretary of the Air Force may not retire, prepare to retire, or place in storage or on backup aircraft inventory status any A-10 aircraft until a period of 90 days has elapsed following the date on which the Secretary submits to the congressional defense committees the report under ~~subsection (e)(2)~~ part of the report under subsection (e)(2) that is required under subparagraph (C) of that subsection.

(c) Prohibition on Significant Reductions in Manning Levels.—None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2017 for the Air Force may be obligated or expended to make significant reductions to manning levels with respect to any A-10 aircraft squadrons or divisions.

(d) Minimum Inventory Requirement.—The Secretary of the Air Force shall ensure the Air Force maintains a minimum of 171 A-10 aircraft designated as primary mission aircraft inventory until a period of 90 days has elapsed following the date on which the Secretary submits to the congressional defense committees the report under subsection (e)(2).

(e) Reports Required.—

(1) The Director of Operational Test and Evaluation shall submit to the congressional defense committees a report that includes--

(A) the results and findings of the initial operational test and evaluation of the F-35 aircraft program; and

(B) a comparison test and evaluation that examines the capabilities of the F-35A and A-10C aircraft in conducting close air support, combat search and rescue, and forward air controller airborne missions.

(2) Not later than 180 days after the date of the submission of the report under paragraph (1), the Secretary of the Air Force shall submit to the congressional defense committees a report that includes--

(A) the views of the Secretary with respect to the results of the initial operational test and evaluation of the F-35 aircraft program as summarized in the report under paragraph (1), including any issues or concerns of the Secretary with respect to such results;

(B) a plan for addressing any deficiencies and carrying out any corrective actions identified in such report; and

(C) short-term and long-term strategies for preserving the capability of the Air Force to conduct close air support, combat search and rescue, and forward air controller airborne missions.

(f) Special Rule.—

(1) Subject to paragraph (2), the Secretary of the Air Force may carry out the transition of the A-10 unit at Fort Wayne Air National Guard Base, Indiana, to an F-16 unit as described by the Secretary in the Force Structure Actions map submitted in support of the budget of the President for fiscal year 2017 (as submitted to Congress under section 1105(a) of title 31, United States Code).

(2) Subsections (a) through (e) shall apply with respect to any A-10 aircraft affected by the transition described in paragraph (1).

**William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021
(Public Law 116–283):**

SEC. 135. INVENTORY REQUIREMENTS FOR AIR REFUELING TANKER AIRCRAFT.

(a) In General.--During the period beginning on the date of the enactment of this Act and ending on October 1, 2025, the Secretary of the Air Force shall maintain not less than 412 tanker aircraft based on Primary Mission Aircraft Inventory (PMAI) of the Air Force.

(b) Minimum Inventory Requirements for KC-10A Aircraft.--Except as provided in subsection ~~(e)(1)(d)~~:

(1) Fiscal year 2021.--During the period beginning on the date of the enactment of this Act and ending on October 1, 2021, the Secretary of the Air Force shall maintain a minimum of 50 KC-10A aircraft designated as primary mission aircraft inventory.

(2) Fiscal year 2022.--During the period beginning on October 1, 2021, and ending on October 1, 2022, the Secretary of the Air Force shall maintain a minimum of ~~38~~ 36 KC-10A aircraft designated as primary mission aircraft inventory.

~~(3) Fiscal year 2023.--During the period beginning on October 1, 2022, and ending on October 1, 2023, the Secretary of the Air Force shall maintain a minimum of 26 KC-10A aircraft designated as primary mission aircraft inventory.~~

~~—(c) Prohibition on Retirement of KC-135 Aircraft.--Except as provided in subsection (e), during the period beginning on the date of the enactment of this Act and ending on October 1, 2023, the Secretary of the Air Force may not retire, or prepare to retire, any KC-135 aircraft.~~

~~(d) KC-135 Aircraft Fleet Management.--None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2021 for the Air Force may be obligated or~~

expended to reduce the number of KC-135 aircraft designated as primary mission aircraft inventory.

~~(ed) Exceptions.—~~

~~—(1) KC-10A aircraft. EXCEPTION.—The requirement in subsection (b) shall not apply to an aircraft otherwise required to be maintained by that subsection if the Secretary of the Air Force determines, on a case-by-case basis, that such aircraft is no longer mission capable due to mishap or other damage, or being uneconomical to repair.~~

~~—(2) KC-135 aircraft. The requirement in subsection (c) shall not apply to an aircraft otherwise required to be maintained by that subsection if the Secretary of the Air Force—~~

~~—(A) at any time during the period beginning on the date of the enactment of this Act and ending on October 1, 2023, determines, on a case-by-case basis, that such aircraft is no longer mission capable due to mishap or other damage, or being uneconomical to repair; or~~

~~—(B) during fiscal year 2023, certifies in writing to the congressional defense committees, not later than 30 days before the date of divestment of such aircraft, that the Air Force can meet combatant command tanker aircraft requirements by leveraging Air National Guard and Air Force Reserve capacity with increased Military Personnel Appropriation (MPA) Man-day Tours to the reserve force.~~

~~(fe) Primary Mission Aircraft Inventory Defined.—In this section, the term “primary mission aircraft inventory” has the meaning given that term in section 9062(i)(2)(B) of title 10, United States Code.~~

1 **SEC. ___. AMENDMENT TO DEFENSE PRODUCTION ACT OF 1950 RELATING TO**
2 **CRITICAL INDUSTRIAL RESOURCE SHORTFALLS.**

3 Section 303(a) of the Defense Production Act of 1950 (50 USC 4533(a)) is amended by
4 adding at the end the following new paragraphs:

5 “(8) EXCEPTION FOR CERTAIN SHORTFALL CATEGORIES.—

6 “(A) IN GENERAL.—

7 (i) The requirements of paragraph (6)(B) do not apply to industrial
8 resources shortfalls in the categories listed in subparagraph (B).

9 (ii) Notwithstanding the limitation under paragraph (6)(C), the
10 aggregate amount of all actions for each industrial resources shortfall in
11 the categories listed in subparagraph (B) may not exceed \$350,000,000,
12 unless such action or actions are authorized to exceed such amount by an
13 Act of Congress.

14 “(B) CATEGORIES.—The categories listed in this subparagraph are as
15 follows:

16 “(i) Light rare earth separation and processing.

17 “(ii) Heavy rare earth separation and processing.

18 “(ii) Rare earth metal and alloys production.

19 “(iv) Neodymium Iron Boron rare earth permanent magnets
20 production.

21 “(v) Samarium Cobalt rare earth permanent magnets production.

22 “(vi) Precursor materials for critical chemicals for missiles and
23 munitions.

24 “(vii) Inert materials for critical chemicals for missiles and
25 munitions.
26 “(viii) Energetic materials for critical chemicals for missiles and
27 munitions.
28 “(ix) Advanced manufacturing techniques for critical chemicals for
29 missiles and munitions.
30 “(x) Radiation-hardened electronics.
31 “(9) The requirements of paragraph (6)(B) and (6)(C) do not apply to shortfalls
32 for any industrial resources, material, or critical technology item used in furthering
33 hypersonic systems and strategic systems.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would amend the Defense Production Act (DPA) to ensure that the DPA Title III program is postured to successfully mitigate critical resource shortfalls in the supply chains for rare earth elements, critical chemicals for Department of Defense (DoD) missiles and munitions, hypersonic and strategic systems, and radiation hardened electronics.

Section 303 of the Defense Production Act (50 USC 4533) provides authority for the President to make provisions to create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense. That authority, however, requires that if the taking of any action under section 303 to correct a domestic industrial base shortfall would cause the aggregate outstanding amount of all such action for such shortfall to exceed \$50,000,000, the action or actions may be taken only after the 30-day period following the date on which designated Congressional committees have been notified in writing of the proposed action (section 303(a)(6)(B) (50 USC 4533(a)(6)(B))). Furthermore, it limits the aggregate outstanding amount of all action to correct an industrial resource shortfall under the section to \$50,000,000 unless such action or actions are authorized to exceed such amount by an Act of Congress (section 303(a)(6)(C) (50 USC 4533(a)(6)(C))).

(a) Rare Earths Supply Chain: The proposed modifications to add clauses (i) through (v) in new paragraph (8)(B) of section 303(a) to the Defense Production Act of 1950 will aid in more effectively addressing critical, capital-intensive industrial base shortfalls in the rare earths supply chain. As highlighted in the report on Executive (EO) 13806, *Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States*, “China represents a significant and growing risk to the supply of materials

deemed strategic and critical to U.S. national security.” China is dominating upstream sources of supply (e.g., mining) and aggressively moving up the value chain to dominate value-added materials processing and associated manufacturing supply chains. The report in response to EO 13806 emphasizes particular areas of concern to the United States industrial base in “widely used and specialized metals, alloys, and other materials, including rare earths and permanent magnets.” In response to the report, in July 2019, President Donald Trump signed five Presidential Determinations (PDs), authorizing the use of DPA Title III authorities to address resource shortfalls in the rare earth elements supply chain, including (1) light rare earth elements separation and processing, (2) heavy rare earth separation and processing, (3) production of rare earth metals and alloys, (4) production of Neodymium Iron Boron (NdFeB) rare earth permanent magnets, and (5) the production of Samarium Cobalt (SmCo) rare earth permanent magnets.

The U.S. industry for production of REEs was once robust. From the 1960s through the 1990s, the U.S. and Japan led much of the early development of rare earth applications. However, China has taken a dominant position of world markets in rare earth materials. The Chinese government further strengthened its market dominance through anticompetitive means, including quotas and regulation of the volume of domestic production. In 2015, the World Trade Organization (WTO) ruled in favor of the U.S. that Chinese quotas and other restrictive policies were in violation of WTO rules.¹ However, China’s dominant position in rare earth materials production has not significantly changed since this ruling.

The significant cost and environmental considerations placed upon U.S. domestic companies, the challenge posed by a strategic competitor using predatory economic practices, and the desire of U.S. companies to avoid risky investments make the current environment one that is nearly impossible for timely establishment of a domestic capability. To counteract this unfavorable climate, the government will need to provide expedient and sustained long-term investments in each of the five areas identified in the PDs that have been signed covering this industrial category. It is anticipated that each of these shortfalls will require multiple capital-intensive projects, and the projected investments required to establish the capabilities and increase the capacities necessary for national defense far exceed the \$50,000,000 limit for each of the identified supply chain areas. Raising the spending limits on each of the individual PDs to \$350,000,000 will allow the DPA Title III program office to expend up to \$1,750,000,000 in total to mitigate the identified rare earth elements supply chain shortfalls as have heretofore been identified. The proposed legislation would also alleviate the constraint of notifying Congress and waiting 30 days thereafter to take actions exceeding \$50,000,000, given this pre-existing approval to spend up to \$350,000,000 on each of the shortfalls already identified in PDs and appropriately reported to Congress.

(b) Critical Chemicals for DoD Missiles and Munitions: The proposed modifications to add clauses (vi) through (ix) in new paragraph (8)(B) of section 303(a) to the Defense Production Act of 1950 will aid in more effectively addressing critical, capital-intensive industrial base shortfalls for critical chemicals for DoD missiles and munitions. The report in response to EO 13806 highlights domestic industrial base shortfalls in chemical production for those chemicals critical for DoD missiles and munitions as a significant risk to the United States. The report further describes risks posed by a dependence upon foreign sources of supply and sole sources

¹ World Trade Organization. “DS431: China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum.” https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds431_e.htm

for some chemicals, with reliance upon China being a leading concern driving prioritization of projects against this line of effort. In response to the report, in January of 2019, President Donald Trump signed four PDs authorizing the use of DPA Title III authorities to address resource shortfalls in the critical chemicals for Department of Defense Missiles and Munitions, including- (1) precursor materials, (2) inert materials, (3) energetic materials, and (4) advanced manufacturing techniques for such products.

China is currently the sole source or primary supplier for many chemicals required to make ingredients in missiles and munitions end items. In many cases, there is no other source for these foreign sourced materials and no drop-in alternatives are available. A sudden and catastrophic loss of supply due to restrictions from foreign suppliers, industrial accidents, natural disasters, or wartime damages would impact critical DoD programs for many years and severely disrupt DoD munitions, satellites, space launches, and other defense manufacturing programs. Even in instances where replacements exist, the time and cost to test and qualify a new material could be prohibitive—especially for larger systems where the costs could amount to hundreds of millions of dollars for each individual component. Due to the small demand for materials used in many weapons systems compared to materials used for commercial products, domestic companies have stopped making these necessary materials in the quantities required to support the national defense and the warfighter. Unfavorable business cases to continue production for weapon systems discourage domestic investment in this sector. This lack of investment has led to many costly obsolescence issues for the DoD, increasing the risk of being unable to procure the necessary materials for the weapon systems and negatively affecting Defense readiness.

To mitigate the risks associated the above described shortfalls, the government will need to provide expedient and sustained long-term investments in the areas of the supply chain identified in the PDs. It is anticipated that each of the identified shortfalls will require multiple projects, and the projected investments required to establish the capabilities and increase the capacities necessary for national defense far exceed the \$50,000,000 limit for each area. Raising the limits on each of the individual PDs to \$350,000,000 will allow the DPA Title III program office to expend up to \$1,400,000,000 in total to mitigate the identified critical chemicals for DoD missiles and munitions shortfalls.

(c) Radiation-Hardened Electronics. The proposed modifications to add clause (x) in new paragraph (8)(B) of section 303(a) to the Defense Production Act of 1950 will aid in more effectively addressing critical, capital-intensive industrial base shortfalls for radiation-hardened electronics. In December of 2001, USD(AT&L) Edward Aldridge signed a PD for Advanced Radiation Hardened Microelectronics. At that time there was a \$50,000,000 limitation (much like that now in effect); however, in section 3 of the Defense Production Act Reauthorization of 2003 (Public Law 108-195, December 2003)² Congress permitted an aggregate amount of \$200,000,000 for the effort (increasing a previously approved exception that permitted an aggregate of \$106,000,000). To date, efforts under this PD have expended \$163,477,000 against the \$200,000,000 limitation, leaving an available amount of just \$26,523,000. Raising the limit

² PUBLIC LAW 108-195, SEC. 3. RESOURCE SHORTFALL FOR RADIATION HARDENED ELECTRONICS.

(a) IN GENERAL.—Notwithstanding the limitation contained in section 303(a)(6)(C) of the Defense Production Act of 1950 (50 U.S.C 4533(a)(6)(C)), the President may take actions under section 303 of the Defense Production Act of 1950 to correct the industrial resource shortfall for radiation-hardened electronics, to the extent that such Presidential actions do not cause the aggregate outstanding amount of all such actions to exceed \$200,000,000.

to \$350,000,000 for this industrial base shortfall will provide sufficient funds to continue mitigation efforts and address emergent requirements as DoD modernizes its strategic systems which rely upon advanced radiation-hardened electronics.

The additional funds provided by raising the spending cap will ensure the only remaining on-shore, Defense Microelectronics Activity (DMEA)-accredited trusted producer of Radiation Hardened Microelectronics components, is available for strategic nuclear weapons systems. Section 1670 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91, Dec. 12, 2017) requires: “Not later than December 31, 2020, the Secretary of Defense shall submit to the congressional defense committees a certification that an assured capability to produce or acquire strategic radiation hardened trusted microelectronics, consistent with Department of Defense Instruction 5200.44, is operational and available to supply necessary microelectronic components for necessary radiation environments involved with the acquisition of delivery systems for nuclear weapons.” The additional funding requested will aid in ensuring the expressed intent of Congress is met.

(d) Hypersonic and Strategic Systems. The proposed modifications to add new paragraph (9) to section 303(a) of the Defense Production Act of 1950 will aid in more effectively addressing critical, capital-intensive industrial base shortfalls in hypersonic and strategic systems. Hypersonic strike has been identified as a game changing capability as it enables the warfighter to prosecute high value, time critical targets from standoff ranges. The U.S. has invested in hypersonic capabilities as far back as 1961; however, investments in hypersonic systems, including materials capable of withstanding the high temperature demands of hypersonics, have been sparse and intermittent since the cancellation of the National Aero-Space Plan (NASP). This has led the hypersonic engineering and industrial base to survive by relying on minimal exploratory R&D, and, where possible, industry has attempted to sustain human capital by leveraging them against tangential markets. Many DoD senior leaders believe the U.S. has lost its pre-eminence in this critical technology capability based on observed capabilities from our potential near-peer adversaries. In response, the DoD has rapidly accelerated funding for the development of operational prototypes and manufacturing technologies across the spectrum of hypersonic systems. The unique requirements demanded by these intense missions cannot be readily met by other industries, and the current industrial base is only suited to develop prototype level production to support these systems. In some cases the industrial base is failing to even meet the demand to fulfill these prototype programs.

This demand risk is compounded as the DoD is working to recapitalize its strategic systems that rely on the same fragile industrial base. For example, the Air Force Nuclear Weapons Center (AFNWC) Ground Based Strategic Deterrence (GBSD) system requires similar materials to those required for hypersonic systems for re-entry vehicle thermal protection systems and solid rocket motor nozzle throats. In addition to these applications, DoD, NASA, and National Security customers rely on this industrial base for rocket nozzle throats and nozzle extensions. Production demand for these materials and components is expected to grow dramatically and existing domestic production capacity will be completely subscribed as early as 2021.

Proactively eliminating the spending limit on hypersonic-related investments of section 303(a)(6) (C) and removing the 30-day notification requirement of 303(a)(6)(B) will greatly improve the ability of the DPA Title III program to assist the transition of technologies from research and development prototypes to the production capacities required to meet the DoD’s

needs. It is anticipated that PDs to address shortfalls in the hypersonic and strategic systems industrial base will be executed soon, including ultra-high and high temperature composites (U/HTC) which are used for leading edges, aeroshells, and windows, as well as critical components for the strategic systems that are being concurrently recapitalized. For this one industrial base shortfall alone, it is highly likely that multiple projects will be required to ensure there is not a shortage of the various parts that all require U/HTC materials. Investment costs will be driven by the need to directly scale all of these components from prototype volumes to full rate production in short periods of time to meet their schedule targets.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2022 President’s Budget request. The proposal is a proactive measure to remove the spending limits as the program anticipates needing to expend more than \$50M in each of the identified areas in upcoming years. The table below is illustrative in nature, and the numbers provided depict the funds obligated and/or planned utilizing fiscal year 2020 and prior year funds, as well as estimated funding requirements for continued mitigation efforts in industrial resource shortfalls.

RESOURCE IMPACT (\$MILLIONS)										
Program	FY 2021 & Prior Years	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
DPA Title III Rare Earth Elements	125.00	37.00	37.00	10.00	18.00	30.00	Defense Production Act Purchases	01	Title III	0902199D8Z
DPA Title III Critical Chemicals	5.50	39.30	31.42	44.08	21.53	14.56	Defense Production Act Purchases	01	Title III	0902199D8Z
DPA Title III Radiation Hardened Electronics	200.00	20.68	20.68	20.69	20.69	20.69	Defense Production Act Purchases	01	Title III	0902199D8Z
DPA Title III Hypersonics	-	40.00	50.00	40.00	60.00	50.00	Defense Production Act Purchases	01	Title III	0902199D8Z
Total	255.50	136.98	139.10	114.77	120.22	115.25				

Changes to Existing Law: This proposal would make the following changes to section 303 of the Defense Production Act (50 U.S.C. 4533):

§4533. Other presidential action authorized

(a) In general

(1) In general

To create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense, the President may make provision-

(A) for purchases of or commitments to purchase an industrial resource or a critical technology item, for Government use or resale;

(B) for the encouragement of exploration, development, and mining of critical and strategic materials, and other materials;

(C) for the development of production capabilities; and
(D) for the increased use of emerging technologies in security program applications and the rapid transition of emerging technologies-

(i) from Government-sponsored research and development to commercial applications;
and

(ii) from commercial research and development to national defense applications.

(2) Treatment of certain agricultural commodities

A purchase for resale under this subsection shall not include that part of the supply of an agricultural commodity which is domestically produced, except to the extent that such domestically produced supply may be purchased for resale for industrial use or stockpiling.

(3) Terms of sales

No commodity purchased under this subsection shall be sold at less than-

(A) the established ceiling price for such commodity, except that minerals, metals, and materials shall not be sold at less than the established ceiling price, or the current domestic market price, whichever is lower; or

(B) if no ceiling price has been established, the higher of-

(i) the current domestic market price for such commodity; or

(ii) the minimum sale price established for agricultural commodities owned or controlled by the Commodity Credit Corporation, as provided in section 1427 of title 7.

(4) Delivery dates

No purchase or commitment to purchase any imported agricultural commodity shall specify a delivery date which is more than 1 year after the date of termination of this section.

(5) Presidential determinations

Except as provided in paragraph (7), the President may not execute a contract under this subsection unless the President, on a non-delegable basis, determines, with appropriate explanatory material and in writing, that-

(A) the industrial resource, material, or critical technology item is essential to the national defense;

(B) without Presidential action under this section, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner; and

(C) purchases, purchase commitments, or other action pursuant to this section are the most cost effective, expedient, and practical alternative method for meeting the need.

(6) Notification to Congress of shortfall

(A) In general

Except as provided in paragraph (7), the President shall provide written notice to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of a domestic industrial base shortfall prior to taking action under this subsection to remedy the shortfall. The notice shall include the determinations made by the President under paragraph (5).

(B) Aggregate amounts

If the taking of any action under this subsection to correct a domestic industrial base shortfall would cause the aggregate outstanding amount of all such actions for such shortfall to exceed \$50,000,000, the action or actions may be taken only after the 30-day period following the date on which the Committee on Banking, Housing, and Urban Affairs of the Senate and the

Committee on Financial Services of the House of Representatives have been notified in writing of the proposed action.

(C) Limitation

If the taking of any action or actions under this section to correct an industrial resource shortfall would cause the aggregate outstanding amount of all such actions for such industrial resource shortfall to exceed \$50,000,000, no such action or actions may be taken, unless such action or actions are authorized to exceed such amount by an Act of Congress.

(7) Waivers authorized

The requirements of paragraphs (1) through (6) may be waived-

(A) during a period of national emergency declared by the Congress or the President; or
(B) upon a determination by the President, on a nondelegable basis, that action is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability.

(8) Exception for certain shortfall categories.—

(A) In general.—

(i) The requirements of paragraph (6)(B) do not apply industrial resources shortfalls in the categories listed in subparagraph (B).

(ii) Notwithstanding the limitation under paragraph (6)(C), the aggregate amount of all actions for each industrial resources shortfall in the categories listed in subparagraph (B) may not exceed \$350,000,000, unless such action or actions are authorized to exceed such amount by an Act of Congress.

(B) Categories.—The categories listed in this subparagraph are as follows:

- (i) Light rare earth separation and processing.
- (ii) Heavy rare earth separation and processing.
- (ii) Rare earth metal and alloys production.
- (iv) Neodymium Iron Boron rare earth permanent magnets production.
- (v) Samarium Cobalt rare earth permanent magnets production.
- (vi) Precursor materials for critical chemicals for missiles and munitions.
- (vii) Inert materials for critical chemicals for missiles and munitions.
- (viii) Energetic materials for critical chemicals for missiles and munitions.
- (ix) Advanced manufacturing techniques for critical chemicals for missiles and munitions.

(x) Radiation-hardened electronics.

(9) The requirements of paragraph (6)(B) and (6)(C) do not apply to shortfalls for any industrial resources, material, or critical technology item used in furthering hypersonic systems and strategic systems.

(b) Exemption for certain limitations

Subject to the limitations in subsection (a), purchases and commitments to purchase and sales under subsection (a) may be made without regard to the limitations of existing law (other than section 1341 of title 31), for such quantities, and on such terms and conditions, including advance payments, and for such periods, but not extending beyond a date that is not more than 10 years from the date on which such purchase, purchase commitment, or sale was initially made, as the President deems necessary, except that purchases or commitments to purchase

involving higher than established ceiling prices (or if no such established ceiling prices exist, currently prevailing market prices) or anticipated loss on resale shall not be made, unless it is determined that supply of the materials could not be effectively increased at lower prices or on terms more favorable to the Government, or that such purchases are necessary to assure the availability to the United States of overseas supplies.

(c) Presidential findings

(1) In general

The President may take the actions described in paragraph (2), if the President finds that-

(A) under generally fair and equitable ceiling prices, for any raw or nonprocessed material, there will result a decrease in supplies from high-cost sources of such material, and that the continuation of such supplies is necessary to carry out the objectives of this subchapter; or

(B) an increase in cost of transportation is temporary in character and threatens to impair maximum production or supply in any area at stable prices of any materials.

(2) Subsidy payments authorized

Upon a finding under paragraph (1), the President may make provision for subsidy payments on any such domestically produced material, other than an agricultural commodity, in such amounts and in such manner (including purchases of such material and its resale at a loss), and on such terms and conditions, as the President determines to be necessary to ensure that supplies from such high-cost sources are continued, or that maximum production or supply in such area at stable prices of such materials is maintained, as the case may be.

(d) Incidental authority

The procurement power granted to the President by this section shall include the power to transport and store and have processed and refined any materials procured under this section.

(e) Installation of equipment in industrial facilities

(1) Installation authorized

If the President determines that such action will aid the national defense, the President is authorized-

(A) to procure and install additional equipment, facilities, processes or improvements to plants, factories, and other industrial facilities owned by the Federal Government;

(B) to procure and install equipment owned by the Federal Government in plants, factories, and other industrial facilities owned by private persons;

(C) to provide for the modification or expansion of privately owned facilities, including the modification or improvement of production processes, when taking actions under section 4531 of this title, 4532 of this title, or this section; and

(D) to sell or otherwise transfer equipment owned by the Federal Government and installed under this subsection to the owners of such plants, factories, or other industrial facilities.

(2) Indemnification

The owner of any plant, factory, or other industrial facility that receives equipment owned by the Federal Government under this section shall agree-

(A) to waive any claim against the United States under section 9607 or 9613 of title 42; and

(B) to indemnify the United States against any claim described in paragraph (1) made by a third party that arises out of the presence or use of equipment owned by the Federal Government.

(f) Excess metals, minerals, and materials

(1) In general

Notwithstanding any other provision of law to the contrary, metals, minerals, and materials acquired pursuant to this section which, in the judgment of the President, are excess to the needs of programs under this chapter, shall be transferred to the National Defense Stockpile established by the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.), when the President deems such action to be in the public interest.

(2) Transfers at no charge

Transfers made pursuant to this subsection shall be made without charge against or reimbursement from funds appropriated for the purposes of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.), except that costs incident to such transfer, other than acquisition costs, shall be paid or reimbursed from such funds.

(g) Substitutes

When, in the judgement of the President, it will aid the national defense, the President may make provision for the development of substitutes for strategic and critical materials, critical components, critical technology items, and other industrial resources.

* * * * *

1 **SEC. __. EXTENSION OF AUTHORIZATION FOR THE DEFENSE CIVILIAN**
2 **ACQUISITION WORKFORCE PERSONNEL DEMONSTRATION**
3 **PROJECT.**

4 Section 1762(g) of title 10, United States Code, is amended by striking “2023” and
5 inserting “2028”.

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal amends section 1762 of title 10, United States Code, to extend the authority for the Civilian Acquisition Workforce Personnel Demonstration Project (AcqDemo) by amending the current statutory sunset from 2023 to 2028. If authority for AcqDemo is not extended in the FY 2022 National Defense Authorization Act, DoD will need to immediately plan for conversion of up to 50,000 AcqDemo employees to the General Schedule system. This proposal must be enacted in the FY 2022 legislative cycle to enable additional expansion and use this contribution-based system for improved acquisition. The AcqDemo expansion supports the NDS requirement to cultivate talent as part of achieving increased lethality, readiness, and reform. Current statutory authority is scheduled to sunset in December 2023.

AcqDemo is a major talent management tool for over 50,000 professionals – 36,000 Defense Acquisition Workforce (AWF) members and 14,000 employees that provide direct support to the AWF. Today, AcqDemo is the primary performance system for major acquisition organizations: Air Force Material Command, Army Material Command, Naval Air Systems Command, Naval Sea Systems Command, and Missile Defense Agency, to name a few. AcqDemo design, like the proven Laboratory Demonstration programs, links performance and compensation, rewarding contribution to the mission, and is not based on longevity within the government. Since 1999, Congress has repeatedly extended AcqDemo’s temporary authority, and this proposal requests another five-year extension to authorize AcqDemo through December 2028.

Over the next five years, the AWF will develop, acquire, and sustain acquisitions through complex responsibilities, obligating more than \$1 trillion. Today the workforce is responsible for managing major acquisition programs valued at \$7 trillion over the lifecycle of the programs. The Department must recruit and cultivate workforce talent in order to deliver on the National Defense Strategy’s (NDS) mission of developing a more lethal force that is ready to anticipate and meet the needs of the Warfighter. A contribution-based personnel system will motivate and equip the Department’s acquisition talent, enabling the Department to gain full value of every taxpayer dollar spent on defense as the AWF develops, acquires, and sustains operational capabilities. This proposal will enable the Department of Defense to retain the highly successful personnel initiatives implemented through the AcqDemo and to have the ability to create new

personnel programs expeditiously and expand AcqDemo to more acquisition organizations to meet emerging acquisition requirements. AcqDemo, by design, enhances the agility, effectiveness, and professionalism of the Department’s acquisition workforce and those supporting personnel assigned to work directly with the acquisition workforce. If this proposal is not adopted, approximately 50,000 employees in AcqDemo will be required to revert back to the Title 5 General Schedule, thus eliminating a major personnel flexibility the Department has leveraged for more than 20 years. This would result in a major setback for human capital management flexibilities and reforms within the Department and limit future human resource reforms for our trusted acquisition professionals. Disbanding AcqDemo will signal to acquisition organizations and personnel that the Department is abandoning a contribution- and results-based performance system to the antiquated General Schedule, which rewards time-in-grade. Extension of AcqDemo maintains a critical tool used to motivate, compensate, and reward the workforce based on the results they deliver to supporting the mission of the Department of Defense.

Since the FY16 NDAA extension, AcqDemo participation has tripled to over 50,000, and additional organizations covert to AcqDemo each time the sunset date is extended. Congress, through the FY17 NDAA, transferred full management authority for AcqDemo from OPM to DoD. The Department quickly used the new authority to responsibly deploy the first major set of new AcqDemo improvements since 1999. The changes included streamlining processes, adding flexibilities, improving management tools – changes that contribute to improving workforce motivation, performance, and contributions – all key elements of improving acquisition results. The five-year extension of authority further delays the “permanence” recommendation of the Section 809 Panel’s main objective for AcqDemo (June 2018 report to Congress titled “Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations.”) While permanence is preferred, the extension will enable the Department to continue benefitting from the enhanced performance that AcqDemo provides.

Budget Implications: This proposal will be funded in the FY 2022 President’s Budget request. Extending the temporary authority by five years to December 31, 2028, will position AcqDemo for expanded participation by an estimated additional 50 percent, bringing the total population to 75,000 by the end of FY 2028. AcqDemo conversion costs from GS to AcqDemo include the within-grade increase to base pay at conversion into AcqDemo. In AcqDemo, within-grade increases earned to date are paid out at the time of conversion, but there are no additional within-grade increases once an employee converts; AcqDemo provides increases based on their contribution, not longevity in the system. In addition, to support the growth, additional AcqDemo program office resources are required to support component conversion planning and assistance, workforce training delivery, help desk, and other program execution functions.

\$M	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation From
WIGI Buy-in	\$0.55	\$1.11	\$1.39	\$1.790	\$2.10	Operation & Maintenance, Navy
	\$0.14	\$0.27	\$0.34	\$0.45	\$0.49	Operation & Maintenance, Marine Corps
	\$0.45	\$0.91	\$1.14	\$1.48	\$1.71	Operation & Maintenance, Army

	\$0.35	\$0.69	\$0.86	\$1.12	\$1.30	Operation & Maintenance, Air Force
	\$0.33	\$0.65	\$0.82	\$1.06	\$1.23	Operation & Maintenance, Defense-Wide
Expanded AcqDemo Program Office (DAWDF)	\$0.61	\$1.41	\$1.71	\$1.83	\$2.32	Defense Acquisition Workforce Development Fund
Total	\$2.43	\$5.04	\$6.26	\$7.74	\$9.14	

PERSONNEL AFFECTED by Population Growth (FTEs)						
	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation From
Navy	608	1,216	1,520	1,976	2,280	Operation & Maintenance, Navy
Marine Corps	152	304	380	494	570	Operation & Maintenance, Marine Corps
Army	500	1,000	1,250	1,625	1,875	Operation & Maintenance, Army
Air Force	380	760	950	1,235	1,425	Operation & Maintenance, Air Force
DoD	360	720	900	1,170	1,350	Operation & Maintenance, Defense-Wide
Total	2,000	4,000	5,000	6,500	7,500	

Changes to Existing Law: This proposal would amend section 1762 of title 10, United States Code, as follows:

§1762. Demonstration project relating to certain acquisition personnel management policies and procedures

(a) Commencement.-The Secretary of Defense is authorized to carry out a demonstration project, the purpose of which is to determine the feasibility or desirability of one or more proposals for improving the personnel management policies or procedures that apply with respect to the acquisition workforce of the Department of Defense and supporting personnel assigned to work directly with the acquisition workforce.

(b) Terms and Conditions.- (1) Except as otherwise provided in this subsection, any demonstration project described in subsection (a) shall be subject to section 4703 of title 5 and all other provisions of such title that apply with respect to any demonstration project under such section.

(2) Subject to paragraph (3), in applying section 4703 of title 5 with respect to a demonstration project described in subsection (a)-

- (A) “180 days” in subsection (b)(4) of such section shall be deemed to read “120 days”;
- (B) “90 days” in subsection (b)(6) of such section shall be deemed to read “30 days”; and
- (C) subsection (d)(1) of such section shall be disregarded.

(3) Paragraph (2) shall not apply with respect to a demonstration project unless-

- (A) for each organization or team participating in the demonstration project-

(i) at least one-third of the workforce participating in the demonstration project consists of members of the acquisition workforce; and

(ii) at least two-thirds of the workforce participating in the demonstration project consists of members of the acquisition workforce and supporting personnel assigned to work directly with the acquisition workforce; and

(B) the demonstration project commences before October 1, 2007.

(4) The Secretary of Defense shall exercise the authorities granted to the Office of Personnel Management under section 4703 of title 5 for purposes of the demonstration project authorized under this section.

(c) Limitation on Number of Participants.- The total number of persons who may participate at any one time in the demonstration project under this section may not exceed 130,000.

(d) Effect of Reorganizations.-The applicability of paragraph (2) of subsection (b) to an organization or team shall not terminate by reason that the organization or team, after having satisfied the conditions in paragraph (3) of such subsection when it began to participate in a demonstration project under this section, ceases to meet one or both of the conditions set forth in subparagraph (A) of such paragraph (3) as a result of a reorganization, restructuring, realignment, consolidation, or other organizational change.

(e) Assessments.- (1) The Secretary of Defense shall designate an independent organization to conduct two assessments of the acquisition workforce demonstration project described in subsection (a).

(2) Each such assessment shall include the following:

(A) A description of the workforce included in the project.

(B) An explanation of the flexibilities used in the project to appoint individuals to the acquisition workforce and whether those appointments are based on competitive procedures and recognize veteran's preferences.

(C) An explanation of the flexibilities used in the project to develop a performance appraisal system that recognizes excellence in performance and offers opportunities for improvement.

(D) The steps taken to ensure that such system is fair and transparent for all employees in the project.

(E) How the project allows the organization to better meet mission needs.

(F) An analysis of how the flexibilities in subparagraphs (B) and (C) are used, and what barriers have been encountered that inhibit their use.

(G) Whether there is a process for-

(i) ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the performance appraisal period; and

(ii) setting timetables for performance appraisals.

(H) The project's impact on career progression.

(I) The project's appropriateness or inappropriateness in light of the complexities of the workforce affected.

(J) The project's sufficiency in terms of providing protections for diversity in promotion and retention of personnel.

(K) The adequacy of the training, policy guidelines, and other preparations afforded in connection with using the project.

(L) Whether there is a process for ensuring employee involvement in the development and improvement of the project.

(3) The first assessment under this subsection shall be completed not later than September 30, 2012. The second and final assessment shall be completed not later than September 30, 2016. The Secretary shall submit to the covered congressional committees a copy of each assessment within 30 days after receipt by the Secretary of the assessment.

(f) Covered Congressional Committees.-In this section, the term "covered congressional committees" means-

(1) the Committees on Armed Services of the Senate and the House of Representatives;

(2) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(3) the Committee on Oversight and Government Reform of the House of Representatives.

(g) Termination of Authority.-The authority to conduct a demonstration project under this section shall terminate on December 31, ~~2023~~ 2028.

(h) Conversion.-Within 6 months after the authority to conduct a demonstration project under this section is terminated as provided in subsection (g), employees in the project shall convert to the civilian personnel system created pursuant to section 9902 of title 5.

* * * * *

1 **SEC. ____ . ONE-YEAR EXTENSION OF TEMPORARY, LIMITED AUTHORITY TO**
2 **USE OPERATION AND MAINTENANCE FUNDS FOR CONSTRUCTION**
3 **PROJECTS IN CERTAIN AREAS OUTSIDE THE UNITED STATES.**

4 (a) EXTENSION OF AUTHORITY.—Subsection (h) of section 2808 of the Military
5 Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117
6 Stat. 1723), as most recently amended by section 2806 of the Military Construction
7 Authorization Act for Fiscal Year 2021 (Public Law 116-283), is further amended—

8 (1) in paragraph (1), by striking “December 31, 2021” and inserting “December
9 31, 2022”; and

10 (2) in paragraph (2), by striking “fiscal year 2022” and inserting “fiscal year
11 2023”.

12 (b) CONTINUATION OF LIMITATION ON USE OF AUTHORITY.—Subsection (c)(1) of
13 section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of
14 Public Law 108-136; 117 Stat. 1723), as most recently amended by section 2806 of the Military
15 Construction Authorization Act for Fiscal Year 2021 (Public Law 116-283), is further amended
16 by striking “during each of ” and all that follows through the end of subparagraph (C) and
17 inserting the following: “during the period beginning October 1, 2021, and ending on the earlier
18 of December 31, 2022, or the date of the enactment of an Act authorizing funds for military
19 activities of the Department of Defense for fiscal year 2023.”.

20 (c) TECHNICAL CORRECTIONS.—Section 2808 of the Military Construction Authorization
21 Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723), as most recently
22 amended by section 2806 of the Military Construction Authorization Act for Fiscal Year 2021
23 (Public Law 116-283) and subsections (a) and (b) of this section, is further amended—

1
2 (1) by redesignating subsections (e), (f), (g), (h), and (i) as subsections (d), (e), (f),
3 (g), and (h), respectively; and
4 (2) in subsections (b) and (f) (as so redesignated), by striking “subsection (f)” and
5 inserting “subsection (e)”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would provide continued authority for the Secretary of Defense to use funds appropriated for operations and maintenance for military construction to meet temporary operational requirements during a time of declared war, national emergency, or contingency operations through the end of Fiscal Year 2022.

Extension of this authority would enable the Department of Defense to provide basic facilities and infrastructure critical to military operations months and years ahead of the regular annual authorization and appropriation process for construction projects. It also would provide continuous, needed support to our commanders and forces during ongoing and future contingency operations.

This proposal would retain the current requirement to provide notice to Congress prior to the use of funds appropriated from operation and maintenance under the conditions set forth in subsection (a) of section 2808 of the Military Construction Authorization Act for Fiscal Year 2004. In addition, the Department of Defense still would not be able to proceed with execution of these projects until after a waiting period following the delivery of the notification to Congress. (The waiting period is 10 days, unless notification is by electronic means, in which case it is 7 days.)

This proposal would continue to allow the Secretary to waive the long-term base restriction in Afghanistan, as Contingency Construction Authority is not authorized at installations where the United States is reasonably expected to have a long-term presence.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2022 President’s Budget. The Department does not specifically request appropriation to support the authorization granted for the use of 2808 authority granted in the FY 2004 NDAA, as amended, [contingency construction authority (CCA)] but divert Operation and Maintenance funding to support the higher priority CCA.

RESOURCE IMPACT (\$MILLIONS)

Program	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
CCA	10					Operation & Maintenance, Army (base)	Various	Various	
CCA	10					Operation & Maintenance, Navy (base)	Various	Various	
CCA	10					Operation & Maintenance, Marine Corps (base)	Various	Various	
CCA	10					Operation & Maintenance, Air Force (base)	Various	Various	
CCA	10					Operation & Maintenance, Defense-wide (base)	Various	Various	
Total	50								

The above amounts are for display only to reflect the \$50M total cap available for the CCA program. Actual amounts will reflect actual contingencies that arise and amounts could change significantly among the appropriations.

Changes to Existing Law: This proposal would amend section 2808 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 117 Stat. 1723) as follows:

SEC. 2808. TEMPORARY, LIMITED AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR CONSTRUCTION PROJECTS IN CERTAIN AREAS OUTSIDE THE UNITED STATES.

(a) TEMPORARY AUTHORITY.—The Secretary of Defense may obligate appropriated funds available for operation and maintenance to carry out, inside the area of responsibility of the United States Central Command or certain countries in the area of responsibility of the United States Africa Command, a construction project that the Secretary determines meets each of the following conditions:

(1) The construction is necessary to meet urgent military operational requirements of a temporary nature involving the use of the Armed Forces in support of a declaration of war, the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621), or a contingency operation.

(2) The construction is not carried out at a military installation where the United States is reasonably expected to have a long-term presence, unless the military

installation is located in Afghanistan, for which projects using this authority may be carried out at installations deemed as supporting a long-term presence.

(3) The United States has no intention of using the construction after the operational requirements have been satisfied.

(4) The level of construction is the minimum necessary to meet the temporary operational requirements.

(b) NOTIFICATION OF OBLIGATION OF FUNDS.—Before using appropriated funds available for operation and maintenance to carry out a construction project outside the United States that has an estimated cost in excess of the amounts authorized for unspecified minor military construction projects under section 2805(c) of title 10, United States Code, the Secretary of Defense shall submit to the congressional committees specified in ~~subsection (f)~~ subsection (e) a notice regarding the construction project. The project may be carried out only after the end of the 10-day period beginning on the date the notice is received by the committees or, if earlier, the end of the 7-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of title 10, United States Code. The notice shall include the following:

(1) Certification that the conditions specified in subsection (a) are satisfied with regard to the construction project.

(2) A description of the purpose for which appropriated funds available for operation and maintenance are being obligated.

(3) All relevant documentation detailing the construction project.

(4) An estimate of the total amount obligated for the construction.

(c) ANNUAL LIMITATION ON USE OF AUTHORITY.—

(1) The total cost of the construction projects carried out under the authority of this section using, in whole or in part, appropriated funds available for operation and maintenance shall not exceed \$50,000,000 ~~during each of the following periods: during the period beginning October 1, 2021, and ending on the earlier of December 31, 2022, or the date of the enactment of an Act authorizing funds for military activities of the Department of Defense for fiscal year 2023.~~

~~(A) The period beginning October 1, 2018, and ending on the earlier of December 31, 2019, or the date of the enactment of an Act authorizing funds for military activities of the Department of Defense for fiscal year 2020.~~

~~(B) The period beginning October 1, 2019, and ending on the earlier of December 31, 2020, or the date of the enactment of an Act authorizing funds for military activities of the Department of Defense for fiscal year 2021.~~

~~(C) The period beginning October 1, 2020, and ending on the earlier of December 31, 2021, or the date of the enactment of an Act authorizing funds for military activities of the Department of Defense for fiscal year 2022.~~

(2) Notwithstanding paragraph (1), the Secretary of Defense may authorize the obligation under this section of not more than an additional \$10,000,000 of appropriated funds available for operation and maintenance for a fiscal year if the Secretary determines that the additional funds are needed for costs associated with contract closeouts.

[(d) REPEALED.]

(e d) RELATION TO OTHER AUTHORITIES.—The temporary authority provided by this section, and the limited authority provided by section 2805(c) of title 10, United States Code, to use appropriated funds available for operation and maintenance to carry out a construction project are the only authorities available to the Secretary of Defense and the Secretaries of the military departments to use appropriated funds available for operation and maintenance to carry out construction projects.

(f e) CONGRESSIONAL COMMITTEES.—The congressional committees referred to in this section are the following:

(1) The Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the Senate.

(2) The Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the House of Representatives.

(g f) EFFECT OF FAILURE TO SUBMIT PROJECT NOTIFICATIONS.—If the advance notice of the proposed obligation of the funds for a construction project required by subsection (b) is not submitted to the congressional committees specified in ~~subsection (f)~~ subsection (e) by the required date, appropriated funds available for operation and maintenance may not be obligated or expended after that date under the authority of this section to carry out construction projects outside the United States until the date on which the notice is finally submitted.

(h g) EXPIRATION OF AUTHORITY.—The authority to obligate funds under this section expires on the later of—

(1) ~~December 31, 2021~~ December 31, 2022; or

(2) the date of the enactment of an Act authorizing funds for military construction for ~~fiscal year 2022~~ fiscal year 2023.

(i h) CERTAIN COUNTRIES IN THE AREA OF RESPONSIBILITY OF UNITED STATES AFRICA COMMAND DEFINED.—In this section, the term “certain countries in the area of responsibility of the United States Africa Command” means Kenya, Somalia, Ethiopia, Djibouti, Seychelles, Burundi, and Uganda.

1 **SEC. ____ . ONE-YEAR EXTENSION OF CERTAIN EXPIRING BONUS AND SPECIAL**
2 **PAY AUTHORITIES.**

3 (a) AUTHORITIES RELATING TO RESERVE FORCES.—Section 910(g) of title 37, United
4 States Code, relating to income replacement payments for reserve component members
5 experiencing extended and frequent mobilization for active duty service, is amended by striking
6 “December 31, 2021” and inserting “December 31, 2022”.

7 (b) TITLE 10 AUTHORITIES RELATING TO HEALTH CARE PROFESSIONALS.—The following
8 sections of title 10, United States Code, are amended by striking “December 31, 2021” and
9 inserting “December 31, 2022”:

10 (1) Section 2130a(a)(1), relating to nurse officer candidate accession program.

11 (2) Section 16302(d), relating to repayment of education loans for certain health
12 professionals who serve in the Selected Reserve.

13 (c) AUTHORITIES RELATING TO NUCLEAR OFFICERS.—Section 333(i) of title 37, United
14 States Code, is amended by striking “December 31, 2021” and inserting “December 31, 2022”.

15 (d) AUTHORITIES RELATING TO TITLE 37 CONSOLIDATED SPECIAL PAY, INCENTIVE PAY,
16 AND BONUS AUTHORITIES.—The following sections of title 37, United States Code, are amended
17 by striking “December 31, 2021” and inserting “December 31, 2022”:

18 (1) Section 331(h), relating to general bonus authority for enlisted members.

19 (2) Section 332(g), relating to general bonus authority for officers.

20 (3) Section 334(i), relating to special aviation incentive pay and bonus authorities
21 for officers.

22 (4) Section 335(k), relating to special bonus and incentive pay authorities for
23 officers in health professions.

24 (5) Section 336(g), relating to contracting bonus for cadets and midshipmen
25 enrolled in the Senior Reserve Officers' Training Corps.

26 (6) Section 351(h), relating to hazardous duty pay.

27 (7) Section 352(g), relating to assignment pay or special duty pay.

28 (8) Section 353(i), relating to skill incentive pay or proficiency bonus.

29 (9) Section 355(h), relating to retention incentives for members qualified in
30 critical military skills or assigned to high priority units.

31 (e) AUTHORITY TO PROVIDE TEMPORARY INCREASE IN RATES OF BASIC ALLOWANCE FOR
32 HOUSING.—Section 403(b)(7)(E) of title 37, United States Code, is amended by striking
33 “December 31, 2021” and inserting “December 31, 2022”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text above would amend existing law.]

Section-by-Section Analysis

This proposal would extend certain expiring bonus and special pay authorities.

Subsection (a) of this proposal would extend income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service through December 31, 2022. The Department of Defense and Congress recognize the prudence of this incentive, which compensates an involuntarily mobilized Reserve Service member in an amount equal to the monthly income differential between the member’s average monthly civilian income and the member’s total monthly military compensation.

Subsection (b) of this proposal would extend two critical recruitment and retention incentive programs for Reserve component health care professionals through December 31, 2022. The Reserve components historically have found it challenging to meet the required manning in the health care professions. These incentives, which target nurse and critical health care profession skills, are essential to meet required manning levels. The financial assistance and health professions loan repayment programs have proven to be powerful recruiting tools for attracting young health professionals trained in specialty areas that are critically short in the Selected Reserve. Extending these authorities is critical to the continued success of recruiting young, skilled health professionals into the Selected Reserve.

Subsection (c) of this proposal would extend accession and retention incentives for nuclear-qualified officers through December 31, 2022. These incentives enable the Navy to

attract and retain the qualified personnel required to maintain the operational readiness and unparalleled safety record of the nuclear-powered submarines and aircraft carriers, which comprise over 40% of the Navy's major combatants. Due to extremely high training costs and regulatory requirements for experienced supervisors, these incentives provide the surest and most cost-effective means to maintain the required quantity and quality of these officers.

The nuclear officer bonus and nuclear officer incentive pay (NOIP) program is structured to provide career-long retention of officers in whom the Navy has made a considerable training investment and who have continually demonstrated superior technical and management ability. The scope of the program is limited to the number of officers required to fill critical nuclear supervisory billets, and eligibility is strictly limited to those officers who continue to meet competitive career milestones. The technical, leadership, and management expertise developed in the Naval Nuclear Propulsion Program (NNPP) is highly valued in the civilian workforce, which makes the retention of these officers a continuing challenge.

Subsection (d) of this proposal would extend through December 31, 2022, the consolidated special and incentive pay authorities added to subchapter II of chapter 5 of title 37, United States Code, by the National Defense Authorization Act for FY2008. Experience shows that retention of members in critical skills would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and developing replacements. The Department of Defense and the Congress have long recognized the cost-effectiveness of financial incentives in supporting effective staffing in such critical military skills, assignments, and high priority units.

Subsection (e) of this proposal would extend through December 31, 2022, the Secretary of Defense authority to prescribe a temporary increase in the rates of basic allowance for housing otherwise prescribed for a military housing area or a portion of a military housing area if the military housing area or portion thereof is located in an area covered by a declaration by the President that a major disaster exists; or contains one or more military installations that are experiencing a sudden increase in the number of members of the armed forces assigned to the installation.

EXTENSION AUTHORITIES FOR RESERVE FORCES:

Budget Implications: The military departments did not project expenditures for this allowance in their FY 22 President's Budget request because Services do not anticipate usage. However, extension of authority to provide critical income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service is necessary.

EXTENSION OF TITLE 10 AUTHORITIES RELATING TO HEALTH CARE PROFESSIONALS:

Budget Implications: The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2022 President's Budget request. This section will

extend critical accession and retention incentive programs, which the military departments fund annually.

NUMBER OF PERSONNEL AFFECTED									
Program	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation To	Budget Activity	BLI/SAG	Program Element
Army	0	0	0	0	0	Military Personnel, Army	01	40	
Army Res	310	310	310	310	310	Reserve Personnel, Army	01	120	
Army National Guard	439	439	439	439	439	National Guard Personnel, Army	01	90	
Navy	0	0	0	0	0	Military Personnel, Navy;	01	40	
Navy Res	82	82	82	82	82	Reserve Personnel, Navy	01	120	
Air Force	0	0	0	0	0	Military Personnel, Air Force	01	40	
AF Res	142	142	142	142	142	Reserve Personnel, Air Force	01	120	
Air National Guard	32	32	32	32	32	National Guard Personnel, Air Force	01	90	
Total	1,005	1,005	1,005	1,005	1,005				

RESOURCE REQUIREMENTS (\$MILLIONS)									
Program	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation To	Budget Activity	BLI/SAG	Program Element
Army	0	0	0	0	0	Military Personnel, Army	01	40	
Army Res	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	Reserve Personnel, Army	01	120	
Army National Guard	\$19.1	\$19.1	\$19.1	\$19.1	\$19.1	National Guard Personnel, Army	01	90	
Navy	0	0	0	0	0	Military Personnel, Navy;	01	40	
Navy Res	\$1.3	\$1.3	\$1.3	\$1.3	\$1.3	Reserve Personnel, Navy	01	120	
Air Force	0	0	0	0	0	Military Personnel, Air Force	01	40	
AF Res	\$3.4	\$3.4	\$3.4	\$3.4	\$3.4	Reserve Personnel, Air Force	01	120	
Air National Guard	\$.8	\$.8	\$.8	\$.8	\$.8	National Guard Personnel, Air Force	01	90	
Total	\$30.9	\$30.9	\$30.9	\$30.9	\$30.9				

EXTENSION OF SPECIAL PAY AND BONUS AUTHORITIES FOR NUCLEAR OFFICERS:

Budget Implications: The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2022 President’s Budget request. This section will extend the critical accession and retention incentive programs the Navy funds each year. The Army and Air Force are not authorized in the statute to pay these bonuses.

NUMBER OF PERSONNEL AFFECTED									
Program	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation To	Budget Activity	BLI/SAG	Program Element
Navy	3,734	3,734	3,734	3,734	3,734	Military Personnel, Navy	01, 03	40 (for 01); 90 (for 02); 110 (for 03)	
Navy Res	175	175	175	175	175	Reserve Personnel, Navy	01	90	
Total	3,909	3,909	3,909	3,909	3,909				

RESOURCE REQUIREMENTS (\$MILLIONS)									
Program	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation To	Budget Activity	BLI/SAG	Program Element
Navy	\$96.5	\$96.5	\$96.5	\$96.5	\$96.5	Military Personnel, Navy	01, 03	40 (for 01); 90 (for 02); 110 (for 03)	
Navy Res	\$2.6	\$2.6	\$2.6	\$2.6	\$2.6	Reserve Personnel, Navy	01	90	
Total	\$99.1	\$99.1	\$99.1	\$99.1	\$99.1				

EXTENSION OF AUTHORITIES RELATING TO CONSOLIDATED SPECIAL PAY, INCENTIVE PAY, AND BONUS AUTHORITIES.

Budget Implications: The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2022 President’s Budget request. This section will extend the consolidated special and incentive programs the military departments fund each year. These pays consist of enlisted and officer bonuses, aviation bonuses and incentives, non-physician health professions pays, hazardous duty pays, assignment and special duty pays, skill incentive pays, and critical skill retention bonuses. This section does not include the nuclear officer pays, which are located above.

NUMBER OF PERSONNEL AFFECTED									
Program	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation To	Budget Activity	BLI/SAG	Program Element

Army	290,504	290,504	290,504	290,504	290,504	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)	
ARNG	71,127	71,127	71,127	71,127	71,127	National Guard Personnel, Army	01	90	
USAR	57,781	57,781	57,781	57,781	57,781	Reserve Personnel, Army	01	90	
Navy	338,135	338,135	338,135	338,135	338,135	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
USNR	5,829	5,829	5,829	5,829	5,829	Reserve Personnel, Navy	01	90	
Marine Corps	81,180	81,180	81,180	81,180	81,180	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
USMCR	744	744	744	744	744	Reserve Personnel, Marine Corps	01	90	
Air Force	157,808	157,808	157,808	157,808	157,808	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
Air National Guard	5,828	5,828	5,828	5,828	5,828	National Guard Personnel, Air Force	01	120	
AF Res	12,862	12,862	12,862	12,862	12,862	Reserve Personnel, Air Force	01	90	
Total	1,021,798	1,021,798	1,021,798	1,021,798	1,021,789				

RESOURCE REQUIREMENTS (\$ MILLIONS)									
Program	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation To	Budget Activity	BLI/SAG	Program Element
Army	\$1,459	\$1,459	\$1,459	\$1,459	\$1,459	Military Personnel, Army	01, 02	35 & 40 (for 01), 85 & 90 (for 02)	
ARNG	\$327	\$327	\$327	\$327	\$327	National Guard Personnel, Army	01	90	
USAR	\$217.5	\$217.5	\$217.5	\$217.5	\$217.5	Reserve Personnel, Army	01	90	
Navy	\$1,729	\$1,729	\$1,729	\$1,729	\$1,729	Military Personnel, Navy	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	

USNR	\$57.1	\$57.1	\$57.1	\$57.1	\$57.1	Reserve Personnel, Navy	01	90	
Marine Corps	\$257.3	\$257.3	\$257.3	\$257.3	\$257.3	Military Personnel, Marine Corps	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
USMCR	\$10.2	\$10.2	\$10.2	\$10.2	\$10.2	Reserve Personnel, Marine Corps	01	90	
Air Force	\$1,184	\$1,184	\$1,184	\$1,184	\$1,184	Military Personnel, Air Force	01, 02	35 & 40 (for 01); 85 & 90 (for 02)	
Air National Guard	\$101.6	\$101.6	\$101.6	\$101.6	\$101.6	National Guard Personnel, Air Force	01	90	
AF Res	\$89.3	\$89.3	\$89.3	\$89.3	\$89.3	Reserve Personnel, Air Force	01	120	
Total	\$5,432	\$5,432	\$5,432	\$5,432	\$5,432				

EXTENSION OF AUTHORITY TO PROVIDE TEMPORARY INCREASE IN RATES OF BASIC ALLOWANCE FOR HOUSING:

Budget Implications: Expenditures as a result of this authority are not projected in the FY22 President’s Budget as the Department, however the authority is required in case of a disaster. This section will extend the Secretary of Defense authority to temporarily increase basic allowance for housing rates for areas hit by a major disaster or experiencing a sudden increase in the number of members of the armed forces assigned to an installation.

Changes to Existing Laws: This proposal would make the following changes to title 10 and title 37, United States Code:

TITLE 10, UNITED STATES CODE

§ 2130a. Financial assistance: nurse officer candidates

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on ~~December 31, 2021~~ December 31, 2022, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus of not more than \$20,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time the agreement is accepted, except that the first installment may not exceed \$10,000.

(2) In addition to the accession bonus payable under paragraph (1), a person selected under such paragraph shall be entitled to a monthly stipend in an amount not to exceed the stipend rate in effect under section 2121(d) of this title for each month the individual is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian

educational institution by the Secretary selecting the person. The continuation bonus may be paid for not more than 24 months.

§ 16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before ~~December 31, 2021~~ December 31, 2022.

TITLE 37, UNITED STATES CODE

§ 331. General bonus authority for enlisted members

(h) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2021~~ December 31, 2022.

§ 332. General bonus authority for officers

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2021~~ December 31, 2022.

§ 333. Special bonus and incentive pay authorities for nuclear officers

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2021~~ December 31, 2022.

§ 334. Special aviation incentive pay and bonus authorities for officers

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2021~~ December 31, 2022.

§ 335. Special bonus and incentive pay authorities for officers in health professions

(k) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2021~~ December 31, 2022.

§ 336. Contracting bonus for cadets and midshipmen enrolled in the Senior Reserve Officers' Training Corps

(g) TERMINATION OF AUTHORITY.—No agreement under this section may be entered into after ~~December 31, 2021~~ December 31, 2022.

§ 351. Hazardous duty pay

(h) TERMINATION OF AUTHORITY.—No hazardous duty pay under this section may be paid after ~~December 31, 2021~~ December 31, 2022.

§ 352. Assignment pay or special duty pay

(g) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2021~~ December 31, 2022.

§ 353. Skill incentive pay or proficiency bonus

(i) TERMINATION OF AUTHORITY.—No agreement may be entered into under this section after ~~December 31, 2021~~ December 31, 2022.

§ 355. Special pay: retention incentives for members qualified in critical military skills or assigned to high priority units

(h) TERMINATION OF BONUS AUTHORITY.—No bonus may be paid under this section with respect to any reenlistment, or voluntary extension of an enlistment, in the armed forces entered into after ~~December 31, 2021~~ December 31, 2022, and no agreement under this section may be entered into after that date.

§ 403. Basic allowance for housing

(b) BASIC ALLOWANCE FOR HOUSING INSIDE THE UNITED STATES.—*****

(7)(A) *****

(E) An increase in the rates of basic allowance for housing for an area may not be prescribed under this paragraph or continue after ~~December 31, 2021~~ December 31, 2022.

§ 910. Replacement of lost income: involuntarily mobilized reserve component members subject to extended and frequent active duty service

(g) TERMINATION.—No payment shall be made to a member under this section for months beginning after ~~December 31, 2021~~ December 31, 2022, unless the entitlement of the member to payments under this section is commenced on or before that date.

1 **SEC. ____ . IMPROVEMENTS TO USE OF CYBER AND INFORMATION**
2 **TECHNOLOGY WORKFORCE FOR ENTERPRISE INFORMATION**
3 **TECHNOLOGY.**

4 (a) IN GENERAL.—Notwithstanding section 2461 of title 10, United States Code, section
5 325 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84; 123
6 Stat. 2253), sections 741 or 8042 of the Consolidated Appropriations Act, 2020 (Public Law
7 116-93) or successor provisions, or any other provision of law, the Secretary concerned may
8 transform the cyber and information technology workforce of the military department concerned
9 through reallocation of existing billets and personnel for the transition by that military
10 department to enterprise information technology as a service.

11 (b) AUTHORITY.—The Secretary concerned may—

12 (1) use the appropriate cyber and information technology workforce mix of
13 military, civilian, and contract personnel for enterprise information technology as a
14 service that—

15 (A) leverages both civilian workforce and commercial sector capabilities
16 and sources; and

17 (B) ensures the civilian workforce is aligned to focus on inherently
18 governmental functions, functions closely associated with inherently
19 governmental functions, or critical mission tasks that require action and decision
20 by Government employees, including focus on cyber defense missions in
21 accordance with the national defense strategy; and

22 (2) move, transfer, and realign civilian functions and personnel to leverage
23 innovative commercial information technology practices, services, and technologies.

24 (c) ANNUAL REPORT.—Not later than 30 days after the end of each fiscal year, beginning
25 with fiscal year 2022 and ending with fiscal year 2032, the Secretary concerned shall provide to
26 the congressional defense committees an annual report on use of the authority provided under
27 this section to improve use of the cyber and information technology workforce for enterprise
28 information technology.

29 (d) DEFINITIONS.—In this section:

30 (1) The term “Secretary concerned” means—

31 (A) the Secretary of the Army, with respect to the Department of the
32 Army; and

33 (B) the Secretary of the Air Force, with respect to the Department of the
34 Air Force.

35 (2) The term “enterprise information technology as a service” means an initiative
36 to leverage industry best practices to provide core information technology services at the
37 installation level, across the enterprise, and provide applications, services, and data
38 hosting in the commercial Cloud. The term includes networks, phones, email, cloud
39 hosting services, end user hardware support, and help desk.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

Enterprise information technology as a service represents a significant shift in how the Department of the Air Force (DAF) and the Department of the Army currently acquire, deliver, and consume IT services, as well as a large cultural shift and workforce transformation effort. It is a transition to an ‘as-a service’ model, which will allow these departments to buy capabilities, rather than invest in infrastructure that must be routinely replaced. Instead of owning the routers, boxes, and switches, and running the network with Government personnel, the effort is exploring methods to buy the network “as-a-service” and pay on a cost-per-user basis.

The restrictions of section 2461 of title 10, United States Code, specify that no function performed by DoD civilian employees may be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition. When coupled with section 325 of the FY10 NDAA and annual appropriations Act provisions that prohibit Government agencies from converting civilian functions to contract performance without conducting public-private competitions, the result limits the DAF and the Army from being able to take advantage of opportunities to improve Information Technology (IT) capabilities to optimize lethality and readiness while maximizing fiscal efficiency and organizational agility.

Consequently, this proposal seeks relief from section 2461 of title 10, United States Code, section 325 of the FY10 NDAA, and associated annual appropriations Act provisions to enable the Department of the Army and Department of the Air Force to directly move, transfer, and realign civilian functions in order to leverage advanced commercial ingenuity, innovation, and best practices in cyber and information technology.

Our world is entering a new age of technological discovery and advancement. Big data analytics and the Internet of Things are transforming societies and economies, and expanding the power of information and knowledge, fueling a revolution in how we fight and evolving the character of war. Victory in combat will depend less on individual capabilities, and more on the integrated strengths of a connected network of weapons, sensors, and analytic tools now that information technology underpins virtually every critical DoD mission or business system. To compete, deter, and win over our great power adversaries, the DAF and the Army are forging more digital organizations that embrace the potential of this data-driven revolution and prepares us for future conflict environments steeped in shared information and powered by rapid decision-making, and synergize interconnected and mutually supporting reform efforts: IT architecture, data management, and business operations reform.

Years of limited funding and legacy acquisition approaches have left the DAF and Army with an outdated portfolio of enterprise IT services. This has had significant impacts to mission effectiveness in the form of network outages, system degradation, and process inefficiencies. The virtual attack surface for our adversaries is greatly increased and puts our national security at risk. Sustaining this infrastructure has placed outsized demands on a military and civilian cyber workforce that have succeed despite the circumstances. This workforce has not been organized, trained, or equipped to face the modern cyber adversary and defend our critical mission and business capabilities.

Rapid IT evolution drives not only opportunity, but also risk. Our adversaries leverage technology advancements to present ever-evolving attack vectors against our capabilities, oftentimes exploiting our inability to keep pace. This is not singularly a technical challenge. Our industrial age talent management processes put our cyber defenders and capability developers at a marked disadvantage. Acquisition processes and legal barriers to public-private partnerships and collaboration prevent many leap-ahead capabilities from taking hold in the DAF and Army. Together, these shortfalls leave the Services with a strategic gap between the IT processes and capabilities in place to protect and defend weapons systems.

The DAF and Army are conducting technical feasibility assessments of alternative delivery models, leveraging successes with cloud initiatives such as Cloud Hosted Enterprise Services and the Cloud One to explore alternative delivery models for enterprise IT services at the installation level (also known within the DAF as the “Risk Reduction Effort”). All civilian employees will continue to perform the functions identified in their present position descriptions during the current technical feasibility assessment/Risk Reduction Effort. The technical feasibility assessment is currently ongoing and is expected to conclude on or around fiscal year 2022.

IT workforce conversions will be required to fully leverage existing commercial solutions, which may implicate section 2461 of title 10. The ongoing technical feasibility assessments will determine the optimal level of conversion and total workforce mix necessary to implement the commercial solutions. Current law prohibits the conversion of civilian positions and restricts the DAF’s and the Army’s ability to implement optimum commercial IT service solutions. There can be no serious question that IT workforce conversions will be required to fully leverage existing commercial solutions. The ongoing technical feasibility assessments will determine the optimal level of conversion necessary, not whether conversion will take place. We have no shortage of recent examples to show negative operational impacts from our current in-house approach to global Enterprise IT service delivery. The Department of the Air Force and the Department of the Army are at turning points with our legacy IT infrastructures. Aged and unreliable, our current digital undercarriage can no longer support the cutting-edge operational capabilities our Nation requires. The COVID-19 pandemic has underscored the critical need for the Departments to deliver an effective, innovative, and secure IT environment through modernizing outdated infrastructure with proven commercial solutions.

Additionally, numerous cyber-workforce related investments have been deferred or partially funded due to the manpower-intensive infrastructure we have fielded. The current cyber and information technology workforce is not positioned to effect this transformation. Difficult and consequential choices must be made in the upcoming strategic planning cycles as to which future investment strategies best enable establishing the underlying infrastructure our digital transformation strategy demands. Making these choices without the policy headroom necessary to consider all human capital options will significantly constrain the DAF’s and the Army’s flexibility to achieve optimal operational outcomes. Further, this relief will give the Services greater opportunity to achieve the DOD’s Information Technology Modernization goals. The DAF has partnered with the Army and this legislative relief will be leveraged by multiple Services. If Congress does not grant the requested relief before the end of the technical feasibility assessment, which ends in FY22, the DAF and the Army will be restricted to executing partial solutions that will drive additional costs to integrate with legacy services while delaying the availability of the modern infrastructure that Joint All Domain Command and Control demands. The remainder of the technical feasibility assessments are focused on how the commercial delivery model will be integrated into the DAF and Army network. If we are forced to wait until the solutions have presented themselves before we begin analyzing the accompanying workforce changes, our technical and human capital debts will continue to grow. Failure to enact this legislative proposal during the FY22 legislative cycle will substantially limit our ability to aggressively implement the service delivery approaches proven during the technical feasibility assessment. These delays will drive additional costs, limit our ability to robustly implement

cyber defense and mission assurance for our critical systems, and delay the modern infrastructure necessary to achieve Joint All Domain Command and Control.

The DAF and the Army plans to repurpose all affected civilians into cyber defense and mission assurance roles. As a result, the Departments do not intend to decrease civilian FTEs or increase spending on retirement benefits as a result of this proposal. While we recognize the value of the restrictions set forth in section 2461, this proposal would authorize the services to improve use of the cyber and information technology workforce by reducing barriers that inhibit the development of the most effective total force in meeting critical mission requirements. It also allows DoD to determine if the IT service provider positions and personnel fit coherently into the enterprise-wide architecture and processes. It allows the services to prioritize the workforce to shift from IT service delivery and information assurance to mission assurance, cyberspace defense, artificial intelligence and security. Nonetheless, due to the DAF's and Army's recognition of the merit of section 2461, this proposal ensures that appropriate oversight and additional safeguards are in place for the transformation of the civilian workforce by requiring the DAF and Army to produce an annual report to Congress that identifies civilian workforce impacts resulting from the workforce transformation.

Budget Implications: This proposal is expected to achieve significant cost savings in the long term. If this proposal is not implemented, civilian personnel cannot be transferred from basic IT tasks to cybersecurity/mission defense tasks, and the DAF will need to increase its manpower to fulfill the requirements for cyber defense and mission assurance roles. Since the estimated cost of manpower supporting the cyber/mission assurance mission (line six of table 1) is significantly higher than the cost of manpower performing basic IT functions (line two of table 1), and the other associated costs (lines three through five of table 1) are minimal, authorizing these personnel transfers would lead to significant savings (line one of table 1). The Department of the Army does not intend to use this authority in Fiscal Year 2022.

Table 1: Net change to DAF costs due to EITaaS related transfers:

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)
Cost of as-a-service based IT capabilities to enable civilian personnel transfers	6.363	9.062	15.613	15.926	16.244	Operation and Maintenance, Air Force		011Z	
Cost of updating Position Descriptions	0.007	0.010	0.017	0.017	0.017	Operation and Maintenance, Air Force		011Z/012D	
Training cost of transferring civilian personnel to cyber roles	0.542	0.771	1.329	1.350	1.382	Operation and Maintenance, Air Force		012D	
Cost of writing annual report	0.013	0.013	0.013	0.014	0.014	Operation and Maintenance, Air Force		011Z	
Savings from not needing to augment force with contractor cyber defense personnel	-18.086	-25.757	-44.378	-45.265	-46.171	Operation and Maintenance, Air Force		012D	
Total	-11.161	-15.901	-27.406	-27.954	-28.513	Operation and Maintenance, Air Force		011Z	

Table 2: Anticipated number of DAF Civilian FTEs to be transferred from basic IT tasks (e.g., system patching, troubleshooting) to cyber defense and mission assurance roles:

	FY22	FY23	FY24	FY25	FY26
Anticipated number of Civilian FTEs to be transferred from basic IT tasks to cyber defense and mission assurance roles	53	74	125	125	125

Changes to Existing Law: N/A

1 **SEC. ___. ONE-YEAR EXTENSION OF DEPARTMENT OF DEFENSE AUTHORITY**
2 **FOR JOINT TASK FORCES TO PROVIDE SUPPORT TO LAW**
3 **ENFORCEMENT AGENCIES CONDUCTING COUNTER-TERRORISM**
4 **ACTIVITIES.**

5 Section 1022(b) of the National Defense Authorization Act for Fiscal Year 2004 (Public
6 Law 108-136; 10 U.S.C. 271 note) is amended by striking “2022” and inserting “2023”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would extend the authorities provided in section 1022 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2004 (Public Law 108-136). For nearly two decades, section 1022 has provided the Department of Defense (DoD) the authority to use funds from the drug interdiction and counter-drug activities account to enable joint task forces that support law enforcement agencies conducting counter-drug activities also to provide support to law enforcement agencies conducting counter-terrorism or counter-transnational organized crime activities. Since section 1022 was first enacted in November 2003, the authority has been extended nine times. The authority is set to expire at the end of FY 2022, and this proposal would extend it through FY 2023.

Section 1022 has been essential in authorizing DoD analytical support to disrupt the financial resources of terrorists, transnational criminal organizations, and other threat networks that derive revenue from illicit trafficking. Details of support authorized under section 1022 have been reported to Congress annually through a classified report. Section 1022(d) requires that counter-terrorism or counter-transnational organized crime activities must “relate significantly” to counter-drug objectives, unless the Secretary of Defense issues a waiver that providing such support is “vital to the national security interests of the United States.” This provision allows DoD to support the most critical national security requirements, while preserving the integrity of the counter-drug appropriation for activities to disrupt the flow of cocaine, heroin, and other dangerous drugs and precursor chemicals bound for the United States. Extending section 1022 would continue to enhance the efforts of the combatant commanders and other DoD components to confront the persistent national security threat posed to the United States and our allies and partners by the nexus among drug trafficking, terrorism, and other forms of transnational organized crime.

Budget Implications: The resources required are reflected in the table below and are included within the Fiscal Year (FY) 2022 President’s Budget. Funds used under this authority will be sourced from the Drug Interdiction and Counter-Drug Activities, Defense, appropriation.

RESOURCE REQUIREMENTS (\$MILLIONS)						
	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation From
Drug Interdiction and Counter Drug Activities, Defense	\$47	\$48				Central Transfer Account
Total	\$47	\$48				

Changes to Existing Law: This proposal would make the following changes to section 1022 of the National Defense Authorization Act for Fiscal Year 2004:

SEC. 1022. AUTHORITY FOR JOINT TASK FORCES TO PROVIDE SUPPORT TO LAW ENFORCEMENT AGENCIES CONDUCTING COUNTER-TERRORISM ACTIVITIES.

(a) **AUTHORITY.**—A joint task force of the Department of Defense that provides support to law enforcement agencies conducting counter-drug activities may also provide, subject to all applicable laws and regulations, support to law enforcement agencies conducting counter-terrorism activities or counter-transnational organized crime activities.

(b) **AVAILABILITY OF FUNDS.**—During fiscal years 2006 through ~~2022~~ 2023, funds for drug interdiction counter-drug activities that are available to a joint task force to support counter-drug activities may also be used to provide the counter-terrorism or counter-transnational organized crime support authorized by subsection (a).

* * * * *

1 **SEC. __. MILITARY LAND WITHDRAWAL FOR FALLON RANGE TRAINING**
2 **COMPLEX.**

3 The Military Land Withdrawals Act of 2013 (title XXIX of division B of Public Law
4 113–66) is amended by adding at the end the following new subtitle:

5 **“Subtitle G – Fallon Range Training Complex, Nevada**

6 **“SEC. 2981. WITHDRAWAL AND RESERVATION OF PUBLIC LAND.**

7 “(a) WITHDRAWAL.—Subject to valid existing rights and except as otherwise provided in
8 this subtitle, the lands established at the B–16, B–17, B–19, and B–20 Ranges, as referred to in
9 subsection (b), and all other areas within the boundary of such lands as depicted on the map
10 referred to in such subsection, which may become subject to the operation of the public land
11 laws, are hereby withdrawn from all forms of appropriation under the public land laws, including
12 the mining laws and the mineral leasing and geothermal leasing laws. The lands and interests in
13 lands within the boundaries established at the Dixie Valley Training Area, as referred to in
14 subsection (b), are hereby withdrawn from all forms of appropriation under the public land laws,
15 including the mining laws, but not the geothermal and mineral leasing laws.

16 “(b) DESCRIPTION OF LAND.—The public lands and interests in lands withdrawn and
17 reserved by this subsection comprise approximately 730,806 acres of land in Churchill County,
18 Lyon County, Mineral County, Pershing County, and Nye County, Nevada, as generally depicted
19 as “Proposed Withdrawal Land” and “Existing Withdrawals” on the map entitled “Naval Air
20 Station Fallon Ranges—Proposed Withdrawal of Public Lands for Range Safety and Training
21 Purposes”, dated June 8, 2021, and filed in accordance with section 2912. The ranges in the
22 Fallon Training Range Complex described in this subsection are identified as B-16, B-17, B-19,
23 B-20, Dixie Valley Training Area and the Shoal Site.

1 “(c) PURPOSE OF WITHDRAWAL AND RESERVATION.—The land withdrawn by subsection
2 (a) is reserved for use by the Secretary of the Navy for—

3 “(1) aerial testing and training, bombing, missile firing, electronic warfare, and
4 tactical combat maneuvering and air support;

5 “(2) ground combat tactical maneuvering and firing; and

6 “(3) other defense-related purposes that are—

7 “(A) consistent with the purposes specified in the preceding paragraphs;

8 and

9 “(B) authorized under section 2914.

10 **“SEC. 2982. MANAGEMENT OF WITHDRAWN AND RESERVED LANDS.**

11 “(a) MANAGEMENT BY THE SECRETARY OF THE NAVY.—During the duration of this
12 withdrawal, the Secretary of the Navy shall manage the land withdrawn and reserved comprising
13 the B-16, B-17, B-19 and B-20 ranges for the purposes described in section 2981(c) in
14 accordance with—

15 “(1) an Integrated Natural Resources Management Plan prepared and implemented
16 under title I of the Sikes Act (16 U.S.C. 670a et seq.); and

17 “(2) any other applicable law.

18 “(b) MANAGEMENT BY THE SECRETARY OF THE INTERIOR.—

19 “(1) IN GENERAL.—During the duration of this withdrawal, the Secretary of the
20 Interior shall manage the land withdrawn and reserved comprising Dixie Valley and the
21 Shoal Site for the purposes described in section 2981(c) in accordance with—

22 “(A) the Federal Land Policy and Management Act of 1976 (43 U.S.C.
23 1701 et seq.); and

1 “(B) any other applicable law.

2 “(2) CONSULTATION WITH SECRETARY OF THE NAVY.—Prior to taking any Federal
3 action approving any use within the land withdrawn, the Secretary of the Interior shall
4 consult with the Secretary of the Navy. Such consultation shall include—

5 “(A) informing the Secretary of the Navy of the pending authorization
6 request so the Secretary of the Navy may work with the Secretary of the Interior
7 to preserve the training environment.

8 “(B) prior to authorizing approval of any installation or use of mobile or
9 stationary equipment used to transmit and receive radio signals in the land
10 withdrawn, obtaining permission from the Secretary of the Navy for the use of
11 such equipment.

12 “(3) AGREEMENT.—The Secretary of the Navy and the Secretary of the Interior
13 shall enter into an agreement governing the roles and responsibilities for reviewing and
14 approving Federal actions to be granted by the Secretary of the Interior in the Dixie
15 Valley Training Area and Shoal Site.

16 **“SEC. 2983. RELATIONSHIP TO OTHER RESERVATIONS.**

17 “(a) B-16 RANGE.—To the extent the withdrawal and reservation made by section 2981
18 for the B-16 Range withdraws lands currently withdrawn and reserved for use by the Bureau of
19 Reclamation, the reservation made by such section shall be the primary reservation for public
20 safety management actions only, and the existing Bureau of Reclamation reservation shall be the
21 primary reservation for all other management actions. The Secretary of the Navy shall enter into
22 an agreement with the Secretary of the Interior to ensure continued access to the B-16 Range by

1 the Bureau of Reclamation to conduct management activities consistent with the purposes for
2 which the Bureau of Reclamation withdrawal was established.

3 “(b) B-20 RANGE.—To the extent the withdrawal and reservation made by section 2981
4 for the B–20 Range withdraws lands currently withdrawn and reserved for use by the Bureau of
5 Reclamation, the reservation made by such section shall be the primary reservation for public
6 safety management actions only, and the existing Bureau of Reclamation reservation shall be the
7 primary reservation for all other management actions. The Secretary of the Navy shall enter into
8 an agreement with the Secretary of the Interior to ensure continued access to the B-20 Range by
9 the Bureau of Reclamation to conduct management activities consistent with the purposes for
10 which the Bureau of Reclamation withdrawal was established.

11 “(c) SHOAL SITE.—The Secretary of Energy shall remain responsible and liable for the
12 subsurface estate and all its activities at the ‘Shoal Site’ withdrawn and reserved by Public Land
13 Order Number 2771, as amended by Public Land Order Number 2834. The Secretary of the
14 Navy shall be responsible for the use of the surface estate at the ‘Shoal Site’ pursuant to the
15 withdrawal and reservation made by section 2981.

16 **“SEC. 2984. RELEASE OF WILDERNESS STUDY AREAS.**

17 “Approximately 22,335 acres of public land in the Clan Alpine Wilderness Study Area
18 that is reserved for use by the Secretary of the Navy under section 2981(c) shall no longer be
19 subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C.
20 1782(c)).

21 **“SEC. 2985. USE OF MINERAL MATERIALS**

22 “Notwithstanding any other provision of this subtitle or of the Act of July 31, 1947
23 (commonly known as the Materials Act of 1947; 30 U.S.C. 601 et seq.), the Secretary of the

1 Navy may use sand, gravel, or similar mineral materials resources of the type subject to
2 disposition under that Act from lands withdrawn and reserved by this subtitle if use of such
3 resources is required for construction needs on such lands.

4 **“SEC. 2986. TERMINATION OF PRIOR WITHDRAWAL.**

5 “Notwithstanding section 2842 of the National Defense Authorization Act for Fiscal Year
6 2021 (Public Law 116-283) and section 3015 of the Military Lands Withdrawal Act of 1999
7 (title XXX of Public Law 106-65), the withdrawal and reservation under section 3011(a) of such
8 Act is terminated.

9 **“SEC. 2987. DURATION OF WITHDRAWAL AND RESERVATION.**

10 “The withdrawal and reservation of public land made by section 2981 shall terminate on
11 November 6, 2046.”.

Section-by-Section Analysis

The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116-283) extended, until November 5, 2046, the withdrawal and reservation authorized by the NDAA for FY 2000 (Pub. L. 106-65) of approximately 204,953 acres of public land in Churchill County, Nevada, for defense-related uses as a range complex associated with Naval Air Station Fallon, Nevada. Subsequent refinement of real property descriptions revealed the actual withdrawal area to be 202,864 acres. The range complex is used to support naval aviation aerial combat maneuvering training and weapons deployment and is used by naval aviators to meet basic, intermediate, and advanced tactics, techniques, and procedures training requirements. It is also used by special operations forces for ground vehicle tactical maneuvering and live-fire training.

The current Fallon Range Training Complex (FRTC) comprises withdrawn and fee-owned land in and around Fallon, Nevada. Though essential to continued naval readiness, the FRTC is too small for today’s tactics, techniques, and procedures. The FRTC must be expanded by withdrawing an additional 529,044 acres for a total of 730,806 acres to accommodate precision-guided munitions and Sea, Air, and Land (SEAL) ground mobility training in a tactical environment. The DON determined that 1,079 acres of B-16 are not required and are being relinquished. The total withdrawal request is for 730,806 acres.

While acquisition of 730,806 acres of public land via land withdrawal has no budget implications, modernization of the FRTC requires the acquisition of approximately 66,551 acres of non-federal land, relocation of approximately 10 miles of Nevada State Route 361, relocation

of Pole Line Road (an unimproved road), and relocation of approximately 20 miles of the Paiute Pipeline Company six-inch natural gas pipeline. In addition, expansion of the FRTC from its current 231,069 acres to 825,565 acres (an additional 594,494 acres of mostly withdrawn land but also purchased land) will result in increased management costs that will require six additional full time equivalent civilian employees, increased range operating support (e.g., electrical power, maintenance of range buildings, fencing and roads; preparation and implementation of a new Integrated Natural Resources Management Plan and Integrated Cultural Resources Management Plan; restoration of burned areas). Finally, modernization requires installation and maintenance of new target arrays, sensors, and scoring systems.

This proposal would modernize the FRTC by adding a Subtitle to the Military Land Withdrawals Act of 2013, Title XXIX of Pub. L. 113-66. Section 2901 and 2902 and Subtitle A – General Provisions are common to all withdrawals under Title XXIX. This proposal would create a new Subtitle dedicated specifically to the unique aspects of the FRTC withdrawal. The specific sections to be added are listed below.

Section 2981 identifies the land to be withdrawn and reserved from public use.

Section 2982 provides for management of FRTC withdrawn lands. The DON would be responsible for managing the land within the ordnance ranges (B-16, B-17, B-19 and B-20) under the Sikes Act. The Bureau of Land Management would be responsible for managing the land within the Dixie Valley Training Area and Shoal Site under the Federal Land Policy and Management Act consistent with the purposes of the military land withdrawal. This section also requires the DON and Department of the Interior (DOI) to enter into an agreement for review of federal actions prior to approval by the DOI.

Section 2983 establishes the relationship between the proposed FRTC land withdrawal and reservation to other reservations currently existing over portions of B-16 and B-20 held by the U.S. Bureau of Reclamation (USBR). With regard to the USBR withdrawals on B-16 and B-20, the section requires the DON to enter into an agreement with the DOI to afford the USBR access to the ranges to operate and maintain its water management facilities consistent with DON range and public safety requirements.

Section 2984 provides for release from Wilderness Study Area designation over 22,335 acres of the 196,128-acre Clan Alpine Mountains Wilderness Study Area that are unsuitable for wilderness designation.

Section 2985 provides authorization to the DON to extract sand and gravel from the withdrawn area for its use on the withdrawn lands.

Section 2986 terminates the extension of the prior withdrawal for the FRTC.

Section 2987 provides the same termination date for the withdrawal and reservation that currently exists for the extension under section 2842 of the NDAA for FY 2021.

Budget Implications: The resources impacted are reflected in the table below and are included within the Fiscal Year (FY) 2022 President’s Budget Request.

RESOURCE IMPACTS (\$MILLIONS)									
	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation	Budget Activity	BLI/SAG	Program Element
Phase 2 FRTC Modernization – Land Acquisition	\$ 48.25					Military Construction	01	160495444	N/A
Phase 3 FRTC Modernization – fencing, utilities, range support structures				\$ 71.34		Military Construction	01	160495446	N/A
B-17 Range JDAM Capability – relocation of NV State Route 361 and natural gas pipeline			\$ 110.80			Military Construction	01	160495444	N/A
Civilian Personnel (NASF 6 additional FTEs for land management – CLE, NR, CR, CPLO)	\$ 0.60	\$ 0.87	\$ 0.88	\$ 0.90	\$ 0.92	Operation and Maintenance, Navy	01	BSS1	N/A
Range Facilities Management (NASF - preparation and implementation of INRMP, ICRMP and other land management plans	\$ 0.95	\$ 3.68	\$ 1.01	\$ 1.11	\$ 1.59	Operation and Maintenance, Navy	01	BSS1	N/A

Range Facilities Management (NAS Fallon)	\$ 1.03	\$ 0.62	\$ 0.64	\$ 0.65	\$ 0.66	Operations and Maintenance, Navy	01	BSM1	N/A
Civilian Personnel (NAWDC – 3 additional FTEs for range coordination and safety specialists)	\$ 0.51	\$ 0.51	\$ 0.52	\$ 0.52	\$ 0.53	Operation and Maintenance, Navy	01	1C4C	N/A
Range Facilities Maintenance (NAWDC - Range Operating Support – maintenance of range (Class III) systems, range ordnance clearance, range target maintenance)	\$ 0.0	\$ 0.30	\$ 1.60	\$ 1.70	\$ 1.80	Operation and Maintenance, Navy	01	1C4C	N/A
Total	\$ 51.34	\$ 5.98	\$ 115.45	\$ 76.22	\$ 5.50				

PERSONNEL IMPACTS (END STRENGTH OR FTEs)

	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation	Budget Activity	BLI/SAG	Program Element
Navy - NASF	4	6	6	6	6	Operation and Maintenance, Navy	01	BSS1	N/A
Navy - NAWDC	3	3	3	3	3	Operation and Maintenance, Navy	01	1C4C	N/A
Total	7	9	9	9	9				

Changes to Existing Law: This proposal would add a new subtitle G to the Military Land Withdrawals Act of 2013, the full text of which is shown in the legislative text above.

1 **SEC. ___. MULTIYEAR PROCUREMENT AUTHORITY FOR AH-64E APACHE**
2 **HELICOPTERS.**

3 (a) **AUTHORITY FOR MULTIYEAR PROCUREMENT.**—Subject to section 2306b of title 10,
4 United States Code, the Secretary of the Army may enter into one or more multiyear contracts
5 beginning with the fiscal year 2022 program year, for the procurement of AH-64E Apache
6 helicopters.

7 (b) **CONDITION FOR OUT-YEAR CONTRACT PAYMENTS.**—A contract entered into under
8 subsection (a) shall provide that any obligation of the United States to make a payment under the
9 contract for a fiscal year after fiscal year 2022 is subject to the availability of appropriations for
10 that purpose in such later fiscal year.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how
the legislative text would amend existing law.]**

Section-by-Section Analysis

This proposal would allow the Secretary of the Army to enter into a multiyear contract for AH-64E Apache helicopters beginning in fiscal year (FY) 2022 and extending through FY 2025 (subject to subsequent appropriations), with the potential for an additional fifth year subject to need. Based on current estimates, the proposed multiyear procurement (MYP) (FY 2022-2025) provides cost saving opportunities of \$213,680,000 as compared to annual contracts and will facilitate industrial stability.

The AH-64E is a core aviation program and is approved for full-rate production through the current Future Year Defense Program (FY 2021-2025). The minimum need for the AH-64E is not expected to decrease during the contemplated MYP period.

Current budget estimates and associated funding levels are insufficient to support anything other than the proposed multiyear procurement of AH-64E Apache helicopters without significant reductions in quantity each year. Additionally, this proposal will result in stabilization of the workforce and reduce administrative burden for both the Government and contractor resulting in a greater efficiency in acquisition operations.

Budget Implications: Budget estimates and associated funding levels for the AH-64E program for FY 2022 and beyond are predicated on MYP authorization. FY 2021 is included in the table below to show Advance Procurement funding for long lead items for FY 2022. Current budget estimates and associated funding levels are insufficient to support anything other than the

planned MY II of AH-64E Apache helicopters without significant reduction in quantity each year.

	Annual Contracts	MY II Alternative
Total Contract Price	\$2,080,333,000	\$1,866,654,000
\$ Cost Savings over Annual		\$213,679,000
% Cost Savings over Annual		10.27 %

	Resource Requirements (TY\$M)									
Requirements are for Prime only. Does not represent total Budget Requirement.	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appropriation From	Budget Activity	BLI/SAG	Program Element
Army Base Procurement	-	\$230.896	\$269.402	\$396.733	\$350.973	-	Aircraft Procurement, Army	1	020	A05111 A
Army Advance Procurement	\$169.460	\$192.230	\$169.218	\$87.743	-	-	Aircraft Procurement, Army	1	020	A05111 C
Total	\$169.460	\$423.126	\$438.620	\$484.476	\$350.973	-				

Changes to Existing Law: This proposal would not change the text of existing law.

1 **SEC. ____ . PILOT PROGRAM FOR SECURITY VETTING FOR RISKS ASSOCIATED**
2 **WITH FOREIGN INFLUENCE AND FOREIGN PREFERENCE.**

3 (a) ESTABLISHMENT.—The Secretary of Defense, in consultation with the Secretary of
4 State, may establish a pilot program to identify risks associated with foreign influence and
5 foreign preference of individuals performing unclassified research funded by the Department of
6 Defense who would not otherwise undergo Federal personnel vetting.

7 (b) ELEMENTS.—In carrying out the pilot program under this section, the Secretary of
8 Defense may—

9 (1) identify the size of the population to be vetted under the pilot program;

10 (2) establish a process to obtain information from individuals to be vetted under
11 the pilot program;

12 (3) determine the criteria to evaluate risks to research funded by the Department
13 of Defense from foreign influence and foreign preference of individuals participating in
14 such research;

15 (4) establish a process to conduct vetting, including referrals to appropriate
16 counterintelligence and law enforcement entities, for the population to be vetted under
17 the pilot program; and

18 (5) carry out the process described in paragraph (4) with respect to the population
19 to be vetted under the pilot program.

20 (c) SUNSET DATE.—The authority to conduct the pilot program under this section shall
21 expire on the date that is three years after the date of the enactment of this Act.

Section-by-Section Analysis

This proposal would provide authority for the Secretary of Defense to establish a pilot program to screen individuals performing Department of Defense (DoD) funded research to determine whether those individuals pose a threat to critical technologies relevant to national security, by screening for foreign influence and foreign preference. The results of this pilot will be used to identify the barriers, value, and costs associated with vetting the population of personnel participating in DoD funded research. The Department is seeking information to determine the feasibility and proper scope of a permanent program and its potential future availability to other Departments and agencies within the Executive Branch.

Budget Implications: The resources impacted by this proposal are reflected in the table below and are included within the Fiscal Year (FY) 2022 President’s Budget request.

RESOURCE REQUIREMENTS (In millions)									
	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Appn From	Budget Activity	BLI/SAG	Program Element
Funds for pilot program	\$.175	\$.350	\$.350	\$.350		Operation and Maintenance, Defense-Wide	04	SAG: 4G-4GTE	
Total	\$.175	\$.350	\$.350	\$.350		--	--	--	--

Changes to Existing Law: None.