



# ASSOCIATION OF OLD CROWS ADVOCACY NEWSLETTER

December 8, 2020

## House and Senate Agree on NDAA Conference Report

This week, the House and Senate Conference Committee released its final Conference Report for the FY 2021 National Defense Authorization Act (NDAA). The NDAA Conference Report provides \$731.3 billion for national defense programs and several key new legislative provisions that impact the Electromagnetic Spectrum Operations (EMSO) community. On Tuesday, December 8, the House passed the Conference Report by a bipartisan vote of 335-78. The Senate will follow suit later this week. The vote margin in the House and the margin expected in the Senate are enough to override a potential veto by President Trump, who vowed to veto the NDAA if it did not include Sec. 230 reform (liability shield for tech companies) and mandated renaming of military bases named after Confederate generals from the Civil War. The Conference Report does not meet either demand.

Specifically, the Conference Report comes in close to the President's request earlier this year and a modest \$1.7 billion more than FY 2020. Procurement authorization comes in at \$136.6 billion, about \$6 billion more than the President's request and adding \$2.5 billion more than the Senate, which was the high water mark entering negotiations. Conversely, the Conference Report provides \$104.7 billion for RDT&E, about \$1.5 billion less than the President's request, which also provided the least amount of the versions (see Table 1).

| Category               | 2021 President's Request | 2021 House Total | 2021 Senate Total | 2021 NDAA Conference Report |
|------------------------|--------------------------|------------------|-------------------|-----------------------------|
| Procurement            | \$130,684,160            | \$132,844,847    | \$134,014,838     | \$136,585,222               |
| R&D                    | \$106,224,793            | \$106,489,628    | \$106,660,645     | \$104,708,901               |
| O&M                    | \$196,630,496            | \$193,853,071    | \$195,573,380     | \$192,436,494               |
| MILPER                 | \$158,896,845            | \$157,757,045    | \$156,348,755     | \$157,558,593               |
| Other                  | \$36,069,850             | \$36,665,712     | \$35,950,650      | \$36,149,793                |
| Total Major Categories | \$628,506,144            | \$627,610,303    | \$628,548,268     | \$627,439,003               |

**Table 1. NDAA Spending Chart (in thousands)**

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Our previous newsletter noted that AOC is tracking 36 procurement accounts and 48 RDT&E accounts through the annual budget cycle. We will update these accounts with final appropriations amounts once Congress completes an FY 2021 Omnibus bill ([see AOC Advocacy website](#)). In the meantime, there are several authorizations for these accounts worth noting:

- The Conference Report did not keep the two additional Compass Call aircraft, which increased funding in the House NDAA by \$130 million. The Conference Report authorizes the President's Request and the Senate NDAA at \$161.1 million. AOC strongly supported the House version to accelerate Compass Call recapitalization. We believe that both Congress and the USAF to address in the FY 2022 budget.
- The agreement also reduces Compass Call baseline 3 and 4 funding by \$23 million for installation delays and cost discrepancies, respectively, a reduction not contained in either the House or Senate versions.
- To align with eventual defense appropriations, the Conference Report does not maintain USAF efforts to consolidate RDT&E program elements under the new Next Gen Effects Dev/Demos PE (0603035F). The bill returns authorizations to previous accounts including Electronic Combat (0603270F).
- The Conference Report keeps the additional \$30 million in the Senate NDAA under the USAF Airborne Electronic Attack account (0604429F) for System-of-systems Technology Integration Tool Chain for Heterogeneous Electronic Systems (STITCHES) integration.
- The Report fully funds the Navy's Next Generation Jammer (NGJ) programs at \$477.7 million for 0604274N, \$170 million for 0602282N, and \$176.6 million in procurement.
- Congress will also keep full funding for the Navy's E2-D Hawkeye procurement at \$626 million, plus \$123 million in advanced procurement.
- The Conference Report also fully funds Army procurement for its key EW programs, including EW Planning and Management Tool (EW PMT), Multi-Function EW (MFEW), and the Terrestrial Layer System (TLS).

Additionally, the NDAA Conference Report requires the Department of Defense (DoD) to submit to Congress by May 15, 2021, an acquisition strategy for the new Space Force to efficiently develop and deploy innovative technologies, including hardware and software. Once the strategy is submitted to Congress, the Government Accountability Office (GAO) will have up to 60 days to conduct an analysis. As EMSO and space operations are closely related, especially in pursuit of maneuver capabilities, the strategy should have applicable findings and recommendations relevant to the AOC community.

## Conference Report Legislative Highlights

Arguably, the most critical aspects of the NDAA are the legislative provisions contained therein. AOC has been tracking 15 items of interest that required Conference Committee agreement (see Table 2), as opposed to reporting language in both the House and Senate bills that immediately took effect upon passage.

Overall, all the provisions AOC was tracking except one made it through Conference, many with amendments made by the receding Chamber that did not authorize the original provision. There are three provisions to pay special attention to moving forward, and AOC will post all relevant bill language and joint explanatory statements to its Advocacy webpage for ease of research and review.

First, Section 152 orders the transfer of responsibilities and functions relating to EMSO from US Strategic Command (USSTRATCOM) to an appropriate entity within DoD. The original Senate language called for EMSO to fall under the Chairman of Joint Chiefs of Staff (CJCS) as a Chairman's Controlled Activity (CCA) under an ambitious timeline. AOC supported this provision and released an **issue brief** in September. The House did not contain a similar provision, but receded to the Senate with an amendment to consolidate EMSO within two years and require the Service Chiefs to evaluate the Armed Forces' capability to perform EMSO. This provision will make for an important development in 2021, especially as the EMSO Cross Functional Team (CFT) embarks on the Implementation Plan and Roadmap to its recently released DoD EMS Superiority Strategy.

Second, Section 276 orders a strategy for assured access to trusted microelectronics. This provision establishes an Advisory Panel on Microelectronics Leadership and Competitiveness to develop a national strategy to accelerate the development and deployment of state-of-the-art microelectronics and ensure that the US is a global leader in the field. Both the House and Senate contained similar provisions, but the Senate receded to the House language with an amendment to add elements to the strategy.

Finally, Section 1663 authorizes an Independent Technical Review by the National Academies of FCC Order 20-48, which granted a Spectrum license to Ligado Networks LLC in the spring. AOC **opposed this decision** because it would cause unacceptable operational impacts to the warfighter and adversely affect the military potential of GPS by negatively impacting GPS receivers. On the surface, the FCC decision process was unusual, and it failed to adequately answer key technical questions presented by DoD. The decision also potentially sets a new precedent on how FCC will respond to DoD concerns about commercial spectrum encroachment. As the US moves into 5G and 6G, DoD and other government spectrum users must find new ways to work with the commercial sector to design a system of sharing priority bands of spectrum.

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| Section   | Bill             | Conference | Page |
|---|------------------|------------|------|
| Sec 128 - Report on strategy to use ALQ-249 Next Generation Jammer to ensure full spectrum electromagnetic superiority  | Senate           | Yes        | 10   |
| Sec. 146 - Analysis of requirements and Advanced Battle Management System capabilities  | Senate           | Yes        | 17   |
| Sec 152 - Transfer from Commander of United States Strategic Command to Chairman of the Joint Chiefs of Staff of responsibilities and functions relating to electromagnetic spectrum operations | Senate           | Yes        | 18   |
| Sec. 164 - Requirement to accelerate the fielding and development of counter unmanned aerial system efforts across the Joint Force (sec. 181)   | Senate           | Yes        | 21   |
| Sec. 182 - Joint All-Domain Command and Control (JADC2) Requirements  | Senate           | Yes        | 25   |
| Sec. 224 - Governance of 5G Wireless Networking in the DoD  | Senate           | Yes        | 38   |
| Sec. 215—Directed Energy Working Group  | House            | Yes        | 34   |
| Sec. 276 - Microelectronics and National Security   | Senate/<br>House | Yes        | 50   |
| Sec. 804 - Implementation of Modular Open Systems Architecture requirements   | Senate           | Yes        | 212  |
| Sec. 848 - Preference for Sourcing Rare Earth Materials from the National Technology and Industrial Base  | House            | Yes        | 232  |
| Sec. 850 - Policy recommendations for implementation of Executive Order 13806 (Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency)           | Senate           | Yes        | 235  |
| Sec. 802 - Modification to the Definition of Nontraditional Defense Contractor  | House            | No         | 247  |
| Sec. 1613 - Strategy to strengthen civil and national security capabilities and operations in Space   | House            | Yes        | 418  |
| Sec. 1663 - Independent Technical Review of FCC Order 20-48   | Senate           | Yes        | 431  |
| Sec. 2702 - Prohibition on conducting additional BRAC round   | Senate           | Yes        | 480  |

**Table 2. Conference Report Legislative Highlights**

## Next Steps for the NDAA and Defense Budget

As mentioned previously, the House voted on Tuesday, December 8, to pass the NDAA Conference Report by a vote of 335-78. The Senate will vote later in the week. If the President follows through with his threat to veto the legislation, House and Senate leadership have agreed to return Capitol Hill to override the veto before the end of the calendar year. Therefore, a final NDAA is expected to become law within the next few weeks.

Congress is working on the FY 2021 Omnibus Appropriations Act for the annual defense appropriations, which will pull together all appropriations bills under one title. Final defense spending allocations are not yet public, but the amount will be approximately \$696 billion, including close to \$69 billion for Overseas Contingency Operations (OCO). The current Continuing Resolution (CR) keeping the government funded into the current fiscal year is set to expire on Friday, December 11.

| Fiscal Year | Bill    | Date Signed   |
|-------------|---------|---------------|
| FY 2021     | HR 6395 | \$150,524,104 |
| FY 2020     | S 1790  | \$196,630,496 |
| FY 2019     | HR 5515 | \$130,866,091 |
| FY 2018     | HR 2810 | \$106,224,793 |
| FY 2017     | S 2943  | \$68,650,238  |
| FY 2016     | S 1356  | \$652,895,722 |
| FY 2015     | HR 3979 | \$652,895,722 |

*Table 3. NDAA Signing History*

The Omnibus bill is progressing, but it will not be ready by the end of the current CR, so Congress is preparing a second short-term CR to give itself another week through December 18. There has been some mention of talks stalling, but that happens when Congress buys itself more time. The expectation is that there will be an Omnibus before the holidays. In the past, President Trump has threatened to veto another Omnibus bill, but he has not made any direct threat to veto this bill. AOC will keep you posted as developments warrant.

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*For questions, comments, or additional information on any of the above topics, please contact Ken Miller, AOC Director of Advocacy and Outreach, at [kmiller@crow.org](mailto:kmiller@crow.org).*

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