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Defense Primer: The NDAA Process

The National Defense Authorization Act (NDAA) provides authorization of appropriations for the Department of Defense (DOD), nuclear weapons programs of the Department of Energy, DOD elements of the Intelligence Community, and defense-related activities at other federal agencies. In addition to serving as an authorization of appropriations, the NDAA establishes defense policies and restrictions, and addresses organizational administrative matters related to the DOD. Unlike an appropriations bill, the NDAA does not provide budget authority for government activities. Nevertheless, historically it has provided a fairly reliable indicator of congressional sentiment on subsequent appropriations for particular programs.

Enactment of the NDAA has come to be expected annually, as FY2020 was the 59th consecutive fiscal year for which a defense authorization was enacted. This regular enactment of complex legislation for more than five decades depends upon close adherence to process and consistency in procedures, schedules, and protocols.

Committees of Jurisdiction

The House Committee on Armed Services (HASC) and the Senate Committee on Armed Services (SASC) are provided jurisdiction over all bills, resolutions, and other matters relating to the common defense under the Rules of the House and Senate. Referred to as the *authorizers* or the *authorizing committees*, the HASC and SASC each has subcommittees that are assigned jurisdictional responsibilities by the full committee. In the 116th Congress, the HASC established six subcommittees:

- Tactical Air and Land Forces;
- Military Personnel;
- Readiness;
- Seapower and Projection Forces;
- Strategic Forces; and
- Intelligence and Emerging Threats and Capabilities.

The SASC established seven subcommittees:

- Airland;
- Cybersecurity;
- Emerging Threats and Capabilities;
- Personnel;
- Readiness and Management Support;
- Seapower; and
- Strategic Forces.

The NDAA Timeline

The NDAA process begins on or about the first Monday in February of each year, with the submission of the President's budget request to Congress. The Administration often submits policy proposals (requests for legislation) to

the committees of jurisdiction in conjunction with the budget request.

The authorizing committees begin their work on the NDAA in parallel. Both committees conduct a series of hearings on the budget request and related matters, which typically lead to the drafting and markup of separate bills in the House and the Senate.

Hearings

Upon receipt of the President's budget request, the HASC and the SASC begin a series of posture hearings in which the senior civilian and military leadership of the DOD, the military services, and certain defense agencies are invited to testify before the committees on the budget request. The subcommittees will also conduct related hearings, with a focus on issues specific to that subcommittee's jurisdiction. For example, the SASC may hold a hearing with the Secretary and Chief of Staff of the Army on that year's budget request for the Army, and the Airland Subcommittee might follow with a hearing specifically looking at the Army's ground vehicle procurement programs.

Markup

In a typical year, the committees will have reviewed the President's budget request and associated policy proposals and prepared authorizing legislation for markup in committee by late April or May. These meetings are called markups because committee members mark up the legislation by considering, debating, and voting on amendments to the authorizing bill.

Subcommittee Markup

In current practice, both the HASC and the SASC begin the markup process in subcommittee, with each of the subcommittees considering the *subcommittee Chairman's Mark*, which is a draft legislative proposal with funding recommendations for matters in the bill under that subcommittee's jurisdiction. At completion of markup, each subcommittee votes to report the proposal, as amended, to the full committee.

Full Committee Markup

Once the subcommittees have all finalized their markups, the full committee will convene to consider, debate, and vote on amendments to each of the subcommittee marks. During full committee markup, the *full committee Chairman's Mark*, which contains legislation and funding recommendations for matters that are not assigned to a specific subcommittee, is considered, debated, and voted on. The full committee Chairman's Mark addresses a variety of cross-cutting issues such as general defense policy, matters related to the organization and management of the DOD, acquisition and industrial base policy, and matters related to foreign nations and Overseas Contingency Operations (OCO).

Common HASC Committee Practices

The most recent NDAA includes more than 1,000 pages of legislation and authorization of more than \$700 billion. In order to shepherd a bill of this magnitude successfully through the legislative process, the HASC has adopted several common practices in drafting and marking up the NDAA.

Practice at HASC markup typically has not allowed for the consideration of certain amendments. For example:

- **Earmarks.** House rules currently prevent consideration of a bill reported by a committee unless the report includes a list of congressional earmarks or a statement that there are none. Committee practice does not permit Members to offer during markup any amendment containing an earmark.
- **Sequential referral.** The committee typically also requires members of the committee to provide, before offering any amendment that involves the jurisdiction of other House committees, a letter from the respective committee chairman indicating a waiver of the right of referral. This requirement is also imposed on legislation in the underlying mark. Doing so avoids potential delay that could result from a sequential referral of the bill to other committees.
- **Offsets.** The committee's typical past practice also has required that amendments that would increase spending for one item should identify suitable offsets.

Common SASC Committee Practices

Under Senate rules, committees and their subcommittees may vote to hold closed meetings for specific reasons (e.g., to avoid disclosing certain national security information). In recent practice, the SASC full committee markups (and most subcommittee markups) typically have been conducted in closed session. In addition, the SASC proposal is typically reported to the Senate as an original bill (that is, its text has not been previously formally introduced).

Floor Consideration

Once reported favorably out of committee, the NDAA may be scheduled for floor consideration. In the House, current practice is to consider the bill under the provisions of a special rule that structures the conditions of debate and possible floor amendments to the bill. In recent years, the rule has sometimes made more than 100 amendments in order (many of which are offered and agreed to *en bloc*). After being considered, debated, and amended in the House, the House-passed version of the NDAA is sent to the Senate and typically either referred to SASC or placed on the Senate calendar.

In the Senate, after SASC has reported its proposal, any floor debate and amendment consideration is typically structured pursuant to multiple unanimous consent agreements. In recent practice, the Senate has sometimes considered over 100 floor amendments. However, one or more cloture processes (by which three-fifths of the Senate, typically 60 Senators, votes to limit consideration) may be necessary to reach a final vote on certain amendments, and on the bill itself.

If the Senate passes its own bill first, it is sent to the House; often, instead, the Senate takes up the House bill it has received and considers amendments to it (including the proposal reported by SASC).

Conference

The Constitution requires that the House and Senate approve the same bill in precisely the same form before it is presented to the President. To this end, each house must pass its own version of the same measure and then attempt to reach agreement with the other house about its provisions. An agreement may be reached by the exchange of alternatives between the chambers. Alternatively, the House and Senate can each agree to create a conference committee to propose a package settlement of the competing proposals.

A conference committee is traditionally used to resolve differences between the houses on the NDAA. Conferees are House and Senate members, drawn mainly from the HASC and SASC, who are expected to resolve disagreements between the House and Senate positions and provide an agreement in the form of a conference report. Conferees may also be appointed from other committees with jurisdiction over components of the bill; the chamber may limit the provisions on which these conferees may negotiate. The conference committee will typically begin its work as soon as possible following passage of a proposal in each chamber. Completion of the conference report is not on a specified timeline, but many of the authorities provided by the NDAA expire at the end of the fiscal year. Therefore, considerable effort is put toward completing the NDAA conference prior to October 1 of each year.

Once reported by the conference committee, a conference report is subject to debate during floor consideration, but is not amendable. (In the Senate, reaching a vote on the conference report may require three-fifths of the Senate to invoke cloture.) If the House and Senate each agree to the conference report, the NDAA is enrolled for presentation to the President.

CRS Products

CRS Report R42843, *Introduction to the Legislative Process in the U.S. Congress*

CRS Infographic IG10005, *From Bill to Law: Stages of the Legislative Process*

CRS In Focus IF10514, *Defense Primer: Defense Appropriations Process*

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