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The FY2007 National Defense Authorization Act: Selected Military Personnel Policy Issues

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Charles A. Henning, Coordinator
Analyst in National Defense
Foreign Affairs, Defense, and Trade Division

Richard A. Best, Jr., David F. Burrelli, and Lawrence Kapp
Specialists in National Defense
Foreign Affairs, Defense, and Trade Division

The FY2007 National Defense Authorization Act: Selected Military Personnel Policy Issues

Summary

Military personnel issues typically generate significant interest from many Members of Congress and their staffs. Ongoing military operations in Iraq and Afghanistan in support of the Global War on Terror, along with the emerging operational role of the Reserve Components, has further heightened interest and support for a wide range of military personnel policies and issues.

CRS has selected a number of issues being considered by Congress as the FY2007 National Defense Authorization Act evolves. In each case, a brief synopsis is provided that includes background information, a comparison of the House and Senate provisions, if any, and a brief discussion of the issue. Where appropriate, other CRS products are identified to provide more detailed background information and analysis of the issue. For each issue, a CRS analyst is identified and contact information is provided.

This report focuses exclusively on the annual authorization process. It does not include appropriations, veterans' affairs, tax implications of policy choices or any discussion of separately introduced legislation. After any revisions to H.R. 5122/S. 2766 by a conference, this report will be updated.

It is anticipated that this will become an annual CRS report.

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The FY2007 National Defense Authorization Act: Selected Military Personnel Policy Issues

Each year, the Senate and House Armed Services Committee report their respective versions of the National Defense Authorization Act (NDAA). These contain numerous provisions that affect military personnel, retirees and their family members. Provisions in one version are often not included in another, treated differently, or, in certain cases, they are identical. Following passage of each by the respective legislative body, a Conference Committee is typically convened to resolve the various differences between the House and Senate versions. If a Conference Committee reports its final version of the Authorization Act, the bill is returned to the House and Senate for their consideration. Upon final passage the act is sent to the President for his consideration.

In the course of a typical authorization cycle, congressional staffs receive many constituent requests for information on provisions contained within the annual NDAA. This report highlights those personnel-related issues that seem to generate the most intense constituent interest and tracks their status in the FY2007 House and Senate versions of the NDAA. Each presentation offers the background on a given issue, tracks its legislative status, discusses the proposed language, identifies other relevant CRS products, and designates a CRS issue expert.

With a conference on H.R. 5122/S. 2766 pending, this report will be updated as warranted.

Time-in-Grade for Promotion to 0-3

Background: 10 U.S.C. 619 currently requires a minimum of 18 months in grade as a second lieutenant or Navy ensign before promotion to first lieutenant or Navy lieutenant junior grade and 24 months in grade as a first lieutenant or Navy lieutenant junior grade before promotion to captain or Navy lieutenant. As an exception, officers promoted to first lieutenant or Navy lieutenant junior grade before October 1, 2005 are only required to serve 18 months in grade. This exception was included in the FY2002 National Defense Authorization Act to support the Global War on Terror.

House (H.R. 5122)	Senate (S. 2766)	Conference
The House provision would permanently reduce the time-in-grade as a first lieutenant or Navy lieutenant junior grade to 18 months before eligibility for promotion to captain or Navy lieutenant.	The Senate supports 18 months in grade as a temporary measure and extends the exception date from October 1, 2005 to October 1, 2008.	

Discussion: Historically, time-in-grade requirements have varied from one to two years in grade for promotion to first lieutenant or Navy lieutenant junior grade and another one to two years for promotion to captain or Navy lieutenant. Time from commissioning to promotion to captain or Navy lieutenant has therefore ranged from two to four years. Generally, time- in-grade requirements are reduced during periods of hostilities and increased in the absence of conflict. Because many military positions must be filled by officers of specific ranks, time-in-grade reductions provide maximum management flexibility for the services in filling their operational requirements.

Reference(s): None.

CRS Point of Contact (POC): Charles Henning at 7-8866.

Sexual Harassment and Violence at Service Academies

Background: Public Law 108-136 (sec. 527) added a section to 10 United States Code entitled "Actions to Address Sexual Harassment and Violence at the Service Academies." This section contained three main parts: (1) the establishment of a policy on sexual harassment and violence, (2) an annual assessment, and (3) annual reporting requirements.

House (H.R. 5122)	Senate (S. 2766)	Conference
No language reported.	Sec. 567 modifies this language in a number of ways. First, it redefines 'violence' to the more narrow definition of 'sexual violence.' Second, instead of directing DOD to conduct the assessment, the proposed language allows DOD to 'provide' and 'administer' an assessment. Last, it removes the 'annual' requirement for the assessment and reporting and instead requires such for 2008 and 2010.	

Discussion: Such a modification would allow DOD to administer an assessment without actually having to conduct the assessment itself. Further, the annual nature of the assessment/report is modified to be every other year until 2010.

Reference(s): None.

CRS POC: David F. Burrelli at 7-8033.

Sexual Assault Information included in Department of Defense Annual Report

Background: Public Law 108-375, sec. 577, "Department of Defense Policy and Procedures on Prevention and Response to Sexual Assaults Involving Members of the Armed Forces," directed the Secretary of Defense to create and implement a 'comprehensive policy on the prevention and response to sexual assault.' It also directed the Secretaries of each of the military departments to submit to the Secretary of Defense a report regarding sexual assaults involving members under the jurisdiction of each respective Secretary. Among the information to be reported is a "synopsis of, and the disciplinary action taken in, each substantiated case."

House (H.R. 5122)	Senate (S. 2766)	Conference
Sec. 595 would modify the reporting requirement concerning disciplinary action by requiring "the results of the disciplinary action" be reported as well.	No reported language.	

Discussion: Crime rates committed by members of the armed forces are generally lower than those in the general public. Nevertheless, a number of high profile assaults have resulted in increased congressional oversight, scrutiny and legislative interest in the policies concerning the prevention, reporting and handling of these cases.

Reference(s): None.

CRS POC: David F. Burrelli at 7-8033.

Purple Heart Medal for Prisoners of War

Background: The Purple Heart medal is awarded to any member of the armed forces for wounds or death as a result of an act of an opposing armed force, international terrorist attack, or as the result of military operations while serving as part of a peacekeeping force. In 1962, Executive Order 11016 expanded authority for the awarding of the medal to wounds and death resulting from conflicts other than war. Later that same year, Army policy was modified to allow prisoners of war (POW) to receive the medal if wounded or injured by their captors. The policy change was not retroactive. In 1996, Public Law 104-106, expanded eligibility for the Purple Heart to those prisoners of war who were wounded before April 25, 1962, while held as a prisoner of war or while being taken captive, in the same manner as a prisoner of war on or after that date.

House (H.R. 5122)	Senate (S. 2766)	Conference
Sec. 553 expands eligibility for the Purple Heart to the death of a member of the armed forces who dies in captivity and is eligible for the Prisoner of War Medal, or who dies following captivity as a POW due to disease or disability incurred as a POW and who was issued a POW medal.	Sec. 589 states "Not later than March 1, 2007, the President shall provide the Committees on Armed Services of the Senate and House of Representatives a report on the advisability of modifying the criteria for the award of the Purple Heart to authorize the award of the Purple Heart to military members who die in captivity under unknown circumstances or as a result of conditions and treatment which currently do not qualify the decedent for award of the Purple Heart; and for military members who survive captivity as prisoners of war, but die thereafter as a result of disease or disability incurred during captivity."	

Discussion: House language would expand the eligibility to receive the Purple Heart to POWs who die while in captivity or die after release of injuries or illnesses incurred while a POW. The former group would receive the Purple Heart not necessarily as a result of wounds or injuries suffered but because they died as prisoners. The second group includes those who suffer a disease or disability (not necessarily related to their treatment by their captors) as a POW. Senate language seeks a presidential report on the issue.

Reference(s): None.

CRS POC: David F. Burrelli at 7-8033.

Military Chaplains

Background: In recent years, military chaplains have come under scrutiny for the "sectarian nature" of some of their public pronouncements. Complaints have been made that chaplains are not being 'inclusive' in their statements and have offended individuals of other religions. Within the past year, both the Navy and Air Force have issued rules allowing chaplains to pray as they wish during voluntary worship services but to be nonsectarian, or utilize a 'moment of silence,' during public meetings or ceremonies. Religious groups, particularly evangelical Christians, have complained that such rules are a violation of freedom of religion, represent a "gag order" on leaders of faith, and appear to be motivated by "political correctness." Any administrative or legislative activity in this area seems to beg constitutional questions, particularly with regard to the First Amendment.

House (H.R. 5122)	Senate (S. 2766)	Conference
Sec. 590 would add language to each of the service sections (including the Academies) stating that chaplains "shall have the prerogative to pray according to the dictates of the Chaplain's conscience, except as must be limited by military necessity, with any such limitation being imposed in the least restrictive manner feasible."	No language was reported.	

Discussion: If enacted, this language would allow chaplains to invoke sectarian comments (i.e., mention Jesus Christ, Allah, or Buddha, for example), during public meetings or ceremonies. In other words, military necessity considered, sectarian comments would not be limited to private, voluntary meetings or services.

Reference(s): None.

CRS POC: David F. Burrelli at 7-8033.

Targeted Shaping of the Manpower Distribution of the Armed Forces

Background: The Air Force and Navy have both announced plans to reduce their manpower levels between now and 2012, the Air Force by approximately 40,000 and the Navy by 60,000. The Army is simultaneously increasing its strength by 30,000, from 482,400 to 512,400. To facilitate this reshaping of the Armed Forces, Congress has provided a variety of tools for the services with emphasis on voluntary separations and transfers between the services. Specifically, the Voluntary Separation Incentive (VSI) offers a financial incentive for separation while the "Blue to Green" program encourages transfers from the Air Force and Navy to the Army.

House (H.R. 5122)	Senate (S. 2766)	Conference
In Section 619, the House increases the incentive bonus for transfer between the services from $2,500 to $10,000 but does not address the Voluntary Separation Incentive (VSI).	Section 618 doubles the current maximum amount of VSI (from two to four times the full amount of separation pay for a member who is involuntarily separated) and extends this shaping program from Dec. 31, 2008 to Dec. 31, 2012. This section also increases the incentive bonus for transfer between the services from $2,500 to $10,000.	

Discussion: Experience from the Armed Forces drawdowns of the early and mid-1990s has demonstrated that voluntary separation programs are preferable to involuntary programs. VSI allows the services to target overstrength ranks, years of service, skill, rating, military specialty or competitive category to best shape the force for the future. Using the Senate provision as an example, an Air Force captain with 10 years of service would be eligible for a maximum VSI payment of approximately $235,000. According to Army officials, the incentive bonus to transfer to another service (Blue to Green) has prompted 213 officer and 488 enlisted transfers since 2004, including 95 and 259, respectively, so far in FY2006.

References(s): None.

CRS POC: Charles Henning at 7-8866.

Transportation of Remains of Casualties Dying in a Theater of Combat Operations

Background: Among the services/expenses covered "incident to death" in 10 United States Code is section 1482(a)(8): "the Secretary concerned may pay the necessary expenses of ... [t]ransportation of the remains, and round trip transportation and prescribed allowances for an escort of one person, to the place selected by the person designated to direct disposition of remains or, if such a selection is not made, to a national or other cemetery which is selected by the Secretary and in which burial of the decedent is authorized."

House (H.R. 5122)	Senate (S. 2766)	Conference
Sec. 563 modifies the above language in a number of ways. First, it requires a uniformed escort at all times. Second, it requires that the transportation of remains from Dover Air Force Base, DE, to a military airfield shall be by military or contracted aircraft whose exclusive mission is the transportation of remains. Last, in addition to the above escort, there shall be a military escort either from Dover AFB, or at the receiving airfield. This escort, or 'honor guard' shall be of sufficient number to transfer the casket to a hearse for local transportation. This escort shall attend the remains until delivery to the next-of-kin. This escort shall consist of active duty or Ready Reserve members of the armed forces.	No reported language.	

Discussion: This language would expand the role the military performs with regard to the delivery of remains.

Reference(s): CRS Report RL32769, *Military Death Benefits: Status and Proposals*, by David F. Burrelli and Jennifer R. Corwell, and CRS Report RS21545, *Military Funeral Honors*, by Barbara Salazar Torreon.

CRS POC: David F. Burrelli at 7-8033.

Military Pay Raise

Background: Ongoing military operations in Iraq and Afghanistan, combined with recruiting challenges, continue to highlight military pay issues. 37 U.S.C. 1009 provides a permanent formula for annual military pay raises that indexes the raise to annual increases in the Economic Cost Index (ECI). However, for Fiscal Years 2004, 2005, and 2006, Congress approved the raise as the ECI increase plus 0.5%. The FY2007 President's Budget requested a 2.2% military pay raise which is consistent with the permanent formula.

House (H.R. 5122)	Senate (S. 2766)	Conference
In Section 601, the House supports a 2.7% across-the-board pay raise that would become effective on January 1, 2007. Section 602 supports an additional targeted pay raise on April 1, 2007 for mid-grade and senior noncommissioned officers and warrant officers.	In Section 601, the Senate supports a 2.2% across-the-board pay raise (the amount requested in the President's Budget) effective January 1, 2007. Senate also supports a targeted April 1, 2007 additional pay raise but limited to E5/E6/E7 (junior and mid-grade noncommissioned officers). The Senate also extends the military pay table to 40 years to provide continuing longevity raises for the most senior officer, warrant officer and enlisted grades.	

Discussion: Three issues remain to be resolved in conference: 1.) The actual amount of the raise-2.2 or 2.7%, 2.) the ranks to be targeted with the mid-year raise, and 3.) whether to extend the pay table to 40 years. The House's 2.7% would be consistent with the past three raises in FYs 2004, 2005 and 2006. The Senate version is consistent with the administration's request. Targeted raises, used to enhance retention and eliminate perceived inequities in the pay table, have been used successfully since 1999. The current pay table based on rank and longevity has been in use since 1958 and ranges from two to more than 26 years of service. Adding additional longevity increases to 40 years of service would add to personnel costs and, with more senior servicemembers on active duty in the most senior grades, could slow promotion rates, albeit marginally, to those grades.

Reference(s): CRS Report RL33446, *Military Pay and Benefits: Key Questions and Answers*, by Charles A. Henning.

CRS POC: Charles Henning at 7-8866.

Servicemembers Group Life Insurance (SGLI) Full Coverage for OIF and OEF

Background: All servicemembers are automatically insured under SGLI for a maximum of $400,000 in coverage unless they elect lesser coverage in $50,000 increments or cancel the coverage entirely, but doing so requires that they request this in writing. The cost (currently $26.00 per month for full coverage) is paid by the servicemembers through payroll deduction. The FY2006 National Defense Authorization Act required the services to reimburse the cost of the first $150**,**000 in coverage elected by the member for all servicemembers serving in Operations Iraqi Freedom and Enduring Freedom (OIF and OEF). In contrast to most civilian life insurance providers, SGLI pays benefits in the event of combat-related deaths.

House (H.R. 5122)	Senate (S. 2766)	Conference
Sec. 607 expands on the FY2006 SGLI provision by requiring the services to reimburse servicemembers serving in OIF and OEF for all levels of coverage under SGLI (up to the $400,000 maximum).	No provision.	

Discussion: Under H.R. 5122, while deployed to OIF or OEF, servicemembers would receive life insurance coverage up to $400,000 at no cost. The cost to the Department of Defense is estimated at $31M and would be paid from Defense Supplementals.

Reference(s): CRS Report RL31334, *Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom: Questions and Answers About U.S. Military Personnel, Compensation and Force Structure*, by Lawrence Kapp and Charles A. Henning, and CRS Report RL32769, *Military Death Benefits: Status and Proposals*, by David F. Burrelli and Jennifer R. Corwell.

CRS POC: Charles Henning at 7-8866.

Repeal of the Requirement of Reduction of Survivor Benefit Plan Annuities (SBP) by Dependency and Indemnity Compensation

Background: The military Survivor Benefit Plan (SBP) provides annuities to the survivors of military personnel and retirees. If the military retiree was eligible to receive disability payments from the Department of Veterans Affairs (VA), that retiree's surviving spouse would be eligible to receive VA Dependency and Indemnity Compensation (DIC). Under law there is a dollar-for-dollar offset to SBP for any DIC payments. Language in the Senate version of the FY2006 National Defense Authorization Act would have eliminated this offset, but it was removed by the Conference Committee. Instead, Congress ordered the Comptroller General to report on the actuarial soundness of the SBP (P.L. 109-163, January 6, 2006, sec. 666.).

House (H.R. 5122)	Senate (S. 2766)	Conference
No reported language.	Sec. 642 repeals this offset effective the first day of the first month following enactment. This language would also require a surviving spouse to repay any refunded SBP premiums paid as a result of the offset unless the Secretary of Defense waives such repayment.	

Discussion: Congress recently repealed the disability payment offset to the military retirement pay of certain retirees. By extension, surviving spouses have argued that it is only appropriate that they too should be allowed to receive VA DIC benefits and military SBP payments concurrently. Critics contend that this is a form of dual compensation based on the same period of military service.

Reference(s): CRS Report RL31664, *The Military Survivor Benefit Plan: A Description of Its Provisions*, by David F. Burrelli.

CRS POC: David F. Burrelli at 7-8033.

Effective Date of "Paid-Up" Coverage under the Military Survivor Benefit Plan (SBP)

Background: The military Survivor Benefit Plan (SBP) provides annuities to the survivors of military personnel and retirees. The SBP is funded, in part, via deductions in the retired pay of participants. In 1999, Congress reduced the cost of SBP to certain retirees by enacting the so-called "paid-up" provision. Under this language, reductions in retired pay made to cover the retiree's share cease when two conditions are met: (1) the retiree reaches age 70; and (2) the retiree has participated in the SBP for 360 months. As enacted, these provisions become effective October 1, 2008 (P.L. 105-261, 112 Stat. 2045 October 17, 1998). Language was included in the Senate version of the National Defense Authorization Act for Fiscal Year 2006 to move the effective date of this provision to October 1, 2005. This language was dropped by the Conference Committee (U.S. Congress, Conference Committee, National Defense Authorization Act for Fiscal Year 2006 H.Rept. 109-360, 109th Cong., 1st Sess., H.R. 1815, December 18, 2005: 738).

House (H.R. 5122)	Senate (S. 2766)	Conference
No reported language.	Sec. 643 would move the effective date of the "paid-up" provision from October 1, 2008 to October 1, 2006.	

Discussion: The SBP was created on September 21, 1972. It is possible for military retirees who entered the service prior to 1978 to both reach the age of 70 and participate in the SBP for 360 months but be prevented from benefitting under the "paid-up" provision because of the October 1, 2008 effective date. As noted earlier, in the FY2006 National Defense Authorization Act, Congress ordered the Comptroller General to report on the actuarial soundness of the SBP (P.L. 109-163, January 6, 2006, sec. 666).

Reference(s): CRS Report RL31664, *The Military Survivor Benefit Plan: A Description of Its Provisions*, by David F. Burrelli.

CRS POC: David F. Burrelli at 7-8033.

Eligibility of Certain Additional Dependent Children for Survivor Benefit Plan (SBP) Annuities

Background: As originally created, the military Survivor Benefit Plan (SBP) provided coverage for the survivors of military retirees and those active duty personnel who were eligible to retire. Recent legislation (P.L. 107-107, 115 Stat. 1151 et seq.; December 28, 2001) has expanded the coverage to the survivors of individuals who die while on active duty and who are *not* retirement-eligible, effective September 10, 2001.Under these provisions, the surviving spouses of active duty personnel who die are provided an annuity. In 2003, Congress allowed for these benefits to be paid to the surviving children, if any, of an active member who dies (P.L. 108-136, November 24, 2003). This provision was effective after November 23, 2003. With the children as the SBP beneficiaries, the surviving spouse avoids any offsets from the receipt of Dependency and Indemnity Compensation (DIC) (See the sec. entitled "Survivor Benefit Plan and Veterans' Affairs Dependency and Indemnity Compensation").

House (H.R. 5122)	Senate (S. 2766)	Conference
Sec. 645 expresses the sense of the Congress that eligibility for the surviving child in lieu of the surviving spouse of an active member dying while on active duty should be extended to cover children of members dying after October 7, 2001.	Sec. 652 replaces the November 23, 2003 date with October 7, 2001. Any benefits as a result of this change are payable for months after enactment of this language	

Discussion: Survivors of those who died while serving on active duty were potentially able to increase the benefits they received by designating their child or children, if any, as the SBP beneficiary(ies), while allowing the surviving spouse to receive VA Dependency and Indemnity Compensation. As the result of designating the beneficiaries in this manner, it is possible to avoid any offset of SBP as a result of receiving DIC. Survivors of those who died before November 24, 2003, were not able to select children as an SBP beneficiary and were therefore subject to the offset. House language expresses the sense of Congress that such a SBP beneficiary designation option should be extended to all eligible survivors of active duty personnel dying while on duty after October 7, 2001. Senate language allows this designation back to October 7, 2001.

Reference(s): CRS Report RL31664, *The Military Survivor Benefit Plan: A Description of Its Provisions*, by David F. Burrelli.

CRS POC: David F. Burrelli at 7-8033.

Expansion of Conditions for Direct Payment of Divisible Retired Pay under the Uniformed Services' Former Spouse Protection Act (USFSPA)

Background: Under the USFSPA, courts were given the authority to divide military retired pay as part of a divorce proceeding. If the marriage lasted 10 years during which member served 10 years of creditable service, the Defense Finance and Accounting Service (DFAS) had the authority to mail the court-ordered division directly to the former spouse.

House (H.R. 5122)	Senate (S. 2766)	Conference
No language was reported.	Sec. 644 expands the authority of the Defense Finance and Accounting Service to send court-ordered property divisions directly to the former spouse by removing the "10 year rule."	

Discussion: This language would eliminate the "10 year rule" and allow DFAS to make direct payments for any property division that is otherwise in compliance. Retroactive payments are not allowed.

Reference(s): CRS Report RL31663, *Military Benefits for Former Spouses: Legislation and Policy Issues*, by David F. Burrelli.

CRS POC: David F. Burrelli at 7-8033.

Authority for Cost of Living Adjustments of Retired Pay Treated as Divisible Property

Background: Under the Uniformed Services' Former Spouse Protection Act (USFSPA), courts are authorized to divided military retired pay as part of a divorce proceeding. Such a division is usually stated as a percentage of disposable retired pay or as a dollar amount. If stated as a dollar amount, the former spouse's portion would not increase as a result of cost of living adjustments to retired pay.

House (H.R. 5122)	Senate (S. 2766)	Conference
No language was reported.	Sec. 645 provides that if the amount of divisible property is expressed in dollars, such amount may be adjusted at the same time and in the same manner as military retired pay subject to cost of living adjustments.	

Discussion: Such a change allows courts to state the division of retired pay in dollars and to express that such amounts be subject to cost of living adjustments. This language does not make cost of living adjustments automatic. Changes made by this language apply would only to court orders that become effective after a 90-day period following the enactment of this language.

Reference(s): CRS Report RL31663, *Military Benefits for Former Spouses: Legislation and Policy Issues*, by David F. Burrelli.

CRS POC: David F. Burrelli at 7-8033.

Notice and Copy to Members of Court Orders on Payment of Retired Pay

Background: Under law, the military is required to report to the service member when the Secretary concerned receives effective service of a court order concerning military retired pay.

House (H.R. 5122)	Senate (S. 2766)	Conference
No language was reported.	Sec. 646 allows the service member to waive notification.	

Discussion: This language would allow the member to waive notification. If enacted, members may request a copy of the court order. This language would become effective with regard to court orders received 90 or more days after enactment.

Reference(s): CRS Report RL31663, *Military Benefits for Former Spouses: Legislation and Policy Issues*, by David F. Burrelli.

CRS POC: David F. Burrelli at 7-8033.

Concurrent Receipt for Military Retirees with Service-Connected Disabilities Rated as Total by Virtue of Unemployability

Background: Prior to 1999, military retirees who were eligible to receive disability payments from the Department of Veterans Affairs (VA) had their retired pay reduced on a dollar-for-dollar basis by the VA disability benefits. Since that time, language has been introduced, and in some cases enacted, that would afford these retirees additional compensation by allowing them to receive both the VA and DoD benefits (also known as Concurrent Receipt). The FY2005 NDAA language on concurrent receipt did not address what the Department of Veterans Affairs defines as "Individual Unemployability," also known as "100% Unemployables." Instead, the law focused on military retirees with service-connected or combat-related VA disability ratings. The FY2006 NDAA contained a partial step toward inclusion of 100% unemployables. It authorized full concurrent receipt for 100% unemployables beginning October 1, 2009, over four years earlier than the January 1, 2014 date in prior law (the date of full concurrent receipt for all retirees, regardless of disability rating).

House (H.R. 5122)	Senate (S. 2766)	Conference
No reported language.	Sec. 649 authorizes full concurrent receipt for military retirees rated as 100% unemployable by the Department of Veterans Affairs effective December 31, 2004.	

Discussion: The Senate provision, if accepted by the Conference Committee, will retroactively authorize, to December 31, 2004, concurrent receipt for those with a VA Individual Unemployability rating of 100% regardless of the disability rating.

Reference(s): CRS Report RL33449, *Military Retirement: Major Legislative Issues*, by Charles A. Henning.

CRS POC: Charles Henning at 7-8866.

Tricare Coverage for Forensic Examination Following Sexual Assault or Domestic Violence

Background: Congressional concerns regarding sexual assault and domestic violence have resulted in various legislative proposals to address these issues.

House (H.R. 5122)	Senate (S. 2766)	Conference
Sec. 701 would add to the list of services covered under allowable contracts for medical care for spouses and children, the following: "Forensic examination following a sexual assault or domestic violence may be provided."	Sec. 704 contains identical language.	

Discussion: This language would allow Tricare to contract with health care providers for forensic examinations for eligible spouses and children of military personnel. What, if any, reporting requirements (e.g., police reports) would be needed to facilitate payment for such contracts is not clear.

Reference(s): None.

CRS POC: David F. Burrelli at 7-8033.

Prohibition of Increases in Enrollment Fees for Tricare Prime

Background: In early 2006, DOD proposed increases in Tricare enrollment fees for retired personnel under age 65. Legislation currently under consideration would prohibit increases in Tricare Prime enrollment fees (Tricare Prime functions as an HMO for eligible beneficiaries). There are currently no enrollment fees for Tricare Standard (the fee-for-service option) or Tricare Extra (the preferred provider option).

House (H.R. 5122)	Senate (S. 2766)	Conference
Section 704 would prohibit increases in premiums, deductibles, copayments and other charges during the period April 1, 2006 through December 31, 2007.	Section 705 forbids increases in Tricare Prime enrollment fees in FY2007. The bill omits any authorization for imposing enrollment fees for Tricare Standard or Tricare Extra.	

Discussion: DOD had requested authority to raise Tricare enrollment fees (including, for the first time, the establishment of fees for Tricare Standard and Tricare Extra) and copayments for retired beneficiaries not eligible for Medicare as part of its FY2007 budget submission. The goal is to limit growth in health care spending, which is growing both in real terms and as a percentage of the defense budget. The initiative was met with widespread opposition, in part, because of the substantial fee increases involved.

References: CRS Report RL33537, *Military Medical Care: Questions and Answers*, and CRS Report RS22402, *Increases in Tricare Fees: Background and Options for Congress*, both by Richard A. Best, Jr.

CRS POC: Richard Best at 7-7607.

Limitation on Increased Tricare Premiums for Reservists

Background: The FY2005 Defense Authorization Act (P.L. 108-375) established Tricare Reserve Select (TRS), a voluntary program for reservists returning from active duty who agree to remain in the Reserves for at least a year. TRS currently requires monthly premiums of $81 for an individual; $253 for family coverage.

House (H.R. 5122)	Senate (S. 2766)	Conference
Section 709 would repeal TRS and make Tricare Standard available to all non-active duty reservists.	Section 706 prohibits increases beyond 2.2% of current TRS premiums during FY2007.	

Discussion: The Senate bill would preclude any increases in TRS premiums while the House version abolishes TRS in favor of opening Tricare Standard (the fee-for-service option) to all non-active duty drilling reservists. Reservists enrolling in Tricare Standard would pay a premium that would be 28 percent of the total amount determined to be reasonable for the Tricare coverage.

References: CRS Report RL33537, *Military Medical Care: Questions and Answers*, by Richard A. Best, Jr., and CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp.

CRS POC: Richard Best at 7-7607.

DOD Task Force on the Future of Military Health Care

Background: DOD officials, including Secretary Rumsfeld, have testified about growing costs of defense health care and the increasing percentages of the defense budget that it is absorbing. DOD proposals in early 2006 to raise copayments and premiums, however, generated significant opposition from the retiree community.

House (H.R. 5122)	Senate (S. 2766)	Conference
Section 711 would establish a DOD Task Force to examine and report on efforts needed to improve and sustain Defense health care over the long term. The Task Force is to consist of military and civilian officials with experience in health care budgetary and management issues. DOD would be charged with forwarding recommendations for sustaining the military health care benefit to congressional oversight committees.	No comparable provision.	

Discussion: This provision reflects congressional recognition of the budgetary implications of rising costs of defense health care, the need to provide medical care for a larger percentage of the population, and the unpopularity of increased fees that are charged to beneficiaries. The Task Force would be free to develop recommendations that would address relevant issues that could be forwarded to congressional committees.

References: CRS Report RL33537, *Military Medical Care: Questions and Answers;* and CRS Report RS22402, *Increases in Tricare Fees: Background and Options for Congress*, both by Richard A. Best, Jr.

CRS POC: Richard Best at 7-7607.

Comptroller General Study and Report on the Defense Health Program

Background: DOD officials, including Secretary Rumsfeld, have testified about increasing costs of defense health care and the increasing percentages of the defense budget that it is absorbing; the significance of cost growth is widely understood. DOD proposals in early 2006 to raise copayments and premiums, however, generated significant opposition from the retiree community and the larger public.

House (H.R. 5122)	Senate (S. 2766)	Conference
Section 713 requires that the Government Accountability Office (GAO), in cooperation with the Congressional Budget Office (CBO), analyze DOD's health care costing methodologies, including an assessment of the rates of inflation used by the Department in calculating future medical costs. The resulting report is to be forwarded to Congress by June 1, 2007.	No comparable provision.	

Discussion: This study is to assess both the rationale for cost shares imposed on beneficiaries since 1995 and the future increases that DOD has proposed. The study could provide the analytical basis for actions that Congress might consider when addressing future defense budgets.

References: CRS Report RL33537, *Military Medical Care: Questions and Answers*; CRS Report RS22402, *Increases in Tricare Fees: Background and Options for Congress*, both by Richard A. Best, Jr.

CRS POC: Richard Best at 7-7607.

Treatment of Tricare Retail Pharmacy Network Under Federal Procurement of Pharmaceuticals

Background: Pharmaceuticals obtained by DOD are procured under federal pricing rules; there has been a dispute regarding pharmaceuticals dispensed by the Tricare retail network. DOD has maintained that federal pricing rules apply; the pharmaceutical industry disagrees. There is a pending court case.

House (H.R. 5122)	Senate (S. 2766)	Conference
No comparable provision.	Section 721 states that the Tricare Retail Pharmacy Network "shall be treated as an element of the Department of Defense for purposes of the procurement of drugs by Federal agencies."	

Discussion: The provision could save an estimated $251 million in 2007. Others argue, however, that the retail pharmacies are not part of the Defense Department and that treating them as government agencies is an unfair restriction on private enterprise. Some may question the propriety of Congress legislating while there is a legal case pending.

On September 7, 2006 the House voted to instruct conferees on H.R. 5122 to agree to the provisions in section 721 of the Senate version.

Reference(s): None.

CRS POC: Richard Best at 7-7607.

Retiree Tricare Coverage and Employer Health Plans

Background: Military personnel retire from active duty at a relatively young age. Many enter second careers. In 2005, it was reported that certain states and companies were offering military retiree employees supplemental health care coverage or other incentives if they use Tricare as their primary health care coverage. Doing so enables these second employers to shift a portion of the cost of their employee health care to the federal government to enhance the personal benefits of employed military retirees. This increased utilization of Tricare threatens to substantially raise military health care spending. Traditionally, federal health care plans (including military, Veterans Affairs, Medicare and Medicaid) have been the second payer.

House (H.R. 5122)	Senate (S. 2766)	Conference
Sec. 710 prohibits offering financial or other incentives to make Tricare the primary health care provider for military retirees, effective Jan. 1, 2008. This language requires employers to treat military retirees in the same manner as other similarly situated employees. It provides for a $5,000 penalty for each violation. This restriction applies to employers who have 20 or more employees. Military retirees remain eligible for Tricare.	Sec. 722 provides that an employer shall provide a military retiree employee benefits and services under the group health plan offered by the employer in the same manner and to the same extent as other similarly situated employees. It prohibits the establishment of any condition (i.e., benefits or agreement) applicable to participation in the group health plan in terms of eligibility or benefits/services. It prohibits offering incentives to not enroll in or to disenroll from group health plans and allows for a $5,000 penalty for each violation. This language applies to employers with 20 or more employees and is effective Jan. 1, 2008.	

Discussion: The above language would make Tricare consistent with other federal laws in that it would prohibit certain employers from shifting military retirees from their group health plans to the federal government via Tricare. Military retirees and many in the business community argue that these retirees have earned their Tricare benefits and that there should be no limitations on employers offering incentives to encourage these retirees to make Tricare the primary provider. It has been noted that such a shift would allow retirees to be treated differently than other similarly situated employees, would unfairly increase the taxpayers' burden by shifting health care coverage from the employer to the Federal

government, and that it could establish a precedent in that it would allow federal health care to be the primary provider in cases where other group health care coverage is available.

Reference(s): Burrelli, David F., *Tricare and Employer-Sponsored Incentives Offered to Military Retirees*, CRS Memorandum, June 14, 2006.

CRS POC: David F. Burrelli at 7-8033.

Disallowing Costs of Incentive Payments to Employees for Tricare Enrollment for Federal Contractors

Background: Private employers are usually permitted to charge employee health care to the federal government as a cost of administering contracts. Heretofore, incentives offered to military retiree employees have been included in these charges. Secretary Rumsfeld and other DOD officials have expressed concern about civilian firms providing incentives for their employees who are military retirees to use Tricare rather than their company's health care plan. These incentives ultimately result in more civilian beneficiaries using Tricare and thus drive up the overall costs of defense health care. Special attention has focused on employers who are themselves federal contractors.

House (H.R. 5122)	Senate (S. 2766)	Conference
Section 721 makes unallowable as federal contract costs any financial incentives that are offered by federal contractors to their employees to enroll in Tricare instead of company-provided health care.	Although not solely pertaining to "federal contract costs," see Sec. 722 description on page CRS-26.	

Discussion: DOD has viewed with concern the increasing numbers of retirees not eligible for Medicare but employed in civilian capacities who use Tricare because of financial incentives offered by their employers. This provision would address the issue in the case of employers who are federal contractors by making any such incentives unallowable as contract costs. Some contractors may consider the provision to be an unfair restriction on their personnel policies.

References: RS22402, *Increases in Tricare Fees: Background and Options for Congress*, by Richard A. Best, Jr.

CRS POC: Richard Best at 7-7607.

National Mail-Order Pharmacy Program

Background: Beneficiaries with access to DOD health care may obtain maintenance-type medications (i.e., medications taken regularly rather than only for a brief period) through the National Mail-Order Pharmacy (NMOP) at considerable savings to DOD (and to themselves inasmuch as lower co-payments are required) since costs associated with retail pharmacies are avoided.

House (H.R. 5122)	Senate (S. 2766)	Conference
Section 731 precludes co-payments for generic and formulary medications obtained through the NMOP. (Non-formulary agents would remain subject to co-payments.) Co-payments for pharmaceuticals obtained through retail pharmacies could not exceed $6 for generics, $16 for formulary agents, and $22 for nonformulary agents. (Currently at retail network pharmacies co-payments are $3 for generics, $9 for formulary agents, and $22 for nonformulary agents.)	Section 702 requires that effective April 1, 2007 refills of maintenance medications shall be available solely through the NMOP (unless clinical requirements dictate otherwise). DOD may not impose co-pays or cost-shares on refills of generic medications or brand-name medications that are determined to be medically necessary.	

Discussion: DOD seeks to encourage greater use of the NMOP as a means to control escalating pharmacy costs; provisions in either bill would provide a major incentive for beneficiaries to acquire pharmaceuticals from the NMOP. Both House and Senate would remove required co-payments for pharmaceuticals obtained from the NMOP; the Senate bill would go further and mandate that beneficiaries obtain maintenance medications from the NMOP. Pharmacy industry representatives may criticize the provision requiring use of the NMOP as an unfair restriction on their businesses. Some beneficiaries may argue that they find retail pharmacies more convenient.

Reference(s): CRS Report RL33537, *Military Medical Care: Questions and Answers*, by Richard A. Best, Jr.

CRS POC: Richard Best at 7-7607.

Early Diagnosis/Treatment of Post Traumatic Stress Disorder (PTSD)

Background: There has been widespread concern about the potential for personnel who have served in Afghanistan and Iraq to suffer mental disorders subsequent to their transfer to other duty stations or their release from active duty.

House (H.R. 5122)	Senate (S. 2766)	Conference
No comparable provision.	Section 741 would establish pilot projects to evaluate the efficacy of different approaches to earlier diagnosis and treatment of PTSD and other mental health disorders. One project would be carried out in a large military health facility; another at a National Guard or Reserve installation whose health care needs are served by civilian community health resources, and the third utilizing internet-based tools. Reports by DOD on the pilot projects would be due to Congress by the end of 2008.	

Discussion: There has been widespread concern that individuals who have the potential for suffering from PTSD are not being identified and provided early treatment. This provision would evaluate different approaches to addressing this concern.

References: CRS Report RL32961, *Veterans' Health Care Issues in the 109th Congress*, by Sidath Viranga Panangala.

CRS POC: Richard Best at 7-7607.

Extension on Limitation of Conversion of Military Medical and Dental Positions to Civilian Positions

Background: Congress has long been skeptical of efforts by DOD to replace military medical personnel with civilian care providers; current legislation requires a certificate by the Secretary of the relevant military department that quality or access to care would not be decreased by any planned military-to-civilian conversion.

House (H.R. 5122)	Senate (S. 2766)	Conference
No comparable provision.	Section 761 extends an existing requirement that any proposal to civilianize a military medical position must be accompanied by a certificate that the quality or access to care will not decrease as a result.	

Discussion: Current law affects only FY2006; the Senate language would establish an ongoing requirement for annual certifications. The certification requirement might, however, be viewed as unnecessarily and inappropriately complicating the professional judgment of senior defense officials.

References: None.

CRS POC: Richard Best at 7-7607.

Roles for Weapons of Mass Destruction Civil Support Teams

Background: Weapons of Mass Destruction Civil Support Teams (WMD-CST) are units of full-time National Guard personnel established under 10 U.S.C. 12310(c). Currently, these teams "perform duties in support of emergency preparedness programs to prepare for or to respond to any emergency involving – (A) the use of weapons of mass destruction...or (B) a terrorist attack or threatened terrorist attack in the United States that results, or could result, in catastrophic loss of life or property." In the event of an incident that fits this description, a WMD-CST is supposed to rapidly deploy, assist civil authorities with assessing the situation, provide advice on response options, and facilitate the flow of additional response equipment and forces.

House (H.R. 5122)	Senate (S. 2766)	Conference
Section 545 authorizes the use of WMD-CSTs to prepare for or respond to two new categories of events – (a) the release of nuclear, biological, radiological, or toxic or poisonous chemical materials and (b) natural or manmade disasters – that occur in the United States and that result in, or could result in, in catastrophic loss of life or property.	Section 532 expands existing authority of WMD-CSTs to prepare for, or respond to, emergencies involving weapons of mass destruction and terrorist attacks to include those occurring in Canada and Mexico. Authorizes the use of WMD-CSTs to prepare for, or respond to, two new categories of events – (a) the release of nuclear, biological, radiological, or toxic or poisonous chemical materials and (b) natural or manmade disasters – that occur in the United States, Canada, or Mexico and that result in, or could result in, in catastrophic loss of life or property.	

Discussion: Some have argued that WMD-CSTs, with their sophisticated equipment, should be available to respond to other types of emergencies as well. However, expanded authority may generate higher workloads for the limited number of teams that exist and may necessitate a modified training regimen. The House and Senate bills are in agreement on expanding the authority of WMD-CSTs to respond to two new types of events – manmade and natural disasters, and the release of certain hazardous materials, which result in or could result in catastrophic loss of life or property. However, the Senate provision enabling the teams to respond to events in Mexico and Canada has no House equivalent.

Reference(s): CRS Report RL31615, *Homeland Security: The Department of Defense's Role*, by Steve Bowman.

CRS POC: Lawrence Kapp at 7-7609 or Steve Bowman at 7-7613.

Modification of Presidential Reserve Call Up Authority

Background: One of the statutory authorities for involuntarily ordering Reserve Component personnel to active duty, codified at 10 U.S.C. 12304, is commonly referred to as Presidential Reserve Call-up authority (PRC). Currently, PRC allows the President to activate certain reservists for a period of up to 270 days for specified purposes. However, one paragraph of the statute (12304(c)) specifically prohibits the President from using this authority to perform "any of the functions authorized by Chapter 15 or section 12406 of this title" (related to suppressing insurrection) or for "providing assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe."

House (H.R. 5122)	Senate (S. 2766)	Conference
Section 511 permits the use of personnel activated under 10 U.S.C. 12304 to respond to "a serious natural or manmade disaster, accident, or catastrophe that occurs in the United States, its territories and possessions, or Puerto Rico." It also changes the maximum length of duty under 10 U.S.C. 12304 from 270 to 365 days and requires that consideration be given to several factors before activating individuals, in order to ensure equitable sharing of the burden of activation.	Section 1042 repeals 10 U.S.C. 12304(c), thereby removing the prohibition on the use of reservists activated under this authority to suppress insurrection or respond to disasters, accidents, and catastrophes. It also amends 10 U.S.C. 333 to provide authorization for the President to use the armed forces to restore public order and enforce the law in specific circumstances following a natural disaster, epidemic, public health emergency, terrorist attack, or other condition.	

Discussion: Both the House and Senate provision would give the President the ability to involuntarily order reservists to active duty to perform disaster relief operations under the PRC authority, while the Senate provision would also allow their use for restoring public order in certain circumstances as well. The devastation of Hurricane Katrina led to calls for more robust federal authority to respond to disasters. However, activating National Guard personnel in disaster-affected states could result in state governors being stripped of control over one of their most valuable emergency response assets, and it could also lead to more frequent activation of members of the purely federal reserve components (i.e. the Army Reserve, Air Force Reserve, etc.). Extending the maximum duration of the PRC responds to concerns that the current maximum is too short to allow efficient utilization of activated reservists.

Reference(s): CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp.

CRS POCs: Charles Henning at 7-8866 or Lawrence Kapp at 7-7609.

Revision in Computation of Disability Retired Pay Formula for Certain Reserve Component Members

Background: A servicemember's "years of service" can be an important factor in determining the amount of disability retired pay. Under current law, the amount of disability retired pay is based on either disability rating or years of service, whichever produces the higher payment. Years of service is calculated in accordance with the provisions of 10 U.S.C. 1208. For regular component personnel, who are on duty every day of the year, this provision essentially awards a year of service for each year of duty. For reserve component personnel, who usually do not serve on duty every day of the year, years of service are calculated by a more complex formula. To simplify somewhat, the reserve formula totals up reserve training assemblies attended and days of active duty service performed and divides by 360, to produce the number of "years of service." Given the less than full-time nature of normal reserve service, this means that an individual who has been serving in the reserves for 20 years may only have four or five "years of service" as calculated by 10 U.S.C.1208. As a result, the years of service calculation will almost always be less beneficial to a reservist than the disability rating calculation for disability retired pay.

House (H.R. 5122)	Senate (S. 2766)	Conference
Section 643 authorizes "years of service" to be calculated under 10 U.S.C. 12732 for reserve component members who are granted disability retirement, or who have been placed on the temporary disability retired list, and whose disability resulted in the award of a Purple Heart.	No similar provision	

Discussion: Title 10 U.S.C. 12732 awards a "year of service" for any year in which a reserve component member earns 50 "points." Reservists earn 15 points per year for being a member of the Selected Reserve, one point for each unit training assembly (UTA), and one point for each day of active duty (including annual training); points can also be earned by completing certain correspondence courses. As participating reservists typically earn more than 50 points each year, this provision would generally have the effect of awarding a "year of service" for retired pay calculations for each year of reserve service, provided the qualifying disability was incurred in such a manner that it merited the award of a Purple Heart (i.e., for injuries sustained in combat).

Reference(s): CRS General Distribution Memo, *Disability Benefits Provided by the Departments of Defense and Veterans Affairs*, February 18, 2005.

CRS POCs: Charles Henning at 7-8866 or Lawrence Kapp 7-7609.

Tricare Benefits for Non-Activated Members of the Selected Reserve

Background: Until quite recently, non-activated reservists had limited access to Tricare for themselves and no access for their families. This recently began to change. The 108th Congress passed legislation allowing reservists who had served on active duty in support of a contingency operation since September 11, 2001, and who agreed to continue serving in the Selected Reserve, to enroll themselves and their families in Tricare Standard. The premium for this coverage was set at 28% of the cost of the coverage. The 109th Congress established two new "tiers" of eligibility – one for those who are unemployed, ineligible for employer provided health care coverage, or self-employed (premiums set at 50% of cost), and one for those who did not otherwise qualify (premiums set at 85% of cost) – provided the member agreed to continue serving in the Selected Reserves. These new tiers effectively extend access to Tricare to all members of the Selected Reserve and their family members, though at different premium levels.

House (H.R. 5122)	Senate (S. 2766)	Conference
Section 709 would repeal the three-tiered cost share system established in the first session of the 109th Congress and instead provide Tricare Standard coverage to nearly all non-activated members of the Selected Reserve and their families, with premiums set at 28% of cost. However, reservists who are federal employees entitled to coverage under the Federal Employees Health Benefits Program would not be eligible.	Section 708 makes an "employee of a business with 20 or fewer employees" eligible for Tricare coverage in the 50% premium category. It also lowers the premium for those in the highest premium category from 85% to 75%.	

Discussion: The House provision would repeal the three-tier system for non-activated reservists (with premiums set at 28%, 50%, and 85%) and replace it with a single-tier system (with premiums set at 28%) for nearly all non-activated reservists no later than October 1, 2007. The House provision would also eliminate the requirement that reservists agree to continue serving in the Selected Reserves for a given period of time in order to qualify for this benefit; instead, eligibility for the benefit would simply terminate upon departure from the Selected Reserve. The Senate provision would maintain the three-tier system but add employees of small businesses to the middle-tier (i.e., those with premiums set at 50%) and lower the premiums paid in the highest premium tier from 85% to 75% of cost.

Reference(s): CRS Report RL33537, *Military Medical Care Services: Questions and Answers*, by Richard A. Best, Jr., and CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp.

CRS POCs: Lawrence Kapp at 7-7609 or Richard Best at 7-7607.

Modifying Reserve Retirement Authorities

Background: Active duty personnel are eligible for full retirement benefits, including retired pay and access to Tricare, after 20 years of active duty, regardless of their age. Reservists are also eligible to retire after completing 20 years of qualifying service; however, they do not receive retired pay and access to retiree health care benefits until age 60. In recent years, a number of legislative proposals have been introduced to either eliminate the minimum age at which retired reservists can draw retired pay and access military retiree health care benefits, to lower it to age 55 or to lower it to some point below 60 based on the amount of active duty performed .

House (H.R. 5122)	Senate (S. 2766)	Conference
No similar provision	Section 653 reduces the age for receipt of retired pay by three months for each aggregate of 90 days of specified duty performed in any fiscal year after September 11, 2001. Specified duty includes active duty or active service under certain provisions of Title 10 (sections 688, 12301(a), 12301(d), 12302, 12304, and 12406), Title 15 (any section), and Title 32 (section 502(f), if responding to a national emergency declared by the President and supported with federal funds). Eligibility age for retired pay cannot be reduced below age 50. Maintains age 60 as the minimum age for reserve retirees to access retiree health care benefits.	

Discussion: This provision is narrower in scope than some other legislative proposals, such as those that would lower the age for receipt of retired pay and retiree health care benefits to 55 for all reservists. This provision would reduce the age for receipt of retired pay for a specified population of reservists, while maintaining it at age 60 for others. Additionally, it maintains at 60 the age at which reserve retirees can access retiree health care benefits. The reserve population eligible to receive retired pay at a reduced age would be those who have performed active duty or active service under the specified activation authorities since September 11, 2001. These reservists would have the age at which they can draw retired pay drop by three months for each aggregate of 90 days of such service performed.

Reference(s): CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp.

CRS POCs: Charles Henning at 7-8866 or Lawrence Kapp at 7-7609.

Role of National Guard Bureau and Status of National Guard Bureau Chief

Background: There have been long-standing tensions between the senior leadership of the military services and their respective reserve components regarding policy and resource allocation decisions. This conflict resurfaced over the past year with respect to several decisions that directly impacted the Army and Air National Guard. Additionally, the devastation caused by Hurricane Katrina has generated great interest in revamping the way in which the federal and state governments prepare for and respond to disasters or other catastrophic events. Modifying the role that the National Guard might play in future events has been an area of particular area of interest, given its unique status as both a state and federal force. The National Defense Enhancement and National Guard Empowerment Act (H.R. 5200/S. 2658), introduced in April 2006, is one approach to these issues. It would make major changes in the role of the National Guard Bureau (NGB) and the authority of the Chief of the National Guard Bureau (CNGB). Specifically, it would:

(1) change the NGB from a "joint bureau of the Department of the Army and the Department of the Air Force" to a "joint activity of the Department of Defense";

(2) modify current statutory language specifying that the NGB serve as the channel of communications between the (a) the Departments of the Army and Air Force and (b) the states on all matters pertaining to the National Guard, to specify that the NGB will serve as the channel of communications between (a) the Secretary of Defense, the Joint Chiefs of Staff, and the commanders of the combatant commands for the United States, (b) the Departments of the Army and Air Force, and (c) the states on all matters pertaining to the National Guard;

(3) modify current statutory language to specify that the CNGB serves as the principal advisor to the Secretary of Defense and Chairman of the Joint Chiefs of Staff on National Guard matters, in addition to the CNGB's current duties as principal advisor to the Secretary of the Army, Chief of Staff of the Army, Secretary of the Air Force, and Chief of Staff of the Air Force on these matters;

(4) designate the CNGB as a member of the Joint Chiefs of Staff (JCS), with all the attendant duties designated in law for members of the JCS, including the ability to attend JCS meetings and to provide advice and opinions to the President, the Secretary of Defense, the National Security Council, and the Congress as specified by 10 U.S.C. 151;

(5) prescribe the grade of the CNGB as general (i.e., a four-star general), rather than the current grade of lieutenant general (i.e., a 3-star general);

(6) modify the statutory authority which codifies the functions of the NGB so that the Secretary of Defense, in consultation with the Secretary of the Army and the Secretary of the Air Force, is responsible for developing the NGB charter, rather than the Secretary of the Army and the Secretary of the Air Force as currently specified;

(7) add a new function which the NGB charter must cover: "facilitating and coordinating with other federal agencies, and with the several states, the use of National Guard personnel and resources for and in contingency operations, military operations other than war, natural disasters, support of civil authorities, and other circumstances";

(8) give the CNGB the responsibility of identifying gaps between federal and state capabilities to prepare for and respond to emergencies, and to make recommendations to the Secretary of Defense on National Guard programs for military assistance to civil authorities (MACA) which can address these gaps. To fulfill these duties, the legislation would require the CNGB, in consultation with the various state Adjutants General, to assume the following responsibilities: validate requirements of the states and territories with respect to MACA; develop training and doctrine relating to the provision of MACA; acquire equipment and supplies for the provision of MACA; assist the Secretary of Defense in preparing budget materials for training and equipping the National Guard for purposes of MACA and other domestic operations; administer funds provided to the National Guard for MACA; and carry out other responsibilities related to the provision of MACA as specified by the Secretary of Defense. In carrying out these duties, the legislation would require the Chairman of the JCS to assist the CNGB, and require the CNGB to consult with the Secretaries of the Army and the Air Force;

(9) require that budget justification documents submitted to the Congress in support of the President's budget specify separate amounts for training and equipping the National Guard for MACA and other domestic operations. Require that the amounts specified in these documents be sufficient for the purposes of developing and implementing doctrine and training requirements, and for acquiring equipment and supplies, for such MACA and domestic operations;

(10) require the Secretary of Defense, to the extent practical, to prevent any increase in National Guard personnel to address administrative or other requirements arising out of this legislation;

(11) require the CNGB to submit an annual report to Congress on (a) the requirements of the states and territories related to MACA which the CNGB validated during the previous fiscal year, (b) those requirements for which funding will be requested in the next budget, and (c) those requirements for which funding will not be requested in the next budget;

(12) establish within the Joint Staff an Assistant to the Chairman of the JCS for Reserve Matters, who would be an officer of the Army Reserve, Navy Reserve, Air Force Reserve, or Marine Corps Reserve and hold the grade of major general or rear admiral, and who would advise the Chairman on matters relating to the reserves;

(13) require the Secretary of Defense to establish guidance to ensure that, to the maximum extent practical, reserve component officer representation on the Joint Staff is commensurate with the role of the reserve components in the total force;

(14) state that it is the sense of Congress that whenever officers are considered for promotion to lieutenant general or vice admiral on the active duty list, reserve component officers should are eligible for promotion to this grade should be considered for promotion; require the Secretary of Defense to submit a proposal to Congress on how best to achieve this objective; and require the President, when nominating any officer on the active duty list to lieutenant general or vice admiral, to submit to Congress a certification that all reserve officers who were eligible for promotion to that grade were considered in the nomination process; and

(15) require that the position of Deputy Commander of U.S. Northern Command be a National Guard officer eligible for promotion to lieutenant general.

House (H.R. 5122)	Senate (S. 2766)	Conference
Section 594 requires the Commission on National Guard and Reserves to study "the advisability and feasibility of implementing the provisions of H.R. 5200 of the 109th Congress" and "as an alternative to implementation of the provisions of [H.R. 5200] that provide for the Chief of the National Guard Bureau to be a member of the Joint Chiefs of Staff and hold the grade of general, the advisability and feasibility of providing for the Chief of the National Guard Bureau to hold the grade of general in the performance of the current duties of that office."	Section 932 and 933 contain some, but not all, of the provisions of The National Defense Enhancement and National Guard Empowerment Act (S. 2658). Section 932 has provisions virtually identical to items 1-3, 5-7, and 10 mentioned above. Section 932 also has a provision similar to item 8, above, but omits the portions related to acquiring equipment and supplies for the provision of MACA and assisting the Secretary of Defense in preparing budget materials related to MACA and other domestic operations. Section 932 has a section similar to item 11, but omits the reporting requirements related to budget content. Section 933 is virtually identical to item 15. Items 4, 9, and 12-14 are not included.	

Discussion: Supporters of H.R. 5200/S.2658– including representatives of the Adjutants General Association of the United States and the National Guard Association of the United States – have argued that this legislation will give the National Guard a greater and much deserved role in the national security decision-making process, thereby avoiding or minimizing the policy and resource allocation conflicts that have occurred in the past. Deputy Secretary of Defense Gordon England recently voiced opposition to this legislation during testimony before the House Armed Services Committee (June 13, 2006,

hearing on National Guard Enhancement). One of his primary objections was that the Army National Guard is an integral part of the Army, and the Air National Guard is an integral part of the Air Force; this legislation, he argued, could damage that relationship and lead to these organizations becoming less integrated with the Army and Air Force. Additionally, he argued that the legislation has not been adequately studied and could have negative unforseen consequences. The House version of the NDAA directs to Commission on the National Guard and Reserve to study H.R. 5200 and an alternative proposal which would simply elevate the CNGB to the rank of four-star general. The Senate version of the NDAA contains a scaled-back version of S. 2658 which omits some of the most controversial provisions of that bill (for example, the provision making the CNGB a member of the JCS) . Nonetheless, the Senate provisions would still make substantial changes in the role of the NGB and the authority of the CNGB.

Reference(s): None.

CRS POCs: Charles Henning at 7-8866 or Lawrence Kapp at 7-7609.