

Guidelines for HASC Legislative Proposals for FY12 NDAA

Please review the following guidance on the committee's procedure for submitting HASC legislative proposals for the National Defense Authorization Act (NDAA) for Fiscal Year 2012 (FY12).

Legislative Proposals Defined

There are three types of legislative proposals: (1) policy legislative proposals, (2) legislative proposals to reduce funding, and (3) budgetary legislative proposals.

A policy legislative proposal may take the form of bill or report language. A policy legislative proposal is cost neutral, and is a proposal that would make specific national security policy recommendations in order to assert congressional priorities in conduct of U.S. defense policy.¹

A legislative proposal to reduce funding is a proposal that would reduce the level of funds available for a specific activity within the Committee's jurisdiction.

A budgetary legislative proposal is a proposal that would make specific funding additions and reductions to the NDAA, in order to assert congressional priorities in the conduct of U.S. defense policy. Be advised that a budgetary legislative proposal is NOT a congressional earmark pursuant to House rule XXI. The Chair will not permit any congressional earmarks in the FY12 NDAA. Additional guidance and examples of budgetary legislative proposals are discussed in more detail below.

Framework for Offering Legislative Proposals Members should be prepared to offer legislative proposals as amendments to the FY12 NDAA. Budgetary legislative proposals must be offered as an amendment to the bill (not the committee report) when the **full committee** meets to markup the FY12 NDAA, and will therefore be subject to a vote by the full committee. **Only HASC Members** will be able to propose amendments during markup of the FY12 NDAA. Guidance on the amendment process will be provided closer to committee consideration of the bill. Please be advised that the full committee Chair and subcommittee chairs will not include any member budgetary legislative proposals in their respective marks. Members not on the committee will have an opportunity to offer their respective legislative proposals when the House considers the bill.

Policy legislative proposals or legislative proposals to reduce funding may be offered as an amendment at full committee or subcommittee, as appropriate.

¹ An example would be a legislative proposal that modifies a reporting requirement or requires DOD to provide notice and wait. See section 1023 of the FY11 NDAA and section 1063 of the FY10 NDAA, respectively. There is no CBO score increasing mandatory or discretionary spending and neither has the effect of directing the expenditure of funds.

Vetting Policy and Budgetary Legislative Proposals: Guidelines and Timeline

As a service to committee members, HASC staff will be made available prior to markup to review proposed legislative proposals. Staff review is not required for consideration at markup, but prior vetting will ensure a member is given prior notice if an amendment will be ruled out of order during markup on the grounds that the amendment is a congressional earmark. Please note that the Chair retains the discretion to determine whether a proposed legislative proposal is a congressional earmark.

Members of the committee who would like HASC staff to review their legislative proposal, or who wish to submit policy legislative proposals (or legislative proposal to reduce funding) for possible inclusion in the full committee Chair or subcommittee chairs' respective marks, must comply with the following guidelines. These procedures must be followed in order to give the committee ample time to facilitate the collection and review of legislative proposals.

1. All legislative proposals (including policy report language) must be filed with the committee **no later than NOON on Monday, April 11, 2011**. The committee will accept legislative proposals for staff review in electronic form only. Members are not required to submit a hard copy to the committee. The process for submitting legislative proposals for staff review begins online at: <http://legproposals-armedservices.house.gov>. Information about each legislative proposal must be submitted separately using the online HASC FY12 Legislative Proposal Form. For further information, please refer to the instructions posted online -- "*Completing the FY12 Defense Authorization Legislative Proposal Form*" -- for guidance and answers to frequently asked questions.
2. Provide only those legislative proposals that the member will likely offer as an amendment in committee markup.
3. Please **DO NOT** send duplicate packages to subcommittee chairs and/or committee staff directly. The appropriate staff will receive all relevant copies following submission of a properly completed package.

Proposed budgetary legislative proposals should follow the HASC guidance for drafting outlined below. Be advised that in addition to the requirements discussed below, legislative proposals must meet all other HASC markup protocols regarding amendments, including being germane to the bill, not increasing mandatory spending or sequential referral to another committee (without a waiver from that committee's Chair), and being budget neutral.

Guidance for Drafting Budgetary Legislative Proposals

1. **Provide military utility.** Please include a brief description of the purpose of the amendment and its military utility. Members should be prepared to discuss the merits of their proposal at the time their amendments are offered during full committee mark-up.
2. **Request a specific amount of additional, discretionary budget authority.** As long as the other criteria are met, it is permissible to request a specific amount be authorized for some national security purpose.

3. **The request may not direct funds with or to an entity/locality.** A request for additional funds may not be drafted in such a way that a federal agency is directed to expend the funds with (or award a contract to) a specific entity or within a specific locality. Therefore, a budgetary legislative proposal should request funds at an appropriation level which would not force a federal agency to expend funds in such a manner. For example:
 - a. A budgetary legislative proposal may request \$5.0 million for DDG Modernization in Other Procurement, Navy but may not specify the intended use of the additional funding (or direct funding to procurement of a specific piece of equipment) in bill or report language²;
 - b. A budgetary legislative proposal may request \$5.0 million for the Defense Research Projects Agency, Program Element 0602716E: Electronics Technology³ but may not specify the intended use of the additional funding in bill or report language;
 - c. A budgetary legislative proposal may request \$3.0 million for cold weather clothing and equipment in Operation & Maintenance, Marine Corps Budget Activity 01, Operating Forces, but may not specify the intended vendor or type of clothing/equipment to be purchased with additional funding in bill or report language.⁴

4. **Funds must be awarded in one of two ways.** In addition to the aforementioned criteria, a budgetary legislative proposal should clearly state that the amounts authorized must be awarded: (a) consistent with a statutorily declared policy of Congress regarding merit-based procedures, or (b) through a competitive award process.
 - a. *Consistent with merit-based selection procedures.* Amendments should clearly state that funds should be awarded consistent with a declared policy of Congress regarding merit-based procedures (unless funds are to be awarded competitively, in which case see below). The amendment should state that funds must be awarded in accordance with the policy in 10 USC 2304(k)⁵ or 10 USC 2374⁶, **OR**
 - b. *Through a competitive award process.* In the case of a budgetary legislative proposal that authorizes funds for an effort that has not been, but will be competed, amendments should clearly state that funds should be awarded through competitive procedures.

² Please note that this is permissible because multiple entity's support DDG Modernization; otherwise, funds may be requested for Other Procurement, Navy within a particular Budget Activity, but may not identify a funding line.

³ Again, permissible for program elements that funds multiple projects with multiple performers.

⁴ Permissible if there are multiple providers of such clothing and equipment.

⁵ 10 USC 2304(k)(1) states, it is "the policy of Congress that [DOD, the Department of the Army, the Department of the Navy, the Department of the Air Force, the U.S. Coast Guard, and NASA] should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures;"

⁶ 10 USC 2374 is similar to 10 USC 2304(k), except that it applies to awards for new grants for research, development, test, or evaluation to a non-Federal Government entity.

Offsets

All amendments must be budget neutral. In keeping with the longstanding practice of the HASC, the Chair will rule out of order any amendment that increases discretionary or mandatory spending without providing a commensurate funding offset.

HASC staff will provide assistance to Members' offices to identify offsets for budgetary legislative priorities submitted to the HASC by the deadline above.

Additional Information & Questions

HASC staff, in coordination with the Office of Legislative Counsel, is developing a template for amendments for budgetary legislative proposals, which will be made available to members, along with sample amendments.

If you have any questions regarding this process, please feel free to contact Zach Steacy (6-8634) or Catherine McElroy (x5-2191) on the committee staff.