

**HEARING TO MARK UP THE READINESS AND
MANAGEMENT SUPPORT PROGRAMS CON-
TAINED IN THE NATIONAL DEFENSE AU-
THORIZATION ACT FOR FISCAL YEAR 2013**

TUESDAY, MAY 22, 2012

U.S. SENATE,
SUBCOMMITTEE ON READINESS AND
MANAGEMENT SUPPORT,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The subcommittee met, pursuant to notice, at 11:06 a.m. in room SD-G50, Dirksen Senate Office Building, Senator Claire McCaskill (chairman of the subcommittee) presiding.

Committee members present: Senators McCaskill, Nelson, Udall, Begich, Ayotte, Inhofe, Chambliss, Portman, and Graham.

Committee staff member present: Leah C. Brewer, nominations and hearings clerk.

Majority staff members present: Creighton Greene, professional staff member; Peter K. Levine, general counsel; Jason W. Maroney, counsel; John H. Quirk V, professional staff member; Russell L. Shaffer, counsel; and William K. Sutey, professional staff member.

Minority staff members present: Adam J. Barker, professional staff member; Pablo E. Carrillo, minority general counsel; Paul C. Hutton IV, professional staff member; Gregory R. Lilly, executive assistant for the minority; Lucian L. Niemeyer, professional staff member; Bryan D. Parker, minority investigative counsel; and Christopher J. Paul, professional staff member.

Staff assistants present: Hannah I. Lloyd, Mariah K. McNamara, and Lauren M. Gillis.

Committee members' assistants present: Carolyn Chuhta, assistant to Senator Reed; Nick Ikeda, assistant to Senator Akaka; Ryan Ehly, assistant to Senator Nelson; Gordon Peterson, assistant to Senator Webb; Jason Rauch, assistant to Senator McCaskill; Lindsay Kavanaugh, assistant to Senator Begich; Mara Boggs and Patrick Hayes, assistants to Senator Manchin; Patrick Day, assistant to Senator Shaheen; Anthony Lazarski, assistant to Senator Inhofe; Clyde Taylor IV, assistant to Senator Chambliss; Brent Bombach, assistant to Senator Portman; Brad Bowman, assistant to Senator Ayotte; Sergio Sarkany, assistant to Senator Graham; and Dave Hanke, assistant to Senator Cornyn.

**OPENING STATEMENT OF SENATOR CLAIRE McCASKILL,
CHAIRMAN**

Senator McCASKILL. The markup of the Readiness Subcommittee will come to order.

I am pleased that the markup of the Readiness and Management Support Subcommittee will be held in open session for the second straight year, now marking the second time in 15 years that any portion of the Armed Services Committee markup of the National Defense Authorization Act will be debated and fully open to the public. We demonstrated last year that we could conduct our business in public without any disclosure of classified information or any adverse impact on the process.

I will continue to press for all of our subcommittee and full committee markups to be held in open session, as is done every year in the House of Representatives. The public deserves to be able to witness, understand, and scrutinize the positions being advocated and the decisions being made by their elected leaders regarding an over half a trillion dollar defense budget and the associated policies that impact our national defense. We continue to gain votes every year, and I firmly believe that open markups are coming, if not this year, then soon.

Traditionally the subcommittee has used the chairman's mark, the package of legislative provisions and report language that the two staffs have worked on together and that I have reviewed and approved as a markup vehicle. The chairman's mark has been fully briefed and made available to the staff of all subcommittee members. Without objection, we will use the chairman's mark as a markup vehicle subject to an amendment. Is there any objection to proceeding in that manner? [No response.]

I want to start by saying what a pleasure it has been again to work with Senator Ayotte and her staff. The Armed Services Committee has a longstanding tradition of working on a bipartisan basis for the national defense and I think that our working relationship has captured that spirit. Senator Ayotte and I share the goal of providing for our national defense, the strongest national defense, while looking for efficiencies and eliminating waste in the Department of Defense wherever and whenever we can. I am pleased that we have been able to reach agreement on a broad range of issues included in this markup.

As a result of the search for efficiencies, we have been able to cut O&M funding by roughly \$500 million and military construction funding by more than \$600 million. I am proud to say that not \$1 of the money that we have saved through these efficiencies will go to fund earmarks. In fact, the only funding that we propose to add in the Readiness Subcommittee is \$59 million for the DOD Inspector General and \$21 million for the DOD Corrosion Control Initiative. I understand that we get a 22 to 1 return on our investment in the DOD IG and a 14 to 1 return on our investment in corrosion control. So both of these items should save the taxpayers a substantial amount of money in the long run.

I might note that holding the defense authorization markup in closed session has been justified in part by the desire to limit the influence of lobbyists who might use an open markup as an opportunity to press lawmakers to support earmarks of one kind or an-

other. Without earmarks, this toxic motivation is gone. It may be another reason that the open markup I hold with the Readiness Subcommittee is successful and another reason that we might look to have an open markup in every part of the Senate Armed Services Committee defense authorization work.

The Readiness and Management Support Subcommittee mark includes two far-reaching efficiency initiatives that are important to me personally.

First, the mark includes a series of provisions that are designed to implement the recommendations of the Commission on Wartime Contracting in Iraq and Afghanistan. These provisions are drawn from those parts of Senate bill 2139, the Comprehensive Contingency Contracting Reform Act, that Senator Webb and I introduced together earlier this year that apply to the Department of Defense. For example, these provisions would ensure a clear chain of command for contract support in contingency operations, require risk assessments when contractors perform critical functions in support of such operations, ensure the independence and transparency of DOD's suspension and debarment processes, and provide that contractors who commit serious offenses must be considered for suspension and debarment. Taken together, these provisions should go a long way to increase accountability for wartime contracting and improve the way the Department of Defense awards, manages, and oversees wartime contracts.

As we have learned in Iraq and Afghanistan, however, wartime contracting is not a DOD problem alone. The Department of State, USAID, and other Federal agencies also engage in billions of dollars of contracting in large overseas contingency operations. While we were not able to include provisions addressing these agencies in our mark because they are outside the jurisdiction of the Armed Services Committee, I fully intend to address this shortcoming when the bill comes to the floor of the Senate.

Second, the mark includes a provision that substantially enhances protections available for contractor employees who blow the whistle on waste, fraud, and abuse on Department of Defense contracts. This provision is drawn from Senate bill 2412, my Non-Federal Employee Whistleblower Protection Act, which was voted unanimously out of the Homeland Security and Government Affairs Committee last month. For example, the provision would extend coverage to employees of subcontractors, cover disclosures that are made to management officials of the contractor and of abuses of authority that undermine performance of a contract and revise the standard of proof to match the standard already applicable in Federal employee cases. These changes should go a long way to ensure that brave individuals who disclose fraud, waste, and abuse on DOD contracts are protected from reprisal.

Once again, however, I have to note that the provisions we include here apply only to the Department of Defense. It is my intent to revisit this issue when we go to the Senate floor and ensure we have strong protections for all non-Federal employees who disclose waste, fraud, and abuse on Federal programs. The taxpayers deserve no less.

The Readiness Subcommittee mark includes a number of other provisions that should improve the management of the Department of Defense and help save taxpayer money.

We propose to repeal the depot maintenance provisions that we accepted in last year's conference, enabling us to avoid costly shifts of resources from the public sector to the private sector and vice versa.

We will require DOD to issue defense-wide guidance on the tracking and handling of possible environmental contamination exposures on military installations.

We include a provision that would codify the 2014 goal established by Secretary Panetta for auditability of DOD's Statement of Budgetary Resources, while requiring the Department to ensure that this goal was achieved in an affordable and sustainable manner.

And we include a series of acquisition provisions, including provisions that limit the use of cost-plus contracts for the production of major defense acquisition programs, lower the cap on allowable executive compensation for contractors to \$400,000, limit the extent to which DOD contractors can pass through work to subcontractors by requiring at least half of the work on any contract to be performed by the prime contractor or a subcontractor specifically identified in the contract, grant auditor access to contractor internal audit reports and change DOD profit policy to ensure contractor profits are clearly tied to their performance.

These provisions should go a long way to improve the oversight of DOD contracts and ensure taxpayer money is not wasted.

This year the Department requested authorization for two additional rounds of base realignment and closure. In March, I stated my clear opposition to the Department's request, and the Department of Defense has done nothing to convince me since that now is the appropriate time for another BRAC round. We do not authorize additional BRAC rounds this year. We know from GAO, the Government Accountability Office, that the most recent round of BRAC has cost more and saved significantly less than DOD originally estimated, and we will not recoup our upfront costs from BRAC 2005 until 2018. At minimum, base closure is extraordinarily disruptive to local communities. So before we even consider authorizing another round of BRAC, Congress must have a better understanding of how future BRAC's would affect our budget, our national security interests, and the communities that patriotically support bases around this country.

In addition, our Nation's military footprint around the globe is changing in significant ways. We do not yet have a clear vision of our force posture as we draw down our forces from the Middle East. Before closing bases in the United States, we must ensure that our overseas force posture is appropriate.

Finally, we recommend over \$600 million in reductions to military construction accounts. While some of these reductions are due to incrementing large projects to more efficiently use taxpayer funds, there are significant project cancellations.

As I have said many times in the past, I do not believe there is anything the Department is doing that we cannot do better, and I do not believe that there is any part of the budget that can be off

limits as we look for savings. With this mark, I believe the Readiness Subcommittee has met this standard.

Let me close by saying how much I recognize and how much I know all members of this subcommittee recognize how important our work is to the service men, women, civilians, and families who make up our armed forces. The sacrifice and selflessness of those who serve especially in this sustained period of conflict humble each of us. Our responsibility to our armed forces is one we take very seriously. The scope of the issues with our subcommittee's jurisdiction is extraordinary and the need to get our work right is patently clear. We seek to ensure the readiness of our armed forces to carry out ongoing missions, to be prepared to carry out any new national security requirements that arise, and to continue to serve as a detriment to any entity in the world who might wish to harm the United States of America. In today's uncertain world, we must ensure we can accomplish all this while also addressing what former Chairman of the Joint Chiefs of Staff Admiral Mike Mullen termed our largest national security threat: our national debt. That is what this mark seeks to do.

Senator Ayotte, would you like to make an opening statement?
Senator AYOTTE. Yes.

Senator MCCASKILL. Let me say if I misstated in the opening statement—Senator Ayotte and I have agreed on the amount on O&M at \$200 million, and I think it said \$500 million. I think that was in error. I noticed a little body language to my left as I said that, but we are agreed on \$200 million on O&M.

Senator AYOTTE. We have come to an agreement. Yes.

Senator MCCASKILL. And I think I misstated that in my opening statement. So I did not want you to think I had gone off the reservation here before we even got started. [Laughter.]

STATEMENT OF SENATOR KELLY AYOTTE

Senator AYOTTE. Thank you so much, Madam Chair. First of all, let me say what a pleasure it has been to work with you in this very important subcommittee.

And I could not agree more with you how important it is that this be an open proceeding, and I am very, very proud that this is the second year in a row that we have had open proceedings in the Readiness and Management Support Subcommittee. Given what is at stake, I think that the American people deserve to know what is happening, deserve to know what decisions we are making. And we have oversight in this committee of over \$162 billion of the \$525 billion requested by the President this year. And so I could not agree with you—thank you so much for pushing this issue, and I too hope that the overall Armed Services Committee—that when we have the full markup, it will be open for the American people to see what we are doing and I think that that is very important.

I believe we have crafted a mark that addresses the wide range of critical needs for the Department of Defense, while we have also accomplished efficiencies and savings to taxpayer dollars, again while meeting our national security needs. I would like to highlight a few of the components of this bill that I think are important.

I am very pleased that the mark contains a provision to repeal the controversial language related to military depots and shipyards

that threaten to upset the delicate balance in the defense industrial base between the public and private workload. I think this public/private balance in our depots was working, and I believe that last year's change to the depot language was largely a solution in search of a problem. I strongly urge that we sustain this repeal in conference to ensure that it is signed into law.

I am also encouraged to see that the mark includes the requirement for the Department to achieve audit readiness for the Statement of Budgetary Resources by 2014. To distinguish between necessary defense budget cuts and cuts that would harm our troops and damage military readiness, we must have reliable financial data and effective business processes and systems in place. And for this reason, last year I authored and introduced an amendment to the National Defense Authorization Act that would have required the Pentagon to complete a full Statement of Budgetary Resources by 2014. I am very pleased that this year it is being included in this mark.

I am also pleased that the mark does not authorize, as the chairperson mentioned, the two additional base realignment and closure rounds that were requested by the Department. As I have said and as the chair discussed, I do not believe we can justify spending tens of billions of dollars within the Pentagon budget in the short term to fund more BRAC rounds for returns that may take decades to materialize, especially when we are in a situation when details regarding defense sequestration, overseas force posture, and the size of our forces—there are many questions that need to be addressed, not to mention the prior GAO reports and the savings and questions that have been raised as a result of the savings from BRAC from the prior 2005 round.

I am pleased that the mark requires the Department to review the allocation system for facility sustainment, restoration, and modernization funding to ensure parity in the distribution of funds among the military departments and adequate adjustments for unique facility requirements, including joint bases and historic preservation. Currently some bases have a large quantity of historic buildings on the National Registry of Historic Places that are critical to the bases' operations. The presence of these buildings on the registry requires the respective bases to maintain these buildings at a higher and costly standard. Yet, the Department frequently does not appear to provide sufficient funding to match these requirements. This reporting requirement in the mark will help address this ongoing problem.

Madam Chair, it has been a pleasure working with you over the last year and a half, and I want to thank you for working with me to also include by maritime prepositioning force amendment in the mark. As you know, the Navy proposes eliminating one of three squadrons that are critical to Marine Corps readiness. This step will slow the Marine Corps' response to future contingencies in the Mediterranean region, north Africa, and west Africa, including countries like Syria, Egypt, Libya, and others. Before we allow the Navy to move forward with this plan to eliminate the maritime squadron, which could incur additional risk, we must ensure that we understand the risks and assess the Department's risk mitigation strategies.

Madam Chair, I also want to thank you for including my overseas military cemeteries amendment. When the Department closes bases overseas that have base cemeteries, it is important that the Department conduct the necessary coordination with other Federal agencies or private entities to ensure that the graves of those who have served our country receive the proper maintenance and are treated with dignity and respect. And I want to thank Senator Begich for working with me on this issue. This amendment will help ensure we never repeat the circumstances that occurred in 1991 at the Clark Air Force Base and Clark Veterans Cemetery.

Most importantly, it is the preeminent purpose of this subcommittee to ensure Congress and the American people understand the specific risk that defense sequestration would incur to our warfighters and to our country. So I want to raise it today because I believe it is the elephant in the room when it comes to our national security.

Secretary Panetta has described defense sequestration cuts as catastrophic, inflicting severe damage to our national defense for generations, and he compared the cuts to shooting ourselves in the head. The Assistant Commandant of the Marine Corps testified in our hearing that potential manpower cuts from budget sequestration would result in the Marine Corps—and I quote—would not have adequate capabilities and capacities to meet a single major contingency operation.

Given these compelling statements from our military leaders, I am deeply concerned that Congress has not yet mustered the courage to make the tough decisions we need to make to avoid this serious risk to our national security. We cannot afford to wait until December to address these looming cuts. It is too late to address defense sequestration during the lame duck session because at that point, many of our members of our defense industrial base will already have had to make the decisions to start implementing layoffs and notifying employees of layoffs. And in addition, many of the subcontractors that they rely on are sole-source providers. Some of them are already feeling the pressure and some have already gone out of business. And we cannot afford to kick this can to the lame duck session. So it is my hope that not only our members of this committee but the entire Senate will take this issue up now as opposed to waiting till December.

Finally, I want to join you in expressing our appreciation—my appreciation to the members of the committee, the professional staff, and the staff assistants. I especially want to thank your staff, Peter, Jay, John, Russ, Maggie, and Jason, for their support and cooperation with my staff.

And again, Madam Chair, I thank you for the way you have conducted this committee, and I have appreciated the opportunity to work with you on this mark. And I look forward to moving this mark quickly to the full committee. Thank you.

Senator MCCASKILL. There have been 17 amendments that have been cleared and we can take an opportunity to go through these amendments one by one, if the committee would like. I will delineate the cleared amendments—and you are going to get a packet on them—just by who the sponsor is and what the subject matter is, and then each individual member, if they would like to address

their amendment, they can. Any members who have questions about any of the amendments, feel free to speak up.

Senator Begich's amendment on rare earths.

Senator Collins on Air Force strategic basing.

Senator McCaskill on GFEBS realignment.

Senator Levin on Guam fuel pipeline upgrade project.

Senator McCaskill on Landstuhl hospital authorization.

Senator Gillibrand on West Point barracks.

Senator McCaskill on Arlington National Cemetery project language.

Senator Ayotte on scope clarification.

Senator Ayotte on overseas cemeteries.

Senator Inhofe on HAZMAT.

Senator McCaskill on DOD IG reporting requirement.

Senator Cornyn on electromagnetic interference.

Senator Cornyn on training systems.

Senator Ayotte on O&M restoration.

Senator Ayotte on maritime prepositioning.

Senator Inhofe on extending the authority for the northern distribution Route.

And Senator Inhofe on State-local law enforcement partnerships.

And we will open it up to any discussion. Yes, Senator Shaheen?

Senator SHAHEEN. Madam Chair, I do not have an amendment.

And I would like to thank both you and Senator Ayotte for all of your hard work, as well as the work of your staffs, in putting together this subcommittee package.

I do want to just comment that I am very pleased that the subcommittee has rejected DOD's request for another BRAC round at this time. As you both pointed out so well, the 2005 BRAC round has raised serious questions about the effectiveness of the process and the costs of that round are yet to be realized. So I think it is appropriate at this time to delay any further action until we have more information.

I also want to commend the subcommittee again, as both of you pointed out, for the inclusion of a number of important provisions to reduce duplication, waste, and efficiencies and to move the Department rapidly towards auditability.

I have a full statement that I want to submit for the record, but I just wanted to highlight those two points before we begin the amendment discussion.

[The prepared statement of Senator Shaheen follows:]

[COMMITTEE INSERT]

Senator MCCASKILL. Senator Inhofe?

Senator INHOFE. Yes, Madam Chair. First of all, I thank you and Senator Ayotte for your leadership in getting these things through.

I had three amendments. The last one was a little bit more difficult—not difficult. But back when we first started moving materials into Afghanistan, we were able to go through Pakistan. So it was not necessary. We could go there with whatever we started with. However, now that we have a route that is about nine times further, going all the way from Western Europe down there, we can save a lot of money, time, and effort by allowing DOD to purchase some of these things en route from the country. So I think this is something that is very good.

The main thing I wanted to say, though, is I appreciate the fact that we corrected the problem. Senator Ayotte, I wrote down what you said. You said “a solution in search of a problem.” We are talking about the depot language that mysteriously appeared at a meeting, but it was too late to change it. And I hope that because of what we are doing here, that will preclude that from happening again, to walk into a joint hearing and then have something appear that I think in my heart was staff-driven. Good work.

Senator MCCASKILL. Thank you.

Anyone else? [No response.]

I will entertain a motion to accept the 17 amendments that have been delineated in the packet that has been sent around and that has been given to your staff, obviously, prior to this date.

Senator BEGICH. So moved.

Senator SHAHEEN. Second.

Senator MCCASKILL. All those in favor? [Chorus of ayes.]

All those opposed? [No response.]

Are there any other amendments that need to come before the committee? [No response.]

All right.

There is one amendment that was offered, that was considered to be offered, that I assume will be taken up at the full committee from Senator Graham and Senator Hagan on the makeup of uniforms in terms of the textiles that are used.

There is also an amendment correcting some technical BRAC language that raised a little bubble at the end, and we are going to try to sort that out before the full committee.

If there are any specific questions on any of the amendments that anyone has, make sure that you bring them now.

I think that one of the interesting things I will point out is it is my understanding we have a class from the War College that is observing today, another benefit of having an open markup, that our men and women who are attending the War College can see what one of these looks like. I think they have been bitterly disappointed at what we have exposed to the public eye because it appears to me that this was incredibly efficient, incredibly effective. It was not what you read in the papers. We actually do talk and get along. We actually do work together and strive to do the right thing for our country. And there are many moments of compromise that occur in the U.S. Senate. It is just not as newsworthy these days. And so go forth, all of you members of the class in the War College, and know that it is not as dysfunctional as it sometimes looks from the outside.

And thank you all for your cooperation today. And we will see you at the full committee markup.

Yes, Peter?

Mr. LEVINE. Senator, you need to adopt the package as amended.

Senator MCCASKILL. Oh, I need to adopt the whole mark.

Do I hear a motion to adopt the entire mark?

Senator INHOFE. So moved.

Senator BEGICH. Second.

Senator MCCASKILL. All those in favor? [Chorus of ayes.]

All those opposed? [No response.]

Thank you very much.

[Whereupon, at 11:31 a.m., the subcommittee adjourned.]