

**Noteworthy Nuclear Weapons Provisions of the FY13 National Defense Authorization Act (NDAA), House and Senate Versions, 5/30/2012 4:00 pm update**

A blank cell means that there appears to be no corresponding provision in the other chamber's bill.

**Statement of Administration Policy, H.R.4310 (pdf)**

In the Statement of Administration Policy (SAP) for H.R. 4310, the sections below marked by a bomb (☛) are subject to this threat: "If the final bill presented to the President includes these provisions, the President's senior advisors would recommend that he veto the bill" (emphasis in original).

The Administration "strongly objects" to or "strongly opposes" those sections marked by a pointing finger (☞).

The SAP also carries a generic threat: "If the cumulative effects of the bill impede the ability of the Administration to execute the new defense strategy and to properly direct scarce resources, the President's senior advisors would recommend to the President that he veto the bill" (emphasis in original).

There is as yet no SAP for S. 2467.

**Provisions that the Los Alamos Study Group (LASG) recommends STRIKING IN THEIR ENTIRETY (except where noted)**

<p><b>Sections of H.R.4310, the FY13 NDAA, passed by the <u>House</u>, quoted titles)</b> National Defense Authorization Act for Fiscal Year 2013 (Reported in House - RH)[<a href="#">H.R.4310.RH</a>][<a href="#">PDF</a>] <b>House Report <a href="#">112-479</a>.</b></p>	<p><b>Provisions of S.2467 passed by the <u>Senate Armed Services Committee</u> (from <a href="#">SASC press release of 5/24/12 (pdf)</a> only, all text here is quotation)</b></p>	<p align="center"><b>LASG Comments</b> (evolving; see date above)</p>
	<p>Requires the NWC to determine the feasibility of further consolidations to the NNSA complex and, if feasible, requires in its report a proposed process. The provision requires the report to be submitted before construction begins on the Uranium Processing Building and Chemistry and Metallurgy Research building (phase CD-3).</p>	<p><i>Regarding the Senate language:</i></p> <p>Further consolidation of the weapons complex would be infeasible managerially (because institutional knowledge would not relocate, transition activities would require widely-separated dual facilities for years, and for other reasons), require billions in excess capital expenses (because appropriate facilities in the receiver sites do not exist), cripple NNSA's knowledge and skill base, and prevent completion of current and planned life extension programs, to name just the most obvious problems. The best way to lower costs and improve management is to do so where the infrastructure and skill base now are, i.e. at the present sites. To the extent that work scales with stockpile size, it does so best at the present sites. Downsizing requirements may be practical, by contrast.</p> <p>The question was studied by NNSA at great expense over the 2006-2008 period and the resulting decisions are well into the implementation phase now.</p> <p>In the case of plutonium, NNSA has admitted it erred in <i>over</i>-consolidating its programs for the time being, resulting in excessive unplanned costs for new infrastructure (CMRR-NF) which is not actually needed for the foreseeable future.</p> <p>For discussion of the issues see:</p> <ul style="list-style-type: none"> <li>• Regarding consolidation of certain tritium activities: <a href="http://www.lasg.org/WETF_June2009.pdf">http://www.lasg.org/WETF_June2009.pdf</a></li> <li>• Regarding consolidation of non-nuclear manufacturing: <a href="http://www.lasg.org/KCP_Bulletin_June2009.pdf">http://www.lasg.org/KCP_Bulletin_June2009.pdf</a></li> <li>• Regarding consolidation of the warhead complex generally: <a href="http://www.lasg.org/ConsolidationRemarks2009.pdf">http://www.lasg.org/ConsolidationRemarks2009.pdf</a> and <a href="http://www.lasg.org/press/2009/PressReleaseApr7_2009.htm">http://www.lasg.org/press/2009/PressReleaseApr7_2009.htm</a></li> </ul> <p>NNSA's 2008 decisions on warhead complex consolidation:</p> <ul style="list-style-type: none"> <li>• <a href="#">December 19, 2008 "Record of Decision for the Complex Transformation Supplemental Programmatic Environmental Impact Statement—Tritium Research and Development, Flight Test Operations, and Major Environmental Test Facilities"</a></li> <li>• <a href="#">December 19, 2008 "Record of Decision for the Complex Transformation Supplemental Programmatic Environmental Impact Statement—Operations Involving Plutonium, Uranium, and the Assembly and Disassembly of Nuclear Weapons"</a></li> </ul> <p>NNSA's extensive 2006-2008 analysis of warhead complex consolidation with references: <a href="http://www.complexttransformationspeis.com/">http://www.complexttransformationspeis.com/</a>.</p> <p>To clarify: the press release language does not indicate that initial construction on these projects, which involves extensive site preparation, construction of ancillary structures and concrete batch plants, road and utility modifications and other work prior to construction of these buildings <i>per se</i>, would be held back in any way for production of this report. The press release implies the contrary: construction of CMRR-NF and UPF must begin as soon as possible to meet the deadlines imposed.</p>
	<p>Puts Legislative cost caps on the CMRR-NF building at \$3.7 billion and the first phase of the Uranium Processing Facility project for building 9212 at \$4.2 billion.</p>	<p><i>Regarding the Senate language:</i></p> <p>What are "legislative cost caps" and how will the Senate impose them? What can this possibly mean? No one seriously thinks these projects can be built for so little money. Realistic capital costs could easily be twice this much, and LANS has estimated CMRR-NF M&amp;O costs at an order of magnitude more than CMR. It appears that the Senate is now following NNSA's pattern of low-balling costs in order to create unstoppable project momentum. The "legislative cost caps" will be raised as needed.</p> <p>Applicable: Bent Flyvbjerg, <a href="#">"Design by Deception: The Politics of Megaproject Approval"</a> (pdf).</p>

	<p>Requires the NNSA to publish to the greatest extent practicable, in a common format, the performance evaluations of the Management and Operations Contractors at NNSA facilities.</p>	<p><i>Regarding the Senate language:</i></p> <p>Strike “to the greatest extent practicable” and “in a common format.” There is no reason the performance evaluation reports (PERs) should not be published in their entirety and also no reason to require a common format. New law is not needed to promptly publish all NNSA PERs. A “common format” will likely result in a lowest common denominator.</p> <p>NNSA’s performance evaluations are very soft pitches – inadequately so – where its nuclear labs are concerned. There are no penalties for non-performance, only degrees of profit, and little accountability overall. Fee is too high at all the sites, and many liabilities are waived. The GOCO management model began with, and its special licenses were partially justified by, absence of fee. Institutionalized greed, e.g. through excessive salaries and unwarranted programs, is undermining the nuclear weapons complex.</p> <p>It is utterly remarkable that this mere publication requirement is the sole provision in these two bills which even pretends to go toward increasing contractor accountability. [check]</p> <p>Thus the problems with NNSA contractor accountability go far deeper than this provision will address. NNSA, which is at least 97.3% privatized in FY2012, is weaker than its contractors and many of the provisions of the House NDAA would make it much weaker still.</p> <p>Instead of the extensive patchwork of new regulations, bureaucratic complexity, and new agency capabilities recommended by the House bill especially, <u>we recommend federalization of most or all of the warhead complex</u>, which we believe would save approximately \$1.4 B per year, provide for more flexible and responsive management, and lay the groundwork for further necessary reforms.</p>
<p>1051—Nuclear Weapons Employment Strategy of the United States</p> <p><i>Report, p. 235:</i> “...This section would hold that congressional oversight is vital to the oversight of the Nation’s nuclear weapons employment strategy, plans, and options, and that the Secretary would be required to provide such briefings to the chairmen and ranking members of the Senate Committee on Armed Services and the House Committee on Armed Services, and such professional staff as they designate, not later than March 15th of each year.”</p>		<p><i>Regarding the House language:</i></p> <p>This section purports to provide greater congressional oversight of the nuclear weapons employment strategy of the United States. In practice, it would provide access to this strategy to a total of four members of the House and Senate armed services committees only, and their selected staff.</p> <p>This section would provide <i>special knowledge of an existential character for the nation</i> to a few powerful persons only. Many of these parties, experience shows, are precisely those with vested interests in maintaining and expanding nuclear weapons programs. That is in part why many members serve on the armed services committees in the first place: to serve their districts through the military contracts in their districts. Thanks to <i>Citizens United</i>, those contractors now wield even greater electoral power than ever – quite possibly decisive power.</p> <p><u>Plainly, the real purpose of this section is not to improve oversight but to prevent any budget- or disarmament-driven declines in funding by enhancing the political power of these four people and their staff vis-à-vis the balance of Congress and the Administration.</u></p> <p>A better course of action, if increased oversight is the goal, would be to declassify more aspects of nuclear policy. Extensive lists could be generated of what policies would benefit from greater openness. The misuse of pseudo-classification labels as “Official Use Only,” which has long been a way to shield embarrassing information from the public, could be curbed as well. Instead of more closed briefings, more <i>open</i> briefings and hearings, as appropriate, are the way to improve governance. There is indeed insufficient oversight of the nuclear weapons enterprise.</p> <p>We see this section as an increase, not a decrease, in secret government, and believe it will lead to more self-dealing in Congress.</p> <p>We note that markup of S. 2467 was done in closed session.</p>
<p>1052—Commitments for Nuclear Weapons Stockpile Modernization</p> <p><i>Report, p. 235:</i> “The section consists of a series of Congressional findings on U.S. nuclear weapons stockpile modernization.”</p>	<p>Includes language reaffirming that the Committee is committed to honoring the nuclear modernization commitments made under the New START Treaty, and provides funding and authorities to restore key facilities and programs. Provides the Department of Defense a limited transfer authority to the Department of Energy for fulfilling this important commitment.</p>	<p><i>Regarding the House language:</i></p> <p>This House language is a cherry-picked litany of statements and testimony that is bombastic, presents opinions as facts, and is lacking in modern context. It has no objective informational value and no legislative content.</p> <p>This and related sections of the House bill suffer from the core defect that nobody can say what precisely “modernization” is or what the benefits and costs of it in each particular situation might be. It is an empty slogan which is being flogged for partisan and ideological purposes.</p> <p>The House here quotes, as it does elsewhere in these provisions, previous office-holders rather than currently-sworn ones.</p> <p>The House here privileges the M&amp;O laboratory contractors by providing them with self-serving opportunities to pontificate on national policy. This is a core cause of the problems supposedly being addressed by this legislation.</p> <p><i>Regarding the Senate language:</i></p> <p>The Senate committee badly errs in saying that the New START treaty includes “modernization commitments.” It certainly does not. The Resolution of Ratification makes no new law beyond the Treaty itself. Any non-Treaty provisions in such a Resolution must be passed by the House and signed by the President to become law.</p> <p>The Senate press release hints at extensive provisions under this topic but provides no detail.</p>
<p>☛ 1053—Limitation and Report in the Event of Insufficient Funding for Modernization of Nuclear Weapons Stockpile</p> <p><i>Report, pp. 235-6:</i> “The section states the Sense of Congress regarding the linkage between the New START Treaty and modernization of the U.S. nuclear weapons stockpile in Condition 9 of the</p>	<p>Requires the Director of the Congressional Budget Office (CBO) to estimate over a 10 year window the costs at the Department of Energy and the DOD on maintaining and modernizing nuclear warheads and their delivery systems.</p>	<p><i>Regarding the House language:</i></p> <p>From the SAP:</p> <p>The Administration strongly objects to [House bill] sections 1053-1059, which would impinge on the President's ability to implement the New START Treaty and to set U.S. nuclear weapons policy. In particular, sections 1053 and 1055 would set onerous conditions on the Administration's ability to implement the Treaty, and section 1058 would set onerous conditions on the President's ability to retire, dismantle, or eliminate non-deployed nuclear weapons. Further, section 1054 raises</p>

<p>Resolution of Ratification of the treaty.</p> <p>“The section would amend section 1045(a) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81) to require a report in any year in which funding is appropriated for nuclear modernization activities that is less than projected in the November 2010 update of the plan referred to in section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84) within 60 days of the determination of insufficient funding. The section would prohibit the reduction of U.S. deployed nuclear warheads until the President certifies that the resource shortfall identified in the report has been addressed and 120 days have elapsed following such certification. The limitation on reductions would not apply regarding reductions made to ensure the safety, security, reliability and credibility of the U.S. nuclear weapons stockpile and delivery systems.”</p>		<p>constitutional concerns as it appears to encroach on the President's authority as Commander in Chief to set nuclear employment policy – a right exercised by every president in the nuclear age from both parties. If the final bill presented to the President includes these provisions, the President's senior advisors would recommend that he veto the bill.</p> <p>This provision would make a 12-page document from 2010 into the enduring touchstone and framework of U.S. nuclear weapons policy, independent of all other considerations such as changing geopolitical, military, diplomatic, technical, or budgetary conditions. The notion is absurd on its face.</p> <p>This section makes spending money less than a certain amount each year an inviolable nuclear policy requirement. Spending money is no guarantee of any desirable public policy outcome.</p> <p>It would impede the President’s duties as Commander-in-Chief under Article II of the Constitution and it impedes his or her conduct of foreign policy.</p> <p>This section conflicts with U.S. disarmament obligations under Article VI of the most widely-subscribed arms control treaty of all time, namely the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). It can be confidently predicted that this provision would cause diplomatic headaches for the U.S. nonproliferation efforts throughout much of the world – including, specifically, those parts of the world whose close and enthusiastic cooperation is most needed. It would lower the security of the United States.</p> <p>NNSA has been on the GAO watch list for waste, fraud, and abuse since its inception – for 20 years. This section would also enshrine the single worst management principle of the nuclear weapons complex: contractor failures to meet cost, schedule, and performance baselines become the basis for the next year’s inflated budget request. The NWC is 96.4% privatized, and contractors are writing policies which enrich themselves every day of the week. There is absolutely no limit to how large “insufficient funding” could be, especially at the three labs.</p> <p>This section purports to maintain the “credibility” of the U.S. nuclear deterrent when exactly the opposite is the case. The real purpose of this section is to cast doubts on the sufficiency of funding for nuclear weapons contractors in order to drum up business for them.</p> <p>This section, like many others, seeks to replace the ordinary due diligence of oversight with ideologically-based, inflexible prejudice that is sure to create severe management problems. It incentivizes waste, the creation of spurious new programs when existing programs have matured and produced their results (or not) and would prevent cost-cutting, simplification, and elimination of redundancy.</p> <p>Further, since fiscal limitations are certain to occur, this section aims to establish a unique claim on national resources based on nuclear fear.</p> <p>This section, like many others, mandates additional paperwork for no additional purpose. The annual budget request, the FYNSP, the Section 1043 Plan, the annual SSMP, the annual warhead certification process, and many other requirements make this section a redundant, ideologically-driven, complicated exercise, for not just big and bigger government but also for redundant government. The trigger for reporting is a decline in planned money for contractors, not actual program performance. It’s just bad government.</p> <p>This is new law, not a reiteration of existing law, because the Senate Resolution of Ratification for New START, unlike a treaty, is not a law. The resolution was passed by only one house of Congress.</p> <p><i>Regarding the Senate language</i></p> <p>The Senate’s idea (we don’t know the language) might be better than the House’s, but CBO has no expertise in estimating costs for NNSA programs and in practice this means it will be heavily influenced by the NNSA M&amp;O contractor community, which has a conflict of interest. To have value, considerable new staff or contractors would be required at CBO.</p> <p>All efforts to double up NNSA’s functions (double-check the checkers, manage the managers, regulate the regulators, etc.) in other departments are wasteful and redundant and do not deal with the fundamental issues at NNSA itself, or with the heavy conflicts of interests that are currently built into the M&amp;O contractor role at the three labs especially. The problem is that NNSA is not doing its job, and adding more layers will make NNSA weaker and make matters worse, not better.</p> <p>The precise nature of the charge to CBO will heavily determine the outcome; reliance on the shibboleth of “modernization” assures a shoddy result, because the word has no uniform or precise meaning.</p>
<p>● 1054—Progress of Modernization</p> <p><i>Report</i>, pp. 235-6: “The section would limit any funds made available for fiscal year 2012 or any fiscal year thereafter to implement a new nuclear weapons employment strategy until a period of 1 year after a report detailing such strategy has been submitted to Congress.</p> <p>“The section would also provide that for fiscal years 2012 through 2021, no funds made available for each such fiscal year may be used to carry out the decisions of the 2010 Nuclear Posture Review Implementation study that would alter the nuclear weapons employment strategy, guidance, plans or options of the United States until the President certifies that the resources projected in February 2011 update to the report required under section 1251 of the National</p>		<p><i>Regarding the House language:</i></p> <p>This section aims to impede the President’s duties as Commander-in-Chief and impede his or her conduct of foreign policy.</p> <p>It does so in two ways: first, by requiring a full year of congressional review of any changes in nuclear weapons deployment, following preparation and submission of a report; second, by making sure no changes to the stockpile could result in spending decreases; and third, by requiring that the overall military spending decreases required by Congress last year, barring alternative deficit reduction approaches, not come to pass.</p> <p>This is another section that quotes previous office-holders.</p> <p>This and other House sections are a prescription for paralysis. They allow no learning.</p>

<p>Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84) have been requested from the Congress, have been provided in appropriations enacted by the President, and the sequestration mechanism of the Balanced Budget and Emergency Deficit Control Act of 1985 have been repealed or otherwise terminated.”</p>		
<p>● 1055—Limitation on Strategic Delivery System Reductions</p> <p><i>Report</i>, p. 236: “The section would require the President to annually certify in writing whether plans to modernize or replace strategic delivery systems are fully resourced and being executed at a level equal to or more than the levels set forth in the November 2010 update to the plan referred to in section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84).</p> <p>“The section would further prohibit the use of funds to reduce, convert, or eliminate strategic delivery systems as a result of the New START treaty or otherwise unless the President is able to issue the required certification. The section would except from the limitation reductions made to ensure the safety, security, reliability and credibility of the nuclear weapons stockpile and delivery systems, and such systems awaiting dismantlement on the date of the referenced certification.”</p>		<p><i>Regarding the House language:</i></p>
<p>● 1056—Prevention of Asymmetry of Nuclear Weapon Stockpile Reductions</p> <p><i>Report</i>, p. 237: “The section would require the President to certify whether reductions in the United States nuclear weapons stockpile would result in the stockpile being smaller than that of the Russian Federation. The section would provide that if the President certifies that the U.S. nuclear weapons stockpile is smaller than the Russian stockpile, he may not make any reductions to the U.S. stockpile until the Commander of U.S. Strategic Command reports on a potential strategic imbalance created by the reductions, and a period of 180 days has elapsed following the submission of the report to the congressional defense committees. The section would except from the limitation reductions made to ensure the safety, security, reliability and credibility of the nuclear weapons stockpile.”</p>		<p><i>Regarding the House language:</i></p>
<p>● 1057—Consideration of Expansion of Nuclear Forces of Other Countries</p> <p><i>Report</i>, p. 237: “The section would provide that in any year in which the President recommends any reductions in the nuclear forces of the United States, no funds made available for fiscal year 2012 or any fiscal year thereafter may be used for such reduction until the President transmits to the appropriate congressional committees a report regarding foreign nuclear weapons programs and a certification by the Commander of U.S. Strategic Command as to whether the recommended reductions in U.S. nuclear forces could have specific implications for U.S. national security.”</p>		<p><i>Regarding the House language:</i></p>
<p>● 1058—Chemistry and Metallurgy Research Replacement Nuclear Facility and Uranium Processing Facility</p> <p><i>Report</i>, p. 237: “The section would require an annual</p>		<p><i>Regarding the House language:</i></p> <p>See comments on Section 2805, below.</p>

<p>certification by the President whether the construction of the Chemistry and Metallurgy Research Replacement Nuclear Facility (CMRR-NF) and the Uranium Processing Facility (UPF) will be completed not later than 2021 and whether both facilities will be fully operational by not later than 2024. The section would further require that if the President is not able to so certify, then no funds made available for fiscal year 2012 or any year thereafter may be available to reduce the nondeployed nuclear warheads of the United States until 120 days after the President is able to make the certification. The section would include an exception for reductions necessary to ensure the safety, security, reliability and credibility of the nuclear weapons stockpile.”</p>		
<p>☛ 1059—Nuclear Warheads on Intercontinental Ballistic Missiles of the United States</p> <p><i>Report</i>, pp. 237-8: “The section states the sense of the Congress that strategic stability is not enhanced by reducing the deployment of multiple warheads on U.S. intercontinental ballistic missiles if other states are increasing the warhead loading of their intercontinental ballistic missiles. The section would also limit the reductions in warhead loading on U.S. intercontinental ballistic missiles unless the President certifies that the Russian Federation and the People’s Republic of China are carrying out similar reductions. The section includes an exception for reductions made to ensure the safety, security, reliability and credibility of the U.S. nuclear weapons stockpile and delivery systems.”</p>		<p><i>Regarding the House language:</i></p>
<p>☛ 1060—Nonstrategic Nuclear Weapon Reductions and Extended Deterrence Policy</p> <p><i>Report</i>, p. 238: “The section would state the policy of the United States regarding nonstrategic nuclear weapons reductions as well as the United States policy on the extended deterrence commitment to Europe. The section would also limit any funds made available for fiscal year 2012 or any fiscal year thereafter to reduce, consolidate or withdraw U.S. nuclear weapons that are based in Europe until certain specific conditions are met, as established by a certification from the President submitted to the appropriate congressional committees, and a period of 180 days has elapsed.”</p>		<p><i>Regarding the House language:</i></p>
<p>☛ 1061—Improvements to Nuclear Weapons Council</p> <p><i>Report</i>, p. 238: “The section would amend the charter of the Nuclear Weapons Council to enable the Department of Defense to have greater insight into and control of the budget of the National Nuclear Security Administration.”</p> <p>See also Section 3134, which would “require the Nuclear Weapons Council, in each odd-numbered year, to submit to Congress an assessment of certain aspects of the plan developed by the Administrator and determine whether the plan adequately supports nuclear security enterprise infrastructure modernization requirements.”</p>	<p>Requires the Nuclear Weapons Council (NWC) to oversee the Nuclear Command, Control and Communications System, certify the budget of the National Nuclear Security Administration (NNSA) to meet stockpile and stockpile stewardship requirements and report to Congress whenever an authorization or appropriation bill reported out of Committee falls below the President’s budget request level on any significant impacts.</p>	<p><i>Regarding the House language:</i></p> <p><i>Concerning the Senate idea:</i></p> <p>I am unsure of the first requirement (nuclear command and control), but the second and third of these Senate requirements add no value and create no new avenues of communication. There is no barrier to communications of anybody’s concerns about budgets. These provisions add bureaucratic requirements.</p> <p>These new requirements undermine the role of the President as Commander in Chief, since the NWC advises the President but does not make formal policy. The President makes nuclear weapons policy.</p> <p>All new requirements added to agencies without sufficient staff for the new job will engage new staff, or contractors. Diminishing DOE and NNSA’s autonomy will likely increase the relative power of the laboratory M&amp;O contractors, who hold a near-monopoly on information and use that monopoly to further their business interests. The problem is the overweening power of the labs.</p> <p>DOE/NNSA is a member of the NWC and is charged with responsibility for developing these budgets in consultation with other NWC members and relevant agencies. Is the point to diminish the power of OMB, in order to provide for greater budgetary freedom? That appears to be the case.</p>
<p>☛ 1062—Interagency Council on the Strategic Capability of</p>		<p><i>Regarding the House language:</i></p>

<p>the National Laboratories</p> <p><i>Report</i>, p. 238: “This section would establish an Interagency Council on the Strategic Capability of the National Laboratories. The membership of the council would include the Secretary of Defense, the Secretary of Energy, the Secretary of Homeland Security, the Director of National Intelligence, the Administrator for Nuclear Security, and other officials as designated by the President. The council would be responsible for a variety of matters related to identifying, assessing, and ensuring adequate support for strategic capabilities at the national laboratories that could be used by the participating agencies to accomplish national security missions. This section would also require each member of the council to create streamlined consideration and approval processes for their agency to procure the services of the national laboratories on appropriate matters. Finally, this section would require the council to submit a report to appropriate congressional committees on the functions and effectiveness of the council.</p> <p>In June 2010, the Secretary of Energy, the Director of National Intelligence, the Secretary of Homeland Security, and the Secretary of Defense signed a “Governance Charter for an Interagency Council on the Strategic Capability of DOE National Laboratories as National Security Assets.” The committee supports the intent of this charter, and recommends this provision to codify the Council and provide congressional direction regarding its functions. Elsewhere in this report, the committee discusses the Work For Others program at the Department of Energy and the National Nuclear Security Administration.”</p>		
<p>1063—Report on Capability of Conventional and Nuclear Forces Against Certain Tunnel Sites</p> <p><i>Report</i>, p. 239: “This section would require the Commander, U.S. Strategic Command to prepare a report for the congressional defense committees within 1 year after the date of the enactment of this Act on the implications of the underground tunneling network of the People’s Republic of China for the capacity of the conventional and nuclear forces of the United States to hold those tunnels (and assets contained within) at risk, including any implications for U.S. force structure and requirements. Such report would be provided to the congressional defense committees in an unclassified report, with a classified annex if necessary. The committee also directs the Commander, U.S. Strategic Command to prepare a classified update of a report on the known hardened and deeply buried sites of foreign nations, as well as an assessment of the ability of the United States to neutralize such sites with conventional and or nuclear forces.”</p>		<p><i>Regarding the House language:</i></p>
<p>1064—Report on Conventional and Nuclear Forces in the Western Pacific Region</p> <p><i>Report</i>, p. 239: “The section would state the sense of the Congress regarding U.S. conventional and nuclear forces in the Western Pacific as a response to North Korean aggression. The section would require a report related to deploying additional conventional and nuclear forces to the</p>		<p><i>Regarding the House language:</i></p>

<p>Western Pacific, and specific issues with such deployments including an evaluation of any bilateral agreements, basing arrangements and costs of such deployments.”</p>		
<p>1065—Sense of Congress on Nuclear Arsenal</p> <p><i>Report</i>, p. 239: “This section would express a sense of Congress that the nuclear force structure of the United States should be periodically reexamined, through nuclear posture reviews, to assess assumptions that shape the structure, size, and targeting of U.S. nuclear forces and to ensure that such forces are structured, sized, and targeted to be capable of holding at risk the assets that potential adversaries value and to provide robust extended deterrence and assurance to allies of the United States.”</p>		<p><i>Regarding the House language:</i></p>
<p>2804—Treatment of Certain Defense Nuclear Facility Construction Projects as Military Construction Projects</p> <p><i>Report</i>, p. 315: “This section would make several findings regarding a May 2010 agreement between the Secretary of Defense and the Secretary of Energy regarding the transfer of Department of Defense budget authority to the National Nuclear Security Administration (NNSA) to fund activities the Secretary of Defense determines to be high priorities.</p> <p>“This section would also mandate that certain construction projects of the NNSA be deemed military construction projects and require that such projects therefore be subject to: (1) the advance project authorization requirement of section 2802(a) of title 10, United States Code, and other requirements of chapter 169 of such title related to military construction projects carried out by the Secretary of Defense; and (2) annual acts authorizing military construction projects (and authorizing the appropriation of funds therefore) for a fiscal year. This section would require that the Chemistry and Metallurgy Research Building Replacement (CMRR) project, in Los Alamos, New Mexico, the Uranium Processing Facility (UPF) project, in Oak Ridge, Tennessee, and any nuclear facility of the NNSA initiated on or after October 1, 2013 that is estimated to cost more than \$1.0 billion (and is intended to be primarily utilized to support NNSA’s nuclear weapons activities), be treated as military construction projects. Further, this section would authorize, as military construction, the CMRR project in the amount of \$3.5 billion and the UPF project in the amount of \$4.2 billion.</p> <p>“This section would specify that the Secretary of Energy shall retain authority to regulate design and construction activities for these projects, that the Secretary of Defense must coordinate with the Administrator for Nuclear Security regarding requirements for these facilities, and that the Administrator must make available to the Secretary of Defense the expertise of the NNSA to support design and construction activities. This section would also require the Secretary of Defense, upon completion of these projects, to negotiate with the Administrator to transfer the constructed facility to the authority of the Administrator for operations.</p> <p>“This section would also express a sense of Congress that during fiscal year 2014 and thereafter, the budgetary authority provided by the Secretary of Defense to the</p>		<p><i>Regarding the House language:</i></p>

<p>Administrator under the May 2010 agreement should be reduced by the amount needed to fund design and construction of the CMRR and UPF projects under the military construction authority established by this section.</p> <p>“Finally, this section would apply to the designated projects for fiscal year 2014 and thereafter, and require that by September 30, 2013, the Administrator shall transfer to the Secretary of Defense all information related to architectural and engineering services and construction design for the CMRR and UPF projects. This section would mandate that all environmental impact statements and legal rulings in effect before September 30, 2013 would remain valid upon transfer of responsibility for the CMRR and UPF projects to the Secretary of Defense.”</p>		
<p>2805—Execution of Chemistry and Metallurgy Research Building Replacement Nuclear Facility and Limitation on Alternative Plutonium Strategy</p> <p><i>Report</i>, p. 315: “This section would state that it is the policy of the United States to create and sustain the capability to produce plutonium pits for nuclear weapons, and to ensure sufficient plutonium pit production capacity to respond to technical challenges in the existing nuclear weapons stockpile or geopolitical developments. This section would also express a sense of Congress that: (1) successful and timely construction of the Chemistry and Metallurgy Research Building Replacement (CMRR) nuclear facility in Los Alamos, New Mexico, is critical to achieving the aforementioned policy and that such facility should achieve full operational capability by fiscal year 2024; (2) prior-year funds provided for CMRR, up to \$160.0 million being available, should be applied to continue design and construction of CMRR in fiscal year 2013; and (3) during fiscal year 2014 and thereafter, the budgetary authority provided by the Secretary of Defense to the Administrator for Nuclear Security under a May 2010 memorandum of agreement between the Secretary of Defense and the Secretary of Energy should be reduced by the amount needed to fund design and construction of the CMRR under the military construction authorities provided by section 2804 of this title.</p> <p>“This section would require the Secretary of Defense, in coordination with the Administrator, to request such funds in fiscal year 2014 and subsequent fiscal years under the military construction authority provided by section 2804 to ensure the CMRR facility achieves full operational capability by 2024. Finally, this section would limit any funds authorized to be appropriated by this Act or any other Act from being obligated or expended on any activities associated with a plutonium strategy for the National Nuclear Security Administration that does not include achieving full operational capability of the CMRR facility by fiscal year 2024.”</p>	<p>Restores to fiscal year 2013, the proposed deferral by “at least 5 years” of the Chemistry and Materials Research Replacement (CMRR-NF) building, requiring the NNSA to use \$150.0 million from funds authorized and appropriated for fiscal year 2013, requires the facility to be operational by the end of 2024.</p> <p>Reported additional provision of S.2467 (not included in SASC press release): requires NNSA to study combining the CMRR-NF project with potential replacement of LANL’s main plutonium facility (PF-4), a suggestion also reported in a Government Accountability Office (GAO) <a href="#">review of the CMRR project</a>.</p>	<p><i>Regarding the House language:</i></p> <p>A press release critical of this provision is <a href="#">here</a>.</p> <p>The House and Senate appropriations committees have zeroed out CMRR-NF for FY13. The NNSA, Pentagon, STRATCOM, and DOE have all testified repeatedly to Congress in hearings this year that CMRR-NF can be deferred for at least five years, since there are alternative means of satisfying the CMRR-NF mission for at least that long.</p> <p>This deferral implies that the earliest possible operational date for CMRR-NF would be 2028, confirmed in questioning from Senator Sessions by NNSA Administrator Thomas D’Agostino.</p> <p>The Administration’s consensus strategy is indicated in these documents: <a href="#">Revised Plutonium Strategy – Supplemental Information for the President’s FY 2013 Budget Request</a> (pdf); <a href="#">FY2013 Budget Guidance on the CMRR-NF</a> – Memorandum from Donald Cook to Kevin Smith, Los Alamos Site Office, and Dr. Charles McMillan, Los Alamos National Laboratory, Feb 13, 2012 (pdf); <a href="#">Cuts, Consolidation, and Savings</a> (pdf).</p> <p>Detailed reasons to defer CMRR-NF can be found in <a href="#">Reasons Not to Build, or to Delay CMRR-NF</a> (pdf), Mello, May 22, 2011.</p> <p>Other key background resources are listed <a href="#">here</a>.</p>
<p>3111—Authorized Personnel Levels of the Office of the Administrator</p> <p><i>Report</i>, pp. 337-8: “This section would amend the National Nuclear Security Administration Act (50 U.S.C. 2401) by</p>	<p>Repeals an annual workforce restructuring report, the DOE has not requested funds associated with this report since 2007.</p> <p>Includes a provision that, under existing hiring</p>	<p><i>Regarding the House language:</i></p> <p>SAP: “The Administration believes” this section is inadvisable.</p> <p><i>Regarding the Senate language:</i></p>



<p>creating a new section 3241A that would limit the total number of employees of the National Nuclear Security Administration's (NNSA) Office of the Administrator. The total number of employees of the Office of the Administrator, as determined on a full-time equivalent basis, would be limited to 1,730 beginning 180 days after enactment, and 1,630 beginning October 1, 2014. This section would exclude from counting toward this limit the employees of the Office of Naval Reactors, the employees of the Office of Secure Transportation, and Members of the Armed Forces who are detailed to NNSA. The section would allow the Administrator to offer voluntary separation or retirement incentives to help meet the personnel level limits, and would require the Administrator to establish a work placement program to assist separating employees in finding new employment.</p> <p>Further, this section would also amend section 3241 of the National Nuclear Security Administration Act (50 U.S.C. 2441) to increase from 300 to 450 the number of scientific, engineering, and technical positions in the NNSA. Finally, this section would require the Administrator to submit a report to the congressional defense committees within 180 days of enactment of this Act on the required reductions, the cost savings from the reductions and the transition to performance-based governance, management, and oversight required by sections included elsewhere in this title, and other matters. The Comptroller General would be required to provide the congressional defense committees an assessment of this report within 180 days of its submission.</p> <p>The committee believes that, as part of the reforms to the NNSA described in detail elsewhere in this title, the Administrator must streamline the NNSA's Federal workforce. A key component of the reforms required by this title is a transition from the current transaction-based system of oversight of the nuclear security enterprise to a performance-based system. Such a performance-based system will require fewer Federal employees but enable the NNSA to conduct equally robust oversight of its management and operating contractors.</p> <p>The committee believes that by limiting the number of Federal employees at the NNSA, Congress can provide a key mechanism for ensuring the transition to performance-based oversight occurs. The committee expects that the reductions will result in savings across the nuclear security enterprise, and that as a result, efficiencies at the laboratories and plants will increase and overhead rates will decrease.</p> <p>The committee also notes that several independent assessments of NNSA's management and governance structure have stated that NNSA's Federal employees often lack the technical knowledge needed to effectively oversee many programs at the nuclear security laboratories. The committee believes that this section, which would increase by 50 percent the number of special scientific, engineering, and technical positions the Administrator may appoint within NNSA, would help address these concerns."</p>	<p>caps, gives the Administrator of the NNSA an increase in the number of hires from 300 to 700 akin to authorities used by the Nuclear Regulatory Commission for contracting, scientific, engineering and technical personnel.</p>	<p>This section allows NNSA to fill much of its ranks with contractor personnel (i.e. the people whom the agency supposedly hires, manages, and regulates), increasing its internal conflicts of interest. For several years in the mid-1990s the House Appropriations Committee inveighed against this practice.</p>
<p>3112—Budget Justification Materials</p>		<p><i>Regarding the House language:</i></p>

<p><i>Report</i>, pp. 338-9: “This section would require the Administrator of Nuclear Security to include in the budget request, beginning with the fiscal year 2014 budget request, an assessment of how that budget maintains the core nuclear weapons skills, including nuclear weapons design, engineering, production, testing, and prediction of stockpile aging.</p> <p>“In its final report submitted to Congress in May 2009, the Congressional Commission on the Strategic Posture of the United States found that, “attracting and retaining the top national talent and expertise requires that the laboratories conduct challenging research on important national problems. This program of work must be sustained, predictable, and exercise the full range of laboratory skills, including nuclear weapon design skills. Exercising these design skills is necessary to maintain design and production engineering capabilities. Skills that are not exercised will atrophy.” The Commission recommended that, “the Congress should require that annual NNSA budget submissions include an assessment of whether the budget as proposed will maintain these capabilities. To monitor progress, the NNSA and the White House Office of Management and Budget (OMB) should establish a formal mechanism for tracking funding sources for the weapons laboratories, without additional administrative burden on the laboratories. The assessment of needed expertise, its recruitment, and its retention are necessary but not sufficient preconditions for maintaining proficiency. Those skills must be exercised.” This section would seek to implement the Commission’s recommendation.”</p>		
<p>☞ 3113—Contractor Governance, Oversight, and Accountability</p> <p><i>Report</i>, pp. 339-340: “This section would amend the National Nuclear Security Administration Act (50 U.S.C. 2401) by adding a new section that would require the Administrator for Nuclear Security to establish a system of governance, management, and oversight of management and operating contracts of the National Nuclear Security Administration (NNSA). The system established by the Administrator would be required to: (1) include clear and auditable performance-based standards related to both mission effectiveness and operations of the contractor; (2) ensure that governance, management, and oversight of the contract is conducted, when applicable, pursuant to national and international standards and best practices; (3) recognize the respective roles of the Federal Government in determining performance-based objectives and the contractor (particularly contractors running a Federally Funded Research and Development Center) in determining how to accomplish such objectives; (4) conduct oversight based on outcomes and performance-based standards and not detailed, transaction-based oversight; and (5) include measures to ensure the Administrator has accurate and consistent data to manage and make decisions across the nuclear security enterprise.</p> <p>“The Administrator would be allowed to exempt individual areas of governance, management, and oversight from the</p>		<p><i>Regarding the House language:</i></p>

<p>requirements of this system and continue to conduct transaction-based oversight if the Administrator determines that such exemption is necessary to ensure the national security or safety, security, or performance. If the Administrator makes such exemptions, the Administrator would be required to submit an annual certification of such exemption to the congressional defense committees that includes a description of why such exemption is needed.</p> <p>“The Administrator would also be provided a 3-year period starting on the date of enactment of this Act in which the Administrator may temporarily exempt individual facilities or contractors from the system established by this section and continue to conduct transaction-based oversight if the Administrator determines that such exemption is needed to ensure that robust contractor assurance, accountability, and performance-based oversight mechanisms are in place for the facility or contractor. If the Administrator makes such exemptions, the Administrator would be required to annually submit to the congressional defense committees a written justification for such exemptions and a plan and schedule to transition the exempted facility or contractor to the performance-based system established pursuant to this section.</p> <p>“This section would also require the Administrator to ensure that each management and operating contract of NNSA includes robust mechanisms for ensuring the accountability of the contractor and that the Administrator exercise such mechanisms as appropriate to ensure the performance by the contractor.</p> <p>“Finally, this section would require the Administrator to submit a report by January 15, 2013, and each year thereafter until 2016, to the congressional defense committees that includes a description of each instance during the previous year in which an agency of the Federal Government used a procedure, standard, or process of governance, management, and oversight of a contract of the NNSA that is not a procedure, standard, or process that conforms to national or international standards or industry best practices. The report would also be required to include a description of why each such procedure, standard, or process was used instead of a national or international standard or best practice. Finally, the report would include a description of any oversight activities by any agency of the Federal Government that occurred during the previous year that the Administrator considers duplicative or unnecessary.”</p>		
<p>3114—National Nuclear Security Administration Council</p> <p><i>Report</i>, pp. 340: “This section would amend section 4102 of the Atomic Energy Defense Act (50 U.S.C. 2512) to streamline statutory requirements related to the management structure of the National Nuclear Security Administration (NNSA). This section would also reform and broaden the mandate of the Defense Programs Management Council and rename it the ‘National Nuclear Security Administration Council.’” The Council would advise the Administrator for Nuclear Security on scientific and technical issues related to policy matters, and on operational concerns, strategic planning, and development of priorities related to the nuclear</p>		<p><i>Regarding the House language:</i></p>

<p>security enterprise and to the mission and operations of the NNSA. The Council would be composed of the directors of NNSA’s national security laboratories and nuclear weapons production facilities. This section would also provide the Council the authority to provide recommendations to the Administrator or the Secretary of Energy, and would require the Administrator or the Secretary to provide a response to the Council within 60 days of receiving such a recommendation.</p> <p>The committee believes that the NNSA Council would provide an important mechanism for the directors of the national security laboratories and nuclear weapons production facilities to provide their recommendations on mission- and operational-concerns to the Administrator and the Secretary; create a necessary and sustained dialogue between NNSA and the directors of its laboratories and plants on NNSA’s strategic priorities and plans; and help ensure robust implementation and successful execution of reforms to NNSA’s management, governance, and oversight structures and processes.</p>		
<p>§ 3115—Safety, Health, and Security of the National Nuclear Security Administration</p> <p><i>Report</i>, pp. 340-3: “This section would amend the National Nuclear Security Administration Act (Title 32 of Public Law 106–65) to require the Administrator for Nuclear Security to establish policies and procedures for the regulation and oversight of health, safety, and security of the nuclear security enterprise. In conjunction with a provision the committee includes elsewhere in this title that would strengthen the autonomy of the NNSA, this section would transition the authority to make policy, prescribe regulations, and conduct oversight of health, safety, and security in the nuclear security enterprise from the Department of Energy (DOE) to the National Nuclear Security Administration (NNSA).</p> <p>First, this section would amend section 3231 of the National Nuclear Security Administration Act (50 U.S.C. 2421) to require the Administrator for Nuclear Security to establish policies and procedures to ensure the protection of special nuclear material, sensitive physical assets, and classified information in the possession of the NNSA. The Administrator would be required to establish procedures to ensure any significant problems related to security are promptly reported.</p> <p>Second, this section would amend section 3261 of the National Nuclear Security Administration Act (50 U.S.C. 2461) to ensure that the Administrator is the responsible authority for ensuring and overseeing NNSA compliance with all applicable health and safety requirements. For non-nuclear operations, the Administrator would be required to ensure that NNSA complies with all applicable occupational safety and health standards promulgated pursuant to the Occupational Safety and Health Act of 1970 and that NNSA’s compliance and oversight of such standards is</p>	<p>Requires the Secretary of Energy to submit to the congressional defense committees a report on actions required to transition, to the maximum extent practicable, the regulation of non-nuclear operations of the National Nuclear Security Administration over a period of 5 years to federal agencies other than the DOE. The report shall be prepared using the widest possible public input.</p>	<p><i>Regarding the House language:</i></p> <p><i>Regarding the Senate language:</i></p>

conducted in accordance with best industry and Government practices and with the performance-based system of governance, management, and oversight established pursuant to a provision included elsewhere in this title, notwithstanding the Administrator's authority under such provision to exempt individual activities and continue to conduct transaction-based oversight.

The Administrator would be limited from establishing or prescribing any order, rule, or regulation regarding occupational safety and health unless such order, rule, or regulation is pursuant to standards resulting from the Occupational Safety and Health Act of 1970. The Administrator would be allowed the authority to waive this requirement and apply more stringent standards if the Administrator determines that such a waiver is necessary to ensure safety. The Administrator would be required to waive this requirement and apply stricter standards for operations involving beryllium. If the Administrator makes exemptions using this authority and applies more stringent standards, the Administrator would be required to submit an annual certification to the congressional defense committees regarding why such waivers are required.

For nuclear operations, this section would require the Administrator to prescribe appropriate policies and regulations to ensure that risks to the health and safety of the employees of NNSA and its contractors, as well as the general public, are as low as reasonably practicable and that adequate protection is provided. The Administrator would be required to ensure that NNSA's compliance and oversight of such policies related to nuclear operations is in accordance with the performance-based system of governance, management, and oversight established pursuant to a provision included elsewhere in this title, notwithstanding the Administrator's authority under such provision to exempt individual activities and continue to conduct transaction-based oversight. This section would delay full transition of authority with regards to nuclear safety until October 1, 2013, and would require the Administrator to submit a report to the congressional defense committees by March 1, 2013, on an implementation plan and cost-benefit analysis for transitioning the policy, regulatory, and oversight authority for nuclear safety from the Department of Energy to the NNSA.

In its February 2012 Phase I report on "Managing for High-Quality Science and Engineering at the NNSA National Security Laboratories," the National Academies of Science recommended "that the NNSA, Congress, and top management of the Laboratories recognize that safety and security systems at the Laboratories have been strengthened to the point where they no longer need special attention. NNSA and Laboratory management should explore ways by which the administrative, safety, and security costs can be reduced, so that they not impose an excessive burden on essential science and engineering activities."

In its 2009 report, the bipartisan Congressional Commission on the Strategic Posture of the United States found that "the regulatory burden on the laboratories is excessive and should be rationalized," and "that burden imposes a significant cost

<p>and less heavyhanded oversight would bring real benefits.” The Commission continued, “This conclusion is backed up by some real data. One recent external assessment of NNSA laboratories . . . found a very high cost of compliance with federal safety and security requirements— approximately 15 times as much as for companies of similar complexity (recognizing also some important differences in some of the functions of those companies). Some other data is available from a pilot program conducted by the NNSA at the Kansas City Plant in 2006 and 2007. Under this program, the plant was exempted from essentially all DOE regulations and additional oversight changes were made. An external audit documented significant savings. Extending this approach throughout the complex is feasible.”</p> <p>In response to a request from the Secretary of Energy, the National Laboratory Directors Council (consisting of DOE and NNSA national lab directors) submitted a white paper in May 2011, identifying 18 policies and practices the NLDC deemed “most burdensome.” The NLDC stated that the DOE rule regarding occupational health goes “significantly beyond the Occupational Safety and Health Administration (OSHA) standards and incorporates standards that were not designed to be regulatory in nature. It has not been demonstrated that the rule has improved worker safety at DOE facilities since its adoption; however, the cost to implement and maintain the requirements that go beyond the OSHA standards have significantly increased costs . . . Therefore, it is recommended that the rule be revised to implement only OSHA standards. This action would align DOE facilities with U.S. industry, academia, and other federal facilities such as the National Institute of Standards and Technology.” The Strategic Posture Commission recommended this action as well, saying in its 2009 report: “the commission recommends that the Administrator should issue no regulations concerning occupational health and safety but should depend on the Occupational Safety and Health Administration for both regulations and oversight.”</p> <p>Based upon these and other reports, the committee believes that the lines of authority, responsibility, and oversight for health, safety, and security within the nuclear security enterprise are unclear, duplicative, and inefficient. The committee believes that safety and security must remain a paramount concern for the NNSA, but notes that, as in military operations, duplicative and confused lines of authority and responsibility often lead to less effective outcomes. The committee believes this section, coupled with other provisions included elsewhere in this title, would streamline redundant functions, and lead to more effective and more efficient oversight of these important matters.</p>		
<p>3116—Design and Use of Prototypes of Nuclear Weapons <i>Report</i>, pp. 343-344: “This section would required that the Administrator of Nuclear Security should develop and carry out a plan for the national nuclear weapons laboratories and nuclear weapons production plants to design and build prototypes of nuclear weapons to further intelligence assessments of foreign nuclear weapons activities. This section would also prohibit the Administrator from</p>		<p><i>Regarding the House language:</i></p>

<p>conducting any experiment that would produce a nuclear yield. The committee urges the Administrator to use surrogate materials where appropriate in designing and building these prototypes.</p> <p>The committee notes in its final report, one of the recommendations the Congressional Commission on the Strategic Posture of the United States was that: “A particularly sensitive question is whether the laboratories should be permitted to do weapons design work in support of this intelligence mission. At issue is whether the United States should seek to improve its understanding of the feasibility of the weapons design efforts of others by replicating those designs in U.S. laboratories. In the commission’s view, this is possible and this work should be permitted. At a time of rising concern about efforts by proliferators to develop and improve their nuclear weapons, and of nuclear terrorism, such work is indeed critical. Such work would not involve the design of new weapons with new military characteristics for deployment by the United States. It can and should be done in accordance with U.S. policies not to produce fissile materials and not to conduct nuclear explosive tests. It would be limited to assessing whether adversarial efforts in development of new nuclear weapons will result in operational capabilities, and what technical, military, political, and other consequences might follow from the potential new capabilities. Working with partners in the intelligence community, the laboratories should be in a position to advise national leadership on foreign nuclear weapons activities bearing on the interests of the United States and its allies. In short, the commission recommends that the laboratories be allowed to design, simulate, and experimentally assess foreign nuclear weapon designs for the purposes of defensive analysis.”</p> <p>Further, the committee notes that the National Academies panel on the Comprehensive Nuclear Test Ban Treaty made a similar recommendation when it stated: “Allowing the workforce to have the technical responsibility and flexibility in defining the paths to mission goals supports both workforce development and workforce morale. The “challenge programs” run by the AWE illustrate what can be achieved in this regard. For example, in one challenge program the AWE designed a new warhead (together with the non-nuclear components), although the UK has no intention of producing any such weapon. This helped to maintain proficiency and train the next generation of warhead designers. Such flexibility for activities undertaken by AWE with MOD approval (but not MOD direction) helps to recruit and maintain a top-flight workforce and to exercise the advanced tools of the program. Programs of this nature have been tried, with positive workforce response, in the U.S. complex, but have fallen victim to budget pressures and micromanagement to short term goals.”</p>		
<p>3117—Improvement and Streamlining of the Missions and Operations of the Department of Energy and National Nuclear Security Administration</p> <p><i>Report</i>, p. 344: “This section would require the Secretary of</p>		<p><i>Regarding the House language:</i></p>

<p>Energy and the Administrator for Nuclear Security to revise various regulations, rules, directives, orders, and policies to improve and streamline the administration, execution, and oversight of the Department of Energy (DOE) and the National Nuclear Security Administration's (NNSA) missions and operations, within 90 days after the date of the enactment of this Act. These efforts would include: (1) streamlining business processes and structures to reduce unnecessary, overly burdensome, or duplicative approvals; (2) delegating approval for all but very high value or unique Work Force Others (WFO) agreements and Cooperative Research and Development Agreements (CRADA) to DOE and NNSA's management and operating contractors while holding such contractors accountable for maintaining appropriate WFO and CRADA portfolios; (3) establishing processes for ensuring routine or low-risk procurement and subcontracting decisions are made at the discretion of the management and operating contractors; (4) assessing current procurement thresholds and taking steps to adjust such thresholds if appropriate; (5) eliminating duplicative or low-value reports and data calls and ensuring consistency in management and cost accounting data; and (6) streamlining, clarifying, and eliminating redundancy in regulations, rules, directives, orders, and policies. Finally, this section would require the Secretary and the Administrator to provide a briefing on these efforts to the congressional defense committees and the Senate Committee on Energy and Natural Resources and the House Committee on Energy and Commerce.”</p>		
<p>3118—Cost-Benefit Analyses for Competition of Management and Operating Contracts</p> <p><i>Report</i>, pp. 344-5: “This section would require the Administrator for Nuclear Security to submit a report to the congressional defense committees before the Administrator releases any final request for proposals for competition of any contract to manage and operate a facility of the National Nuclear Security Administration. The report would be required to include a cost-benefit analysis of the competition that includes the expected costs and cost savings resulting from the competition; a description of any disruption or delay in mission activities or deliverables resulting from the competition; a description of any benefits of the proposed competition to mission performance or operations; and an assessment of how the competition complies with the Federal Acquisition Regulation regarding Federally Funded Research and Development Centers, if applicable. This section would also require the Comptroller General of the United States to submit a review of the Administrator’s report to the congressional defense committees within 90 days of the Administrator submitting any report pursuant to this section. The requirements of this section would apply to any request for proposals that is released by the Administrator during fiscal years 2012–17.”</p>		<p><i>Regarding the House language:</i></p>
<p>3133—Clarification of the Role of the Administrator for Nuclear Security</p> <p><i>Report</i>, pp. 346-7: “This section would clarify the role of the Administrator for Nuclear Security and reinforce the semi-</p>		<p><i>Regarding the House language:</i></p>



<p>autonomous nature of the National Nuclear Security Administration (NNSA) by amending various sections of the National Nuclear Security Administration Act (50 U.S.C. 2401), the Atomic Energy Defense Act (50 U.S.C. 2501), and the Department of Energy Organization Act (42 U.S.C. 7131).</p> <p>“This section would clarify that the Administrator is responsible for all programs, policies, regulations, and rules of the NNSA. This section would further clarify that the Secretary of Energy may disapprove any action, policy, regulation, or rule of the Administrator if the Secretary submits justification for such disapproval to the congressional defense committees and a period of 15 days has elapsed since such justification was submitted. This section would also clarify that the Administrator has complete authority to establish and conduct oversight of policies, activities, and procedures of the NNSA without direction or oversight by the Secretary, and establish that the Secretary’s authority to administer, enforce, or oversee the activities of the NNSA would be limited to the disapproval authority described above, unless otherwise specifically provided by law. This section would also amend several statutes to transfer authority for certain activities from the Secretary to the Administrator.</p> <p>“In its 2009 report, the Congressional Commission on the Strategic Posture of the United States recommended making NNSA a fully autonomous agency reporting to the President through the Secretary of Energy. The Commission recommended following the example of the Federal Energy Regulatory Commission (FERC), which reports to the Secretary of Energy, and for which the Secretary only has the authority to comment on and not disapprove FERC’s budget. Also in 2009, a study by The Henry L. Stimson Center, “Leveraging Science for Security: A Strategy for the Nuclear Weapons Labs in the 21st Century,” was highly critical of both the Department of Energy (DOE) and the NNSA. The Stimson Center Task Force concluded that the choices for reform were clear, either “initiate an extensive overhaul of DOE/NNSA to achieve intended agency autonomy” or “create a new independent agency with the institutional mechanisms and oversight in place to achieve the envisioned transformation and fully leverage the taxpayer’s investments.” Ultimately, the Task Force “strongly recommend[ed] creating a fully independent agency . . . the Task Force proposes fully severing NNSA and its Federally Funded Research and Development Centers, including the Nevada Test Site, from DOE.”</p> <p>“The committee agrees with these and other recent assessments that the degree of autonomy intended by the National Nuclear Security Administration Act has not been achieved. This section would strengthen the autonomy of NNSA and reinforce the intent of the legislation.”</p>		
<p>3134—Consolidated Reporting Requirements Relating to Nuclear Stockpile Stewardship, Management, and Infrastructure</p> <p><i>Report</i>, pp. 347-8: “This section would consolidate several existing reporting requirements in sections 4202, 4203,</p>		<p><i>Regarding the House language:</i></p>

<p>4203A, 4204, 4207, and 4208 of the Atomic Energy Defense Act (Public Law 106–65), as well as section 3152 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106), and consolidate them into a new section. This section would create a consolidated requirement for the Administrator for Nuclear Security, in consultation with the Secretary of Defense and other appropriate officials, to develop and annually update a plan for sustaining the nuclear weapons stockpile. The plan would be required to cover, at a minimum, stockpile stewardship, stockpile management, stockpile surveillance, program direction, infrastructure modernization, human capital, and nuclear test readiness. This section would require the Administrator to submit a summary of this plan, including identification of changes to the plan, to the congressional defense committees in each even-numbered year, and a detailed report on the plan in each odd-numbered year. Finally, this section would require the Nuclear Weapons Council, in each odd-numbered year, to submit to Congress an assessment of certain aspects of the plan developed by the Administrator and determine whether the plan adequately supports nuclear security enterprise infrastructure modernization requirements.”</p>		
<p>3142—Reports on Lifetime Extension Programs</p> <p><i>Report</i>, pp. 348-9: “This section would require that before proceeding beyond phase 6.2 activities on any life extension activities, the directors of the national nuclear weapons laboratories shall submit to the congressional defense committees a report on the lifetime extension program option for the nuclear physics package, i.e., refurbishment, reuse, and replacement, of that weapon and an assessment of why the option selected was selected, including an assessment of pros and cons of the other two options, including costs and other considerations. The lab director’s assessment would be submitted to the congressional defense committees without change by the Administrator of Nuclear Security, though he may if he chooses, submit his own explanation.</p> <p>The committee notes that section 1062 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181) created the Congressional Commission on the Strategic Posture of the United States. The committee is aware that the commission stated that the “basic approaches to refurbishment and modernization are, in fact, not stark alternatives. Rather, they are options along a spectrum. That spectrum is defined at its two ends by the pure re-manufacturing of existing warheads with existing components at one end and complete redesign and new production of all system components at the other. In between are various options to utilize existing components and design solutions while mixing in new components and solutions as needed. Different warheads may lend themselves to different solutions along this spectrum. The decision on which approach is best should be made on a case-by-case basis as the existing stockpile of warheads ages.”</p>	<p>Includes a provision that requires the Nuclear Weapons Council to report to Congress on the definition of a common W88 / W78 warhead that will be used for phase 6.1 and 6.2A studies.</p>	<p><i>Regarding the House language:</i></p> <p><i>Regarding the Senate language:</i></p>
<p>3143—National Academy of Sciences Study on Peer Review and Design Competition Related to Nuclear Weapons</p> <p><i>Report</i>, pp. 349-350: “This section would require the</p>		<p><i>Regarding the House language:</i></p>

<p>Administrator for Nuclear Security to enter into an agreement with the National Academies of Science to conduct a study of peer review and design competition related to nuclear weapons. The National Academies study would be required to include an assessment of: the quality and effectiveness of peer review of designs, development plans, engineering and science activities, and priorities related to both nuclear and non-nuclear aspects of nuclear weapons; incentives for effective peer-review; the potential effectiveness, efficiency, and cost of alternative methods of conducting peer review and design competition related to both nuclear and non-nuclear aspects of nuclear weapons (as compared to current methods); the known instances where peer review practices and design competition succeeded or failed to find problems or potential problems; and any other related matters the Administrator considers appropriate. The Administrator would be required to ensure the National Academies receives full and timely cooperation from the National Nuclear Security Administration, and its contractors, for the purposes of conducting the study. The Administrator would be required to submit the report and any recommendations of the National Academies, together with any comments or recommendations, to the congressional defense committees by December 15, 2014.</p> <p>The committee believes that peer review and design competition are critical components of nuclear stockpile stewardship and important means of ensuring the health and reliability of the stockpile in the absence of nuclear explosive testing. Because of its importance, the committee believes an independent assessment is needed to understand the effectiveness of current practices and a thorough analysis of previous instances where peer review and design competition either succeeded or failed to find problems. Further, in a constrained fiscal environment where funds for peer review and design competition may face significant pressure, the committee seeks to better understand the effectiveness and efficiency of alternative means of conducting peer review and design competition.</p>		
<p>☞ 3151—Use of Probabilistic Risk Assessment To Ensure Nuclear Safety</p> <p><i>Report</i>, pp. 351: “This section would require the Administrator for Nuclear Security and the Secretary of Energy to ensure that the methods for certifying and overseeing nuclear safety at defense nuclear facilities of the National Nuclear Security Administration (NNSA) and the Department of Energy’s Office of Environmental Management use national and international standards and nuclear industry best practices, including probabilistic risk assessment, for parts, equipment, and systems for which sufficient data exists to support such methods.</p> <p>The committee notes that the nuclear safety assessment and certification methods used by the Office of Environmental Management and the NNSA for proven systems have lagged behind more modern methods used by the nuclear power industry and the Nuclear Regulatory Commission. The highly prescriptive and deterministic methods used by the Office of Environmental Management and the NNSA have</p>		<p><i>Regarding the House language:</i></p>

<p>resulted in highly complex systems of engineered controls when more modern safety assessment and certification methods, such as probabilistic risk assessment, may result in much simpler systems with equally robust safety margins when sufficient data exists to support such methods. The committee expects the Office of Environmental Management and NNSA to consult with the Nuclear Regulatory Commission to understand and leverage lessons learned from the development and application of modern safety assessment and certification methods in both nuclear power reactors and other civilian nuclear facilities. The committee notes that these methods may not apply to one-of-a-kind parts, equipment, or systems.</p>		
<p>3152—Advice to President and Congress Regarding Safety, Security, and Reliability of United States Nuclear Weapons Stockpile and Nuclear Forces</p> <p><i>Report</i>, pp. 351-2: “This section would transfer section 7274p of title 42, United States Code, and re-designate it as section 4215 of the Atomic Energy Defense Act.</p> <p>This section would also amend and clarify the underlying statute to ensure that no person, including representatives of the President, may prevent or constrain a director of a national security laboratory, a director of a nuclear weapons production facility, a member of the Nuclear Weapons Council, or the Commander, U.S. Strategic Command from sharing his or her professional views with the President, the National Security Council, or Congress. This section would ensure that such individuals can freely share their professional views with national leaders on the safety, security, reliability, and credibility of the nuclear weapons stockpile and nuclear forces, as well as the status of, and plans for, the capabilities and infrastructure that support and sustain the nuclear weapons stockpile and nuclear forces. This section would ensure that these individuals can provide classified information on these matters directly to Congress, and it requires the Administrator for Nuclear Security and the Secretary of Defense to establish classified mail channels to enable provision of such information.</p> <p>The committee believes that all national leaders require access to the objective, independent, and unfiltered professional opinions of the Nation’s nuclear weapons experts. This section would ensure that the President, the National Security Council, and Congress have such direct access.</p>		<p><i>Regarding the House language:</i></p>
<p>3202—Improvements to the Defense Nuclear Facilities Safety Board</p> <p><i>Report</i>, pp. 355-6: “The section would amend the enabling statute of the Defense Nuclear Facilities Safety Board (DNFSB) to provide congressional direction regarding the DNFSB’s operation, clarify the DNFSB’s mission, and improve collaboration between the DNFSB and the Department of Energy.</p> <p>First, this section would clarify that each member of the DNFSB has equal responsibility and authority for establishing decisions and determining certain actions of the DNFSB, that each member must have full and simultaneous</p>		<p><i>Regarding the House language:</i></p>

<p>access to all information related to the DNFSB, that each member shall have one vote, that a quorum of members is needed for certain actions, and that each member of the DNFSB may propose individuals for senior staff positions and require a determination of the DNFSB on whether the individual will be appointed. This section would also require that each member of the DNFSB be provided funds to employ at least one technical advisor to directly support the member, and that such advisor would not be subject to the appointment, direction, or supervision of the DNFSB chairman.</p> <p>Second, this section would clarify that the mission of the DNFSB is to provide independent analysis, advice, and recommendations to the Secretary of Energy to ensure that risks to public health and safety at defense nuclear facilities are as low as reasonably practicable and that public health and safety are adequately protected. In any recommendations submitted to the Secretary, the DNFSB would be required to consider, and specifically assess, the technical and economic feasibility, the costs and benefits, and the practicability of implementing its recommended measures.</p> <p>Third, this section would revise the statutory authority for the DNFSB to submit recommendations to the Secretary of Energy, creating a more collaborative recommendation process in which the DNFSB provides a draft recommendation to the Secretary, who then has at least 45 days to provide comments on the recommendation. After this comment period, the DNFSB may choose to formalize and publish the recommendation in the Federal Register and seek public comment. After such publication, the Secretary of Energy would have at least 60 days to accept or reject the recommendation and publish a statement in the Federal Register regarding the recommendation and why it was accepted or rejected. If a recommendation is rejected, the DNFSB may transmit a letter to the Senate Committee on Armed Services and the House Committee on Armed Services. If a recommendation is accepted, the Secretary would be required to submit an implementation plan to the DNFSB within 120 days. Further, if the DNFSB submits a recommendation regarding an imminent or severe threat to public health and safety, the Secretary of Energy would have 15 days to provide comments to the President on the recommendation.</p> <p>Finally, this section would require certain reports of the DNFSB to be submitted to the Senate Committee on Armed Services and the House Committee on Armed Services, and the DNFSB to enter into an agreement with a Federal agency to procure the services of the Inspector General of that agency for the DNFSB.</p>		
<b>Recommended Provisions</b>		
<p>3145—Study on Reuse of Plutonium Pit</p> <p><i>Report</i>, pp. 350: “This section would require the Administrator for Nuclear Security to conduct a study of the plutonium pits available, and those that may become available as a result of nuclear weapon dismantlement, and assess the potential for reuse of these pits in future life</p>		

<p>extension programs. The study would include an analysis of: the feasibility and practicability of potential full or partial reuse options; the benefits and risks of reusing plutonium pits; the potential costs and cost savings; and the impacts of reuse on the requirements for pit manufacturing. This section would require the Administrator to submit a report on the results of the study to the congressional defense committees within 120 days after the date of the enactment of this Act.</p>		
<p><b>3153—Classification of Certain Restricted Data</b>  <i>Report</i>, pp. 352: “This section would amend section 142 of the Atomic Energy Act of 1954 (42 U.S.C. 2162) to permit the Secretary of Energy, in conjunction with the Secretary of Defense or the Director of National Intelligence, to restore certain information related to the design of nuclear weapons back into the Restricted Data category. This section would also make a technical correction to subsection 142e. of the Atomic Energy Act by updating the term ‘‘Director of Central Intelligence’’ to ‘‘Director of National Intelligence’’ to conform section 142e. with the transfer of functions contained in the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458).</p>	<p>Amends section 142 of the Atomic Energy Act to restore some data that was classified as formerly restricted data to restricted data.</p>	<p><i>Regarding the House language:</i>  <i>Regarding the Senate language:</i>  <a href="http://www.fas.org/blog/secretcy/2012/05/frd_reclass.html">http://www.fas.org/blog/secretcy/2012/05/frd_reclass.html</a></p>
<p><b>3154—Independent Cost Assessments for Life Extension Programs, New Nuclear Facilities, and Other Matters</b>  <i>Report</i>, pp. 352: “This section would require the Secretary of Defense, acting through the Director of Cost Assessment and Program Evaluation (CAPE) and in coordination with the Administrator for Nuclear Security, to assess the cost of options and alternatives for new life extension programs and new nuclear facilities within the nuclear security enterprise that are expected to cost more than \$500.0 million. This section would also require the Secretary of Defense to submit a copy of these cost assessments to the congressional defense committees within 30 days of their completion. Finally, this section would provide the Administrator for Nuclear Security the authority to ask the Secretary of Defense to seek a CAPE assessment on other initiatives of the National Nuclear Security Administration that are expected to cost more than \$500.0 million.    “The committee expects that an independent cost assessment will increase accountability and inform diligent planning to avoid budget overruns and schedule delays. The committee expects that the Administrator and the Secretary will conduct a cost estimate for upcoming life extension programs, including those for the W78 and W88.”</p>	<p>Requires the Secretary of Energy to submit Selected Acquisition Reports based on DOD requirements in 10 U.S.C. 2432 and Independent Cost Estimate of nuclear weapon life extension programs before entering phase 6.2A (design engineering) and 6.4 (production).</p>	
<p><b>3155—Assessment of Nuclear Weapon Pit Production Requirement</b>  <i>Report</i>, pp. 352-3: “This section would require the Secretary of Defense and the Secretary of Energy, in coordination with the Commander of U.S. Strategic Command, to jointly assess the annual plutonium pit production requirement needed to sustain a safe, secure, and reliable nuclear weapon arsenal. This section would require the Secretaries, not later than 180 days after enactment of this Act, to jointly submit a report regarding this assessment to the congressional defense</p>		

<p>committees. The report would be required to include an explanation of the rationale and assumptions that led to the current 50 to 80 plutonium pit production requirement; an analysis of whether there are any changes to the current 50 to 80 pit production requirement; the implications for national security, for maintaining the nuclear weapons stockpile (including options for life extension programs), and costs for various levels of pit production capacity (including annual production capacity of 10–12 pits, 20–30 pits, 30–50 pits and 50–80 pits); and the implications of various pit production capacities on the requirements for the nuclear weapon hedge or reserve forces of the United States.</p> <p>This section would require an update to this report if the report submitted does not incorporate the results of the currently ongoing Nuclear Posture Review Implementation Study. Such an update would be required to be submitted to the congressional defense committees within 90 days of the date on which the committees receive the results of the Nuclear Posture Review Implementation Study. Finally, this section would require that the report and any update be submitted in unclassified form, but allows a classified annex if necessary.</p>		
<b>Authorization Levels in billions (B) and millions (M)</b>		
Atomic Energy Defense: \$17.744 B	Atomic Energy Defense: \$17.4 B	Administration request: \$17.746 B House Appropriations Committee: \$17.008 B Senate Appropriations Committee: \$17.311 B
Weapons Activities: \$7.901	Weapons Activities: \$7.6 B	Administration request: \$7.577 B House Appropriations Committee: \$7.512 B Senate Appropriations Committee: \$7.577 B
04-D-125 CMRR: \$100 M plus unspent prior appropriations	04-D-125 CMRR: \$150 M, presumably plus unspent prior appropriations	Administration request: zero House Appropriations Committee: zero; rescind \$65 M of unspent balance, apply to safety improvements in PF-4 (\$30 M) and to cleaning out the PF-4 vault (\$35 M). Senate Appropriations Committee: zero, apply \$35 M to cleaning out the PF-4 vault, \$141.7 M to plutonium sustainment activities, \$8.9 M to continue upgrades to PF-4, and \$9 M for a study of pit reuse, making \$194.6 M in all for these programs.