

The Senate is voting to invoke cloture on the defense bill, meaning that it will be considered “as is” with no opportunity to amend. They should vote Thursday (19th) or Friday (20th). There should be no surprises moving forward.



Dear NACA Members:

The House and Senate are trying to finish the National Defense Authorization Act (NDAA) for the 52nd consecutive year. However, a tight timeline has impacted how this year’s defense bill will be finalized. The Senate had been working on its version, but was unable to find agreement on its own as to how best to deal with several hundred amendments offered by members. These amendments included four (4) Native contracting amendments. Two of these amendments are positive, while the other two are negative Native contracting provisions. The House adjourns this Friday for the remainder of the year, and the Senate is expected to adjourn on December 21. Therefore, in order to enact a bill, the two chambers have decided to negotiate a bill that would streamline the process. In this spirit, House and Senate negotiators have agreed upon the provisions to be included in a comprehensive bill that ultimately will be considered by both chambers. This process eliminates the need for a “conference committee” to reconcile differences between House and Senate versions, thereby reducing time to pass a final bill. This process offers little or no opportunity to amend the bill. As a result of this streamlined process, none of the Native contracting provisions, good or bad, were included in the final agreement. The following is a summary of all the provisions related to Native contracting, and the expected outcome of each in the final package.

Senate Amendments Offered but Not Included:

Pro-Native Contracting Provisions:

- *Amendment #2336 (Begich/Hirono/Schatz):* A repeal and replacement of Section 811, which would require the same justification and approval for all sole-source contracts at DOD over \$20 million.
- *Amendment #2427 (Schatz/Hirono):* Provides parity for NHO participation in the HUBZone program similar to Tribes and ANCs, and provides for the same application process of Tribes within the 8(a) program regarding proving economic disadvantage.

Negative Native Contracting Provisions:

- *Amendment #2193 (McCaskill/McCain):* Prohibits funding the Indian Incentive Program at Department of Defense
- *Amendment #2194 (McCaskill/McCain):* Prohibits 8(a) sole-source awards above the individual sole-source caps from counting towards DOD small business goals.

House Amendment Stripped from Final Agreement:

Section 835 (Young/Hanabusa): Reiterates that a justification and approval is delegable, not requiring the “Head of Agency” to approve each sole-source contract over \$20 million. This was included in the House passed version, but was not included in the final agreement. NACA understands Senate negotiators may have objected to its inclusion.

House and Senate Measures that Survived:

House:

While none of the amendments above are included in the final agreement, the House and Senate both did take smaller steps that may be beneficial to Native 8(a) contractors. During House debate, Congressman Young (R-AK) and Chairman Buck McKeon (R-CA) engaged in a colloquy discussing the impacts of Section 811, and the Chairman committed to writing a letter with Congressman Young to DOD regarding how Section 811 should be interpreted and to direct a review of how Section 811 has impacted Native 8(a) contractors.

Senate:

The Senate Armed Services Committee included language in its report accompanying the bill reiterating the Section 811 is not a cap, and directs DOD to issue guidance on proper implementation of Section 811.

NACA fought hard to include positive provisions, including a repeal of Section 811, while keeping out negative provisions offered by Senators McCaskill (D-MO) and McCain (R-AZ). Although no favorable provisions were included into the final package, negative provisions were also excluded. NACA is already looking towards next year’s bill to ensure that favorable provisions are included in the base text of the NDAA, as opposed to working through the amendment process. Although no positive provisions were included in the final package, all is not lost. NACA strongly believes that this year’s NDAA efforts and dialogue represents significant progress in the understanding of the importance of Native 8(a) program on the Hill, with a positive amendment being included in the House passed version, and two amendments introduced in the Senate, neither of which has occurred in the past years. NACA will continue to update its members about the NDAA and Native contracting provisions throughout the course of next year.

That all being said, while a final NDAA has been agreed to by principals, it must still be voted on by the full House and Senate. As of today, neither Chamber has yet taken up the package, but is expected to shortly. Of course, should anything unexpected occur, NACA staff will immediately inform membership.

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