



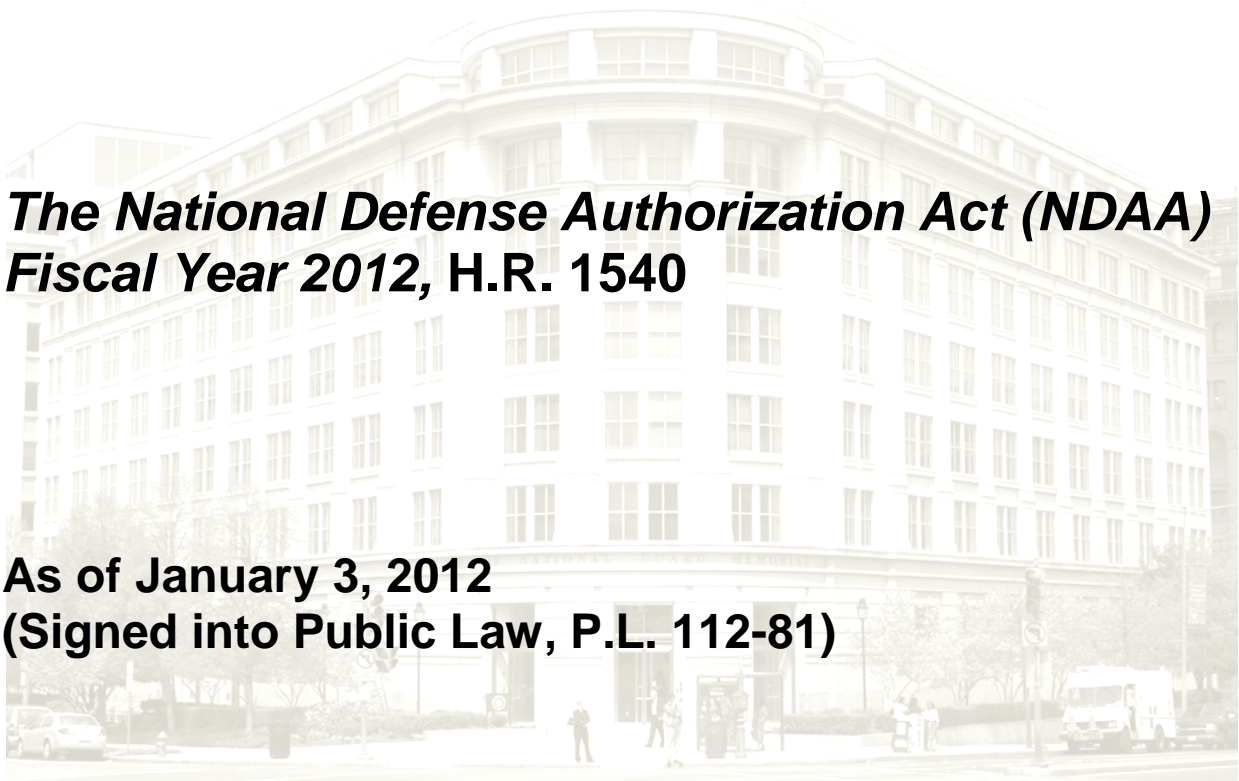
**NGAUS**

The National Guard Association of the United States

# ***Legislative Analysis***

***The National Defense Authorization Act (NDAA)  
Fiscal Year 2012, H.R. 1540***

**As of January 3, 2012  
(Signed into Public Law, P.L. 112-81)**



## Overview

On December 12, 2011 the House and Senate Conferees reported out Conference Report 112-329 of H.R. 1540, the Fiscal Year 2012 National Defense Authorization Act (NDAA). The House voted on and adopted the Conference Report by a vote of 283-136 on December 14, 2011.

During debate in the House on Wednesday the 14<sup>th</sup>, the White House issued a statement that the changes made to the language relating to detainee terrorism suspects in the Conference Report to H.R. 1540 were enough to satisfy President Obama's initial objections, thus the President lifted his veto threat on the bill.

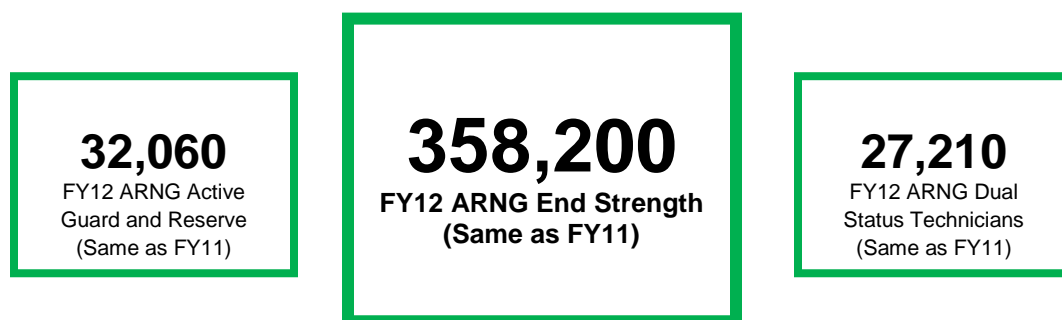
The Senate began debate on the Conference Report on the morning of December 15, 2011. By Thursday afternoon, on December 15, the Senate had adopted the Conference Report to H.R. 1540 by a vote of 86-13. The bill was officially presented to the President on December 21, 2011.

The conference agreement would authorize \$530 billion for the Department of Defense and \$115.5 billion to support the war in Afghanistan and operation in Iraq. It would authorize \$24.4 billion less than the President's request and roughly \$19 billion less than the Fiscal 2011 enacted levels. In total, H.R. 1540 authorizes **\$662.4 billion** for Fiscal Year 2012.

On December 31, 2011, President Obama signed H.R. 1540 into law, becoming Public Law 112-81 (P.L. 112-81).

## Army National Guard Strength

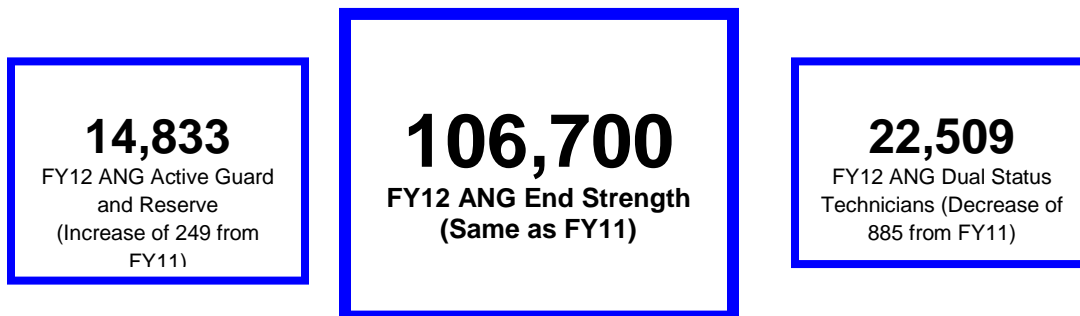
The Army National Guard's (ARNG) overall end strength level and authorized number of dual and non-dual status technicians remain the same as FY11 in P.L. 112-81.



**ARNG Non-Dual Status Technicians:** 1,600 (same as FY11)  
**ARNG ADOS:** 17,000 (same as FY11)

## Air National Guard Strength

In P.L. 112-81, the law decreases the number of Air National Guard Dual Status Technicians by 885 from FY11 levels and increases the number of ANG Active Guard and Reserve forces by 249. The ANG's overall end strength remains constant for FY12.



**ANG Non-Dual Status Technicians:** 350 (same as FY11)

**ANG ADOS:** 16,000 (same as FY11)

## Operation and Maintenance Authorizations

The Base Funding for ARNG O&M decreased compared to the President's budget request submitted in February 2011 for FY12 and ANG O&M stayed the same. In the funding table of Sec. 4301 of P.L. 112-81, the following is authorized;

For Army National Guard Operation and Maintenance (ARNG O&M) Base Funding in Fiscal Year 2012, the President requested **\$7.04 billion**. P.L. 112-81 authorizes **\$6.92 billion**, which is a decrease of about **\$120 million** below the President's budget request and **\$80 million** above the Senate passed December 1, S. 1867 FY12 NDAA.

For Air National Guard Operation and Maintenance (ANG O&M) Base Funding in Fiscal Year 2012, the President requested **\$6.13 billion**. P.L. 112-81 authorizes **\$6.10 billion**, which is a decrease of about **\$34 million** below the President's budget request and the same as the Senate passed December 1, S. 1867 FY12 NDAA.

## Overseas Contingency Operations, Operation and Maintenance Authorizations

The OCO Funding for ARNG O&M decreased compared to the President's budget request submitted in February 2011 for FY12 and ANG O&M OCO stayed the same. In the funding table of Sec. 4302 of P.L. 112-81, the following is authorized;

For Army National Guard Overseas Contingency Operations, Operation and Maintenance Authorizations (ARNG OCO- O&M), the President requested **\$387.5 million**. P.L. 112-81 authorizes **\$377.5 million**, which is a decrease of **\$10 million** below the President's budget request as well as the Senate passed December 1, S. 1867 NDAA.

For Air National Guard Overseas Contingency Operations, Operation and Maintenance Authorizations (ANG OCO- O&M), the President requested **\$34.1 million**. P.L. 112-81 authorizes **\$34.1 million**, which fully funds the President's budget request.

## **Military Construction Authorizations**

Over the past few years, NGAUS and others in the Guard community have placed an increased priority on modernizing National Guard facilities across the country. In the funding table of Sec. 4601 of P.L. 112-81, the following is authorized:

For Army National Guard Military Construction in Fiscal Year 2012, the President requested **\$773.6 million**. P.L. 112-81 authorizes **\$773.6 million**, which fully funds the President's budget request.

For Air National Guard Military Construction in Fiscal Year 2012, the President requested **\$116.2 million**. P.L. 112-81 authorizes **\$116.2 million**, which fully funds the President's budget request.

## **National Guard and Reserve Equipment**

The National Guard and Reserve Equipment account (NGREA) funds allow the National Guard to directly procure high-priority equipment that can be used for both the war fight and domestic response. In previous years, everything from trucks to aircraft targeting pods has been purchased with NGREA funds. P.L. 112-81 authorizes a total of **\$325 million** for National Guard and Reserve Equipment, an increase of **\$325 million** from the zero amount allocated in the Senate passed December 1, S. 1867 NDAA.

## ***Other Legislative Provisions***

**Public Law 112-81 contains a number of additional provisions pertaining to the National Guard. Below you will find a summary, compiled from the actual bill text and analysis by the National Guard Bureau Office of Legislative Liaison as well as the NGAUS Legislative Staff:**

### **SEC. 112. LIMITATION ON RETIREMENT OF C-23 AIRCRAFT**

This section would, upon retirement of a C-23, require the Secretary of the Army to offer the airframe to the state in which it is currently based at no cost. The State would be responsible for all operations and maintenance.

### **SEC. 131. STRATEGIC AIRLIFT AIRCRAFT FORCE STRUCTURE**

This section would reduce the number of strategic airlift airframes that must be maintained by the Air Force from 316 to 301.

### **SEC. 146. JSTARS RE-ENGINEING PROGRAM**

This section would require the Air Force to conduct an audit on the funds appropriated to re-engine E-8 JSTARS aircraft.

**SEC. 215. LIMITATION ON OBLIGATION OF FUNDS ON THE F-35 LIGHTENING II AIRCRAFT PROGRAM**

This section would authorize not more than 80 percent of the funds available for Fiscal Year 2012 for the F-35 program until the date when the Secretary of Defense certifies to the Congressional defense committees that the acquisition strategy for the F-35 Lightning II aircraft includes a plan for achieving competition throughout operation and sustainment, in accordance with the Weapons System Acquisition Reform Act of 2009.

**SEC. 244. COMPTROLLER GENERAL REPORT ON THE KC-46A AIRCRAFT ACQUISITION PROGRAM**

This section states that between the enactment of the bill and ending March 1, 2017, the Comptroller General of the United States shall conduct a review of the KC-46A aircraft acquisition program.

**SEC. 312. IMPROVED SIKES ACT COVERAGE OF STATE OWNED FACILITIES USED FOR THE NATIONAL DEFENSE**

This section would improve the coverage of State-owned National Guard facilities under the Sikes Act and would make certain technical modifications.

**SEC. 321. DEFINITION OF DEPOT-LEVEL MAINTENANCE AND REPAIR**

This section defines "Depot Level Maintenance" as, "any action performed on material or software in the conduct of inspection, repair, overhaul, or the modification or rebuild of end-items, assemblies, subassemblies and parts."

**SEC. 362. COMPTROLLER GENERAL REVIEW OF SPACE AVAILABLE TRAVEL ON MILITARY AIRCRAFT**

The section would require the Comptroller General to review and assess the effect on the cost and capacity of the Space Available program if the program were extended to un-remarried widows of active and reserve component members, and expanded for gray area retirees to include overseas travel.

**SEC. 511. LEADERSHIP OF THE NATIONAL GUARD BUREAU, VICE CHIEF**

The section would re-establish the position of the Vice Chief, National Guard Bureau at the three-star level.

**SEC. 512. MEMBERSHIP OF THE CHIEF OF THE NATIONAL GUARD BUREAU ON THE JOINT CHIEFS OF STAFF**

This section designates the Chief of the National Guard Bureau as a member of the Joint Chiefs of Staff.

**SEC. 513. MODIFICATION OF PRESEPERATION COUNSELING FOR RESERVE COMPONENT MEMBERS BEING DEMOBILIZED**

This section would require the Secretary of Defense to clarify in policy the availability of pre-separation counseling to members of the reserve component demobilizing less than 90 days before the projected date of discharge or release from active duty when operational requirements make it unfeasible to do so at an earlier date.

**SEC. 514. CLARIFICATION OF APPLICABILITY OF AUTHORITY FOR DEFERRAL OF MANDATORY SEPARATION OF MILITARY TECHNICIANS (DUAL STATUS) UNTIL AGE 60**

This section clarifies that the Secretary of the Army and the Secretary of the Air Force may allow a military technician (dual status) to continue serving beyond their mandatory separation

date until the technician reaches the age of 60 and becomes eligible for an unreduced civilian annuity, if they otherwise continue to meet the requirements for dual status.

#### **SEC. 515. AUTHORITY TO ORDER SELECTED RESERVE TO ACTIVE DUTY**

The section would modify section 12304 of Title 10 to allow the Service Secretaries to order members of the Reserve Component to active duty other than during times of war or national emergency. The provision is limited to no more than 60,000 members at any one time. This provision differs from the President's submission by increasing the number of members from 10,000 to 60,000. Another significant difference is that the Senate bill grants the authority to the Service Secretaries as opposed to the Secretary of Defense. The Senate Committee report last summer acknowledges that this provision enhances the role of the operational reserve.

#### **SEC. 516. AUTHORITY FOR ORDER TO ACTIVE DUTY OF UNITS OF THE SELECTED RESERVE FOR PREPLANNED MISSIONS IN SUPPORT OF COMBATANT COMMANDS**

This section would authorize the secretary of a military department to order units, and certain members of the Selected Reserve or the Individual Ready Reserve, without the consent of the members concerned, to active duty for not more than 365 consecutive days for preplanned missions in support of a combatant command.

#### **SEC. 517. MODIFICATION OF ELIGIBILITY FOR PROMOTION FOR CERTAIN RESERVE OFFICERS EMPLOYED AS DUAL STATUS MILITARY TECHNICIANS**

This section would clarify that reserve officers employed as military technicians (dual status) who have been retained beyond their mandatory removal date for years of service under either section 10216(f) or 14702(a)(2) of title 10, United States Code, are not eligible for consideration for promotion by a mandatory promotion board convened under section 14101(a) of title 10, United States Code.

#### **SEC. 518. CONSIDERATION OF RESERVE COMPONENT OFFICERS FOR APPOINTMENT TO CERTAIN COMMAND POSITIONS**

This section would require that whenever officers of the Armed Forces are considered for appointment to the position of Commander, Army North Command or Commander, Air Force North Command, fully qualified officers of the National Guard and the Reserves shall be considered for appointment to such position.

#### **SEC. 519. REPORT ON TERMINATION OF MILITARY TECHNICIAN AS A DISTINCT PERSONNEL MANAGEMENT CATEGORY**

This section would require the Secretary of Defense to submit a report on terminating military technicians as a personal management category. This section suggests the removal from promotion eligibility those Reserve officers of the Army and Air Force employed as dual status military technicians who had been retained on the Reserve Active status list beyond the mandatory removal date normally required after reaching their maximum number of years of service. This provision differs from the President's submission because the submission only applies to Army technicians.

#### **SEC. 533. DEPARTMENT OF DEFENSE SUICIDE PREVENTION PROGRAM**

This section would direct the Secretary of Defense to coordinate with each military department to enhance current suicide prevention information sharing services for members of the Armed Forces. Coordinated efforts would occur at various stages of training from their initial enlistment or appointment through their final retirement or separation. In addition, it would include in pre-separation counseling the availability to the member and dependents of suicide prevention resources following separation from the armed forces.

**SEC. 556. RESERVE COMPONENT MENTAL HEALTH STUDENT STIPEND**

This section would expand an existing stipend program to include post-baccalaureate degrees and training leading to certification as a licensed mental health provider in Clinical Psychology or Social Work. It would also require recipients of the stipend under this authority to agree to serve in the Selected Reserve.

**SEC. 574. REVISION TO MEMBERSHIP OF DEPARTMENT OF DEFENSE MILITARY FAMILY READINESS COUNCIL**

This section would amend section 1781a of title 10, United States Code, to revise the membership of the Department of Defense Military Family Readiness Council to include family members, including parents, of members of the military services and members of the reserve component.

**SEC. 575. REEMPLOYMENT RIGHTS FOLLOWING CERTAIN NATIONAL GUARD DUTY**

This section would provide rights under the Uniformed Services Employment and Reemployment Rights Act (Public Law 103-353) to National Guard service under section 502(f) of title 32, United States Code, when such service was authorized by the President or Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by federal funds.

**SEC. 590. ENHANCEMENT AND IMPROVEMENT OF YELLOW RIBBON REINTEGRATION PROGRAM**

This section would enhance the Yellow Ribbon Reintegration Program to improve processes for determining best practices for information dispersal and outreach services, as well as improve collaboration with state programs.

**SEC. 611. BONUS AND PAY FOR RESERVE FORCES**

This section would extend for 1 year the authority to pay the Selected Reserve reenlistment bonus, the Selected Reserve affiliation or enlistment bonus, special pay for enlisted members assigned to certain high-priority units, the Ready Reserve enlistment bonus for persons without prior service, the Ready Reserve enlistment and reenlistment bonus for persons with prior service, the Selected Reserve enlistment and reenlistment bonus for persons with prior service, and income replacement for reserve component members experiencing extended and frequent mobilization for active duty service. (Also a 1.6% increase in overall military pay would be effective January 1, 2012)

**SEC. 621. EXTENSION OF INACTIVE DUTY REIMBURSEMENT TRAVEL**

This section would extend for 1 year the authority to reimburse travel expenses for inactive-duty training outside of normal commuting distances.

**SEC. 651. DEATH GRATUITY FOR INACTIVE DUTY TRAINING**

This section would clarify eligibility for death gratuity and related benefits for reserves that die during an authorized stay at their residence during or between successive days of inactive duty training. It also would require the Secretary of the Army to use appropriate authority, including the authority under section 127 of title 10, United States Code, to equitably resolve certain cases in which reserve component members participating in inactive-duty training are determined not to be covered under section 1475 of title 10, United States Code, including cases involving deaths occurring before the date of enactment of this Act.

**SEC. 661. REPORT ON BASIC ALLOWANCE FOR HOUSING (BAH) FOR NATIONAL GUARD MEMBERS TRANSITIONING FROM ACTIVE DUTY**

This section would require the Secretary of Defense to study the implications on BAH for members of the National Guard when they transition between fulltime National Guard duty under title 32, United States Code, and active duty under title 10, United States Code, taking into account current laws, policies, and practices, and the well being of service members and their families. The section would also require the Secretary to report to the congressional defense committees the results of this study within 5 months of the date of enactment of this Act.

**SEC. 662. REPORT ON RECRUITMENT AND RETENTION OF HEALTHCARE PROFESSIONALS**

This section would require the Surgeons General of the Army, Navy, and Air Force to report to Congress within 90 days of the date of enactment of this Act on their staffing needs for health care professionals and to provide recommendations on additional recruiting incentives needed to encourage experienced health care professionals to join the active or reserve components.

**SEC. 702. MENTAL HEALTH ASSESSMENTS FOR ARMED FORCES DEPLOYED IN SUPPORT OF A CONTINGENCY OPERATION**

This section would codify, with several modifications, the existing legislative requirement for the Secretary of Defense to provide person-to person mental health assessments for each member of the armed forces who is deployed in support of a contingency operation at specified times before and after the deployment. This would align the timing of the mental health assessments with the timing of required periodic health assessments.

**SEC. 703. BEHAVIORAL HEALTH SUPPORT FOR MEMBERS OF THE RESERVE COMPONENT**

This section would require the Secretary of Defense to provide access to mental health assessments to members of the reserve components during scheduled unit training and assemblies. The provision would also require the Secretary to provide psychological health programs and training on suicide prevention and post-suicide response during scheduled unit training. These assessments would be permissive, and funding for these programs would be provided from operations and maintenance accounts of the reserve components.

**SEC. 711. IMPROVEMENT OF PROCEDURES FOR MENTAL HEALTH EVALUATIONS**

This section would amend chapter 55 of title 10, United States Code, to require the Secretary of Defense to prescribe and maintain regulations relating to commanding officer and supervisor referrals of members of the armed forces for mental health evaluations.

**SEC. 712. EXTENSION ON TIME LIMIT FOR TRICARE CLAIMS OUTSIDE THE UNITED STATES**

This section would extend the time limit for TRICARE claims outside the United States to be no later than three years after the services have been provided.

**SEC. 713. EXPANSION OF STATE LICENSURE EXCEPTIONS FOR MENTAL HEALTH CARE PROFESSIONALS**

This section would expand the Department of Defense state licensure exception to qualified and credentialed DOD health-care professionals, including contractors and civilians.

**SEC. 723. REPORT ON RESEARCH AND TREATMENT OF PTSD**

This section would require the Secretary of Defense to submit to the congressional defense committees a report assessing the benefits of neuroimaging research in an effort to identify and increase the diagnostic properties of post-traumatic stress disorder (PTSD).

**SEC. 724. REPORT ON TRAUMATIC BRAIN INJURIES (TBI)**

This section would require the Secretary of Defense to submit to the congressional defense committees, not later than 180 days after the date of enactment of this Act, a report on the policy of the Department of Defense related to the management of traumatic brain injuries.

**SEC. 1003A. DISPLAY OF PROCUREMENT OF EQUIPMENT FOR RESERVE COMPONENT IN FUTURE YEARS DEFENSE PROGRAMS**

This section would require the Department of Defense, in its future-years defense program submitted with its annual budget request, to display separately the estimated expenditures and item quantities for each reserve component of the armed forces.

**SEC. 1005. THREE YEAR EXTENSION OF DEPARTMENT OF DEFENSE SUPPORT OF COUNTERDRUG ACTIVITIES**

This section would extend, by 3 years, the authority of the Department of Defense to provide additional support to counterdrug activities of other governmental agencies under section 1004 of the National Defense Authorization Act for Fiscal Year 1991.

**SEC. 1070. CHANGE OF DEADLINE FOR NATIONAL GUARD AND RESERVE EQUIPMENT REPORT**

This section would delay the required submission date for the annual National Guard and Reserve component equipment report from February 15 until March 15.

**SEC. 1080A. REPORT ON COMPARATIVE COST ANALYSIS BETWEEN RESERVE COMPONENT AND ACTIVE COMPONENT**

This section would require the Secretary of Defense to submit to the congressional defense committees not later than 180 days after the date of enactment of this Act a report setting forth an analysis of the costs of a sample of deployable units of the active components of the armed forces and the costs of a sample of similar deployable units of the reserve components of the armed forces.

**SEC. 1085. USE OF STATE PARTNERSHIP PROGRAM FUNDS**

This section would authorize the National Guard to use up to \$3.0 million of the funds made available through the State Partnership Program to pay travel and per diem costs associated with the participation of U.S. and foreign civilian and non-defense ministry personnel in authorized National Guard State Partnership Program events.

**SEC. 1234. REPORT ON THE NATIONAL GUARD STATE PARTNERSHIP PROGRAM**

This section would direct the Comptroller General of the United States to conduct a review of the effectiveness of the National Guard State Partnership Program and provide the results of the review to the Committees on Armed Services of the Senate and the House of Representatives no later than March 31, 2012.

**SEC. 1404 DRUG INTERDICTION AND COUNTER DRUG**

This section would authorize **\$1.15 billion** for drug interdiction and counter drug activities of the Department of Defense. This is a decrease of **\$20 million** from the President's budget request and an increase of **\$170 million** from the Senate passed December 1, S. 1867 NDAA.

**SEC. 4101. ABRAMS TANK INDUSTRIAL BASE AND GUARD MODERNIZATION**

This section in the funding table would provide **\$436 million** for the Abrams Tank Upgrade Program. This is an increase of **\$15 million** from the Senate passed December 1, S. 1867, NDAA and an increase of **\$255 million** from the President's budget request.