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Before the

Subcommittee on Emerging Threats and Capabilities

COMMITTEE ON
ARMED SERVICES

UNITED STATES SENATE

HEARING TO MARK UP THE NATIONAL DEFENSE
AUTHORIZATION ACT FOR FISCAL YEAR 2017

Tuesday, May 10, 2016

Washington, D.C.

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HEARING TO MARK UP
THE NATIONAL DEFENSE AUTHORIZATION ACT
FOR FISCAL YEAR 2017

Tuesday, May 10, 2016

U.S. Senate
Subcommittee on Emerging
Threats and Capabilities
Committee on Armed Services
Washington, D.C.

The subcommittee met, pursuant to notice, at 3:31 p.m.,
in Room SD-G50, Dirksen Senate Office Building, Hon. Deb
Fischer, chairman of the subcommittee, presiding.

Members Present: Senators Fischer [presiding], Ayotte,
Cotton, Ernst, Nelson, Manchin, Shaheen, Gillibrand,
Donnelly, and Kaine.

1 OPENING STATEMENT OF HON. DEB FISHER, U.S. SENATOR
2 FROM NEBRASKA

3 Senator Fischer: Good afternoon. The Emerging Threats
4 and Capabilities Subcommittee will come to order.

5 I am pleased that the markup of the Emerging Threats
6 and Capabilities Subcommittee is going to be held in open
7 session to mark up an original bill, the National Defense
8 Authorization Act for Fiscal Year 2017. And I am confident
9 that we can conduct our business in public without any
10 disclosure of classified information or any adverse impact
11 to the process.

12 In this regard, I ask that any senator wishing to offer
13 an amendment or raise an issue of a classified nature defer
14 to the full committee's consideration. And please note that
15 while the subcommittee is an open session, there is -- this
16 is an executive session, and the entire contents of the
17 markup book are subject to amendment throughout its
18 consideration by the full Armed Services Committee, and,
19 therefore, embargoed until passage by the full committee and
20 reported to the full Senate.

21 Traditionally, the subcommittee has used the chairman's
22 mark as the markup vehicle. Without objection, we will use
23 the chairman's mark as the markup vehicle subject to
24 amendment. Is there objection?

25 [No response.]

1 Senator Fischer: There being no objection, it is so
2 ordered.

3 I would first like to thank Senator Nelson for his
4 contributions as the ranking member and my colleagues for
5 their participation in subcommittee hearings and briefings
6 this year. We have had a number of productive hearings on
7 emerging threats and capabilities, and the hard work of many
8 senators is incorporated into the bipartisan mark before us
9 today.

10 Before turning to Senator Nelson for his opening
11 comments, I would like to briefly discuss some of this
12 mark's key features.

13 First and foremost, this mark supports the needs of our
14 warfighters. It authorizes \$10.8 billion for U.S. Special
15 Operations Command, including an additional \$26.8 million to
16 address technology gaps on its fleet of MQ-9 Reaper remotely
17 piloted aircraft while reallocating \$45.3 million from
18 unjustified growth in civilian compensation for higher
19 priority operational requirements.

20 The mark provides an additional \$12.7 million to help
21 address shortfalls in U.S. Southern Command's intelligence,
22 surveillance, and reconnaissance capabilities. The mark
23 authorizes \$3.4 billion for the Afghanistan Security Force
24 Fund to preserve gains made over the last 14 years. In the
25 rapidly evolving area of cyber security, it requires the

1 President to assess and report on military and non-military
2 options available to deter Russia, China, Iran, North Korea,
3 and terrorist organizations in cyberspace, as well as
4 requiring an evaluation of the cyber vulnerabilities of DOD
5 weapons systems by the beginning of 2020.

6 In the science and technology portion of the mark, the
7 committee has identified over \$50 million in savings by
8 eliminating duplicative efforts and more efficiently
9 managing programs. These resources are reinvested in higher
10 priority areas with a focus on warfighter requirements. The
11 mark also significantly reforms the Department of Defense
12 training programs designed to build partner capacity by
13 consolidating security cooperation authorities from Title 10
14 and elsewhere in public law into one single chapter of U.S.
15 Code. Additionally, the mark requires the Department of
16 Defense to submit a consolidated budget justification for
17 its security cooperation activities.

18 Together I believe these steps will substantially
19 reduce the inefficient patchwork of legal authorities and
20 significantly improve operational outcomes, program
21 management, and congressional oversight. By breaking down
22 the stovepipes, these changes will also enable the
23 Department to better align security cooperation activities
24 with strategic objectives.

25 At this point I would want to offer the ranking member,

1 Senator Nelson, the opportunity to make any opening
2 statement he would like to make. Senator Nelson.

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1 STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM
2 FLORIDA

3 Senator Nelson: Madam Chair, it apparent -- it is
4 apparent that great minds think alike because your staff in
5 drafting that speech has drafted for me almost the identical
6 -- almost the identical words. So I will spare the
7 committee the indulgence of having me go through.

8 Let me just say one area that I do not think you
9 mentioned, security assistance. This mark includes a
10 package of proposals related to Department of Defense's
11 security cooperation and assistance, and it is intended to
12 simplify and consolidate those authorities. The Department
13 has rightly developed this proposal in response to
14 complaints from the combatant commander and security
15 cooperation implementers on the growing patchwork of
16 security cooperation and assistance authorities.

17 And so, indeed this senator has been pleased to work
18 with you, and I think the symmetry of our staff certainly
19 indicates the degree of their excellence. So thank you,
20 Madam Chairman.

21 Senator Fischer: Thank you, Senator Nelson. I, too,
22 think the similarity in our statements is reflective of the
23 good work that we have done together on this subcommittee.
24 You and I have, I think, made a point of making sure that we
25 have agreement on many issues. The committee as a whole has

1 been very easy to work with. We all understand the
2 importance of this area and the challenges we face, so thank
3 you, Senator Nelson.

4 Before we begin the amendment process, I want to remind
5 my colleagues that any amendment to add funding must include
6 an offset. And I understand we have a package of 19 cleared
7 amendments, three of which require a report from the
8 Department. These amendments have been reviewed by the
9 majority and the minority staff and jointly recommended for
10 adoption. The package of amendments is on the table in
11 front of you, and I would ask that the package of cleared
12 amendments be considered at this time.

13 The package begins with the Sullivan Amendment Number
14 26, as modified, and ends with the Ayotte Amendment Number
15 241, as modified. If there are no questions or debate on
16 these amendments, I would ask unanimous consent that the
17 package of cleared amendments be adopted en bloc.

18 Is there any objection?

19 Senator Shaheen: Madam Chair?

20 Senator Fischer: Senator Shaheen.

21 Senator Shaheen: Is it appropriate to speak to any of
22 these amendments at this point, or would you prefer we adopt
23 them first?

24 Senator Fischer: I would prefer if you are in
25 agreement with the amendments that we adopt them first, and

1 then if there are individual ones, we can certainly address
2 them.

3 Senator Shaheen: Great, thank you.

4 Senator Fischer: Thank you. Did I hear a second?

5 Senator Manchin, thank you.

6 And without objection then, the amendments are adopted,
7 and they will be added to the subcommittee mark.

8 Senator Shaheen, did you have a comment to make?

9 Senator Shaheen: I do. I wanted to thank you and
10 Senator Nelson for including Amendment Number 168, which is
11 -- it is language that relates to predictable funding for
12 the National Guard Counterdrug Program.

13 As we all know, we have a crisis in this country with
14 respect to heroin and opioid abuse, and deaths, and
15 destroyed families and communities as the result of drug
16 use. And what this language does is to ask the National
17 Guard Counterdrug Program to look at the timing of funding
18 for that program and to direct the undersecretary of defense
19 to work with the National Guard Bureau to develop a process
20 to ensure more consistent and predictable funding to
21 mitigate gaps or delays.

22 I had the opportunity to get a briefing from the
23 National Guard last week while we were in State in New
24 Hampshire. And one of the things -- they pointed out two
25 things to me that I hope we would all be concerned about.

1 One is the timing of funding. Right now funding for this
2 program is on annual basis, and yet in New Hampshire they
3 said one of the challenges we have is that to train an
4 analyst takes two years, and yet they can only guarantee
5 funding for one year.

6 The other thing they pointed out is that there is a
7 base amount of funding for this program that is only
8 \$500,000 a year for a number of States, and that in funding
9 that amount to States, they do not look at the impact of
10 heroin and opioid abuse in those States, so that West
11 Virginia is funded at that base level even though West
12 Virginia has one of the biggest challenges with respect to
13 drug use in the country. New Hampshire is funded at that
14 level even though we have the highest percentage of drug
15 overdose deaths in the country. There are a number of other
16 States that have that same challenge.

17 So I would hope that this language would cause the
18 National Guard Bureau to stand up and pay attention to how
19 that funding is done and how the base amount is allocated so
20 that it looks at how States are affected when giving out the
21 funding. Thank you, Madam Chair.

22 Senator Fischer: Thank you, Senator Shaheen. Are
23 there any other amendments that senators wish to call up?
24 Senator Gillibrand.

25 Senator Gillibrand: Madam Chairwoman, I wish to call

1 up Gillibrand Amendment 204, as modified. And I will give
2 the committee the context of this amendment.

3 In 2015, the National Guard Bureau announced the
4 creation of 10 Army National Guard cyber protection teams
5 over 23 States. These cyber protection teams are uniquely
6 positioned to support Federal and State governments at a
7 time when our critical infrastructure is already being
8 hacked.

9 The Army has said over and over again, and I have asked
10 these questions in our hearings, that it intends to train
11 the Army Guard CPTs to the same standard as the active force
12 CPTs, but it did not fund Guard CPT training in last year's
13 budget request or this year's. Now the Army says it is
14 going to budget for it in next year's budget request, and my
15 view is we cannot wait until threats continue to multiply.

16 The Air Force decided at least a year ago that its
17 Guard CPTs were going to be part of the force present -- the
18 force presented to Cyber Command. The Army keeps putting
19 off this decision. Now we hear that the Army leadership is
20 poised to make the Guard units part of its cyber force
21 commitment to Cyber Command, so that ups the ante for
22 getting these units trained and ready. The deficit is \$10
23 million.

24 The Guard requested funding in its budget proposals to
25 the Army. The Army's Internal Training Board approved the

1 requirement. The Army says that at some point in the
2 process the Guard appears to uphold the funding request, but
3 we do not know why that happened. My staff has been trying
4 to negotiate a solution to this matter for weeks now.

5 We agreed to a piece of report language which requires
6 no funding, report language addressing this issue except for
7 one sentence, a sentence at the end that tells the Army and
8 Guard to work out this funding problem and fix it. We do
9 not assign blame to anyone or say where the money has to
10 come from. We just tell them they have to fix the training
11 shortfall.

12 So I am very concerned about readiness of our cyber
13 mission forces. There are 10 of these Army National Guard
14 units waiting for training, so I think this is a readiness
15 issue. And so, I want that request for report language to
16 be put in the bill.

17 Senator Fischer: Senator Gillibrand, I understand the
18 amendment has not been cleared on the staff level, and
19 members on the outside of the committee might have concerns
20 on this. Would you be willing to advance it to the full
21 committee?

22 Senator Gillibrand: I would, but I would like the
23 assistance of staff to get it in the full committee's mark
24 because I think it is non-controversial. It is not
25 requesting money, and if it did, it is \$10 million. But it

1 does not. It is just asking for report language. And since
2 we have had many hearings on Cyber Command, I think it is
3 something that a lot of the members are concerned about.

4 Senator Fischer: Okay. I would offer that the
5 majority staff would be willing to work with you on that.

6 Senator Gillibrand: Thank you. Thank you very much.

7 Senator Fischer: Yes.

8 Senator Ayotte: Eric, could I be added as a --

9 Senator Fischer: Senator Ayotte.

10 Senator Ayotte: Thank you. Could I be added as a co-
11 sponsor to Senator Gillibrand's Amendment Number 204?

12 Senator Fischer: Without objection.

13 Senator Ayotte: Thank you.

14 Senator Fischer: Any other amendments from senators?
15 Senator Kaine.

16 Senator Kaine: Madam Chair, I would like to call up
17 Kaine 258, as modified. This is an amendment that I
18 understand has now been cleared by the staffs on both sides,
19 and it is a fairly simple one. We have had a lot of
20 discussion in the committee about the third offset strategy.
21 And this is an amendment that would ask the DOD to provide a
22 report to us on what their top five acquisition priorities
23 are to implement the offset strategy, and whether the
24 industrial base currently has the ability to meet those
25 priorities.

1 So this would give us sort of two things -- well,
2 three. They are priorities whether the American industrial
3 base can meet them, and it also gives us some budgetary
4 ideas about acquisition as we go down the road to help them
5 accomplish this end. And that is what 258, as modified,
6 would do. And it is my understanding that this has been
7 cleared by both sides.

8 Senator Fischer: Okay. Is there any objection to the
9 amendment?

10 [No response.]

11 Senator Fischer: Without objection, the amendment is
12 adopted.

13 Are there other amendments?

14 [No response.]

15 Senator Fischer: If there are no further amendments to
16 be considered, we will conclude this markup.

17 Without objection, the recommendations of the -- pause.

18 I will entertain a motion at this time that the
19 subcommittee adopt these agreed amendments as part of the
20 Emerging Threats and Capabilities Subcommittee mark.

21 Voice: So move.

22 Senator Fischer: Is there a second?

23 Voice: Second.

24 Senator Fischer: There is. All in favor, say aye.

25 [A chorus of ayes.]

1 Senator Fischer: All opposed, nay.

2 [No response.]

3 Senator Fischer: The motion is agreed to.

4 I move that the recommendations of the subcommittee be
5 reported to the full committee, and that the staff be
6 authorized to draft necessary bill and report language, and
7 to make necessary technical and conforming changes. Is
8 there a second?

9 Voice: Second.

10 Senator Fischer: All in favor, aye.

11 [A chorus of ayes.]

12 Senator Fischer: Opposed, no.

13 [No response.]

14 Senator Fischer: The motion is agreed to.

15 Is there any other business to come before the
16 subcommittee?

17 [No response.]

18 Senator Fischer: I would once again remind members and
19 staff that this is an executive session, and matters
20 discussed here today, including the subcommittee's
21 recommendations, may not be disclosed until released by the
22 full committee.

23 The markup is adjourned.

24 [Whereupon, at 3:49 p.m., the hearing was adjourned.]

25