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

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

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

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

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

[No response.]
Senator Fischer: There being no objection, it is so ordered.

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

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

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

The mark provides an additional $12.7 million to help address shortfalls in U.S. Southern Command's intelligence, surveillance, and reconnaissance capabilities. The mark authorizes $3.4 billion for the Afghanistan Security Force Fund to preserve gains made over the last 14 years. In the rapidly evolving area of cyber security, it requires the
President to assess and report on military and non-military options available to deter Russia, China, Iran, North Korea, and terrorist organizations in cyberspace, as well as requiring an evaluation of the cyber vulnerabilities of DOD weapons systems by the beginning of 2020.

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

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

At this point I would want to offer the ranking member,
Senator Nelson, the opportunity to make any opening statement he would like to make. Senator Nelson.
STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

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

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

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

Senator Fischer: Thank you, Senator Nelson. I, too, think the similarity in our statements is reflective of the good work that we have done together on this subcommittee. You and I have, I think, made a point of making sure that we have agreement on many issues. The committee as a whole has
been very easy to work with. We all understand the
importance of this area and the challenges we face, so thank
you, Senator Nelson.

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

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

Is there any objection?

Senator Shaheen: Madam Chair?

Senator Fischer: Senator Shaheen.

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

Senator Fischer: I would prefer if you are in
agreement with the amendments that we adopt them first, and
then if there are individual ones, we can certainly address them.

Senator Shaheen: Great, thank you.

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

Senator Manchin, thank you.

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

Senator Shaheen, did you have a comment to make?

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

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

I had the opportunity to get a briefing from the National Guard last week while we were in State in New Hampshire. And one of the things -- they pointed out two things to me that I hope we would all be concerned about.
One is the timing of funding. Right now funding for this program is on annual basis, and yet in New Hampshire they said one of the challenges we have is that to train an analyst takes two years, and yet they can only guarantee funding for one year.

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

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

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

Senator Gillibrand: Madam Chairwoman, I wish to call
up Gillibrand Amendment 204, as modified. And I will give
the committee the context of this amendment.

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

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

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

The Guard requested funding in its budget proposals to
the Army. The Army's Internal Training Board approved the
requirement. The Army says that at some point in the process the Guard appears to uphold the funding request, but we do not know why that happened. My staff has been trying to negotiate a solution to this matter for weeks now.

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

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

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

Senator Gillibrand: I would, but I would like the assistance of staff to get it in the full committee's mark because I think it is non-controversial. It is not requesting money, and if it did, it is $10 million. But it
does not. It is just asking for report language. And since we have had many hearings on Cyber Command, I think it is something that a lot of the members are concerned about.

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

Senator Gillibrand: Thank you. Thank you very much.

Senator Fischer: Yes.

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

Senator Fischer: Senator Ayotte.

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

Senator Fischer: Without objection.

Senator Ayotte: Thank you.

Senator Fischer: Any other amendments from senators?

Senator Kaine.

Senator Kaine: Madam Chair, I would like to call up Kaine 258, as modified. This is an amendment that I understand has now been cleared by the staffs on both sides, and it is a fairly simple one. We have had a lot of discussion in the committee about the third offset strategy. And this is an amendment that would ask the DOD to provide a report to us on what their top five acquisition priorities are to implement the offset strategy, and whether the industrial base currently has the ability to meet those priorities.
So this would give us sort of two things -- well, three. They are priorities whether the American industrial base can meet them, and it also gives us some budgetary ideas about acquisition as we go down the road to help them accomplish this end. And that is what 258, as modified, would do. And it is my understanding that this has been cleared by both sides.

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

[No response.]

Senator Fischer: Without objection, the amendment is adopted.

Are there other amendments?

[No response.]

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

Without objection, the recommendations of the -- pause. I will entertain a motion at this time that the subcommittee adopt these agreed amendments as part of the Emerging Threats and Capabilities Subcommittee mark.

Voice: So move.

Senator Fischer: Is there a second?

Voice: Second.

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

[A chorus of ayes.]
Senator Fischer: All opposed, nay.

[No response.]

Senator Fischer: The motion is agreed to.

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

Voice: Second.

Senator Fischer: All in favor, aye.

[A chorus of ayes.]

Senator Fischer: Opposed, no.

[No response.]

Senator Fischer: The motion is agreed to.

Is there any other business to come before the subcommittee?

[No response.]

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

The markup is adjourned.

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