

National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81)

(Excerpt from Pages 848-861)

SEC. 1004. COMMISSION ON PLANNING, PROGRAMMING, BUDGETING, AND EXECUTION REFORM.

(a) Establishment.—

(1) In general.—There is hereby established an independent commission in the legislative branch to be known as the “Commission on Planning, Programming, Budgeting, and Execution Reform” (in this section referred to as the “Commission”). (2) Date of establishment.—The Commission shall be established not later 30 days after the date of the enactment of this Act.

(b) Membership.—

(1) Number and appointment.—The Commission shall be composed of 14 civilian individuals not employed by the Federal Government who are recognized experts and have relevant professional experience one or more of the following: (A) Matters relating to the planning, programming, budgeting, and execution process of the Department of Defense. (B) Innovative budgeting and resource allocation methods of the private sector. (C) Iterative design and acquisition process. (D) Budget or program execution data analysis.

(2) Members.—The members shall be appointed as follows: (A) The Secretary of Defense shall appoint two members. (B) The Majority Leader and the Minority Leader of the Senate shall each appoint one member. (C) The Speaker of the House of Representatives and the Minority Leader shall each appoint one member. (D) The Chair and the Ranking Member of the Committee on Armed Services of the Senate shall each appoint one member. (E) The Chair and the Ranking Member of the Committee on Armed Services of the House of Representatives shall each appoint one member. (F) The Chair and the Ranking Member of the Committee on Appropriations of the Senate shall each appoint one member. (G) The Chair and the Ranking Member of the Committee on Appropriations of the House of Representatives shall each appoint one member.

(3) Deadline for appointment.—Not later than 30 days after the date described in subsection (a)(2), members shall be appointed to the Commission.

(4) Expiration of appointment authority.—The authority to make appointments under this subsection shall expire on the date described in subsection (a)(2), and the number of members of the Commission shall be reduced by the number equal to the number of appointments so not made.

(c) Chair and Vice Chair.—The Commission shall elect a Chair and Vice Chair from among its members.

(d) Period of Appointment and Vacancies.—Members shall be appointed for the term of the Commission. A vacancy in the Commission shall not affect its powers and shall be filled in the same manner as the original appointment was made.

(e) Purpose.—The purpose of the Commission is to— (1) examine the effectiveness of the planning, programming, budgeting, and execution process and adjacent practices of the Department of Defense, particularly with respect to facilitating defense modernization; (2) consider potential alternatives to such process and practices to maximize the ability of the Department of Defense to respond in a timely manner to current and future threats; and (3) make legislative and policy recommendations to improve such process and practices in order to field the operational capabilities necessary to outpace near-peer competitors, provide data and analytical insight, and support an integrated budget that is aligned with strategic defense objectives.

(f) Scope and Duties.—The Commission shall perform the following duties: (1) Compare the planning, programming, budgeting, and execution process of the Department of Defense, including the development and production of documents including the Defense Planning Guidance (described in section 113(g) of title 10, United States Code), the Program Objective Memorandum, and the Budget Estimate Submission, with similar processes of private industry, other Federal agencies, and other countries. (2) Conduct a comprehensive assessment of the efficacy and efficiency of all phases and aspects of the planning, programming, budgeting, and execution process, which shall include an assessment of— (A) the roles of Department officials and the timelines to complete each such phase or aspect; (B) the structure of the budget of Department of Defense, including the effectiveness of categorizing the budget by program, appropriations account, major force program, budget activity, and line item, and whether this structure supports modern warfighting requirements for speed, agility, iterative development, testing, and fielding; (C) a review of how the process supports joint efforts, capability and platform lifecycles, and transitioning technologies to production; (D) the timelines, mechanisms, and systems for presenting and justifying the budget of Department of Defense, monitoring program execution and Department of Defense budget execution, and developing requirements and performance metrics; (E) a review of the financial management systems of the Department of Defense, including policies, procedures, past and planned investments, and recommendations related to replacing, modifying, and improving such systems to ensure that such systems and related processes of the Department result in— (i) effective internal controls; (ii) the ability to achieve auditable financial statements; and (iii) the ability to

meet other financial management and operational needs; and (F) a review of budgeting methodologies and strategies of near-peer competitors to understand if and how such competitors can address current and future threats more or less successfully than the United States. (3) Develop and propose recommendations to improve the effectiveness of the planning, programming, budgeting, and execution process.

(g) Commission Report and Recommendations.— (1) Interim report.—Not later than February 6, 2023, the Commission shall submit to the Secretary of Defense and the congressional defense committees an interim report including the following: (A) An examination of the development of the documents described in subsection (f)(1). (B) An analysis of the timelines involved in developing an annual budget request and the future-years defense program (as described in section 221 of title 10, United States Code), including the ability to make changes to such request or such program within those timelines. (C) A review of the sufficiency of the civilian personnel workforce in the Office of the Secretary of Defense and the Office of Cost Assessment and Program Evaluation to conduct budgetary and program evaluation analysis. (D) An examination of efforts by the Department of Defense to develop new and agile programming and budgeting to enable the United States to more effectively counter near-peer competitors. (E) A review of the frequency and sufficiency of budget and program execution analysis, to include any existing data analytics tools and any suggested improvements. (F) Recommendations for internal reform to the Department relating to the planning, programming, budgeting, and execution process for the Department of Defense to make internally. (G) Recommendations for reform to the planning, programming, budgeting, and execution process that require statutory changes. (H) Any other matters the Commission considers appropriate.

(2) Final report.—Not later than September 1, 2023, the Commission shall submit to the Secretary of Defense and the congressional defense committees a final report that includes the elements required under paragraph (1).

(3) Briefings.—Not later than 180 days after the date specified in subsection (a)(2), and not later than 30 days after each of the interim and final reports are submitted, the Commission shall provide to the congressional defense committees a briefing on the status of the review and assessment conducted under subsection (f) and include a discussion of any interim or final recommendations.

(4) Form.—The reports submitted to Congress under paragraphs (1) and (2) shall be submitted in unclassified form but may include a classified annex.

(h) Government Cooperation.— (1) Cooperation.—In carrying out its duties, the Commission shall receive the full and timely cooperation of the Secretary of Defense in providing the Commission with analysis, briefings, and other information necessary for the fulfillment of its responsibilities.

(2) Liaison.—The Secretary shall designate at least one officer or employee of the Department of Defense to serve as a liaison between the Department and the Commission.

(3) Detailees authorized.—The Secretary may provide, and the Commission may accept and employ, personnel detailed from the Department of Defense, without reimbursement.

(4) Facilitation.— (A) Independent, non-government institute.—Not later than 45 days after the date specified in subsection (a)(2), the Secretary of Defense shall make available to the Commission the services of an independent, nongovernmental organization, described under section 501(c)(3) of the Internal Revenue Code of 1986 and which is exempt from taxation under section 501(a) of such Code, which has recognized credentials and expertise in national security and military affairs, in order to facilitate the discharge of the duties of the Commission under this section.

(B) Federally funded research and development center.—On request of the Commission, the Secretary of Defense shall make available the services of a federally funded research and development center in order to enhance the discharge of the duties of the Commission under this section.

(i) Staff.—

(1) Status as federal employees.—Notwithstanding the requirements of section 2105 of title 5, United States Code, including the required supervision under subsection (a)(3) of such section, the members of the commission shall be deemed to be Federal employees.

(2) Executive director.—The Commission shall appoint and fix the rate of basic pay for an Executive Director in accordance with section 3161(d) of title 5, United States Code.

(3) Pay.—The Executive Director, with the approval of the Commission, may appoint and fix the rate of basic pay for additional personnel as staff of the Commission in accordance with section 3161(d) of title 5, United States Code.

(j) Personal Services.—

(1) Authority to procure.—The Commission may— (A) procure the services of experts or consultants (or of organizations of experts or consultants) in accordance with the

provisions of section 3109 of title 5, United States Code; and (B) pay in connection with such services the travel expenses of experts or consultants, including transportation and per diem in lieu of subsistence, while such experts or consultants are traveling from their homes or places of business to duty stations. (2) Maximum daily pay rates.—The daily rate paid an expert or consultant procured pursuant to paragraph (1) may not exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(k) Authority to Accept Gifts.—The Commission may accept, use, and dispose of gifts or donations of services, goods, and property from non-Federal entities for the purposes of aiding and facilitating the work of the Commission. The authority in this subsection does not extend to gifts of money. Gifts accepted under this authority shall be documented, and conflicts of interest or the appearance of conflicts of interest shall be avoided. Subject to the authority in this section, commissioners shall otherwise comply with rules set forth by the Select Committee on Ethics of the Senate and the Committee on Ethics of the House of Representatives governing Senate and House employees.

(l) Legislative Advisory Committee.—The Commission shall operate as a legislative advisory committee and shall not be subject to the provisions of the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. App) or section 552b, United States Code (commonly known as the Government in the Sunshine Act).

(m) Contracting Authority.—The Commission may acquire administrative supplies and equipment for Commission use to the extent funds are available.

(n) Use of Government Information.—The Commission may secure directly from any department or agency of the Federal Government such information as the Commission considers necessary to carry out its duties. Upon such request of the chair of the Commission, the head of such department or agency shall furnish such information to the Commission.

(o) Postal Services.—The Commission may use the United States mail in the same manner and under the same conditions as departments and agencies of the United States.

(p) Space for Use of Commission.—Not later than 30 days after the establishment date of the Commission, the Administrator of General Services, in consultation with the Commission, shall identify and make available suitable excess space within the Federal space inventory to house the operations of the Commission. If the Administrator is not able to make such suitable excess space available within such 30-day period, the Commission may lease space to the extent the funds are available.

(q) Removal of Members.—A member may be removed from the Commission for cause by the individual serving in the position responsible for the original appointment of such member under subsection (b)(1), provided that notice has first been provided to such member of the cause for removal and voted and agreed upon by three quarters of the members serving. A vacancy created by the removal of a member under this subsection shall not affect the powers of the Commission, and shall be filled in the same manner as the original appointment was made.

(r) Termination.—The Commission shall terminate 180 days after the date on which it submits the final report required by subsection (g)(2).