



July 19, 2023

To the Members of the United States Senate:

The U.S. Chamber of Commerce supports S. 2226, the “National Defense Authorization Act for Fiscal Year 2024,” which would authorize \$876.8 billion for national defense commitments at home and abroad. This important legislation would strengthen and advance America’s National Defense Strategy and ensure that the Department’s procurement, research, and readiness priorities are met. The National Defense Authorization Act should serve as a model for bipartisan cooperation as members of both parties have worked together to produce a bill that ensures that America’s servicemembers have resources they need to protect our country. We appreciate the Senate’s work to craft this legislation and ask that you consider our recommendations.

The Chamber supports the following provisions:

Strengthening the National Security Industrial and Innovation Base: The Chamber strongly supports a robust defense industrial base and flexibility for federal contractors to provide the goods and services that the Department of Defense needs. Chamber members serve throughout the federal contracting supply chain, from the smallest components to the largest weapon systems for the Department of Defense. Furthermore, the Chamber commends inclusion of Section 831. This public-private partnership program would incentivize investment in innovative U.S. small businesses and startups developing advanced technologies critical to our national security, leveraging America’s entrepreneurial and innovative spirit to counter ongoing threats.

Reform to the Defense Department’s Foreign Military Sales (FMS) Enterprise: To reform the FMS program while facilitating capability improvements for Allies and close partner nations, the Chamber commends inclusion of the following sections: Sec 922, Transition of Oversight Responsibility for the Defense Technology Security Administration; Sec 1076, Program and Processes Relating to Foreign Acquisition; Sec 1209, Modification of Department of Defense Security Cooperation Workforce Development; Sec 1299F, Foreign Advance Acquisition Account; Sec 1299J, Improvements to Security Cooperation Workforce and Defense Acquisition Workforce; and Sec 1299K, Modification of Foreign Military Sales Processing. The FMS program and associated processes have remained virtually unchanged for five decades. The conflict in Ukraine, as well as the urgency associated with preparing for potential conflict in the Pacific, demonstrates the need for innovation and transformation in this area. We recognize that FMS is a Department of State authorized program, and we applaud the work across committees to ensure America is better prepared to meet the security challenges of tomorrow.

Commercial Satellite Intelligence, Surveillance and Reconnaissance (ISR) Procurement: The Chamber supports the Committee on Armed Services’ view on the value of space-based commercial imagery to DOD ISR missions and the Committee’s ongoing commitment to commercial imagery procurement in support of the warfighter.

Space Launch Services: The Chamber supports Senate Amendment 380 on the application of TNT equivalency to rocket launch vehicles and components using methane propellant. The current approach to characterizing explosive yield was not designed based on launch vehicle designs or test and launch operations.

Existing industry data, risk-based characterization capabilities and existing vehicle designs and operations should inform the Government's approach. In addition, the amendment would direct Department, the National Aeronautics and Space Administration, and the Department of Transportation to establish a process through which scientifically valid TNT equivalency determinations can be assessed for launch vehicles while in flight. This requirement would allow U.S. industry to continue to safety test launch vehicles on the ground while the assessment process continues.

Inclusion of the Foreign Extortion Prevention Act (FEPA): The Chamber supports efforts to protect American companies from corrupt foreign officials who demand bribes as a condition of doing business abroad. FEPA is a commonsense reform that would outlaw such activity and help keep U.S. firms competitive in the global economy.

Camp Lejeune Litigation: The Chamber supports efforts to limit attorney's fees in Camp Lejeune-related litigation authorized under last Congress' Honoring Our PACT Act ("PACT Act") so more money can make its way to injured veterans and their families rather than plaintiffs' attorneys. The PACT Act does not contain any limits on attorneys' fees for this type of litigation and that is why trial lawyers are targeting veterans and their families through mass advertising and marketing. According to an article in Bloomberg Law, "[a] historic number of possible claimants and a new era in legal marketing have turned the Camp Lejeune tainted water litigation into a potential record-setter for the amount invested and spent on advertising." The ads are ubiquitous and so misleading that some veteran advocacy groups are warning vets to be informed before signing up with an attorney. Plaintiffs' lawyers have a financial incentive to file as many claims as possible—the more claims filed, the more money they can get through fees. But to add insult to injury, if the attorneys' fees are not limited, some veterans may be in a worse financial position than if they had not sued in the first place.

The Chamber urges you to oppose efforts to weaken this important legislation, including provisions and amendments related to:

Arbitration, Class Action Litigation and Private Rights of Action: We strongly oppose amendments and language that would limit the availability and usage of pre-dispute arbitration clauses, prohibit, or otherwise limit class action waivers or affirmatively provide litigation expanding private rights of action. The Chamber believes that these provisions would lead to costly, time-consuming, and adversarial litigation for service members and veterans while only serving to enrich the class action plaintiffs' bar and should not be included in the legislation.

Per-and polyfluoroalkyl substances (PFAS): We oppose amendments and provisions of the bill that would circumvent existing, well-established regulatory processes and predetermine outcomes related to cleanup of PFAS contaminated sites. We ask you to

oppose amendments and language that would further restrict the procurement of PFAS-containing products and the temporary ban on incineration by the Department of Defense. The Chamber will continue to support the ongoing Environmental Protection Agency (EPA) process to evaluate sites, establish appropriate regulatory standards supported by sound science and risk, and facilitate expeditious cleanups. We also support public-private partnerships in research, development, and deployment in innovative treatment, disposal, and destruction technologies.

Contractor Debarment: Bans on federal contracting with firms for violations of the National Labor Relations Act or other workplace and employment laws is unnecessary and redundant as a suspension and debarment process is already in place that federal contracting officers can utilize. Any such new requirement would bypass and complicate that process. Furthermore, new penalties are unnecessary because existing law provides for remedies and penalties for contractors in violation, which are vigorously pursued by the Department of Labor and other agencies and applied to employers. Finally, this amendment could result in opponents or competitors of a contractor to generate spurious violation allegations to undermine a potential contractor's position.

Demographic Reporting of Highest Compensated Executives for Sub-contractors: Such a requirement would effectively revive the discredited compensation reporting requirement imposed by the Equal Employment Opportunity Commission known as Component 2 of the EEO-1 form. Data collected by such a reporting requirement has no utility for identifying compensation discrimination, imposes a significant administrative burden, and cannot be adequately protected from public release.

Codifying Executive Order 14026: E.O. 14026, issued by President Biden, raised the minimum wage for all employees of federal contractors and indexed it to inflation. That minimum wage now stands at \$16.20 per hour. Codifying the E.O. would mean it could not be amended or repealed by a subsequent President.

Prohibiting Inquiries on Criminal History by Federal Contractors: Efforts to direct the Office of Federal Contract Compliance Programs at Department of Labor to create procedures for prohibiting federal contractors from making inquiries about criminal histories of applicants and employees is misplaced and could result in employees being hired with backgrounds that are incompatible with working in areas with sensitive defense information, or putting other employees at risk due to violent or other dangerous past behavior. Further, the Chamber has been advocating for other bipartisan approaches to encouraging second chance hiring more likely to improve employment opportunities for the formerly incarcerated.

SEC-Related Disclosure Amendments: Congress should not mandate what information from corporate issuers and funds may be deemed material to investors. Such amendments, and other proposals to mandate corporate disclosures for purposes relating to extraneous public policy objectives, undermine investor protection and water down the usefulness of information relied upon by investors.

The Chamber supports S. 2226, the “National Defense Authorization Act for Fiscal Year 2024.” We believe that passage of this bipartisan legislation is a critical step to ensuring our national defense commitments remain strong in a challenging global environment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil L. Bradley", with a stylized flourish at the end.

Neil L. Bradley
Executive Vice President, Chief Policy Officer,
and Head of Strategic Advocacy
U.S. Chamber of Commerce