

Piecing Together NDAA Section 1053

Congress begins to assert itself on EW and JEMSO

Congress recently completed its work on H.R. 5515, the FY 2019 National Defense Authorization Act, that authorizes \$717 billion for defense and pursues several important policy changes that are relevant to the AOC community. Arguably the most substantive EW-related provision in the NDAA is Section 1053 - Guidance on the Electronic Warfare Mission Area and Joint Electromagnetic Spectrum Operations. This provision takes aim to establish a unity of effort within the Department of Defense (DoD) and between DOD and Congress to advance permanent governance for the EMS Enterprise.

Section 1053 is an amalgamation of several provisions in both the House and Senate versions of the NDAA. It is notable not only for its scope, but also the ongoing efforts of congressional EW Working Group (EWWG) to advance the EW in Congress. In total, Section 1053 represents the most substantive expression of support for EW and electromagnetic spectrum operations (EMSO) from Congress in years, which will hopefully feed and reinforce a larger ongoing effort in DOD.

At its core, Section 1053 is comprised of five main provisions: (1) improve integration of the EW mission and joint electromagnetic spectrum operations (JEMSO) across all warfighting domains; (2) establish a Designated Senior Official (DSO) to strengthen DOD leadership and resourcing; (3) establish a cross-function team (CFT) to identify gaps in EW and JEMSO capabilities and resourcing needs across personnel, procedures, and equipment areas; (4) identify various plans and requirements primarily stemming from the 2017 DOD EW Strategy; and (5) improve training and education in EW and JEMSO across DOD and the military Services.

A Long Time in the Making

The 2019 NDAA was completed in record time. Therefore, the scope of Section 1053 may not have come together without complimentary efforts long in the works in Congress from Committee staff and key Members of Congress from the EWWG. The impetus behind much of the agreed upon language in Section 1053 can be credited to Rep. Don Bacon (NE-02), a co-chair of the EWWG. In April, Rep. Bacon introduced H.R. 5522, the Joint Electromagnetic Spectrum Operations Readiness Act (JEMSORA), with the goal of getting as much of the bill as possible adopted in the NDAA. Sen. Perdue helped with the introduction of companion JEMSORA legislation, S. 2949. This was the same strategy that was successful for the EW Capabilities Enhancement Act of 2016, key provisions of which were inserted into the FY 2017 NDAA. While H.R. 5522 was stronger than the negotiated language in H.R. 5515, it did spotlight the need for Joint Campaign Modeling for JEMSO and set an expectation for unity of effort across DOD and the military services to advance the JEMSO enterprise and implement recommendations from the 2017 DoD EW Strategy. The AOC strongly endorsed this legislation.

In the Senate, the Senate Armed Services Committee (SASC) included Section 1032 into its version of the NDAA, S. 2949, which called for, among other things, the DSO and an associated cross-functional team to update the January 2017 DOD EW strategy and submit it, along with a road map of the referenced requirements and plans. Due to the fundamentally cross-cutting nature of Joint Force participation in and dedicated EMS Operations for control of the EMS, current DoD structure does not currently offer an extant executive position which can, at once, effectively oversee the DOTMLPF/P constellation of features critical to effective management of a balanced EMS Enterprise.

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For its part, the EWWG has long advocated for a DSO. Since its inception in 1999, the EWWG has frequently raised concerns that there is no champion for EW and no opportunity for a champion to emerge in DOD. Despite efforts to coordinate EW capabilities across DOD, the lack of authority and resources of any senior official ultimately countered any progress. With these points in mind, the AOC supported both the House and Senate language with the expectation that a compromise would result in a notable accomplishment for the EW community.

Highlights of Section 1053

Section 1053 in the Conference Report seeks to balance the wide-ranging EW and JEMSO provisions in the House and Senate versions of the NDAA while injecting accountability into a process that is advancing, but arguably in need of alignment and leadership. A key provision of Section 1053, related to both H.R. 5522 and S. 2949, is paragraph (d), which requires the new DSO through the cross-functional team to “develop requirements and specific plans for addressing personnel, capability, and capacity gaps in the electronic warfare mission area, and plans for future warfare.” Included in this requirement is a joint force assessment of capability and capacity gaps for JEMSO, a “review of roles and functions of related offices within the Joint Staff, the Office of the Secretary of Defense, and the combatant commands with primary responsibility for joint electromagnetic spectrum policy and operations.

As for the DSO, the Conference Report requires that the DSO be selected “from among individuals serving in the Department as civilian employees or members of the Armed Forces who are, equivalent in grade or rank, at or below the level of Under Secretary of Defense.” An important adjustment was made from the Senate version to expand the pool of potential DSOs to include senior military officials who provide the operational experience necessary for leading JEMSO efforts in DOD.

NDAA Signed Into Law Timeline		
Fiscal Year	Bill Number	Date Signed
FY 2019	HR 2810	August 2018?
FY 2018	HR 2810	12/12/17
FY 2017	S 2943	12/23/16
FY 2016	S 1356	11/25/15
FY 2015	HR 3979	12/19/14
FY 2014	HR 3304	12/26/13
FY 2013	HR 4310	1/2/13
FY 2012	HR 1540	12/31/11
FY 2011	HR 6523	1/7/11
FY 2010	HR 2647	10/28/09
FY 2009	S 3001	10/14/08
FY 2008	HR 4986	1/28/08
FY 2007	HR 5122	10/17/06
FY 2006	HR 1815	1/6/06
FY 2005	HR 4200	10/28/2004

Designated Senior Official

Designated by Sec. Def Military or civilian equivalent to USD Ex-officio member of EW EXCOM	Oversee Establishment and Responsibilities of EW Cross-Functional Team	Oversee implementation of DOD EW Strategy	Provide recommendations to EW EXCOM on resource allocation to support capability development and investment in EW and JEMSO	Propose EW governance, management, organizational, and operational reforms to Sec. Def. (after review and comment by EW EXCOM)
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A third provision worth noting is the requirement for Annual Certification on Budgeting for Certain Capabilities. This requirement must accompany the President's annual budget submission for Fiscal Years 2020-2024. The Conference Report adopts House language that revisits now-expired requirements from Section 1053(b) of the FY 2010 NDAA (see chart). Interestingly, this section began as an amendment to the House version of the FY 2010 NDAA (now Public Law 111-84) by Rep. Rick Larsen, the lead co-chair of the EW Working Group, back in 2009. This provision also calls for the DSO to assess whether enough funding is requested to secure the development electromagnetic battle management (EMBM) for JEMSO and the establishment of JEMSO cells.

Requirements for Annual Certification on Budgeting	Description of DOD organizational structure assigned to oversee EW strategy, requirements, capabilities, and R&D
	List of all EW acquisition programs and R&D projects and description of how each program or project supports the DOD EW strategy
	Total amount of funding appropriated, obligated and forecasted by Fiscal Year, including PE or procurement line number
	Technology Readiness Level of critical technologies
	Assessment of cost, schedule, and performance of EW programs
	Identification of capability gaps and which programs or capabilities are developed to mitigate or close each gap.
	Based on FY 2010 NDAA, Section 1053(b)

Fourth, a key element of cross-function team responsibilities established in Section 1053 is to consult with the Defense Intelligence Agency to assess the EW capabilities of Russia and China and the vulnerabilities of US systems to electronic attack. It is imperative that Congress deliberately emphasize Intelligence-related assessments, support and analysis. The relative inadequacy of Intelligence support has in large part been a result of the systemic misalignment between strategic and operational Intelligence focus and the tactically-constrained focus of traditional EW.

A final provision of interest is found in the Joint Statement that accompanies the Conference Report. The conferees require a briefing to the House and Senate Armed Services Committee no later than February 25, 2019, in part, on the progress of the Department in implementing the pilot program authorized by section 234 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 10 U.S.C. 113 note). This pilot program was also created through the leadership of Rep. Rick Larsen to provide flexibility in the use of sustainment funds for the modernization of certain legacy EW systems. The AOC strongly endorsed this pilot program and supports its inclusion in this year's conference report. The pilot program, to date, has not been implemented according to schedule. Following its creation in the FY 2017 NDAA, there was concern about the scope and eligibility requirements for systems approved under the program. The FY 2018 NDAA sought to clarify congressional intent, but obstacles remain related to implementation.

What to Make of It

The Conference Report highlights operational advantages provided by electronic warfare and expects the DOD to dedicate additional resources to the problem set. That said, there are a few key points to keep in mind as the FY 2019 NDAA becomes law and reaches DOD for implementation.

Accountability. Arguably the most important aspect of Section 1053 is the accountability it should provide to the myriad lines of effort currently underway in DOD. Despite the landmark 2017 DOD EW Strategy and the accomplishments of the EW EXCOM, initiated under the Third Offset Strategy, there is little in the way of an organizing construct to drive meaningful reform. Certainly, there is a lack of communication and collaboration on EMSO between DOD and Congress. At the end of the day, everything comes down to authority and resources. Initiatives that have both will succeed and those that do not will likely struggle. EW has historically lagged to its detriment on both fronts. Congress has an important role to play to make sure that authorities and resources are aligned with national defense priorities. In this vein, Section 1053 lays the groundwork to further advance EMS governance and the evolution toward EMSO and better harmonize congressional perspectives with OSD leadership.

Caution. Section 1053 and related EW provisions are not perfect. These provisions rely heavily on reporting requirements, briefings, and other assessments. While expectations may be clear, the outcomes are uncertain. Congress intentionally provides DOD space to pursue ongoing lines of effort, but it wants to see enduring reform and governance stem from these efforts. How DOD implements these provisions will inform how Congress responds through future legislative initiatives, but there is hardly a predetermined outcome. What exists in Section 1053 is opportunity to advance the EW mission and the enduring governance necessary for a balanced EMS enterprise.

Progress. Section 1053 not only represents a significant legislative accomplishment, but also a progression in how Congress thinks about the EW mission area and how it understands the need to work with DOD to advance JEMSO. Rep. Bacon's original JEMSORA legislation calls on Congress and DOD to "accelerate" this effort and provide for "the unified governance framework necessary to optimize" every aspect of JEMSO — from concept to integrated fielded systems to warfighter training, to a fully interoperable capability. Few efforts from Congress seek to do more for the EW/EMSO-related community than Section 1053, but it is still a work in progress. It is a significant step in the right direction, and one that opens the door to greater alignment and unity of effort.