

DEFENSE ACTS

PUBLIC LAW 106-398—OCT. 30, 2000

*Public Law 106-398
106th Congress

An Act

To authorize appropriations for fiscal year 2001 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Oct. 30, 2000
[H.R. 4205]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ENACTMENT OF FISCAL YEAR 2001 NATIONAL DEFENSE AUTHORIZATION ACT.

Incorporation by reference.

The provisions of H.R. 5408 of the 106th Congress, as introduced on October 6, 2000, are hereby enacted into law.

SEC. 2. PUBLICATION OF ACT.

1 USC 112 note.

In publishing this Act in slip form and in the United States Statutes at Large pursuant to section 112 of title 1, United States Code, the Archivist of the United States shall include after the date of approval an appendix setting forth the text of the bill referred to in section 1.

Approved October 30, 2000.

LEGISLATIVE HISTORY—H.R. 4205 (S. 2549) (S. 2550):

HOUSE REPORTS: Nos. 106-616 (Comm. on Armed Services) and 106-945 (Comm. of Conference).

SENATE REPORTS: No. 106-292 accompanying S. 2549 (Comm. on Armed Services).

CONGRESSIONAL RECORD, Vol. 146 (2000):

May 17, 18 considered and passed House.

July 13, considered and passed Senate, amended.

Oct. 11, House agreed to conference report.

Oct. 12, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 36 (2000):

Oct. 30, Presidential statement.

*ENDNOTE: The following appendix was added pursuant to the provisions of sections 1 and 2 of this Act.

PUBLIC LAW 106-398—APPENDIX

- Sec. 532. Selection of foreign students to receive instruction at service academies.
- Sec. 533. Revision of college tuition assistance program for members of Marine Corps Platoon Leaders Class program.
- Sec. 534. Review of allocation of Junior Reserve Officers Training Corps units among the services.
- Sec. 535. Authority for Naval Postgraduate School to enroll certain defense industry civilians in specified programs relating to defense product development.

SUBTITLE D—DECORATIONS, AWARDS, AND COMMENDATIONS

- Sec. 541. Limitation on award of Bronze Star to members in receipt of imminent danger pay.
- Sec. 542. Consideration of proposals for posthumous or honorary promotions or appointments of members or former members of the Armed Forces and other qualified persons.
- Sec. 543. Waiver of time limitations for award of certain decorations to certain persons.
- Sec. 544. Addition of certain information to markers on graves containing remains of certain unknowns from the U.S.S. Arizona who died in the Japanese attack on Pearl Harbor on December 7, 1941.
- Sec. 545. Sense of Congress on the court-martial conviction of Captain Charles Butler McVay, Commander of the U.S.S. Indianapolis, and on the courageous service of the crew of that vessel.
- Sec. 546. Posthumous advancement on retired list of Rear Admiral Husband E. Kimmel and Major General Walter C. Short, senior officers in command in Hawaii on December 7, 1941.
- Sec. 547. Commendation of citizens of Remy, France, for World War II actions.
- Sec. 548. Authority for award of the Medal of Honor to William H. Pitsenbarger for valor during the Vietnam War.

SUBTITLE E—MILITARY JUSTICE AND LEGAL ASSISTANCE MATTERS

- Sec. 551. Recognition by States of military testamentary instruments.
- Sec. 552. Policy concerning rights of individuals whose names have been entered into Department of Defense official criminal investigative reports.
- Sec. 553. Limitation on Secretarial authority to grant clemency for military prisoners serving sentence of confinement for life without eligibility for parole.
- Sec. 554. Authority for civilian special agents of military department criminal investigative organizations to execute warrants and make arrests.
- Sec. 555. Requirement for verbatim record in certain special court-martial cases.
- Sec. 556. Commemoration of the 50th anniversary of the Uniform Code of Military Justice.

SUBTITLE F—MATTERS RELATING TO RECRUITING

- Sec. 561. Army recruiting pilot programs.
- Sec. 562. Enhancement of recruitment market research and advertising programs.
- Sec. 563. Access to secondary schools for military recruiting purposes.
- Sec. 564. Pilot program to enhance military recruiting by improving military awareness of school counselors and educators.

SUBTITLE G—OTHER MATTERS

- Sec. 571. Extension to end of calendar year of expiration date for certain force drawdown transition authorities.
- Sec. 572. Voluntary separation incentive.
- Sec. 573. Congressional review period for assignment of women to duty on submarines and for any proposed reconfiguration or design of submarines to accommodate female crew members.
- Sec. 574. Management and per diem requirements for members subject to lengthy or numerous deployments.
- Sec. 575. Pay in lieu of allowance for funeral honors duty.
- Sec. 576. Test of ability of reserve component intelligence units and personnel to meet current and emerging defense intelligence needs.
- Sec. 577. National Guard Challenge Program.
- Sec. 578. Study of use of civilian contractor pilots for operational support missions.
- Sec. 579. Reimbursement for expenses incurred by members in connection with cancellation of leave on short notice.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

SUBTITLE A—PAY AND ALLOWANCES

- Sec. 601. Increase in basic pay for fiscal year 2001.
- Sec. 602. Additional restructuring of basic pay rates for enlisted members.
- Sec. 603. Revised method for calculation of basic allowance for subsistence.
- Sec. 604. Family subsistence supplemental allowance for low-income members of the Armed Forces.
- Sec. 605. Basic allowance for housing.
- Sec. 606. Additional amount available for fiscal year 2001 increase in basic allowance for housing inside the United States.
- Sec. 607. Equitable treatment of junior enlisted members in computation of basic allowance for housing.

SEC. 546. POSTHUMOUS ADVANCEMENT ON RETIRED LIST OF REAR ADMIRAL HUSBAND E. KIMMEL AND MAJOR GENERAL WALTER C. SHORT, SENIOR OFFICERS IN COMMAND IN HAWAII ON DECEMBER 7, 1941.

(a) Findings.--Congress makes the following findings:

(1) The late Rear Admiral Husband E. Kimmel, while serving in the temporary grade of admiral, was the Commander in Chief of the United States Fleet and the Commander in Chief, United States Pacific Fleet, at the time of the Japanese attack on Pearl Harbor, Hawaii, on December 7, 1941, with an excellent and unassailable record throughout his career in the United States Navy before that date.

(2) The late Major General Walter C. Short, while serving in the temporary grade of lieutenant general, was the Commander of the United States Army Hawaiian Department, at the time of the Japanese attack on Pearl Harbor, Hawaii, on December 7, 1941, with an excellent and unassailable record throughout his career in the United States Army before that date.

(3) Numerous investigations following the attack on Pearl Harbor have documented that Admiral Kimmel and Lieutenant General Short were not provided necessary and critical intelligence that was available, that foretold of war with Japan, that warned of imminent attack, and that would have alerted them to prepare for the attack, including such essential communiques as the Japanese Pearl Harbor Bomb Plot message of September 24, 1941, and the message sent from the Imperial Japanese Foreign Ministry to the Japanese Ambassador in the United States from December 6 to 7, 1941, known as the Fourteen-Part Message.

(4) On December 16, 1941, Admiral Kimmel and Lieutenant General Short were relieved of their commands and returned to their permanent grades of rear admiral and major general, respectively.

(5) Admiral William Harrison Standley, who served as a member of the investigating commission known as the Roberts Commission that accused Admiral Kimmel and Lieutenant General Short of "dereliction of duty" only six weeks after the attack on Pearl Harbor, later disavowed the report, maintaining that "these two officers were martyred" and "if they had been brought to trial, both would have been cleared of the charge".

(6) On October 19, 1944, a Naval Court of Inquiry--

(A) exonerated Admiral Kimmel on the grounds that his military decisions and the disposition of his forces at the time of the December 7, 1941, attack on Pearl Harbor were proper "by virtue of the information that Admiral Kimmel had at hand which indicated neither the probability nor the imminence of an air attack on Pearl Harbor";

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(B) criticized the higher command for not sharing with Admiral Kimmel "during the very critical period of November 26 to December 7, 1941, important information . . . regarding the Japanese situation"; and

(C) concluded that the Japanese attack and its outcome was attributable to no serious fault on the part

of anyone in the naval service.

(7) On June 15, 1944, an investigation conducted by Admiral T. C. Hart at the direction of the Secretary of the Navy produced evidence, subsequently confirmed, that essential intelligence concerning Japanese intentions and war plans was available in Washington but was not shared with Admiral Kimmel.

(8) On October 20, 1944, the Army Pearl Harbor Board of Investigation determined that--

(A) Lieutenant General Short had not been kept ``fully advised of the growing tenseness of the Japanese situation which indicated an increasing necessity for better preparation for war'';

(B) detailed information and intelligence about Japanese intentions and war plans were available in ``abundance'' but were not shared with the Lieutenant General Short's Hawaii command; and

(C) Lieutenant General Short was not provided ``on the evening of December 6th and the early morning of December 7th, the critical information indicating an almost immediate break with Japan, though there was ample time to have accomplished this''.

(9) The reports by both the Naval Court of Inquiry and the Army Pearl Harbor Board of Investigation were kept secret, and Rear Admiral Kimmel and Major General Short were denied their requests to defend themselves through trial by court-martial.

(10) The joint committee of Congress that was established to investigate the conduct of Admiral Kimmel and Lieutenant General Short completed, on May 31, 1946, a 1,075-page report which included the conclusions of the committee that the two officers had not been guilty of dereliction of duty.

(11) On April 27, 1954, the Chief of Naval Personnel, Admiral J. L. Holloway, Jr., recommended that Rear Admiral Kimmel be advanced in rank in accordance with the provisions of the Officer Personnel Act of 1947.

(12) On November 13, 1991, a majority of the members of the Board for the Correction of Military Records of the Department of the Army found that Major General Short ``was unjustly held responsible for the Pearl Harbor disaster'' and that ``it would be equitable and just'' to advance him to the rank of lieutenant general on the retired list.

(13) In October 1994, the Chief of Naval Operations, Admiral Carlisle Trost, withdrew his 1988 recommendation against the advancement of Rear Admiral Kimmel and recommended that his case be reopened.

(14) Although the Dorn Report, a report on the results of a Department of Defense study that was issued on December 15, 1995, did not provide support for an advancement of Rear Admiral Kimmel or Major General Short in grade, it did set forth as a conclusion of the study that ``responsibility for the

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Pearl Harbor disaster should not fall solely on the shoulders of Admiral Kimmel and Lieutenant General Short, it should be broadly shared''.

(15) The Dorn Report found--

(A) that ``Army and Navy officials in Washington

were privy to intercepted Japanese diplomatic communications . . . which provided crucial confirmation of the imminence of war'';

(B) that ``the evidence of the handling of these messages in Washington reveals some ineptitude, some unwarranted assumptions and misestimations, limited coordination, ambiguous language, and lack of clarification and followup at higher levels''; and

(C) that ``together, these characteristics resulted in failure . . . to appreciate fully and to convey to the commanders in Hawaii the sense of focus and urgency that these intercepts should have engendered''.

(16) On July 21, 1997, Vice Admiral David C. Richardson (United States Navy, retired) responded to the Dorn Report with his own study which confirmed findings of the Naval Court of Inquiry and the Army Pearl Harbor Board of Investigation and established, among other facts, that the war effort in 1941 was undermined by a restrictive intelligence distribution policy, and the degree to which the commanders of the United States forces in Hawaii were not alerted about the impending attack on Hawaii was directly attributable to the withholding of intelligence from Admiral Kimmel and Lieutenant General Short.

(17) The Officer Personnel Act of 1947, in establishing a promotion system for the Navy and the Army, provided a legal basis for the President to honor any officer of the Armed Forces of the United States who served his country as a senior commander during World War II with a placement of that officer, with the advice and consent of the Senate, on the retired list with the highest grade held while on the active duty list.

(18) Rear Admiral Kimmel and Major General Short are the only two officers eligible for advancement under the Officer Personnel Act of 1947 as senior World War II commanders who were excluded from the list of retired officers presented for advancement on the retired lists to their highest wartime grades under that Act.

(19) This singular exclusion of those two officers from advancement on the retired list serves only to perpetuate the myth that the senior commanders in Hawaii were derelict in their duty and responsible for the success of the attack on Pearl Harbor, a distinct and unacceptable expression of dishonor toward two of the finest officers who have served in the Armed Forces of the United States.

(20) Major General Walter Short died on September 23, 1949, and Rear Admiral Husband Kimmel died on May 14, 1968, without the honor of having been returned to their wartime grades as were their fellow commanders of World War II.

(21) The Veterans of Foreign Wars, the Pearl Harbor Survivors Association, the Admiral Nimitz Foundation, the Naval Academy Alumni Association, the Retired Officers Association,

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and the Pearl Harbor Commemorative Committee, and other associations and numerous retired military officers have called for the rehabilitation of the reputations and honor of Admiral Kimmel and Lieutenant General Short through their posthumous advancement on the retired lists to their highest wartime

grades.

(b) Advancement of Rear Admiral Kimmel and Major General Short on Retired Lists.--(1) The President is requested--

(A) to advance the late Rear Admiral Husband E. Kimmel, United States Navy (retired), to the grade of admiral on the retired list of the Navy; and

(B) to advance the late Major General Walter C. Short, United States Army (retired), to the grade of lieutenant general on the retired list of the Army.

(2) Any advancement in grade on a retired list requested under paragraph (1) shall not increase or change the compensation or benefits from the United States to which any person is now or may in the future be entitled based upon the military service of the officer advanced.

(c) Sense of Congress Regarding the Professional Performance of Admiral Kimmel and Lieutenant General Short.--It is the sense of Congress--

(1) that the late Rear Admiral Husband E. Kimmel performed his duties as Commander in Chief, United States Pacific Fleet, competently and professionally and, therefore, that the losses incurred by the United States in the attacks on the naval base at Pearl Harbor, Hawaii, and other targets on the island of Oahu, Hawaii, on December 7, 1941, were not a result of dereliction in the performance of those duties by then Admiral Kimmel; and

(2) that the late Major General Walter C. Short performed his duties as Commanding General, Hawaiian Department, competently and professionally and, therefore, that the losses incurred by the United States in the attacks on Hickam Army Air Field and Schofield Barracks, Hawaii, and other targets on the island of Oahu, Hawaii, on December 7, 1941, were not a result of dereliction in the performance of those duties by then Lieutenant General Short.