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Senate Passes Defense Authorization Bill, Including Penalties on China's ZTE and New Authority for CFIUS

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June 2018

On June 18, the U.S. Senate voted 85-10 to approve the annual National Defense Authorization Act (NDAA), authorizing a total of \$716 billion in Fiscal Year 2019 (FY 2019) for national defense. The NDAA authorizes a base defense budget of \$639 billion for the Department of Defense and national security programs at the Department of Energy. The NDAA also authorizes \$69 billion for Overseas Contingency Operations. Next, a joint conference committee will meet to resolve differences between the House and Senate bills, a process House Armed Services Committee Chairman Mac Thornberry (R-TX) hopes to finish by the end of July. However, many observers do not expect final resolution until the end of the year.

Of note, the Senate NDAA would go further than the House-passed version in restoring the Commerce Department's penalties on Chinese telecommunications equipment-maker ZTE for violating U.S. sanctions against Iran and North Korea. The Commerce Department announced in early June that it had reached a deal to lift penalties on ZTE following direction from President Trump. Senators in both parties expressed frustration with the decision to ease penalties and voted on a bipartisan basis to amend the Senate NDAA to reinstate the sanctions. The amendment would also ban government agencies from buying or leasing telecommunications equipment and services from Chinese telecom firms Huawei and ZTE and ban the government from providing loans to or subsidizing either company. The White House has issued statements opposing the Senate language on ZTE, with legislative director Marc Short claiming that the Administration would aim to jettison the provision during conference negotiations between the House and Senate. The House version of the defense bill included less far-reaching language on ZTE, a company that Senators claim poses espionage risks to the United States.

The Senate NDAA also includes language to update the authority for the Committee on Foreign Investment in the United States (CFIUS). The language is based on the Senate version of the Foreign Investment Risk Review Modernization Act (FIRRMA). Among many other provisions, FIRRMA would expand CFIUS's jurisdiction to review a number of transactions previously uncovered by CFIUS. These transactions include types of business transactions deemed "non-passive" as well as those transactions involving critical infrastructure and technology. The House NDAA does not include FIRRMA language, which means this will be a key issue to be resolved in conference. While the House and Senate CFIUS reform bills differ on specifics, there is overwhelming bipartisan support among lawmakers to modernize and expand CFIUS's jurisdiction, and FIRRMA's inclusion in the Senate NDAA increases its likelihood to advance in Congress.