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[House]  
[Pages H8356-H8726]

CONFERENCE REPORT ON H.R. 1540, NATIONAL DEFENSE AUTHORIZATION ACT FOR  
FISCAL YEAR 2012

Mr. McKEON submitted the following conference report and statement on the bill (H.R. 1540) to authorize appropriations for fiscal year 2012 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Conference Report (H. Rept. 112-329)

[...]

**SEC. 954. MILITARY ACTIVITIES IN CYBERSPACE.**

Congress affirms that the Department of Defense has the capability, and upon direction by the President may conduct offensive operations in cyberspace to defend our Nation, Allies and interests, subject to--

(1) the policy principles and legal regimes that the Department follows for kinetic capabilities, including the law of armed conflict; and

(2) the War Powers Resolution (50 U.S.C. 1541 et seq.).

[...]

*Military activities in cyberspace (sec. 954)*

*The House bill contained a provision (sec. 962) that would clarify that the Secretary of Defense has the authority to conduct clandestine cyberspace activities in support of military operations pursuant to the Authorization for the Use of Military Force (Public Law 107-40; title 50 United States Code, section 1541 note) outside of the United States or to defend against a cyber attack on an asset of the Department of Defense.*

*The Senate amendment contained no similar provision.*

*The Senate recedes with an amendment.*

*The conferees recognize that because of the evolving nature of cyber warfare, there is a lack of historical precedent for what constitutes traditional military activities in relation to cyber operations and that it is necessary to affirm that such operations may be*

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*conducted pursuant to the same policy, principles, and legal regimes that pertain to kinetic capabilities.*

*The conferees also recognize that in certain instances, the most effective way to deal with threats and protect U.S. and coalition forces is to undertake offensive military cyber activities, including where the role of the United States Government is not apparent or to be acknowledged. The conferees stress that, as with any use of force, the War Powers Resolution may apply.*

