ML STRATEGIES

Congress Passes Defense Bill with AI Provisions — AI: The Washington Report

December 19, 2024 | Article | By **Bruce Sokler**, **Alexander Hecht**, **Christian Tamotsu Fjeld**, Matthew Tikhonovsky

- On December 18, Congress passed the FY 2025 National Defense Authorization Act (NDAA), which includes a number of AI provisions. The NDAA is expected to be signed into law by President Biden.
- The NDAA includes the first – and likely the only – AI provisions passed by the 118th Congress.
- Although the Bipartisan Senate AI Working Group had called for comprehensive AI legislation earlier this year, the AI provisions in the NDAA do not substantially regulate the use of AI. Instead, they direct defense agencies to launch pilot programs and initiatives to support the adoption of AI by the government for defense purposes.

On Wednesday, the US Congress voted to pass with bipartisan support the 2025 National Defense Authorization Act (NDAA), which includes a number of AI provisions. The bill will now be sent to President Biden's desk, where he is expected to sign it into law.

In recent months, Senator Schumer (D-NY) and other Senators who had been determined to act on AI, as **we covered**, had increasingly touted the NDAA as the most likely pathway through which to pass AI legislation this Congress. And while the NDAA does include AI provisions, it does not include generally applicable provisions, for example, the comprehensive AI legislation that the Bipartisan Senate AI Working Group and other members called for this year, as **we covered**. Instead, the AI provisions in the NDAA direct defense agencies to launch pilot programs and initiatives to support the adoption of AI by the government for strategic and operational purposes.

AI in the NDAA

The NDAA includes a number of AI provisions that direct defense agencies to adopt the use of AI for strategic and operations purposes. The NDAA would:

- **Create a Chief Digital Engineering Recruitment and Management Officer**: The NDAA appoints a Chief Digital Engineering Recruitment and Management Officer at the Department of Defense (DOD) who is charged with "clarifying the roles and responsibilities of the artificial intelligence workforce" at DOD.
- **Promote AI Education**: The Act tasks the Chief Digital and AI Officer at DOD, with 180 days after the NDAA is enacted, to develop educational course on AI for members of DOD.
- **Identify AI National Security Risks**: The NDAA modifies the existing responsibilities of the Chief Digital and AI Officer Governing Council to direct the council to identify AI models that "could pose a national security risk if accessed by an adversary of the United States" and "develop strategies to prevent unauthorized access" of such technologies. The NDAA also directs the Council to "make recommendations and relevant federal agencies for legislative action" on AI.
- **Harness AI for Auditing**: The Act directs the secretaries of the different branches of the armed forces to "encourage" the use of AI for "facilitating audits of the financial statements of the Department of Defense."
- **Improve the Human Usability of AI**: The Under Secretary of Defense for Research and Engineering shall launch an initiative to "improve the human usability of artificial intelligence systems and information derived from such systems through the application of cognitive ergonomics techniques."
- **Consider AI in Budgeting**: Within 180 days of the NDAA's enactment, the Chief Digital and Artificial Intelligence Officer at DOD shall make sure that budgets for AI "includes estimates for the types of data required to train, maintain, improve the artificial intelligence components or subcomponents contained within such programs."

The Secretary of Defense's AI Programs

The NDAA specifically directs the Secretary of Defense to launch a number of pilot programs and initiatives to accelerate the adoption and development of AI by DOD.

- **Pilot Program for Biotechnology and AI:** The Secretary ofDefense shall launch a pilot program to "develop near-term use cases and demonstrations of artificial intelligence for national security-related biotechnology applications" with support for public-private partnerships within one year after the NDAA is enacted.
- **Pilot Program on AI Workflow Optimization**: Within 60 days after the NDAA is enacted, the Secretary of Defense shall launch a pilot program to study and determine the feasibility of using AI to optimize the workflow and operations for DOD manufacturing facilities and contract administration services.
- **Multilateral AI Working Group**: Within 90 days after the NDAA is passed, the Secretary of Defense shall form a working group "to develop and coordinate artificial intelligence initiatives among the allies and partners of the United States."
- **Expanded DOD AI Capabilities**: The Secretary of Defense shall establish a program "to meet the testing and processing requirements for next generation advanced artificial intelligence capabilities" at DOD installations. The Secretary is directed to expand the infrastructure of DOD for the "development and deployment of military applications of high-performing computing and artificial intelligence capabilities," as well as develop "advanced artificial intelligence systems that have general-purpose military applications."

Sense of Congress

The NDAA acknowledges both the potential strategic benefits that AI provides, as well as the risks its poses. The use of AI presents numerous advantages, from strengthening "the security of critical strategic communications" to improving "the efficiency of planning process to reduce the risk of collateral damage." However, it is the sense of Congress that "particular care must be taken to ensure that the incorporation of artificial intelligence and machine learning tools does not increase the risk that our Nation's most critical strategic assets can be compromised."

The new Congress will have to start over from scratch, i.e., bills will have to be introduced or reintroduced, activity in the current Congress will be of no effect, and control of the Senate will pass to the Republicans. In this divided Congress, the efforts to pass AI regulations, largely led by Democrats, had always faced an uphill battle, complicated by partisan disagreements about the urgency with which to regulate AI and the need to better understand AI. With Republicans taking control of both chambers in January, Republicans in the next Congress are unlikely to push for the substantial AI regulation that we've seen proposed in the past year, instead favoring deregulation and investments in AI R&D. But just as AI continues to evolve, it remains to be seen how the next Congress will chart the future course of AI legislative activity.

Authors

Bruce Sokler

Bruce D. Sokler is a Mintz antitrust attorney. His antitrust experience includes litigation, class actions, government merger reviews and investigations, and cartel-related issues. Bruce focuses on the health care, communications, and retail industries, from start-ups to Fortune 100 companies.

Alexander Hecht, Executive Vice President & Director of Operations

Alex Hecht is a trusted attorney and policy strategist with over 20 years of experience advising clients across a broad range of industries on how to navigate complex policy environments. His strategic insight and hands-on experience in both legislative and regulatory arenas empower clients to advance their priorities with clarity and confidence in an evolving policy landscape.

Christian Tamotsu Fjeld, Senior Vice President

Christian Tamotsu Fjeld draws on two decades of Capitol Hill experience to support clients in building relationships, shaping policy, and engaging effectively with the federal government. His experience working with Congress and his insights help clients anticipate federal developments and advance their priorities with clarity and confidence.

Matthew Tikhonovsky

Matthew is a Mintz Senior Project Analyst based in Washington, DC.