

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: February 6, 2020

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations
Committee

FROM: Sharon M. Tso *SM Tso*
Chief Legislative Analyst

Council File No.: 19-0002-S188
Assignment No.: 20-01-0056

SUBJECT: “National Defense Authorization Act for Fiscal Year 2020” (NDAA).

CLA RECOMMENDATION: Approve Resolution (Price – Cedillo) to include in the City’s 2019-2020 Federal Legislative Program SUPPORT for the House version of the NDAA.

SUMMARY

The annual NDAA sets policies for Department of Defense (DOD) programs and activities. Specifically, the authorization bill determines the agencies responsible for defense, establishes funding levels, and sets the policies under which money will be spent. Recently, each NDAA also included provisions only peripherally related to the Defense Department, because unlike most other bills, Congress generally considers and passes the NDAA on an annual basis.

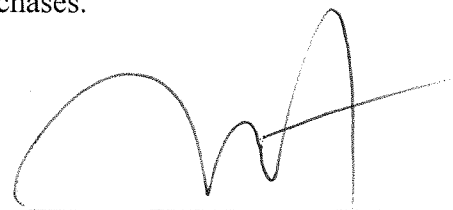
In early 2019, the United States House and Senate introduced legislation, H.R. 2739 and S. 846, respectively, that sought to restrict the use of federal funding for rolling stock (buses and rail vehicles) from firms based in China. The only difference between the House and Senate versions is that the House version applies only to rail transit rolling stock; the Senate version includes all transit rolling stock (rail and bus). Both the House and Senate versions of the NDAA bill mirrored language in each respective bill. On December 9, 2019, the House and Senate released the text of their conference agreement for the NDAA. One significant exception to the language adopted in the NDAA conference agreement is the addition of a two-year delay before the federal funding ban and penalties are implemented, except for the Washington Metropolitan Area Transportation Authority (WMATA) which is immediately subject to the federal ban on purchasing rolling stock from firms based in China. The legislation became law on December 20, 2019.

The final NDAA prohibits transit agencies from using any federal funding assistance provided under chapter 53 of title 49, U.S.C. from being “used in awarding a contract or subcontract...for the procurement of rolling stock for use in public transportation” from any company that has a manufacturing facility in the U.S. but is “owned or controlled by, is a subsidiary of, or is otherwise related legally or financially to a corporation” based in the People’s Republic of China. In addition, the bill provides a financial penalty to transit agencies that use their own non-federal funds to buy rolling stock from these companies – agencies that do so would forfeit their annual federal apportionment from the State of Good Repair formula program under 49 U.S.C. §5337 in the year that they signed the contract with the Chinese manufacturer. The final bill also grandfathers transit agencies that have contracts to purchase rail transit vehicles from Chinese companies “if the manufacturer and the public transportation agency have executed a contract for rail rolling stock before the date of enactment of this subsection.”

Resolution (Price – Cedillo) raises concerns regarding the impact of the rolling stock purchase exclusion in S. 846 on the Los Angeles-based company “Build Your Dreams” (BYD), a Los Angeles-based company that is a subsidiary of the Chinese multinational BYD Co Ltd. BYD North America’s headquarters is located in Downtown Los Angeles, with a 450,000-square-foot bus manufacturing facility in Lancaster, California.

BYD has manufactured 340 electric buses to numerous communities across the nation, including several that are part of the City’s DASH system. In November 2019, Los Angeles Department of Transportation ordered 130 battery-electric buses from BYD. The Los Angeles County Metropolitan Transportation Authority (Metro) has also purchased electric buses from BYD. Additionally, Metro anticipates purchasing rail cars from the China Railway Rolling Stock Corporation (CRRC).

According to LADOT, the 2020 NDAA does not affect any current local bus orders placed with BYD. Metro’s contracts for BYD buses, as well as their contract with CRRC for railcars, will not be directly impacted by this legislation. Both LADOT and BYD are seeking clarification from the Federal Transit Authority to confirm the City’s ability to contract for the purchase of additional electric replacement buses. LADOT is also working with regional transit partners, other stakeholders, and the State to address future electric vehicle purchases.

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Maria Souza-Rountree
Analyst

Attachment:

1. Resolution (Price - Cedillo)

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, Congress is currently deliberation two versions of the National Defense Authorization Act (NDAA); and

WHEREAS, the Senate version contains the Transit Infrastructure Vehicle Security Act (S. 846), which would prohibit public transportation agencies from entering into contracts for the purchase of all rolling stock, including buses, manufactured by Chinese state-owned, controlled, or subsidized companies; and

WHEREAS, the House version of the NDAA also includes contract prohibitions, but it does not contain S. 846 and more narrowly focuses the prohibition to rail cars and vehicles; and

WHEREAS, if enacted, S. 846 would negatively impact the Los Angeles-based company Build Your Dreams (BYD) by eliminating federal funding for BYD's rolling stock that could cost nearly 1,000 jobs in Los Angeles County; and

WHEREAS, BYD has manufactured 340 electric buses to communities across the nation, including several that are part of the City's DASH system; and

WHEREAS, BYD's ability to conduct business would be unfairly affected by S. 846 simply because the company's international headquarters are located in China; and

WHEREAS, Los Angeles needs the well-paying jobs provided by BYD that, through a unique Community Benefits Agreement, has created opportunities for veterans, single mothers, and individuals seeking a second chance;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2019-2020 Federal Legislative Program SUPPORT for the House version of the National Defense Authorization Act (NDAA).

PRESENTED BY: _____

CURREN D. PRICE, JR.
Councilmember, 9th District

SECONDED BY: _____

19-0002-5188

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