

CONCLUSION OF MORNING  
BUSINESS

The PRESIDING OFFICER. Morning business is closed.

WEAPON SYSTEMS ACQUISITION  
REFORM ACT OF 2009—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 454, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 454) to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes.

AMENDMENT NO. 1052, AS MODIFIED

Mr. LEVIN. Mr. President, I now send a modified Murray amendment to the desk and ask that it be called up.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for Mrs. MURRAY and Mr. CHAMBLISS, proposes an amendment numbered 1052, as modified.

Mr. LEVIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment, as modified, is as follows:

At the end of title II, add the following:  
**SEC. 207. EXPANSION OF NATIONAL SECURITY OBJECTIVES OF THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.**

(a) IN GENERAL.—Subsection (a) of section 2501 of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(6) Maintaining critical design skills to ensure that the armed forces are provided with systems capable of ensuring technological superiority over potential adversaries.”.

(b) NOTIFICATION OF CONGRESS UPON TERMINATION OF MDAPS OF EFFECTS ON NATIONAL SECURITY OBJECTIVES.—Such section is further amended by adding at the end the following new subsection:

“(c) NOTIFICATION OF CONGRESS UPON TERMINATION OF MAJOR DEFENSE ACQUISITION PROGRAM OF EFFECTS ON OBJECTIVES.—(1) Upon the termination of a major defense acquisition program, the Secretary of Defense shall notify Congress of the effects of such termination on the national security objectives for the national technology and industrial base set forth in subsection (a), and the measures, if any, that have been taken or should be taken to mitigate those effects.

“(2) In this subsection, the term ‘major defense acquisition program’ has the meaning given that term in section 2430 of this title.”.

Mr. LEVIN. Mr. President, Senator MURRAY introduced an important amendment yesterday and spoke about it last night. It is intended to make certain that when the Secretary of Defense looks at the question of cost and whether weapon systems should be continued, that at least the Secretary looks into the impact on the industrial base.

The amendment has been modified now in a way that makes this accept-

able. The Senator from Washington has put her finger on a very significant issue, which is the industrial manufacturing base of the country. But it has been modified in a way that would not make it difficult or impossible for us to do what we need to do relative to ending the production of weapon systems which, for instance, are no longer useful or have so outlived or outdone the expectations for the system and exceeded the expected expense that they are no longer practical in terms of their continued production.

So she has raised an important issue. It will be considered by the Secretary of Defense when these decisions are made. But the thrust of our bill is to make it possible to end the production of weapon systems if they are so costly that they no longer make sense or if they are not working effectively. That is the thrust of this bill, the heart of the matter. Her contribution does not detract or diminish that important point of our bill.

So we support that modified amendment and ask that the Senate adopt it.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment, as modified.

The amendment (No. 1052), as modified, was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote.

Mr. MCCAIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 1057

Mr. MCCAIN. Mr. President, I ask unanimous consent to call up amendment No. 1057, offered by the Senator from Oklahoma, Mr. COBURN.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for Mr. COBURN, proposes an amendment numbered 1057.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:  
(Purpose: To require a plan for the elimination of weaknesses in operations that hinder the capacity to assemble and assess reliable cost information on assets acquired under major defense acquisition programs)

At the end of title II, add the following:

**SEC. 207. PLAN FOR ELIMINATION OF WEAKNESSES IN OPERATIONS THAT HINDER CAPACITY TO ASSEMBLE AND ASSESS RELIABLE COST INFORMATION ON ACQUIRED ASSETS UNDER MAJOR DEFENSE ACQUISITION PROGRAMS.**

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Chief Management Officer of the Department of Defense shall submit to Congress a report setting forth a plan to identify and address weaknesses in operations that hinder

the capacity to assemble and assess reliable cost information on the systems and assets to be acquired under major defense acquisition programs.

(b) ELEMENTS.—The report required under subsection (a) shall include the following:

(1) Mechanisms to identify any weaknesses in operations under major defense acquisition programs that hinder the capacity to assemble and assess reliable cost information on the systems and assets to be acquired under such programs in accordance with applicable accounting standards.

(2) Mechanisms to address weaknesses in operations under major defense acquisition programs identified pursuant to the utilization of the mechanisms set forth under paragraph (1).

(3) A description of the proposed implementation of the mechanisms set forth pursuant to paragraph (2) to address the weaknesses described in that paragraph, including—

(A) the actions to be taken to implement such mechanisms;

(B) a schedule for carrying out such mechanisms; and

(C) metrics for assessing the progress made in carrying out such mechanisms.

(4) A description of the organization and resources required to carry out mechanisms set forth pursuant to paragraphs (1) and (2).

(5) In the case of the financial management practices of each military department applicable to major defense acquisition programs—

(A) a description of any weaknesses in such practices; and

(B) a description of the actions to be taken to remedy such weaknesses.

(c) CONSULTATION.—

(1) IN GENERAL.—In preparing the report required by subsection (a), the Chief Management Officer of the Department of Defense shall seek and consider input from each of the following:

(A) The Chief Management Officer of the Department of the Army.

(B) The Chief Management Officer of the Department of the Navy.

(C) The Chief Management Officer of the Department of the Air Force.

(2) FINANCIAL MANAGEMENT PRACTICES.—In preparing for the report required by subsection (a) the matters covered by subsection (b)(5) with respect to a particular military department, the Chief Management Officer of the Department of Defense shall consult specifically with the Chief Management Officer of the military department concerned.

Mr. MCCAIN. I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 1057) was agreed to.

Mr. MCCAIN. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCAIN. Mr. President, I believe there is a Senator coming over to speak, and I think that is the last speaker on this bill that I know of. So in the meantime, awaiting his arrival, I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I agree with Senator MCCAIN that we know of no more amendments that are going to

be offered. But there are one or two Senators who may want to speak on either their amendments which have been adopted or on the bill itself, and we will know that within the next few minutes.

What we are exploring in both our cloakrooms is whether we could possibly have a vote on final passage in about 10 or 15 minutes. We do not know if that is a possibility yet. If not, we would vote on final passage sometime probably early this afternoon. But we are trying now to identify what the time would be for a vote on final passage, and, hopefully, we will have more to say on that in the next few moments.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COBURN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COBURN. Mr. President, first of all, let me relay my appreciation to both the chairman and the ranking member for this bill. It does a lot of things that needed to be done for a long time. I would also say it will not do anything unless the President puts in the right person who has the right character; that is, mean as all get out, thorough, and comprehensive in what they are going to do and plans on staying there for a long time.

The other points I wanted to make, and I will be brief—really there are two. I have listened to all of this debate, not necessarily here but from my office. There is one thing that is missing in the debate. We have had the problem with contractors, and there is a problem with the Pentagon. But not once did I hear there is a problem with us.

The real reason we have gotten into trouble to the degree we have is because we have not done the oversight. We have not done our job. So we are seeing a great response now by the leadership of the Armed Services Committee to do some of the right things. But had we been doing our job, much of what we see in terms of failed major procurement systems, lack of transparency, we could have had that transparency had we been doing the oversight.

I will give you an example. Senator CARPER and I did the transparency on the C-5 retrofit, and we had a supposed Nunn-McCurdy breach when, in fact, there was not a Nunn-McCurdy breach. The people wanted there to be a Nunn-McCurdy breach. The fact is, we could in fact cut down costs, create transparency, not just with the effects of what this bill is going to do, but if we are much more aggressive.

The last point I will make is that there is no question that the earmarking process hampers us far more

than it helps us in the Pentagon. When we see the amount of time that is spent on most projects versus oversight, the American taxpayers are getting short-changed. They are just getting short-changed.

I hope people will recognize that although sometimes earmarks turn out to be fantastic, the vast majority of times they do not, and we spend staff time doing that rather than managing what is happening there today.

Our No. 1 charge under the Constitution is the defense of this country, and we do not just spend \$500 billion on that or \$600 billion. When we add up everything we spend, it comes—if we count nuclear weapons maintenance and we count the research for nuclear warheads, if we count everything that goes through, we are about at \$1 trillion. When we add everything else, that comes to that. And we are highly inefficient.

I am very appreciative with what is happening within this bill. But I think the American public ought to recognize that the earmarking process in Congress has hurt the Defense Department because it has taken away from us doing our regular job.

No. 2, Congress has hurt our procurement and our ability to defend ourselves because we are not doing the work we need to be doing, the oversight on a monthly basis on major programs. We cannot depend on IGs and the GAO. We have to ask them: Are you on time? Are you meeting the schedule we need to do this because we are putting one-third of our assets that we expend every year into defense? It is rich. And when we pay out \$7, \$8 billion for performance contracts that the performance contractor did not make, did not meet the requirements, but we pay it anyhow, we are the ones who allow that to happen.

Finally, the last point I will make: Until we address the revolving door of working in the Pentagon and going to work for a contractor and how that impacts what people do in terms of procurement and major decisions, we are not going to solve this problem. Whether it is an ethical constraint or a positive statement of principles, somehow we have to address that issue because we cannot blame the people who are looking for their next job to be less than perfectly independent in this job if, in fact, it is going to affect their future.

So we have not addressed that in this bill, but that is still one of the things that has to be addressed because it is problematic not only in terms of how well we do but what we get for what we actually pay out.

Again, I thank the chairman and ranking member. I appreciate their work. I appreciate them taking our amendment. My hope is that when we combine what we have put forward with a—I cannot use the word I want to use on the Senate floor—but someone of significantly tough demeanor to ramrod this through there, that, in

fact, we will see great savings, better performance, and better procurement for the American taxpayers.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Let me thank the Senator from Oklahoma for his amendment. It was just adopted. It is a very significant amendment, and what it reflects is the determination of the Senator from Oklahoma to get the Defense Department to do something that in law they are required to do, which is to give us a financial statement which receives a clean audit opinion.

They haven't done that for decades. We have tried various ways to do it. The voice of the Senator from Oklahoma is a welcome addition to this effort, and we appreciate his amendment and his willingness to work with us on the exact language thereof.

NUNN-MCCURDY

Ms. COLLINS. Mr. President, would the Senator yield for a question?

Some have expressed concerns that changes proposed by this bill could cause Nunn-McCurdy breaches even when a program is performing well and when the Department has provided well-defined requirements. In particular these experts have pointed to the potential for unit cost breaches that could be caused by policy decisions to reduce the number of units that would be purchased by the program. These policy decisions could originate in the executive branch or Congress and could be made regardless of past program performance. Do you believe this legislation will have that effect, and, if so, was that your intention?

Mr. LEVIN. I thank the Senator for her inquiry. This legislation would not change the existing Nunn-McCurdy thresholds for unit cost breaches. I do not believe that programs that are performing well have breached Nunn-McCurdy thresholds in the past as a result of changes in the quantity of units procured under a program, and I do not consider it likely in the future. In the case of a program that is not performing well, a change in unit quantities may be sufficient to push a program over the thresholds. This is a factor that the Department may consider in deciding whether and how to continue with the program. For programs performing well, however, the likelihood of a breach is extremely small. Nonetheless, it is certainly not our intention to penalize programs performing well, and I look forward to continuing to work with the Senator as this bill proceeds through Congress to address these concerns.

NIP-FUNDED ACQUISITION PROGRAMS

Mrs. FEINSTEIN. Mr. President, S. 454, the Weapon Systems Acquisition Reform Act of 2009, is important legislation to improve the organization and procedures of the Department of Defense for the acquisition of major weapons systems and other major defense systems. Chairman LEVIN and

Ranking Member McCAIN are to be congratulated for reporting this bill from their committee with strong bipartisan support.

As my colleagues know, many of our most important, and costly, national intelligence programs are acquired by intelligence community agencies that are found within the Department of Defense. Like the Senate Armed Services Committee, the Select Committee on Intelligence, where the chairman and ranking member of the Armed Services Committee sit as *ex officio* members, has been concerned for many years about the need to improve the intelligence acquisition process and its oversight in order to ensure we are making maximum best use of intelligence resources.

The Congress looks to the Director of National Intelligence to manage and be accountable for major systems acquisitions funded by the National Intelligence Program, NIP, even though these acquisitions are executed in other departments and agencies of the Federal Government. While many of us have had concerns about the implementation of the Intelligence Reform and Terrorism Prevention Act, IRPTA, of 2004, the creation of the Office of the Director of National Intelligence, DNI, and the establishment of the roles and responsibilities of that office were important accomplishments that we on the Intelligence Committee wish to see strengthened through robust implementation of the provisions of that act.

The Intelligence Reform and Terrorism Prevention Act gave the DNI broad acquisition authorities over the NIP, but for NIP programs conducted within the DOD, the act required that the DNI and the Secretary of Defense share these authorities. Specifically, the act required: "For each intelligence program within the National Intelligence Program for the acquisition of a major system, the Director of National Intelligence shall . . . serve as exclusive milestone decision authority, except that with respect to the Department of Defense programs the Director shall serve as milestone decision authority jointly with the Secretary of Defense or the designee of the Secretary."

Subsequently, Director of National Intelligence Michael McConnell and Secretary of Defense Robert Gates agreed in a memorandum of agreement, MOA, signed in March 2008 that this joint milestone decision authority would be extended to majority NIP-funded acquisition programs as well. They agreed that wholly and majority NIP-funded acquisition programs would be executed according to intelligence community acquisition policy. The MOA states that its purpose is to provide for "a single acquisition process" for programs covered by it. I am sure that we will all agree, as the DNI and the Secretary of Defense have done, that it is vitally important that these important intelligence acquisitions be governed by a clear process with clear

lines of responsibility as provided for by the MOA.

The MOA of the DNI and Secretary of Defense was later implemented in DOD Instruction No. 5000.2 on December 8, 2008.

It should also be pointed out that in fact wholly and majority NIP-funded major system acquisitions executed in accordance with intelligence community acquisition policies are now usually deemed to be "highly sensitive classified programs" under title 10 U.S.C. 2430

Because S. 454 would cover all "major defense acquisition programs" within the meaning of title 10 U.S.C. 2430, not just major weapons systems, I appreciate Chairman LEVIN agreeing to this colloquy to clarify the impact of the legislation on NIP-funded acquisition programs executed within the Department of Defense.

Mr. Chairman, is it the case that S. 454 would not extend DOD's jurisdiction to any programs over which it does not already have authority and that to the extent that NIP programs are outside the DOD acquisition system today, they would not be brought into the DOD acquisition system by this bill?

Mr. LEVIN. That is the case. This bill would neither extend nor contract DOD's jurisdiction or authority over the acquisition programs of DOD components that are a part of the intelligence community.

Mrs. FEINSTEIN. Mr. Chairman, do you further agree that this bill is not intended to change the DNI's roles and responsibilities under the Intelligence Reform and Terrorism Protection Act of 2004 or to require revision of the March 2008 memorandum of agreement between the DNI and Secretary of Defense concerning NIP-funded acquisition programs?

Mr. LEVIN. I agree with the chairman of the Intelligence Committee. S. 454 is not intended to amend IRTPA or to modify the respective authorities of the DNI and the Secretary of Defense under that statute. S. 454 does not address the March 2008 memorandum of agreement between the DNI and the Secretary of Defense concerning NIP-funded acquisition programs. It neither ratifies that memorandum of agreement nor requires any modification to the memorandum of agreement.

Mrs. FEINSTEIN. I thank the distinguished chairman of the Armed Services Committee and manager of this bill.

Ms. SNOWE. Mr. President, as ranking member of the Senate Committee on Small Business and Entrepreneurship, I rise with my colleague Senator COLLINS, to file this vital amendment to correct disparities among the Small Business Administration's, SBA, small business contracting programs and thus create a more equitable method for Federal agencies to fairly allocate Federal procurement dollars to small business contractors across the nation.

This targeted amendment reflects a proposed rule promulgated last year,

March 2008, by the Department of Defense, DOD, the Government Services Administration, GSA, and the National Aeronautics and Space Administration, NASA, which requires the Federal Acquisitions Regulations, FAR, clearly reflect the SBA's interpretation of the Small Business Act and the SBA's analysis of its own regulations and provide an equal playing field for small business firms who participate in the Federal contracting marketplace. The SBA's own counsel asserts that parity legislation must be adopted because Federal agencies "must be afforded some discretion in determining which small business program to utilize." Parties agree that small business should be treated uniformly.

Our amendment would provide Federal agencies with the necessary flexibility to satisfy their Government-wide statutory small business contracting goals. It would provide these agencies with the ability to achieve their goaling requirements equally through an award to a small business, a historically underutilized business zone, HUBZone, small business concern, a service-disabled veteran-owned small business, SDVOSB, firm, or a small business participating in the 8(a) Business Development Program. Of course this list should also include the Women's Procurement Program once it finally becomes fully implemented by the SBA.

For years, it has been unclear to the acquisition community what, if any, is the true order of preference when determining which small business contracting program is at the top of the agency's priority list. This amendment will make clear to purchasing agencies that contracting officers may award contracts to HUBZone, SDVOSB, 8(a) firms with equal deference to each program.

This amendment represents the essence of true parity—where each program has an equal chance of being selected for an award. And during these difficult economic times, it is imperative that small business contractors possess an equal opportunity to compete for Federal contracts on the same playing field with each other.

I urge my colleagues on both sides of the aisle to support this amendment.

Mr. CASEY. Mr. President, I rise to express my strong support for the Weapons System Acquisition Reform Act, introduced by the two leading military experts in the U.S. Senate today—Senators CARL LEVIN and JOHN McCAIN. This rapid passage, after years of delay and inaction, has occurred in part because of the strong support demonstrated by President Obama. The President, in public remarks recently on this issue, reaffirmed his strong commitment to be a wise steward of the American taxpayer's dollars. That commitment to fiscal prudence and wise budgeting must apply equally to the Pentagon as it does any other Cabinet Department. Those who argue that it is acceptable to tolerate some waste

and inefficiency in our military budgets because we are talking about our national security have it wrong. It is precisely because our security is at stake that we must ensure, as Secretary Gates has said, every dollar wasted on cost overruns or inefficient contracting is a dollar that cannot be spent on our men and women in service and making sure they have the right tools to succeed.

Defense acquisition reform is one of those perennial Washington issues that everyone talks about, but nobody ever seems to get around to solving. Many of my colleagues, in the debate over the past 2 days, have cited the GAO report last year chronicling \$296 billion in cumulative cost overruns in the 96 major acquisition programs currently maintained by the Pentagon. But I would like to quote from another report:

public confidence in the effectiveness of the defense acquisition system has been shaken by a spate of "horror stories"—overpriced spare parts, test deficiencies, and cost and schedule overruns. Unwelcome at any time, such stories are particularly unsettling when the Administration and Congress are seeking ways to deal with record budget deficits.

This other report was not published this year or last year. I am quoting from the legendary Packard Report, published in 1986, which offered a scathing indictment of the defense acquisition process. Unfortunately, little seems to have changed in the intervening 23 years, and in some respects, our procurement system has only deteriorated.

Year after year, we hear of cost overruns and schedule delays that cost the American taxpayer billions of dollars. Yet we never seem to muster the political will to tackle the problem and crack down on the systemic flaws that produce these chronic poor results. So I am very pleased that this legislation has moved from introduction to committee markup to final Senate passage in a matter of months—after years of reports and blue ribbon commission of studies emphasizing the need for fundamental reform of the process by which the Pentagon purchases the weapons systems used every day by our brave men and women.

The Levin-McCain bill on the floor today seeks to address key deficiencies in the early stages of the acquisition process for a weapons system, where many of the problems first materialize. The legislation would support the Pentagon's efforts to rebuild its procurement workforce, which has been dismantled over the past fifteen years and contracted out. It would establish an independent office in the Pentagon to assess initial cost estimates provided for weapons systems, to ensure that rose-colored cost predictions are no longer permitted to pass muster. Finally, the bill reinforces so-called Nunn-McCurdy provisions to ensure that programs that go seriously off track are terminated unless there is a compelling reason not to do so.

I was also proud to serve as a cosponsor on a series of important amendments offered by my colleague from Missouri, Senator MCCASKILL. I applaud the Senator's single-minded determination to root out waste, fraud and abuse in our procurement and contracting systems, and I am very pleased to collaborate with her on these important amendments, all of which have been accepted by voice vote. Briefly, the amendments ensure that our war fighters in the field, as represented by the Combatant Commanders, provide input to the weapons acquisition process; offer an opportunity for the key Pentagon civilian official in charge of acquisition to sign off on all acquisition program decisions made something that oddly does not yet occur on a regular basis; and strengthen safeguards to ensure competitive prototyping for all major weapons systems before final purchase decisions are made.

What matters, at the end of the day, is not just the dollars we save. All of us have a fiduciary responsibility to safeguard the interests of our young men and women who serve our nation. We cannot continue paying excess dollars on out of control weapons acquisition programs while we shortchange our troops on time at home from extended deployments and the full range of benefits they and their families deserve. That is at the heart of why the Levin-McCain acquisition reform legislation must be enacted into law by Memorial Day, as called for by the President.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEVIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, we are approaching the end of our debate. I believe the Senator from Alabama wishes to speak for up to 5 minutes.

I ask unanimous consent that no further amendments be in order, that following the remarks of Senator SESSIONS, the Senate proceed as provided for under a previous order with respect to passage of S. 454.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Reserving the right to object—and I will not object—I thank the chairman and all the staff for the hard work they have done on this legislation. Many hundreds of hours have been put in, as well as hours of hearings. I thank the chairman for his leadership and the kind of nonpartisanship these important issues require for the good of the country.

I do not object.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Michigan.

Mr. LEVIN. Mr. President, I join in thanking Senator MCCAIN and our

staffs. The work that has gone into this bill has been extraordinary on the part of both staffs. I will get into that after passage of the bill and have perhaps further thoughts. The role of Senator MCCAIN has been absolutely invaluable and essential. We have worked together very closely; as he puts it, in a non-partisan way. I thank him and his staff as well as my own.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Senators LEVIN and MCCAIN for their work. We do need to address wasteful spending. Both of these Senators understand it. Senator MCCAIN has always been willing to challenge programs he thinks are not justified for the warfighter.

I wish to note a few things before we vote on passage as well as urge support for the legislation. First, the legitimate concerns voiced by the Department of Defense about the implications of this bill have been listened to and have been reasonably accommodated. I wish to highlight a few points identified by a report last month by the Government Accountability Office, the independent GAO, titled "Defense Acquisitions, Assessments of Selected Weapon Programs."

Since 2003, the number of major defense acquisitions programs has grown from 77 to 96. All 96 programs were assessed by GAO. They found investment in these programs had grown from \$1.2 trillion to \$1.6 trillion. Research and development costs are now 42 percent higher than originally expected. The cumulative cost growth was \$296 billion. I find that to be a stunning number. I almost have to believe that somehow they calculated it in an excessive way. Sometimes numbers can look misleading. But if it is a third of that, we have a major problem. They concluded the cost growth on these programs was almost \$300 billion. The average delay in delivering the initial capabilities has increased to 22 months. So we have an excessive delay in producing our capabilities. GAO found that only 28 percent of the programs were expected to be delivered on time or ahead of schedule.

To combat cost growth, they found that quantities; that is, the number of the weapon systems and vehicles and other things that were to be produced, had to be reduced by 25 percent or more for 15 of the programs in the 2008 portfolio, and 10 of the largest acquisition programs, which account for half the overall acquisition dollars in the portfolio, have seen quantities reduced by almost one-third.

When the price per item goes up significantly, often the compensating action is to reduce the numbers. But the net reality is, that the taxpayer hasn't received as much as they expected out of the program. So clearly these statistics are disturbing and underscore the need for this important legislation and reform.

In summary, our warfighters are receiving less capability at a higher cost

than was originally agreed upon. I believe this bill will improve the acquisition process by ensuring the Department and industry are more thoughtful when estimating the production cost at the beginning and the total life cycle cost of these programs. While I am mindful that acquisition reforms can continue to be improved, I encourage colleagues to vote in favor of this legislation. It is clearly a step in the right direction.

I salute our chairman and our ranking member, Senators LEVIN and MCCAIN, for this accomplishment.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the substitute amendment, as amended, is agreed to.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. LEVIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on the passage of the bill.

The clerk will call the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from New Jersey (Mr. MENENDEZ), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. ROCKEFELLER) would vote "yea."

Mr. KYL. The following Senator is necessarily absent: the Senator from Missouri (Mr. BOND).

The PRESIDING OFFICER (Mrs. HAGAN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 93, nays 0, as follows:

[Rollcall Vote No. 186 Leg.]

YEAS—93

Akaka	Dodd	Lugar
Alexander	Dorgan	Martinez
Barrasso	Durbin	McCain
Baucus	Ensign	McCaskill
Bayh	Enzi	McConnell
Begich	Feingold	Merkley
Bennet	Feinstein	Mikulski
Bennett	Gillibrand	Murkowski
Bingaman	Graham	Murray
Boxer	Grassley	Nelson (NE)
Brown	Gregg	Nelson (FL)
Brownback	Hagan	Pryor
Bunning	Harkin	Reed
Burr	Hatch	Reid
Burriss	Hutchison	Risch
Byrd	Inhofe	Roberts
Cantwell	Inouye	Sanders
Cardin	Isakson	Schumer
Carper	Johanns	Sessions
Casey	Kaufman	Shaheen
Chambliss	Kerry	Shelby
Coburn	Klobuchar	Snowe
Cochran	Kohl	Specter
Collins	Kyl	Stabenow
Conrad	Landrieu	Tester
Corker	Leahy	Thune
Cornyn	Levin	Udall (CO)
Crapo	Lieberman	Udall (NM)
DeMint	Lincoln	Vitter

Voinovich	Webb	Wicker
Warner	Whitehouse	Wyden

NOT VOTING—6

Bond	Kennedy	Menendez
Johnson	Lautenberg	Rockefeller

The bill (S. 454), as amended, was passed, as follows:

S. 454

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

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Weapon Systems Acquisition Reform Act of 2009".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

#### TITLE I—ACQUISITION ORGANIZATION

Sec. 101. Reports on systems engineering capabilities of the Department of Defense.

Sec. 102. Director of Developmental Test and Evaluation.

Sec. 103. Assessment of technological maturity of critical technologies of major defense acquisition programs by the Director of Defense Research and Engineering.

Sec. 104. Director of Independent Cost Assessment.

Sec. 105. Role of the commanders of the combatant commands in identifying joint military requirements.

Sec. 106. Clarification of submittal of certification of adequacy of budgets by the Director of the Department of Defense Test Resource Management Center.

#### TITLE II—ACQUISITION POLICY

Sec. 201. Consideration of trade-offs among cost, schedule, and performance in the acquisition of major weapon systems.

Sec. 202. Preliminary design review and critical design review for major defense acquisition programs.

Sec. 203. Ensuring competition throughout the life cycle of major defense acquisition programs.

Sec. 204. Critical cost growth in major defense acquisition programs.

Sec. 205. Organizational conflicts of interest in the acquisition of major weapon systems.

Sec. 206. Awards for Department of Defense personnel for excellence in the acquisition of products and services.

Sec. 207. Earned Value Management.

Sec. 208. Expansion of national security objectives of the national technology and industrial base.

Sec. 209. Plan for elimination of weaknesses in operations that hinder capacity to assemble and assess reliable cost information on acquired assets under major defense acquisition programs.

#### SEC. 2. DEFINITIONS.

In this Act:

(1) The term "congressional defense committees" has the meaning given that term in section 101(a)(16) of title 10, United States Code.

(2) The term "major defense acquisition program" has the meaning given that term in section 2430 of title 10, United States Code.

#### TITLE I—ACQUISITION ORGANIZATION

##### SEC. 101. REPORTS ON SYSTEMS ENGINEERING CAPABILITIES OF THE DEPARTMENT OF DEFENSE.

(a) REPORTS BY SERVICE ACQUISITION EXECUTIVES.—Not later than 180 days after the date of the enactment of this Act, the service acquisition executive of each military department shall submit to the Under Secretary of Defense for Acquisition, Technology, and Logistics a report setting forth the following:

(1) A description of the extent to which such military department has in place development planning organizations and processes staffed by adequate numbers of personnel with appropriate training and expertise to ensure that—

(A) key requirements, acquisition, and budget decisions made for each major weapon system prior to Milestones A and B are supported by a rigorous systems analysis and systems engineering process;

(B) the systems engineering strategy for each major weapon system includes a robust program for improving reliability, availability, maintainability, and sustainability as an integral part of design and development; and

(C) systems engineering requirements, including reliability, availability, maintainability, and sustainability requirements, are identified during the Joint Capabilities Integration Development System process and incorporated into contract requirements for each major weapon system.

(2) A description of the actions that such military department has taken, or plans to take, to—

(A) establish needed development planning and systems engineering organizations and processes; and

(B) attract, develop, retain, and reward systems engineers with appropriate levels of hands-on experience and technical expertise to meet the needs of such military department.

(b) REPORT BY UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS.—Not later than 270 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the system engineering capabilities of the Department of Defense. The report shall include, at a minimum, the following:

(1) An assessment by the Under Secretary of the reports submitted by the service acquisition executives pursuant to subsection (a) and of the adequacy of the actions that each military department has taken, or plans to take, to meet the systems engineering and development planning needs of such military department.

(2) An assessment of each of the recommendations of the report on Pre-Milestone A and Early-Phase Systems Engineering of the Air Force Studies Board of the National Research Council, including the recommended checklist of systems engineering issues to be addressed prior to Milestones A and B, and the extent to which such recommendations should be implemented throughout the Department of Defense.

##### SEC. 102. DIRECTOR OF DEVELOPMENTAL TEST AND EVALUATION.

(a) ESTABLISHMENT OF POSITION.—

(1) IN GENERAL.—Chapter 4 of title 10, United States Code, is amended by inserting after section 139b the following new section: "**§ 139c. Director of Developmental Test and Evaluation**

"(a) There is a Director of Developmental Test and Evaluation, who shall be appointed

by the Secretary of Defense from among individuals with an expertise in acquisition and testing.

“(b)(1) The Director of Developmental Test and Evaluation shall be the principal advisor to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics on developmental test and evaluation in the Department of Defense.

“(2) The individual serving as the Director of Developmental Test and Evaluation may also serve concurrently as the Director of the Department of Defense Test Resource Management Center under section 196 of this title.

“(3) The Director shall be subject to the supervision of the Under Secretary of Defense for Acquisition, Technology, and Logistics and shall report to the Under Secretary.

“(4)(A) The Under Secretary shall provide guidance to the Director to ensure that the developmental test and evaluation activities of the Department of Defense are fully integrated into and consistent with the systems engineering and development processes of the Department.

“(B) The guidance under this paragraph shall ensure, at a minimum, that—

“(i) developmental test and evaluation requirements are fully integrated into the Systems Engineering Master Plan for each major defense acquisition program; and

“(ii) systems engineering and development planning requirements are fully considered in the Test and Evaluation Master Plan for each major defense acquisition program.

“(c) The Director of Developmental Test and Evaluation shall—

“(1) develop policies and guidance for the developmental test and evaluation activities of the Department of Defense (including integration and developmental testing of software);

“(2) monitor and review the developmental test and evaluation activities of the major defense acquisition programs and major automated information systems programs of the Department of Defense;

“(3) review and approve the test and evaluation master plan for each major defense acquisition program of the Department of Defense;

“(4) supervise the activities of the Director of the Department of Defense Test Resource Management Center under section 196 of this title, or carry out such activities if serving concurrently as the Director of Developmental Test and Evaluation and the Director of the Department of Defense Test Resource Management Center under subsection (b)(2);

“(5) review the organizations and capabilities of the military departments with respect to developmental test and evaluation and identify needed changes or improvements to such organizations and capabilities; and

“(6) perform such other activities relating to the developmental test and evaluation activities of the Department of Defense as the Under Secretary of Defense for Acquisition, Technology, and Logistics may prescribe.

“(d) The Director of Developmental Test and Evaluation shall have access to all records and data of the Department of Defense (including the records and data of each military department) that the Director considers necessary in order to carry out the Director's duties under this section.

“(e)(1) The Director of Developmental Test and Evaluation shall submit to Congress each year a report on the developmental test and evaluation activities of the major defense acquisition programs and major automated information system programs of the Department of Defense. Each report shall include, at a minimum, the following:

“(A) A discussion of any waivers to testing activities included in the Test and Evalua-

tion Master Plan for a major defense acquisition program in the preceding year.

“(B) An assessment of the organization and capabilities of the Department of Defense for test and evaluation.

“(2) The Secretary of Defense may include in any report submitted to Congress under this subsection such comments on such report as the Secretary considers appropriate.”

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 4 of such title is amended by inserting after the item relating to section 139b the following new item:

“139c. Director of Developmental Test and Evaluation.”

(3) CONFORMING AMENDMENTS.—

(A) Section 196(f) of title 10, United States Code, is amended by striking “the Under Secretary of Defense for Acquisition, Technology, and Logistics” and all that follows and inserting “the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Director of Developmental Test and Evaluation.”

(B) Section 139(b) of such title is amended—

(i) by redesignating paragraphs (4) through (6) as paragraphs (5) through (7), respectively; and

(ii) by inserting after paragraph (3) the following new paragraph (4):

“(4) review and approve the test and evaluation master plan for each major defense acquisition program of the Department of Defense;”

(b) REPORTS ON DEVELOPMENTAL TESTING ORGANIZATIONS AND PERSONNEL.—

(1) REPORTS BY SERVICE ACQUISITION EXECUTIVES.—Not later than 180 days after the date of the enactment of this Act, the service acquisition executive of each military department shall submit to the Director of Developmental Test and Evaluation a report on the extent to which the test organizations of such military department have in place, or have effective plans to develop, adequate numbers of personnel with appropriate expertise for each purpose as follows:

(A) To ensure that testing requirements are appropriately addressed in the translation of operational requirements into contract specifications, in the source selection process, and in the preparation of requests for proposals on all major defense acquisition programs.

(B) To participate in the planning of developmental test and evaluation activities, including the preparation and approval of a test and evaluation master plan for each major defense acquisition program.

(C) To participate in and oversee the conduct of developmental testing, the analysis of data, and the preparation of evaluations and reports based on such testing.

(2) FIRST ANNUAL REPORT BY DIRECTOR OF DEVELOPMENTAL TEST AND EVALUATION.—The first annual report submitted to Congress by the Director of Developmental Test and Evaluation under section 139c(e) of title 10, United States Code (as added by subsection (a)), shall be submitted not later than one year after the date of the enactment of this Act, and shall include an assessment by the Director of the reports submitted by the service acquisition executives to the Director under paragraph (1).

**SEC. 103. ASSESSMENT OF TECHNOLOGICAL MATURITY OF CRITICAL TECHNOLOGIES OF MAJOR DEFENSE ACQUISITION PROGRAMS BY THE DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING.**

(a) ASSESSMENT BY DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING.—

(1) IN GENERAL.—Section 139a of title 10, United States Code, is amended by adding at the end the following new subsection:

“(c)(1) The Director of Defense Research and Engineering shall, in consultation with the Director of Developmental Test and Evaluation, periodically review and assess the technological maturity and integration risk of critical technologies of the major defense acquisition programs of the Department of Defense and report on the findings of such reviews and assessments to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

“(2) The Director shall submit to the Secretary of Defense and to Congress each year a report on the technological maturity and integration risk of critical technologies of the major defense acquisition programs of the Department of Defense.”

(2) FIRST ANNUAL REPORT.—The first annual report under subsection (c)(2) of section 139a of title 10, United States Code (as added by paragraph (1)), shall be submitted to Congress not later than March 1, 2011, and shall address the results of reviews and assessments conducted by the Director of Defense Research and Engineering pursuant to subsection (c)(1) of such section (as so added) during the preceding calendar year.

(b) REPORT ON RESOURCES FOR IMPLEMENTATION.—Not later than 120 days after the date of the enactment of this Act, the Director of Defense Research and Engineering shall submit to the congressional defense committees a report describing any additional resources, including specialized workforce, that may be required by the Director, and by other science and technology elements of the Department of Defense, to carry out the following:

(1) The requirements under the amendment made by subsection (a).

(2) The technological maturity assessments required by section 2366b(a) of title 10, United States Code, as amended by section 202 of this Act.

(3) The requirements of Department of Defense Instruction 5000, as revised.

(c) TECHNOLOGICAL MATURITY STANDARDS.—For purposes of the review and assessment conducted by the Director of Defense Research and Engineering in accordance with subsection (c) of section 139a of title 10, United States Code (as added by subsection (a)), a critical technology is considered to be mature—

(1) in the case of a major defense acquisition program that is being considered for Milestone B approval, if the technology has been demonstrated in a relevant environment; and

(2) in the case of a major defense acquisition program that is being considered for Milestone C approval, if the technology has been demonstrated in a realistic environment.

**SEC. 104. DIRECTOR OF INDEPENDENT COST ASSESSMENT.**

(a) DIRECTOR OF INDEPENDENT COST ASSESSMENT.—

(1) IN GENERAL.—Chapter 4 of title 10, United States Code, as amended by section 102 of this Act, is further amended by inserting after section 139c the following new section:

“§ 139d. Director of Independent Cost Assessment

“(a) There is a Director of Independent Cost Assessment in the Department of Defense, appointed by the President, by and with the advice and consent of the Senate. The Director shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties of the Director.

“(b) The Director is the principal advisor to the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Under Secretary of Defense (Comptroller) on cost estimation and cost analyses for the acquisition programs of the Department of Defense and the principal cost estimation official within the senior management of the Department of Defense. The Director shall—

“(1) prescribe, by authority of the Secretary of Defense, policies and procedures for the conduct of cost estimation and cost analysis for the acquisition programs of the Department of Defense;

“(2) provide guidance to and consult with the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), and the Secretaries of the military departments with respect to cost estimation in the Department of Defense in general and with respect to specific cost estimates and cost analyses to be conducted in connection with a major defense acquisition program under chapter 144 of this title or a major automated information system program under chapter 144A of this title;

“(3) establish guidance on confidence levels for cost estimates on major defense acquisition programs, require that all such estimates include confidence levels compliant with such guidance, and require the disclosure of all such confidence levels (including through Selected Acquisition Reports submitted pursuant to section 2432 of this title);

“(4) monitor and review all cost estimates and cost analyses conducted in connection with major defense acquisition programs and major automated information system programs; and

“(5) conduct independent cost estimates and cost analyses for major defense acquisition programs and major automated information system programs for which the Under Secretary of Defense for Acquisition, Technology, and Logistics is the Milestone Decision Authority—

“(A) in advance of—

“(i) any certification under section 2366a or 2366b of this title;

“(ii) any certification under section 2433(e)(2) of this title; and

“(iii) any report under section 2445c(f) of this title; and

“(B) whenever necessary to ensure that an estimate or analysis under paragraph (4) is unbiased, fair, and reliable.

“(c)(1) The Director may communicate views on matters within the responsibility of the Director directly to the Secretary of Defense and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense.

“(2) The Director shall consult closely with, but the Director and the Director's staff shall be independent of, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), and all other officers and entities of the Department of Defense responsible for acquisition and budgeting.

“(d)(1) The Secretary of a military department shall report promptly to the Director the results of all cost estimates and cost analyses conducted by the military department and all studies conducted by the military department in connection with cost estimates and cost analyses for major defense acquisition programs of the military department.

“(2) The Director may make comments on cost estimates and cost analyses conducted by a military department for a major defense acquisition program, request changes in such cost estimates and cost analyses to ensure

that they are fair and reliable, and develop or require the development of independent cost estimates or cost analyses for such program, as the Director determines to be appropriate.

“(3) The Director shall have access to any records and data in the Department of Defense (including the records and data of each military department) that the Director considers necessary to review in order to carry out the Director's duties under this section.

“(e)(1) The Director shall prepare an annual report summarizing the cost estimation and cost analysis activities of the Department of Defense during the previous year and assessing the progress of the Department in improving the accuracy of its costs estimates and analyses. The report shall include an assessment of—

“(A) the extent to which each of the military departments have complied with policies, procedures, and guidance issued by the Director with regard to the preparation of cost estimates; and

“(B) the overall quality of cost estimates prepared by each of the military departments.

“(2) Each report under this subsection shall be submitted concurrently to the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), and Congress not later than 10 days after the transmission of the budget for the next fiscal year under section 1105 of title 31. The Director shall ensure that a report submitted under this subsection does not include any information, such as proprietary or source selection sensitive information, that could undermine the integrity of the acquisition process. Each report submitted to Congress under this subsection shall be posted on an Internet website of the Department of Defense that is available to the public.

“(3) The Secretary may comment on any report of the Director to Congress under this subsection.

“(f) The President shall include in the budget transmitted to Congress pursuant to section 1105 of title 31 for each fiscal year a separate statement of estimated expenditures and proposed appropriations for that fiscal year for the Director of Independent Cost Assessment in carrying out the duties and responsibilities of the Director under this section.

“(g) The Secretary of Defense shall ensure that the Director has sufficient professional staff of military and civilian personnel to enable the Director to carry out the duties and responsibilities of the Director under this section.”

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 4 of such title, as so amended, is further amended by inserting after the item relating to section 139c the following new item:

“139d. Director of Independent Cost Assessment.”

(3) EXECUTIVE SCHEDULE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by inserting after the item relating to the Director of Operational Test and Evaluation, Department of Defense the following new item:

“Director of Independent Cost Assessment, Defense of Defense.”

(b) REPORT ON MONITORING OF OPERATING AND SUPPORT COSTS FOR MDAPS.—

(1) REPORT TO SECRETARY OF DEFENSE.—Not later than one year after the date of the enactment of this Act, the Director of Independent Cost Assessment under section 139d of title 10 United States Code (as added by subsection (a)), shall review existing systems and methods of the Department of Defense for tracking and assessing operating and sup-

port costs on major defense acquisition programs and submit to the Secretary of Defense a report on the finding and recommendations of the Director as a result of the review, including an assessment by the Director of the feasibility and advisability of establishing baselines for operating and support costs under section 2435 of title 10, United States Code.

(2) TRANSMITTAL TO CONGRESS.—Not later than 30 days after receiving the report required by paragraph (1), the Secretary shall transmit the report to the congressional defense committees, together with any comments on the report the Secretary considers appropriate.

(c) TRANSFER OF PERSONNEL AND FUNCTIONS OF COST ANALYSIS IMPROVEMENT GROUP.—The personnel and functions of the Cost Analysis Improvement Group of the Department of Defense are hereby transferred to the Director of Independent Cost Assessment under section 139d of title 10, United States Code (as so added), and shall report directly to the Director.

(d) CONFORMING AMENDMENTS.—

(1) Section 181(d) of title 10, United States Code, is amended by inserting “the Director of Independent Cost Assessment,” before “and the Director”.

(2) Section 2306b(i)(1)(B) of such title is amended by striking “Cost Analysis Improvement Group of the Department of Defense” and inserting “Director of Independent Cost Assessment”.

(3) Section 2366a(a)(4) of such title is amended by striking “has been submitted” and inserting “has been approved by the Director of Independent Cost Assessment”.

(4) Section 2366b(a)(1)(C) of such title is amended by striking “have been developed to execute” and inserting “have been approved by the Director of Independent Cost Assessment to provide for the execution of”.

(5) Section 2433(e)(2)(B)(iii) of such title is amended by striking “are reasonable” and inserting “have been determined by the Director of Independent Cost Assessment to be reasonable”.

(6) Subparagraph (A) of section 2434(b)(1) of such title is amended to read as follows:

“(A) be prepared or approved by the Director of Independent Cost Assessment; and”.

(7) Section 2445c(f)(3) of such title is amended by striking “are reasonable” and inserting “have been determined by the Director of Independent Cost Assessment to be reasonable”.

(e) COMPTROLLER GENERAL OF THE UNITED STATES REVIEW OF OPERATING AND SUPPORT COSTS OF MAJOR WEAPON SYSTEMS.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the congressional defense committees a report on growth in operating and support costs for major weapon systems.

(2) ELEMENTS.—In preparing the report required by paragraph (1), the Comptroller General shall, at a minimum—

(A) identify the original estimates for operating and support costs for major weapon systems selected by the Comptroller General for purposes of the report;

(B) assess the actual operating and support costs for such major weapon systems;

(C) analyze the rate of growth for operating and support costs for such major weapon systems;

(D) for such major weapon systems that have experienced the highest rate of growth in operating and support costs, assess the factors contributing to such growth;

(E) assess measures taken by the Department of Defense to reduce operating and support costs for major weapon systems; and

(F) make such recommendations as the Comptroller General considers appropriate.

(3) MAJOR WEAPON SYSTEM DEFINED.—In this subsection, the term “major weapon system” has the meaning given that term in 2379(d) of title 10, United States Code.

**SEC. 105. ROLE OF THE COMMANDERS OF THE COMBATANT COMMANDS IN IDENTIFYING JOINT MILITARY REQUIREMENTS.**

(a) IN GENERAL.—Section 181 of title 10, United States Code, as amended by section 104(d)(1) of this Act, is further amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively; and

(2) by adding after subsection (d) the following new subsection (e):

“(e) INPUT FROM COMBATANT COMMANDERS ON JOINT MILITARY REQUIREMENTS.—The Council shall seek and consider input from the commanders of the combatant commands in carrying out its mission under paragraphs (1) and (2) of subsection (b) and in conducting periodic reviews in accordance with the requirements of subsection (f). Such input may include, but is not limited to, an assessment of the following:

“(1) Any current or projected missions or threats in the theater of operations of the commander of a combatant command that would justify a new joint military requirement.

“(2) The necessity and sufficiency of a proposed joint military requirement in terms of current and projected missions or threats.

“(3) The relative priority of a proposed joint military requirement in comparison with other joint military requirements.

“(4) The ability of partner nations in the theater of operations of the commander of a combatant command to assist in meeting the joint military requirement or to partner in using technologies developed to meet the joint military requirement.”.

(b) COMPTROLLER GENERAL OF THE UNITED STATES REVIEW OF IMPLEMENTATION.—Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of the requirements of subsection (e) of section 181 of title 10, United States Code (as amended by subsection (a)), for the Joint Requirements Oversight Council to solicit and consider input from the commanders of the combatant commands. The report shall include, at a minimum, an assessment of the extent to which the Council has effectively sought, and the commanders of the combatant commands have provided, meaningful input on proposed joint military requirements.

**SEC. 106. CLARIFICATION OF SUBMITTAL OF CERTIFICATION OF ADEQUACY OF BUDGETS BY THE DIRECTOR OF THE DEPARTMENT OF DEFENSE TEST RESOURCE MANAGEMENT CENTER.**

Section 196(e)(2) of title 10, United States Code, is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by inserting after subparagraph (A) the following new subparagraph (B):

“(B) If the Director of the Center is not serving concurrently as the Director of Developmental Test and Evaluation under subsection (b)(2) of section 139c of this title, the certification of the Director of the Center under subparagraph (A) shall, notwithstanding subsection (c)(4) of such section, be submitted directly and independently to the Secretary of Defense.”.

**TITLE II—ACQUISITION POLICY**

**SEC. 201. CONSIDERATION OF TRADE-OFFS AMONG COST, SCHEDULE, AND PERFORMANCE IN THE ACQUISITION OF MAJOR WEAPON SYSTEMS.**

(a) CONSIDERATION OF TRADE-OFFS.—

(1) IN GENERAL.—The Secretary of Defense shall develop and implement mechanisms to ensure that trade-offs between cost, schedule, and performance are considered as part of the process for developing requirements for major weapon systems.

(2) ELEMENTS.—The mechanisms required under this subsection shall ensure, at a minimum, that—

(A) Department of Defense officials responsible for acquisition, budget, and cost estimating functions are provided an appropriate opportunity to develop estimates and raise cost and schedule matters before performance requirements are established for major weapon systems; and

(B) consideration is given to fielding major weapon systems through incremental or spiral acquisition, while deferring technologies that are not yet mature, and capabilities that are likely to significantly increase costs or delay production, until later increments or spirals.

(3) MAJOR WEAPONS SYSTEM DEFINED.—In this subsection, the term “major weapon system” has the meaning given that term in section 2379(d) of title 10, United States Code.

(b) DUTIES OF JOINT REQUIREMENTS OVERSIGHT COUNCIL.—Section 181(b)(1) of title 10, United States Code, is amended—

(1) in subparagraph (A), by striking “and” at the end;

(2) in subparagraph (B), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new subparagraph:

“(C) in ensuring the consideration of trade-offs among cost, schedule and performance for joint military requirements in consultation with the advisors specified in subsection (d);”.

(c) REVIEW OF JOINT MILITARY REQUIREMENTS.—

(1) JROC SUBMITTAL OF RECOMMENDED REQUIREMENTS TO UNDER SECRETARY FOR ATL.—Upon recommending a new joint military requirement, the Joint Requirements Oversight Council shall transmit the recommendation to the Under Secretary of Defense for Acquisition, Technology, and Logistics for review and concurrence or non-concurrence in the recommendation.

(2) REVIEW OF RECOMMENDED REQUIREMENTS.—The Under Secretary for Acquisition, Technology, and Logistics shall review each recommendation transmitted under paragraph (1) to determine whether or not the Joint Requirements Oversight Council has, in making such recommendation—

(A) taken appropriate action to solicit and consider input from the commanders of the combatant commands in accordance with the requirements of section 181(e) of title 10, United States Code (as amended by section 105);

(B) given appropriate consideration to trade-offs among cost, schedule, and performance in accordance with the requirements of section 181(b)(1)(C) of title 10, United States Code (as amended by subsection (b)); and

(C) given appropriate consideration to issues of joint portfolio management, including alternative material and non-material solutions, as provided in Chairman of the Joint Chiefs of Staff Instruction 3170.01G.

(3) NON-CONCURRENCE OF UNDER SECRETARY FOR ATL.—If the Under Secretary for Acquisition, Technology, and Logistics determines that the Joint Requirements Oversight Council has failed to take appropriate action in accordance with subparagraphs (A), (B), and (C) of paragraph (2) regarding a joint military requirement, the Under Secretary shall return the recommendation to the Council with specific recommendations as to matters to be considered by the Council to

address any shortcoming identified by the Under Secretary in the course of the review under paragraph (2).

(4) NOTICE ON CONTINUING DISAGREEMENT ON REQUIREMENT.—If the Under Secretary for Acquisition, Technology, and Logistics and the Joint Requirements Oversight Council are unable to reach agreement on a joint military requirement that has been returned to the Council by the Under Secretary under paragraph (4), the Under Secretary shall transmit notice of lack of agreement on the requirement to the Secretary of Defense.

(5) RESOLUTION OF CONTINUING DISAGREEMENT.—Upon receiving notice under paragraph (4) of a lack of agreement on a joint military requirement, the Secretary of Defense shall make a final determination on whether or not to validate the requirement.

(d) ANALYSIS OF ALTERNATIVES.—

(1) REQUIREMENT AT MATERIAL SOLUTION ANALYSIS PHASE.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall ensure that Department of Defense guidance on major defense acquisition programs requires the Milestone Decision Authority to conduct an analysis of alternatives (AOA) during the Material Solution Analysis Phase of each major defense acquisition program.

(2) ELEMENTS.—Each analysis of alternatives under paragraph (1) shall, at a minimum—

(A) solicit and consider alternative approaches proposed by the military departments and Defense Agencies to meet joint military requirements; and

(B) give full consideration to possible trade-offs between cost, schedule, and performance for each of the alternatives so considered.

(e) DUTIES OF MILESTONE DECISION AUTHORITY.—Section 2366b(a)(1)(B) of title 10, United States Code, is amended by inserting “appropriate trade-offs between cost, schedule, and performance have been made to ensure that” before “the program is affordable”.

**SEC. 202. PRELIMINARY DESIGN REVIEW AND CRITICAL DESIGN REVIEW FOR MAJOR DEFENSE ACQUISITION PROGRAMS.**

(a) PRELIMINARY DESIGN REVIEW.—Section 2366b(a) of title 10, United States Code, as amended by section 201(d) of this Act, is further amended—

(1) in paragraph (1), by striking “and” at the end;

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following new paragraph (2):

“(2) has received a preliminary design review (PDR) and conducted a formal post-preliminary design review assessment, and certifies on the basis of such assessment that the program demonstrates a high likelihood of accomplishing its intended mission; and”; and

(4) in paragraph (3), as redesignated by paragraph (2) of this section—

(A) in subparagraph (D), by striking the semicolon and inserting “; as determined by the Milestone Decision Authority on the basis of an independent review and assessment by the Director of Defense Research and Engineering; and”; and

(B) by striking subparagraph (E); and

(C) by redesignating subparagraph (F) as subparagraph (E).

(b) CRITICAL DESIGN REVIEW.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall ensure that Department of Defense guidance on major defense acquisition programs requires a critical design review and a formal post-critical design review assessment for each major defense acquisition program to ensure that such program has attained an appropriate

level of design maturity before such program is approved for System Capability and Manufacturing Process Development.

**SEC. 203. ENSURING COMPETITION THROUGHOUT THE LIFE CYCLE OF MAJOR DEFENSE ACQUISITION PROGRAMS.**

(a) **ENSURING COMPETITION.**—The Secretary of Defense shall ensure that the acquisition plan for each major defense acquisition program includes measures to ensure competition, or the option of competition, at both the prime contract level and the subcontract level of such program throughout the life cycle of such program as a means to incentivize contractor performance.

(b) **MEASURES TO ENSURE COMPETITION.**—The measures to ensure competition, or the option of competition, utilized for purposes of subsection (a) may include, but are not limited to, measures to achieve the following, in appropriate cases where such measures are cost-effective:

- (1) Competitive prototyping.
- (2) Dual-sourcing.
- (3) Funding of a second source for interchangeable, next-generation prototype systems or subsystems.
- (4) Utilization of modular, open architectures to enable competition for upgrades.
- (5) Periodic competitions for subsystem upgrades.
- (6) Licensing of additional suppliers.
- (7) Requirements for Government oversight or approval of make or buy decisions to ensure competition at the subsystem level.
- (8) Periodic system or program reviews to address long-term competitive effects of program decisions.
- (9) Consideration of competition at the subcontract level and in make or buy decisions as a factor in proposal evaluations.

(c) **COMPETITIVE PROTOTYPING.**—The Secretary of Defense shall modify the acquisition regulations of the Department of Defense to ensure with respect to competitive prototyping for major defense acquisition programs the following:

(1) That the acquisition strategy for each major defense acquisition program provides for two or more competing teams to produce prototypes before Milestone B approval (or Key Decision Point B approval in the case of a space program) unless the milestone decision authority for such program waives the requirement on the basis of a determination that—

(A) but for such waiver, the Department would be unable to meet critical national security objectives; or

(B) the cost of producing competitive prototypes exceeds the potential life-cycle benefits of such competition, including the benefits of improved performance and increased technological and design maturity that may be achieved through prototyping.

(2) That if the milestone decision authority waives the requirement for prototypes produced by two or more teams for a major defense acquisition program under paragraph (1), the acquisition strategy for the program provides for the production of at least one prototype before Milestone B approval (or Key Decision Point B approval in the case of a space program) unless the milestone decision authority waives such requirement on the basis of a determination that—

(A) but for such waiver, the Department would be unable to meet critical national security objectives; or

(B) the cost of producing a prototype exceeds the potential life-cycle benefits of such prototyping, including the benefits of improved performance and increased technological and design maturity that may be achieved through prototyping.

(3) That whenever a milestone decision authority authorizes a waiver under paragraph (1) or (2), the waiver, the determination upon

which the waiver is based, and the reasons for the determination are submitted in writing to the congressional defense committees not later than 30 days after the waiver is authorized.

(4) That prototypes may be required under paragraph (1) or (2) for the system to be acquired or, if prototyping of the system is not feasible, for critical subsystems of the system.

(d) **COMPTROLLER GENERAL OF THE UNITED STATES REVIEW OF CERTAIN WAIVERS.**—

(1) **NOTICE TO COMPTROLLER GENERAL.**—Whenever a milestone decision authority authorizes a waiver of the requirement for prototypes under paragraph (1) or (2) of subsection (c) on the basis of excessive cost, the milestone decision authority shall submit a notice on the waiver, together with the rationale for the waiver, to the Comptroller General of the United States at the same time a report on the waiver is submitted to the congressional defense committees under paragraph (3) of that subsection.

(2) **COMPTROLLER GENERAL REVIEW.**—Not later than 60 days after receipt of a notice on a waiver under paragraph (1), the Comptroller General shall—

- (A) review the rationale for the waiver; and
- (B) submit to the congressional defense committees a written assessment of the rationale for the waiver.

(e) **APPLICABILITY.**—This section shall apply to any acquisition plan for a major defense acquisition program that is developed or revised on or after the date that is 60 days after the date of the enactment of this Act.

**SEC. 204. CRITICAL COST GROWTH IN MAJOR DEFENSE ACQUISITION PROGRAMS.**

(a) **AUTHORIZED ACTIONS IN EVENT OF CRITICAL COST GROWTH.**—Section 2433(e)(2) of title 10, United States Code, is amended—

(1) by redesignating subparagraph (C) as subparagraph (E);

(2) by striking subparagraph (B); and

(3) by inserting after subparagraph (A) the following new subparagraphs (B), (C), and (D):

“(B) terminate such acquisition program and submit the report required by subparagraph (D), unless the Secretary determines that the continuation of such program is essential to the national security of the United States and submits a written certification in accordance with subparagraph (C)(i) accompanied by a report setting forth the assessment carried out pursuant to subparagraph (A) and the basis for each determination made in accordance with clauses (I) through (IV) of subparagraph (C)(i), together with supporting documentation;

“(C) if the program is not terminated—

“(i) submit to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in subsection (g) is required to be submitted under section 2432(f) of this title, a written certification stating that—

“(I) such acquisition program is essential to national security;

“(II) there are no alternatives to such acquisition program which will provide equal or greater capability to meet a joint military requirement (as that term is defined in section 181(h)(1) of this title) at less cost;

“(III) the new estimates of the program acquisition unit cost or procurement unit cost were arrived at in accordance with the requirements of section 139d of this title and are reasonable; and

“(IV) the management structure for the acquisition program is adequate to manage and control program acquisition unit cost or procurement unit cost;

“(i) rescind the most recent Milestone approval (or Key Decision Point approval in the case of a space program) for such pro-

gram and withdraw any associated certification under section 2366a or 2366b of this title; and

“(iii) require a new Milestone approval (or Key Decision Point approval in the case of a space program) for such program before entering into a new contract, exercising an option under an existing contract, or otherwise extending the scope of an existing contract under such program;

“(D) if the program is terminated, submit to Congress a written report setting forth—

“(i) an explanation of the reasons for terminating the program;

“(ii) the alternatives considered to address any problems in the program; and

“(iii) the course the Department plans to pursue to meet any continuing joint military requirements otherwise intended to be met by the program; and”.

(b) **TOTAL EXPENDITURE FOR PROCUREMENT RESULTING IN TREATMENT AS MDAP.**—Section 2430(a)(2) of such title is amended by inserting “, including all planned increments or spirals,” after “an eventual total expenditure for procurement”.

**SEC. 205. ORGANIZATIONAL CONFLICTS OF INTEREST IN THE ACQUISITION OF MAJOR WEAPON SYSTEMS.**

(a) **REVISED REGULATIONS REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall revise the Defense Supplement to the Federal Acquisition Regulation to address organizational conflicts of interest by contractors in the acquisition of major weapon systems.

(b) **ELEMENTS.**—The revised regulations required by subsection (a) shall, at a minimum—

(1) ensure that the Department of Defense receives advice on systems architecture and systems engineering matters with respect to major weapon systems from federally funded research and development centers or other sources independent of the prime contractor;

(2) require that a contract for the performance of systems engineering and technical assistance (SETA) functions with regard to a major weapon system contains a provision prohibiting the contractor or any affiliate of the contractor from having a direct financial interest in the development or construction of the weapon system or any component thereof;

(3) provide for an exception to the requirement in paragraph (2) for an affiliate that is separated from the contractor by structural mechanisms, approved by the Secretary of Defense, that are similar to those required for special security agreements under rules governing foreign ownership, control, or influence over United States companies that have access to classified information, including, at a minimum—

(A) establishment of the affiliate as a separate business entity, geographically separated from related entities, with its own employees and management and restrictions on transfers for personnel;

(B) a governing board for the affiliate that has organizational separation from related entities and governance procedures that require the board to act solely in the interest of the affiliate, without regard to the interests of related entities, except in specified circumstances;

(C) complete informational separation, including the execution of non-disclosure agreements;

(D) initial and recurring training on organizational conflicts of interest and protections against organizational conflicts of interest; and

(E) annual compliance audits in which Department of Defense personnel are authorized to participate;

(4) prohibit the use of the exception in paragraph (3) for any category of systems engineering and technical assistance functions (including, but not limited to, advice on source selection matters) for which the potential for an organizational conflict of interest or the appearance of an organizational conflict of interest makes mitigation in accordance with that paragraph an inappropriate approach;

(5) authorize waiver of the requirement in paragraph (2) in cases in which the agency head determines in writing that—

(A) the financial interest of the contractor or its affiliate in the development or construction of the weapon system is not substantial and does not include a prime contract, a first-tier subcontract, or a joint venture or similar relationship with a prime contractor or first-tier subcontractor; or

(B) the contractor—

(i) has unique systems engineering capabilities that are not available from other sources;

(ii) has taken appropriate actions to mitigate any organizational conflict of interest; and

(iii) has made a binding commitment to comply with the requirement in paragraph (2) by not later than January 1, 2011; and

(6) provide for fair and objective “make-buy” decisions by the prime contractor on a major weapon system by—

(A) requiring prime contractors to give full and fair consideration to qualified sources other than the prime contractor for the development or construction of major subsystems and components of the weapon system;

(B) providing for government oversight of the process by which prime contractors consider such sources and determine whether to conduct such development or construction in-house or through a subcontract;

(C) authorizing program managers to disapprove the determination by a prime contractor to conduct development or construction in-house rather than through a subcontract in cases in which—

(i) the prime contractor fails to give full and fair consideration to qualified sources other than the prime contractor; or

(ii) implementation of the determination by the prime contractor is likely to undermine future competition or the defense industrial base; and

(D) providing for the consideration of prime contractors “make-buy” decisions in past performance evaluations.

(C) ORGANIZATIONAL CONFLICT OF INTEREST REVIEW BOARD.—

(1) ESTABLISHMENT REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall establish within the Department of Defense a board to be known as the “Organizational Conflict of Interest Review Board”.

(2) DUTIES.—The Board shall have the following duties:

(A) To advise the Under Secretary of Defense for Acquisition, Technology, and Logistics on policies relating to organizational conflicts of interest in the acquisition of major weapon systems.

(B) To advise program managers on steps to comply with the requirements of the revised regulations required by this section and to address organizational conflicts of interest in the acquisition of major weapon systems.

(C) To advise appropriate officials of the Department on organizational conflicts of interest arising in proposed mergers of defense contractors.

(d) MAJOR WEAPON SYSTEM DEFINED.—In this section, the term “major weapon system” has the meaning given that term in

section 2379(d) of title 10, United States Code.

**SEC. 206. AWARDS FOR DEPARTMENT OF DEFENSE PERSONNEL FOR EXCELLENCE IN THE ACQUISITION OF PRODUCTS AND SERVICES.**

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall commence carrying out a program to recognize excellent performance by individuals and teams of members of the Armed Forces and civilian personnel of the Department of Defense in the acquisition of products and services for the Department of Defense.

(b) ELEMENTS.—The program required by subsection (a) shall include the following:

(1) Procedures for the nomination by the personnel of the military departments and the Defense Agencies of individuals and teams of members of the Armed Forces and civilian personnel of the Department of Defense for eligibility for recognition under the program.

(2) Procedures for the evaluation of nominations for recognition under the program by one or more panels of individuals from the government, academia, and the private sector who have such expertise, and are appointed in such manner, as the Secretary shall establish for purposes of the program.

(c) AWARD OF CASH BONUSES.—As part of the program required by subsection (a), the Secretary may award to any individual recognized pursuant to the program a cash bonus authorized by any other provision of law to the extent that the performance of such individual so recognized warrants the award of such bonus under such provision of law.

**SEC. 207. EARNED VALUE MANAGEMENT.**

(a) ENHANCED TRACKING OF CONTRACTOR PERFORMANCE.—Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall review the existing guidance and, as necessary, prescribe additional guidance governing the implementation of the Earned Value Management (EVM) requirements and reporting for contracts to ensure that the Department of Defense—

(1) applies uniform EVM standards to reliably and consistently measure contract or project performance;

(2) applies such standards to establish appropriate baselines at the award of a contract or commencement of a program, whichever is earlier;

(3) ensures that personnel responsible for administering and overseeing EVM systems have the training and qualifications needed to perform this function; and

(4) has appropriate mechanisms in place to ensure that contractors establish and use approved EVM systems.

(b) ENFORCEMENT MECHANISMS.—For the purposes of subsection (a)(4), mechanisms to ensure that contractors establish and use approved EVM systems shall include—

(1) consideration of the quality of the contractors’ EVM systems and the timeliness of the contractors’ EVM reporting in any past performance evaluation for a contract that includes an EVM requirement; and

(2) increased government oversight of the cost, schedule, scope, and performance of contractors that do not have approved EVM systems in place.

**SEC. 208. EXPANSION OF NATIONAL SECURITY OBJECTIVES OF THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.**

(a) IN GENERAL.—Subsection (a) of section 2501 of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(6) Maintaining critical design skills to ensure that the armed forces are provided

with systems capable of ensuring technological superiority over potential adversaries.”.

(b) NOTIFICATION OF CONGRESS UPON TERMINATION OF MDAPS OF EFFECTS ON NATIONAL SECURITY OBJECTIVES.—Such section is further amended by adding at the end the following new subsection:

“(c) NOTIFICATION OF CONGRESS UPON TERMINATION OF MAJOR DEFENSE ACQUISITION PROGRAM OF EFFECTS ON OBJECTIVES.—(1) Upon the termination of a major defense acquisition program, the Secretary of Defense shall notify Congress of the effects of such termination on the national security objectives for the national technology and industrial base set forth in subsection (a), and the measures, if any, that have been taken or should be taken to mitigate those effects.

“(2) In this subsection, the term ‘major defense acquisition program’ has the meaning given that term in section 2430 of this title.”.

**SEC. 209. PLAN FOR ELIMINATION OF WEAKNESSES IN OPERATIONS THAT HINDER CAPACITY TO ASSEMBLE AND ASSESS RELIABLE COST INFORMATION ON ACQUIRED ASSETS UNDER MAJOR DEFENSE ACQUISITION PROGRAMS.**

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Chief Management Officer of the Department of Defense shall submit to Congress a report setting forth a plan to identify and address weaknesses in operations that hinder the capacity to assemble and assess reliable cost information on the systems and assets to be acquired under major defense acquisition programs.

(b) ELEMENTS.—The report required under subsection (a) shall include the following:

(1) Mechanisms to identify any weaknesses in operations under major defense acquisition programs that hinder the capacity to assemble and assess reliable cost information on the systems and assets to be acquired under such programs in accordance with applicable accounting standards.

(2) Mechanisms to address weaknesses in operations under major defense acquisition programs identified pursuant to the utilization of the mechanisms set forth under paragraph (1).

(3) A description of the proposed implementation of the mechanisms set forth pursuant to paragraph (2) to address the weaknesses described in that paragraph, including—

(A) the actions to be taken to implement such mechanisms;

(B) a schedule for carrying out such mechanisms; and

(C) metrics for assessing the progress made in carrying out such mechanisms.

(4) A description of the organization and resources required to carry out mechanisms set forth pursuant to paragraphs (1) and (2).

(5) In the case of the financial management practices of each military department applicable to major defense acquisition programs—

(A) a description of any weaknesses in such practices; and

(B) a description of the actions to be taken to remedy such weaknesses.

(c) CONSULTATION.—

(1) IN GENERAL.—In preparing the report required by subsection (a), the Chief Management Officer of the Department of Defense shall seek and consider input from each of the following:

(A) The Chief Management Officer of the Department of the Army.

(B) The Chief Management Officer of the Department of the Navy.

(C) The Chief Management Officer of the Department of the Air Force.

(2) FINANCIAL MANAGEMENT PRACTICES.—In preparing for the report required by subsection (a) the matters covered by subsection (b)(5) with respect to a particular military department, the Chief Management Officer of the Department of Defense shall consult specifically with the Chief Management Officer of the military department concerned.

Mr. LEVIN. Madam President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN. Madam President, very briefly, we have done extremely well with this overwhelming vote for the passage of S. 454, the Weapon Systems Acquisition Reform Act. We have done it on a bipartisan basis, which is the way it should be done when it comes to matters of national defense and a whole host of other issues. I am deeply grateful to my friend, our ranking member, Senator MCCAIN.

Of course, a large share of this moment belongs to our hard-working and very talented staff, led on our side by Rick DeBobs and on the Republican side by Joe Bowab. Our special collective thanks must also be given to Peter Levine and Creighton Green on the majority staff and to Richard Fontaine, Chris Paul, and Pablo Corrillo on the minority staff. We thank them all for their hard work. It will bear fruit, we hope within the next month, when we work something out with the House. Then, over the coming years, we will not only save taxpayers' dollars, but we will provide the right equipment to our troops who deserve the best we can get. We will make sure we don't waste these defense dollars, because when we do that, we not only are hurting the taxpayer but we are depriving our troops of funds they need for needed weapon systems.

Mr. KYL. Madam President, the bill we passed contains provisions that I support and others that I oppose. I want to indicate why I voted aye. In the end, I think it is critical for Congress to increase the FDIC's borrowing authority to reduce a costly special assessment that the FDIC intends to impose on distressed banks, and therefore I supported the bill.

Over the last 2 years the FDIC has had to take over 41 different failed depository institutions and in the process has depleted its insurance fund. At its current level, the FDIC is required by law to increase its insurance premiums on banks to recapitalize the fund. However, increasing banks' costs now would only worsen the current recession.

Congress can reduce the size of this assessment by 50 percent if it increases the FDIC's borrowing authority from \$30 billion to \$100 billion. Doing so will help banks hold onto capital that they can use to absorb future losses and make it through these difficult economic conditions.

Unfortunately, this bill would increase the FDIC's borrowing authority at the same time that it would expand the HOPE for Homeowners Program—a

\$300 billion program designed to allow up to 400,000 borrowers to refinance into an FHA-backed loan. The FHA mortgage program has exploded with the decline of the subprime industry as borrowers have flocked to the Government program. FHA loans are attractive due to the high loan limits—up to \$729,250 in high cost areas—and only a 3.5-percent downpayment requirement. According to Inside Mortgage Finance, the FHA's market jumped to nearly a third of all mortgages in the fourth quarter of 2008 from about 2 percent in early 2006.

At the same time, FHA mortgage defaults have increased sharply and are diminishing the FHA's reserve fund. Roughly 7.5 percent of FHA loans were seriously delinquent at the end of February, up from 6.2 percent a year earlier. The FHA's reserve fund fell to about 3 percent of its mortgage portfolio in fiscal year 2008, down from 6.4 percent in the previous year. By law, the reserve fund must remain above 2 percent. Recently, HUD Secretary Shaun Donovan told a Senate Appropriations subcommittee that he did not know whether the FHA would be able to continue to pay its obligations. Many believe that Congress will have to inject additional funding into the FHA.

The HOPE for Homeowners Program will sunset in 2011. I expect the Obama administration to do everything in its power to guarantee the solvency of the FHA mortgage program and will be watching how the Secretary of HUD implements HOPE for Homeowners Program.

In the end, I believe the broader economy would benefit from an increase in the FDIC's borrowing authority. We cannot recover from this economic downturn until banks have the capital to lend freely to all borrowers. Therefore, I voted for S. 896 despite some reservations that I have with other provisions in the bill.

Mr. FEINGOLD. Madam President, I voted in favor of the Weapon Systems Acquisition Reform Act of 2009 but I am disappointed that it does not include key reforms of our defense procurement system. While President Obama and leaders in Congress deserve credit for beginning to address the longstanding problem of wasteful and abusive defense contracting, we need to go further.

Secretary Gates has stated that we "must consistently demonstrate the commitment and leadership to stop programs that significantly exceed their budget or which spend limited tax dollars to buy more capability than the nation needs." Unfortunately, this bill falls short in this regard. It permits programs to continue even if they have experienced cost growth of over 25 percent. GAO has found that 42 percent of our programs have experienced cost growth and that, due in part to such cost overruns, we have scaled back the number of weapons we are buying in 10 major programs by 30 percent.

Congress's failure to make tough choices and restructure troubled programs is therefore having a direct impact on our ability to deliver sufficient quantities to our fighting forces.

Secretary Gates has also stated that "we must ensure that requirements are reasonable and technology is adequately mature to allow the department to successfully execute the programs." This bill encourages such reforms, but unfortunately does not require them. For example, it requires additional reporting on the Department's reliance on immature, risky technologies but does not prohibit the Department from purchasing such equipment. GAO reported this year that of 40 programs that it has reviewed, the Department will decide to move to the production of nearly a fourth of them without requiring realistic testing of their critical technologies.

No company would buy a plane before they have flown it. I don't know why it should be any different for the U.S. Armed Forces. Indeed, given that our brave men and women in uniform are relying on these weapons systems, stricter standards should be enforced.

Unfortunately, these are not new issues. I first objected to inadequate testing of weapons systems in 1998 when the Navy sought to rush the F-18 through its tests, notwithstanding the fact that preliminary tests had discovered serious problems in the aircraft. I am disappointed that a decade has passed and we are still seeing the same problems over and over again.

I suggested that we should require higher level review of alternative acquisition strategies before purchasing systems that have not been tested in a realistic environment but was informed that this would be too strict of a requirement. While I am pleased that the committee at least accepted an amendment I cosponsored that will ensure that annual reports to the Congress identify programs moving into production without undergoing adequate testing, this is just a start.

Secretary Gates demonstrated his commitment to fixing these problems when he recommended the cancellation of several programs that were over budget, were behind schedule, relied on immature technologies and were designed to combat a military-peer that does not exist. GAO had been reporting that these systems were in trouble for several years. If these systems had been restructured when it first became obvious that they were unnecessary and unrealistic, it would have saved the government tens of billions of dollars and sped up our efforts to replace our aging weapons systems.

It is my hope that Congress will eventually forgo the parochial interests that have prevented it from making the tough choices that need to be made and stop repeating the same mistakes of the past. I will continue to work with my colleagues until we have achieved this goal.

## EXECUTIVE SESSION

I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. LINCOLN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. LINCOLN. Madam President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Senator LINCOLN pertaining to the introduction of S. 997 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mrs. LINCOLN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

---

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. Madam President, as in executive session, I ask unanimous consent that at 1:45 p.m. today, the Senate proceed to executive session to consider Calendar No. 64, the nomination of R. Gil Kerlikowske to be Director of National Drug Control Policy, with the time until 2 p.m. equally divided and controlled between the leaders or their designees; that at 2 p.m., the Senate proceed to vote on confirmation of the nomination; that upon confirmation, the motion to reconsider be laid upon the table; that no further motions be in order; that the President be immediately notified of the Senate's action; and that the Senate then resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

---

RECESS

Mr. REID. Madam President, I now ask unanimous consent that the Senate stand in recess until 1:45 p.m. today. We have the leaders of Afghanistan and Pakistan here today. They are important meetings. We have a number of things, and it would be better if we are not in session. I appreciate everyone allowing this consent to go forward.

There being no objection, the Senate, at 12:46 p.m., recessed until 1:45 p.m. and reassembled when called to order by the Presiding Officer (Mr. UDALL of New Mexico).

NOMINATION OF R. GIL KERLIKOWSKE TO BE DIRECTOR OF NATIONAL DRUG CONTROL POLICY

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of R. Gil Kerlikowske of Washington to be Director of National Drug Control Policy.

The PRESIDING OFFICER. The time until 2 p.m. is equally divided.

The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, our Nation's next drug czar is going to face a number of key challenges. The Office of Drug Control Policy is going to play a leading role in addressing the drug-related violence in Mexico and along the southwest border—an area where, if we don't take the right steps to tackle problems today, we will most certainly see the spread of violence and drugs into towns and residences thousands of miles from the Mexican border.

We also know from history that as the economy falls, crime rises, and that crime is growing at the same time law enforcement agencies across the country face painful cutbacks and greater strains on their personnel and resources. It is, therefore, incumbent upon the next drug czar to ensure that law enforcement at all levels is working smarter, forging new relationships, and leveraging the resources they have. We will also have to address the rise in prescription drug abuse, the continued scourge of methamphetamine use, and the violence that affects so many of our communities due to drug trafficking.

Seattle Police Chief Gil Kerlikowske is the right man to address these big challenges. Chief Kerlikowske brings a fresh new perspective to the job as the Nation's drug czar. He is a cop's cop, and his perspective was shaped patrolling the streets in Florida, New York, and Washington State. Along the way, he has helped thousands of people touched by violence and drugs. He and the law enforcement officials that he has led have been on the front lines of our Nation's war against illicit narcotics and in keeping our communities safe. And I know that he will bring this hands-on perspective to his job as our Nation's drug czar.

Chief Kerlikowske also understands the importance of partnerships between ONDCP and our State and local law enforcement communities, because he has been on the local level. As the head of the Major Cities Chiefs Organization, which represents the 63 largest police departments in the United States, he sees the common problems facing cities across the country. I have seen this firsthand in his work as Seattle police chief.

This past December, under Chief Kerlikowske's leadership, the Seattle Police Department, in cooperation with county, State, and Federal law enforcement agencies, he was able to bust a drug ring that stretched from Mexico to Idaho to Seattle.

Chief Kerlikowske worked cooperatively to create a regional response to gang violence in Seattle and in King County. He built a coalition with the King County Sheriff's Office and other King County police chiefs, with the Washington Department of Corrections, the ATF, and other community leaders to tackle persistent gang violence in our neighborhoods. These multiagency, Federal-local partnerships require cooperation and compromise, and they require a leader with Chief Kerlikowske's experience to bring them all together. Local police chiefs and sheriffs have told me they are sorry to see him go, but the Nation is gaining a true innovator in Gil Kerlikowske. I know he is going to continue to work on these relationships with State and local law enforcement across the country, and this approach will make all of our communities safer.

Chief Kerlikowske also understands that the drug war will not only be won on the streets but in our classrooms and in our homes. For the past 9 years, he has been the national board chairman for the group Fight Crime: Invest in Kids. Under the guidance of Chief Kerlikowske, this group has focused their efforts on the importance of prevention by fighting for early childhood intervention funding, afterschool programs, and efforts to prevent child abuse. Chief Kerlikowske knows the best way to end the use of drugs and spread of crime is to prevent it, and he will bring that commonsense approach to ONDCP.

Chief Kerlikowske has served the people of our State well, and he will serve the people of the Nation well also. I am so proud to support his confirmation. In a few short minutes, the Senate will be voting on this confirmation, and I am very proud to stand here today to tell my colleagues they will be glad they voted with us to confirm this nomination.

Mr. President, I yield the floor.

Mr. COBURN. Mr. President, I would like to take a minute to briefly discuss my opposition to the nomination of Gil Kerlikowske to be Director of National Drug Control Policy. Chief Kerlikowske has had a long career in law enforcement, and he enjoys the support of many of his colleagues. However, the concerns I have about certain aspects of his record prevent me from being able to support his nomination to be Director of ONDCP.

The principal purpose of ONDCP is to establish policies, priorities, and objectives for the nation's drug control program. The office has arguably never been more important, as the United States seeks to deal with the violent drug cartels whose influence has begun to cross into our borders. Yet Chief