

**Legislative Bulletin.....May 21, 2009**

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**Conference Report to S. 454**—Weapon System Acquisition Reform Act of 2009

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**S. 454—Conference Report to the Weapon System Acquisition Reform Act of 2009(Levin, D-MI)**

**Order of Business:** On May 21, 2009, the House will consider the Conference Report on the Weapon System Acquisition Reform Act of 2009. The rule ([H.Res.463](#)) for consideration of the conference report to accompany S. 454 waives all points of order against the conference report and against its consideration, and provides one hour of general debate equally divided and controlled by the Chairman and Ranking Member of the Committee on Armed Services.

**Background:** On May 13, 2009, the House passed the Weapons Acquisition System Reform Through Enhancing Technical Knowledge and Oversight Act ([H.R. 2101](#)) under suspension of the rules by a vote of 428-0. The Senate passed similar legislation by a vote of 93-0. S. 454 would make several changes to the acquisition procedures of how the Department of Defense (DoD) acquires Major Defense Acquisition Programs (MDAPs). The Conference Report made several additions to the House version of the bill including:

- Establishing a Senate-confirmed Director of Cost Assessment and Program Evaluation who is responsible for ensuring quality cost estimates for major defense acquisition programs.
- Strengthening Developmental Test and Evaluation.
- Requiring competitive prototyping, with limited exceptions.
- Requires the DOD to ensure that prime contractors allow for meaningful competition on subcontracts.

Some highlights of the Conference Report by title are listed below:

***TITLE I – ACQUISITION ORGANIZATION***

- ***Independent Performance of Acquisition Oversight Functions:*** requires the Secretary of Defense to designate an official to serve as the principal advisor

throughout the process of acquisition oversight to evaluate cost estimation, systems engineering, and performance assessment.

- **Oversight Provisions:** contains a number of provisions to provide officials additional oversight for cost estimation, systems engineering, and technical acquisition. Specifically, the Conference Report directs the Joint Requirements Oversight Council (JROC) to seek input from the combatant commanders in assessing military requirements and a GAO review to provide for legislative changes to the functions of the JROC

## ***TITLE II — ACQUISITION POLICY***

- **Performance Objectives:** requires that mechanisms are developed and implemented to consider trade-offs among cost, schedule, and performance objectives in establishing requirements for acquisition programs. Officials outside the JROC who are responsible for acquisition, budget, and cost estimation are given a chance to develop estimates of cost and schedule before the JROC approves a requirement, and that requirements are structured in a way that will allow for incremental, evolutionary, or spiral development.
- **Acquisition Strategies:** requires the DoD to include measures to ensure competition at both the prime contract and certain subcontract levels throughout the program's lifecycle.
- **Milestone B Approval:** requires the milestone decision authority to annually review any MDAP that received milestone B approval due to a waiver. MDAPs which are determined not to satisfy the requirements will be subject to annual review by the milestone decision authority until they achieve compliance.
- **Milestone B Reporting:** requires reports that identify the root causes of the cost or schedule growth if an MDAP experiences cost growth of 25 percent or schedule delay of more than 25 percent prior to milestone B approval.
- **Critical Cost Growth Modifications:** modifies the program relating to containing significant and critical cost thresholds, known as "Nunn-McCurdy" by requiring the official responsible for performance assessment to perform a root cause analysis following a critical Nunn-McCurdy breach and require restructured programs to receive a new milestone approval prior to proceeding. Additionally, the Conference Report clarifies the definition of "major defense acquisition program" by including all planned increments of a program.
- **Organization Conflicts:** requires DOD's Panel on Contracting Integrity to present recommendations to the Secretary of Defense on measures to eliminate or mitigate organizational conflicts of interest in the acquisition of major weapons systems. Additionally, the conference report requires that a contractor who performs systems engineering and technical assistance functions on a major

weapon system cannot have a duplicate corporate position who is a major contractor on the same weapon system.

### ***TITLE III — ADDITIONAL ACQUISITION PROVISIONS***

- ***Excellence in Personnel:*** Requires the Secretary to commence a program to recognize excellent performance by individuals and teams of personnel in the acquisition of products and services at DOD.
- ***Comptroller Reports:*** Requires two GAO reports on 1) the growth in operating and support costs of major weapon systems; 2) how DOD collects financial information relating to major defense acquisition programs.

**Additional Background:** According to the Government Accountability Office (GAO), the Department of Defense has \$296 billion of cost growth on 96 major weapons systems. .

**Committee Action:** H.R. 2101 was introduced on April 22, 2009, and referred to the Committee on Armed Services. On May 7, 2009, the committee held a mark-up and ordered the bill to be reported, as amended, by a vote of 59-0. On May 13, 2009, the House considered the bill and passed it under suspension of the rules by a vote of 428-0. The Senate version of this legislation S. 454 passed on May 7, 2009 by a vote of 93-0. The House and Senate then appointed conferees to reconcile the two versions of the bill.

**Administration Position:** In a Statement of Administration Policy (SAP), “The Administration [agrees](#) with the sponsors of S. 454 that the defense-acquisition process needs improvement in the areas of systems engineering, developmental test and evaluation, technological maturity, and cost estimation, and that changes are needed to strengthen a culture of acquisition excellence in the Department of Defense.”

**Cost to Taxpayers:** A CBO cost estimate for the conference report to S. 454 is unavailable. However, according a CBO analysis of the House passed version of similar legislation, “implementing H.R. 2101 would cost \$55 million over the 2010-2014 period, assuming the appropriation of the necessary funds. Although H.R. 2101 might yield improvements in the efficiency and effectiveness of DoD’s acquisition system for MDAPs over time, CBO has no basis for determining whether such improvements would occur or to what extent they might result in net savings to the government. Enacting the bill would not affect direct spending or revenues.”

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** No committee report citing compliance with the House earmark rule is available.

**Constitutional Authority:** A Conference Report citing constitutional authority was not available. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

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