

CORE DEPOT-LEVEL MAINTENANCE AND REPAIR CAPABILITIES (SEC. 327)

The House bill contained a provision (sec. 322) that would modify core logistics capabilities requirements (10 U.S.C. 2464) and require an annual report.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment.

The conferees note that the study on the future capability of the Department of Defense (DOD) maintenance depots directed by section 322 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417) found that the existing core determination process should be revised to ensure that it is visible and readily understood. Through this conference agreement, the conferees confirm the criticality of a government-controlled source of repair to support warfighter requirements. The conferees believe a streamlined core policy that eliminates exclusions and exemptions and instead provides for conditional waivers of government performance is in keeping with the section 322 study's recommendations. To provide greater transparency of the core determination process, the conference agreement includes an annual core report that should align capital investment to support current and emerging core requirements and better align sustainment planning with acquisition and development.

SEC. 327. CORE DEPOT-LEVEL MAINTENANCE AND REPAIR CAPABILITIES.

(a) IN GENERAL.—Section 2464 of title 10, United States Code, is amended to read as follows:

“§ 2464. Core depot-level maintenance and repair capabilities

“(a) NECESSITY FOR CORE DEPOT-LEVEL MAINTENANCE AND REPAIR CAPABILITIES.—

- (1) It is essential for national security that the Department of Defense maintain a core depot-level maintenance and repair capability, as defined by this title, in support of mission-essential weapon systems or items of military equipment needed to directly support combatant command operational requirements and enable the armed forces to execute the strategic, contingency, and emergency plans prepared by the Department of Defense, as required under section 153(a) of this title.
- (2) This core depot-level maintenance and repair capability shall be Government-owned and Government-operated, including the use of Government personnel and Government-owned and Government-operated equipment and facilities, throughout the lifecycle of the weapon system or item of military equipment involved to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.
- (3)
 - (A) Except as provided in subsection (c), the Secretary of Defense shall identify and establish the core depot-level maintenance and repair capabilities and capacity required in paragraph (1).
 - (B) Core depot-level maintenance and repair capabilities and capacity, including the facilities, equipment, associated logistics capabilities, technical data, and trained personnel, shall be established not later than four years after a weapon system or item of military equipment achieves initial operational capability or is fielded in support of operations.

- (4) The Secretary of Defense shall assign Government-owned and Government-operated depot-level maintenance and repair facilities of the Department of Defense sufficient workload to ensure cost efficiency and technical competence in peacetime, while preserving the ability to provide an effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.

“(b) WAIVER AUTHORITY.—

- (1) The Secretary of Defense may waive the requirement in subsection (a)(3) if the Secretary determines that—
 - (A) the weapon system or item of military equipment is not an enduring element of the national defense strategy;
 - (B) in the case of nuclear aircraft carrier refueling, fulfilling the requirement is not economically feasible; or
 - (C) it is in the best interest of national security.
- (2) The Secretary of a military department may waive the requirement in subsection (a)(3) for special access programs if such a waiver is determined to be in the best interest of the United States.
- (3) The determination to waive requirements in accordance with paragraph (1) or (2) shall be documented and notification submitted to Congress with justification for the waiver within 30 days of issuance.

“(c) APPLICABILITY TO COMMERCIAL ITEMS.—

- (1) The requirement in subsection (a)(3) shall not apply to items determined to be commercial items.
- (2) The first time a weapon system or other item of military equipment described in subsection (a) is determined to be a commercial item for the purposes of the exception under subsection (c), the Secretary of Defense shall submit to Congress a notification of the determination, together with the justification for the determination. The justification for the determination shall include, at a minimum, the following:
 - (A) The estimated percentage of commonality of parts of the version of the item that is sold or leased in the commercial marketplace and the version of the item to be purchased by the Department of Defense.
 - (B) The value of any unique support and test equipment and tools needed to support the military requirements if the item were maintained by the Department of Defense.
 - (C) A comparison of the estimated life-cycle depot-level maintenance and repair support costs that would be incurred by the Government if the item were maintained by the private sector with the estimated life-cycle depot-level maintenance support costs that would be incurred by the Government if the item were maintained by the Department of Defense.
- (3) In this subsection, the term ‘commercial item’ means an end-item, assembly, subassembly, or part sold or leased in substantial quantities to the general public and purchased by the Department of Defense without modification in the same form that they are sold in the commercial marketplace, or with minor modifications to meet Federal Government requirements.

“(d) LIMITATION ON CONTRACTING.—

- (1) Except as provided in paragraph (2), performance of workload needed to maintain a core depot-level maintenance and repair capability identified by the Secretary under subsection (a)(3) may not be contracted for performance by non-Government personnel under the procedures and requirements of Office of Management and Budget Circular A-76 or any successor administrative regulation or policy (hereinafter in this section referred to as ‘OMB Circular A-76’).

(2) The Secretary of Defense may waive paragraph (1) in the case of any such depot-level maintenance and repair capability and provide that performance of the workload needed to maintain that capability shall be considered for conversion to contractor performance in accordance with OMB Circular A-76. Any such waiver shall be made under regulations prescribed by the Secretary and shall be based on a determination by the Secretary that Government performance of the workload is no longer required for national defense reasons. Such regulations shall include criteria for determining whether Government performance of any such workload is no longer required for national defense reasons.

(3)

(A) A waiver under paragraph (2) may not take effect until the expiration of the first period of 30 days of continuous session of Congress that begins on or after the date on which the Secretary submits a report on the waiver to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(B) For the purposes of subparagraph (A)—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

“(e) BIENNIAL CORE REPORT.—Not later than April 1 on each even-numbered year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (except for the Coast Guard), for the subsequent fiscal year the following:

- (1) The core depot-level maintenance and repair capability requirements and sustaining workloads, organized by work breakdown structure, expressed in direct labor hours.
- (2) The corresponding workloads necessary to sustain core depot-level maintenance and repair capability requirements, expressed in direct labor hours and cost.
- (3) In any case where core depot-level maintenance and repair capability requirements exceed or are expected to exceed sustaining workloads, a detailed rationale for the shortfall and a plan either to correct, or mitigate, the effects of the shortfall.

“(f) ANNUAL CORE REPORT.— In 2013 and each year thereafter, not later than 60 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105 of title 31, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard), for the fiscal year preceding the fiscal year during which the report is submitted, each of the following:

- (1) The core depot-level maintenance and repair capability requirements identified in subsection (a)(3).
- (2) The workload required to cost-effectively support such requirements.
- (3) To the maximum extent practicable, the additional workload beyond the workloads identified under subsection (a)(4) needed to ensure that not more than 50 percent of the non-exempt depot maintenance funding is expended for performance by non-Federal governmental personnel in accordance with section 2466 of this title.
- (4) The allocation of workload for each Center of Industrial and Technical Excellence as designated in accordance with section 2474 of this title.

- (5) The depot-level maintenance and repair capital investments required to be made in order to ensure compliance with subsection (a)(3) by not later than four years after achieving initial operational capacity.
- (6) The outcome of a reassessment of continuation of a waiver granted under subsection (b).

“(g) COMPTROLLER GENERAL REVIEW.—The Comptroller General shall review each report required under subsections (e) and (f) for completeness and compliance and provide findings and recommendations to the congressional defense committees not later than 60 days after the report is submitted to Congress.”.

- (b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 146 of such title is amended by striking the item relating to section 2464 and inserting the following new item:
 “2464. Core depot-level maintenance and repair capabilities.”.

**TITLE 10 - ARMED FORCES
 SUBTITLE A - GENERAL MILITARY LAW
 PART IV - SERVICE, SUPPLY, AND PROCUREMENT
 CHAPTER 146 - CONTRACTING FOR PERFORMANCE OF CIVILIAN COMMERCIAL
 OR INDUSTRIAL TYPE FUNCTIONS**

§ 2464. ~~Core logistics capabilities~~ ~~Core depot-level maintenance and repair capabilities.~~

(a) ~~Necessity for Core Logistics Capabilities.—~~ NECESSITY FOR CORE DEPOT-LEVEL MAINTENANCE AND REPAIR CAPABILITIES

- (1) ~~It is essential for the national defense that the Department of Defense maintain a core logistics capability that is Government owned and Government operated (including Government personnel and Government owned and Government operated equipment and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements. It is essential for national security that the Department of Defense maintain a core depot-level maintenance and repair capability, as defined by this title, in support of mission-essential weapon systems or items of military equipment needed to directly support combatant command operational requirements and enable the armed forces to execute the strategic, contingency, and emergency plans prepared by the Department of Defense, as required under section 153(a) of this title.~~
- (2) ~~The Secretary of Defense shall identify the core logistics capabilities described in paragraph (1) and the workload required to maintain those capabilities. This core depot-level maintenance and repair capability shall be Government-owned and Government-operated, including the use of Government personnel and Government-owned and Government-operated equipment and facilities, throughout the lifecycle of the weapon system or item of military equipment involved to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.~~
- (3) ~~The core logistics capabilities identified under paragraphs (1) and (2) shall include those capabilities that are necessary to maintain and repair the weapon systems and other military equipment (including mission essential weapon systems or materiel not later than four years after achieving initial operational capability, but excluding systems and equipment under special access programs, nuclear aircraft carriers, and commercial items described in paragraph (5)) that are identified by the Secretary, in consultation with the Chairman of the Joint Chiefs of Staff, as necessary to enable the~~

~~armed forces to fulfill the strategic and contingency plans prepared by the Chairman of the Joint Chiefs of Staff under section 153 (a) of this title:~~

~~(A) Except as provided in subsection (c), the Secretary of Defense shall identify and establish the core depot-level maintenance and repair capabilities and capacity required in paragraph (1).~~

~~(B) Core depot-level maintenance and repair capabilities and capacity, including the facilities, equipment, associated logistics capabilities, technical data, and trained personnel, shall be established not later than four years after a weapon system or item of military equipment achieves initial operational capability or is fielded in support of operations.~~

~~(4) The Secretary of Defense shall require the performance of core logistics workloads necessary to maintain the core logistics capabilities identified under paragraphs (1), (2), and (3) at Government-owned, Government-operated facilities of the Department of Defense (including Government-owned, Government-operated facilities of a military department) and shall assign such facilities sufficient workload to ensure cost efficiency and technical competence in peacetime while preserving the surge capacity and reconstitution capabilities necessary to support fully the strategic and contingency plans referred to in paragraph (3). The Secretary of Defense shall assign Government-owned and Government-operated depot-level maintenance and repair facilities of the Department of Defense sufficient workload to ensure cost efficiency and technical competence in peacetime, while preserving the ability to provide an effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.~~

~~(5) The commercial items covered by paragraph (3) are commercial items that have been sold or leased in substantial quantities to the general public and are purchased without modification in the same form that they are sold in the commercial marketplace, or with minor modifications to meet Federal Government requirements.~~

(b) WAIVER AUTHORITY.—

(1) The Secretary of Defense may waive the requirement in subsection (a)(3) if the Secretary determines that—

(A) the weapon system or item of military equipment is not an enduring element of the national defense strategy;

(B) in the case of nuclear aircraft carrier refueling, fulfilling the requirement is not economically feasible; or

(C) it is in the best interest of national security.

(2) The Secretary of a military department may waive the requirement in subsection (a)(3) for special access programs if such a waiver is determined to be in the best interest of the United States.

(3) The determination to waive requirements in accordance with paragraph (1) or (2) shall be documented and notification submitted to Congress with justification for the waiver within 30 days of issuance.

(c) APPLICABILITY TO COMMERCIAL ITEMS.—

(1) The requirement in subsection (a)(3) shall not apply to items determined to be commercial items.

(2) The first time a weapon system or other item of military equipment described in subsection (a) is determined to be a commercial item for the purposes of the exception under subsection (c), the Secretary of Defense shall submit to Congress a notification of the determination, together with the justification for the determination. The justification for the determination shall include, at a minimum, the following:

- (A) The estimated percentage of commonality of parts of the version of the item that is sold or leased in the commercial marketplace and the version of the item to be purchased by the Department of Defense.
 - (B) The value of any unique support and test equipment and tools needed to support the military requirements if the item were maintained by the Department of Defense.
 - (C) A comparison of the estimated life-cycle depot-level maintenance and repair support costs that would be incurred by the Government if the item were maintained by the private sector with the estimated life-cycle depot-level maintenance support costs that would be incurred by the Government if the item were maintained by the Department of Defense.
- (3) In this subsection, the term 'commercial item' means an end-item, assembly, subassembly, or part sold or leased in substantial quantities to the general public and purchased by the Department of Defense without modification in the same form that they are sold in the commercial marketplace, or with minor modifications to meet Federal Government requirements.

~~(b)~~ Limitation on Contracting LIMITATION ON CONTRACTING.—

- (1) Except as provided in paragraph (2), performance of workload needed to maintain a logistics capability identified by the Secretary under subsection (a)(2) may not be contracted for performance by non-Government personnel under the procedures and requirements of Office of Management and Budget Circular A-76 or any successor administrative regulation or policy (hereinafter in this section referred to as OMB Circular A-76). Except as provided in paragraph (2), performance of workload needed to maintain a core depot-level maintenance and repair capability identified by the Secretary under subsection (a)(3) may not be contracted for performance by non-Government personnel under the procedures and requirements of Office of Management and Budget Circular A-76 or any successor administrative regulation or policy (hereinafter in this section referred to as 'OMB Circular A-76').
- (2) The Secretary of Defense may waive paragraph (1) in the case of any such logistics capability and provide that performance of the workload needed to maintain that capability shall be considered for conversion to contractor performance in accordance with OMB Circular A-76. Any such waiver shall be made under regulations prescribed by the Secretary and shall be based on a determination by the Secretary that Government performance of the workload is no longer required for national defense reasons. Such regulations shall include criteria for determining whether Government performance of any such workload is no longer required for national defense reasons. The Secretary of Defense may waive paragraph (1) in the case of any such depot-level maintenance and repair capability and provide that performance of the workload needed to maintain that capability shall be considered for conversion to contractor performance in accordance with OMB Circular A-76. Any such waiver shall be made under regulations prescribed by the Secretary and shall be based on a determination by the Secretary that Government performance of the workload is no longer required for national defense reasons. Such regulations shall include criteria for determining whether Government performance of any such workload is no longer required for national defense reasons.
- (3) (A) A waiver under paragraph (2) may not take effect until the expiration of the first period of 30 days of continuous session of Congress that begins on or after the date on which the Secretary submits a report on the waiver to the Committee on

Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(B) For the purposes of subparagraph (A)—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(e) BIENNIAL CORE REPORT.—Not later than April 1 on each even-numbered year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (except for the Coast Guard), for the subsequent fiscal year the following:

(1) The core depot-level maintenance and repair capability requirements and sustaining workloads, organized by work breakdown structure, expressed in direct labor hours.

(2) The corresponding workloads necessary to sustain core depot-level maintenance and repair capability requirements, expressed in direct labor hours and cost.

(3) In any case where core depot-level maintenance and repair capability requirements exceed or are expected to exceed sustaining workloads, a detailed rationale for the shortfall and a plan either to correct, or mitigate, the effects of the shortfall.

(f) ANNUAL CORE REPORT.— In 2013 and each year thereafter, not later than 60 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105 of title 31, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard), for the fiscal year preceding the fiscal year during which the report is submitted, each of the following:

(1) The core depot-level maintenance and repair capability requirements identified in subsection (a)(3).

(2) The workload required to cost-effectively support such requirements.

(3) To the maximum extent practicable, the additional workload beyond the workloads identified under subsection (a)(4) needed to ensure that not more than 50 percent of the non-exempt depot maintenance funding is expended for performance by non-Federal governmental personnel in accordance with section 2466 of this title.

(4) The allocation of workload for each Center of Industrial and Technical Excellence as designated in accordance with section 2474 of this title.

(5) The depot-level maintenance and repair capital investments required to be made in order to ensure compliance with subsection (a)(3) by not later than four years after achieving initial operational capacity.

(6) The outcome of a reassessment of continuation of a waiver granted under subsection (b).

(g) COMPTROLLER GENERAL REVIEW.—The Comptroller General shall review each report required under subsections (e) and (f) for completeness and compliance and provide findings and recommendations to the congressional defense committees not later than 60 days after the report is submitted to Congress.”.

(e) Notification of Determinations Regarding Certain Commercial Items.—The first time that a weapon system or other item of military equipment described in subsection (a)(3) is

determined to be a commercial item for the purposes of the exception contained in that subsection, the Secretary of Defense shall submit to Congress a notification of the determination, together with the justification for the determination. The justification for the determination shall include, at a minimum, the following:

- (1) The estimated percentage of commonality of parts of the version of the item that is sold or leased in the commercial marketplace and the Government's version of the item.
- (2) The value of any unique support and test equipment and tools that are necessary to support the military requirements if the item were maintained by the Government.
- (3) A comparison of the estimated life cycle logistics support costs that would be incurred by the Government if the item were maintained by the private sector with the estimated life cycle logistics support costs that would be incurred by the Government if the item were maintained by the Government.