

INCLUSION OF PLAN ON THE FINANCIAL MANAGEMENT WORKFORCE IN THE STRATEGIC WORKFORCE PLAN OF THE DEPARTMENT OF DEFENSE (SEC. 1053)

The House bill contained a provision (sec. 1063) that would require an assessment of the financial management workforce of the Department of Defense and a plan for addressing any gaps in capabilities of that workforce.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary of Defense to assess and plan the Department's financial management workforce through the strategic workforce plan established pursuant to section 115b of title 10, United States Code.

SEC. 1053. INCLUSION OF PLAN ON THE FINANCIAL MANAGEMENT WORKFORCE IN THE STRATEGIC WORKFORCE PLAN OF THE DEPARTMENT OF DEFENSE.

Section 115b of title 10, United States Code, is amended—

- (1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and (2) by inserting after subsection (d) the following new subsection (e):

“(e) FINANCIAL MANAGEMENT WORKFORCE.—

- (1) Each strategic workforce plan under subsection (a) shall include a separate chapter to specifically address the shaping and improvement of the financial management workforce of the Department of Defense, including both military and civilian personnel of that workforce.
- (2) For purposes of paragraph (1), each plan shall include, with respect to the financial management workforce of the Department—
- (A) an assessment of the matters set forth in subparagraphs (A) through (D) of subsection (b)(1);
- (B) a plan of action meeting the requirements set forth in subparagraphs (A) through (F) of subsection (b)(2);
- (C) specific steps that the Department has taken or plans to take to develop appropriate career paths for civilian employees in the financial management field and to implement the requirements of 10 section 1599d of this title; and
- (D) a plan for funding needed improvements in the financial management workforce of the Department through the period of the current future years defense program under section 221 of this title, including a description of any continuing short falls in funding available for that workforce.”.

**TITLE 10 - ARMED FORCES
SUBTITLE A - GENERAL MILITARY LAW
PART I - ORGANIZATION AND GENERAL MILITARY POWERS
CHAPTER 2 - DEPARTMENT OF DEFENSE**

§ 115b. Annual strategic workforce plan

(a) Annual Plan Required.—

- (1) The Secretary of Defense shall submit to the congressional defense committees on an annual basis a strategic workforce plan to shape and improve the civilian employee workforce of the Department of Defense.

- (2) The Under Secretary of Defense for Personnel and Readiness shall have overall responsibility for developing and implementing the strategic workforce plan, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics.
- (b) Contents.— Each strategic workforce plan under subsection (a) shall include, at a minimum, the following:
- (1) An assessment of—
 - (A) the critical skills and competencies that will be needed in the future within the civilian employee workforce by the Department of Defense to support national security requirements and effectively manage the Department during the seven-year period following the year in which the plan is submitted;
 - (B) the appropriate mix of military, civilian, and contractor personnel capabilities;
 - (C) the critical skills and competencies of the existing civilian employee workforce of the Department and projected trends in that workforce based on expected losses due to retirement and other attrition; and
 - (D) gaps in the existing or projected civilian employee workforce of the Department that should be addressed to ensure that the Department has continued access to the critical skills and competencies described in subparagraphs (A) and (C).
 - (2) A plan of action for developing and reshaping the civilian employee workforce of the Department to address the gaps in critical skills and competencies identified under paragraph (1)(D), including—
 - (A) specific recruiting and retention goals, especially in areas identified as critical skills and competencies under paragraph (1), including the program objectives of the Department to be achieved through such goals and the funding needed to achieve such goals;
 - (B) specific strategies for developing, training, deploying, compensating, and motivating the civilian employee workforce of the Department, including the program objectives of the Department to be achieved through such strategies and the funding needed to implement such strategies;
 - (C) any incentives necessary to attract or retain any civilian personnel possessing the skills and competencies identified under paragraph (1);
 - (D) any changes in the number of personnel authorized in any category of personnel listed in subsection (f)(1) or in the acquisition workforce that may be needed to address such gaps and effectively meet the needs of the Department;
 - (E) any changes in resources or in the rates or methods of pay for any category of personnel listed in subsection (f)(1) or in the acquisition workforce that may be needed to address inequities and ensure that the Department has full access to appropriately qualified personnel to address such gaps and meet the needs of the Department; and
 - (F) any legislative changes that may be necessary to achieve the goals referred to in subparagraph (A).
 - (3) An assessment, using results-oriented performance measures, of the progress of the Department in implementing the strategic workforce plan under this section during the previous year.
 - (4) Any additional matters the Secretary of Defense considers necessary to address.
- (c) Senior Management, Functional, and Technical Workforce.—
- (1) Each strategic workforce plan under subsection (a) shall include a separate chapter to specifically address the shaping and improvement of the senior management, functional, and technical workforce (including scientists and engineers) of the Department of Defense.
 - (2) For purposes of paragraph (1), each plan shall include, with respect to such senior management, functional, and technical workforce—

- (A) an assessment of the matters set forth in subparagraphs (A) through (D) of subsection (b)(1);
- (B) a plan of action meeting the requirements set forth in subparagraphs (A) through (F) of subsection (b)(2);
- (C) specific strategies for developing, training, deploying, compensating, motivating, and designing career paths and career opportunities; and
- (D) specific steps that the Department has taken or plans to take to ensure that such workforce is managed in compliance with the requirements of section 129 of this title.

(d) Defense Acquisition Workforce.—

- (1) Each strategic workforce plan under subsection (a) shall include a separate chapter to specifically address the shaping and improvement of the defense acquisition workforce, including both military and civilian personnel.
- (2) For purposes of paragraph (1), each plan shall include, with respect to the defense acquisition workforce—
 - (A) an assessment of the matters set forth in subparagraphs (A) through (D) of subsection (b)(1);
 - (B) a plan of action meeting the requirements set forth in subparagraphs (A) through (F) of subsection (b)(2);
 - (C) specific steps that the Department has taken or plans to take to develop appropriate career paths for civilian employees in the acquisition field and to implement the requirements of section 1722a of this title with regard to members of the armed forces in the acquisition field; and
 - (D) a plan for funding needed improvements in the acquisition workforce of the Department through the period of the future-years defense program, including—
 - (i) the funding programmed for defense acquisition workforce improvements, including a specific identification of funding provided in the Department of Defense Acquisition Workforce Fund established under section 1705 of this title, along with a description of how such funding is being implemented and whether it is being fully used; and
 - (ii) a description of any continuing shortfalls in funding available for the acquisition workforce.

(e) Financial Management Workforce.—

- (1) Each strategic workforce plan under subsection (a) shall include a separate chapter to specifically address the shaping and improvement of the financial management workforce of the Department of Defense, including both military and civilian personnel of that workforce.
- (2) For purposes of paragraph (1), each plan shall include, with respect to the financial management workforce of the Department—
 - (A) an assessment of the matters set forth in subparagraphs (A) through (D) of subsection (b)(1);
 - (B) a plan of action meeting the requirements set forth in subparagraphs (A) through (F) of subsection (b)(2);
 - (C) specific steps that the Department has taken or plans to take to develop appropriate career paths for civilian employees in the financial management field and to implement the requirements of 10 section 1599d of this title; and
 - (D) a plan for funding needed improvements in the financial management workforce of the Department through the period of the current future years defense program under section 221 of this title, including a description of any continuing short falls in funding available for that workforce.’’.

(ef) Submittals by Secretaries of the Military Departments and Heads of the Defense Agencies.—

The Secretary of Defense shall require the Secretary of each military department and the head of each Defense Agency to submit a report to the Secretary addressing each of the matters described in this section. The Secretary of Defense shall establish a deadline for the submittal of reports under this subsection that enables the Secretary to consider the material submitted in a timely manner and incorporate such material, as appropriate, into the strategic workforce plan required by this section.

(g) Definitions.— In this section:

(1) The term “senior management, functional, and technical workforce of the Department of Defense” includes the following categories of Department of Defense civilian personnel:

(A) Appointees in the Senior Executive Service under section 3131 of title 5.

(B) Persons serving in positions described in section 5376 (a) of title 5.

(C) Highly qualified experts appointed pursuant to section 9903 of title 5.

(D) Scientists and engineers appointed pursuant to section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721), as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398 (114 Stat. 1654A–315)).

(E) Scientists and engineers appointed pursuant to section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note).

(F) Persons serving in the Defense Intelligence Senior Executive Service under section 1606 of this title.

(G) Persons serving in Intelligence Senior Level positions under section 1607 of this title.

(2) The term “acquisition workforce” includes individuals designated under section 1721 as filling acquisition positions.

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- (A) an assessment of the matters set forth in subparagraphs (A) through (D) of subsection (b)(1);
- (B) a plan of action meeting the requirements set forth in subparagraphs (A) through (F) of subsection (b)(2);
- (C) specific steps that the Department has taken or plans to take to develop appropriate career paths for civilian employees in the financial management field and to implement the requirements of 10 section 1599d of this title; and
- (D) a plan for funding needed improvements in the financial management workforce of the Department through the period of the current future years defense program under section 221 of this title, including a description of any continuing short falls in funding available for that workforce.”.

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CHAPTER 2 - DEPARTMENT OF DEFENSE**

§ 115b. Annual strategic workforce plan

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- (2) The Under Secretary of Defense for Personnel and Readiness shall have overall responsibility for developing and implementing the strategic workforce plan, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics.
- (b) Contents.— Each strategic workforce plan under subsection (a) shall include, at a minimum, the following:
- (1) An assessment of—
 - (A) the critical skills and competencies that will be needed in the future within the civilian employee workforce by the Department of Defense to support national security requirements and effectively manage the Department during the seven-year period following the year in which the plan is submitted;
 - (B) the appropriate mix of military, civilian, and contractor personnel capabilities;
 - (C) the critical skills and competencies of the existing civilian employee workforce of the Department and projected trends in that workforce based on expected losses due to retirement and other attrition; and
 - (D) gaps in the existing or projected civilian employee workforce of the Department that should be addressed to ensure that the Department has continued access to the critical skills and competencies described in subparagraphs (A) and (C).
 - (2) A plan of action for developing and reshaping the civilian employee workforce of the Department to address the gaps in critical skills and competencies identified under paragraph (1)(D), including—
 - (A) specific recruiting and retention goals, especially in areas identified as critical skills and competencies under paragraph (1), including the program objectives of the Department to be achieved through such goals and the funding needed to achieve such goals;
 - (B) specific strategies for developing, training, deploying, compensating, and motivating the civilian employee workforce of the Department, including the program objectives of the Department to be achieved through such strategies and the funding needed to implement such strategies;
 - (C) any incentives necessary to attract or retain any civilian personnel possessing the skills and competencies identified under paragraph (1);
 - (D) any changes in the number of personnel authorized in any category of personnel listed in subsection (f)(1) or in the acquisition workforce that may be needed to address such gaps and effectively meet the needs of the Department;
 - (E) any changes in resources or in the rates or methods of pay for any category of personnel listed in subsection (f)(1) or in the acquisition workforce that may be needed to address inequities and ensure that the Department has full access to appropriately qualified personnel to address such gaps and meet the needs of the Department; and
 - (F) any legislative changes that may be necessary to achieve the goals referred to in subparagraph (A).
 - (3) An assessment, using results-oriented performance measures, of the progress of the Department in implementing the strategic workforce plan under this section during the previous year.
 - (4) Any additional matters the Secretary of Defense considers necessary to address.
- (c) Senior Management, Functional, and Technical Workforce.—
- (1) Each strategic workforce plan under subsection (a) shall include a separate chapter to specifically address the shaping and improvement of the senior management, functional, and technical workforce (including scientists and engineers) of the Department of Defense.
 - (2) For purposes of paragraph (1), each plan shall include, with respect to such senior management, functional, and technical workforce—

- (A) an assessment of the matters set forth in subparagraphs (A) through (D) of subsection (b)(1);
- (B) a plan of action meeting the requirements set forth in subparagraphs (A) through (F) of subsection (b)(2);
- (C) specific strategies for developing, training, deploying, compensating, motivating, and designing career paths and career opportunities; and
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(d) Defense Acquisition Workforce.—

- (1) Each strategic workforce plan under subsection (a) shall include a separate chapter to specifically address the shaping and improvement of the defense acquisition workforce, including both military and civilian personnel.
- (2) For purposes of paragraph (1), each plan shall include, with respect to the defense acquisition workforce—
 - (A) an assessment of the matters set forth in subparagraphs (A) through (D) of subsection (b)(1);
 - (B) a plan of action meeting the requirements set forth in subparagraphs (A) through (F) of subsection (b)(2);
 - (C) specific steps that the Department has taken or plans to take to develop appropriate career paths for civilian employees in the acquisition field and to implement the requirements of section 1722a of this title with regard to members of the armed forces in the acquisition field; and
 - (D) a plan for funding needed improvements in the acquisition workforce of the Department through the period of the future-years defense program, including—
 - (i) the funding programmed for defense acquisition workforce improvements, including a specific identification of funding provided in the Department of Defense Acquisition Workforce Fund established under section 1705 of this title, along with a description of how such funding is being implemented and whether it is being fully used; and
 - (ii) a description of any continuing shortfalls in funding available for the acquisition workforce.

(e) Financial Management Workforce.—

- (1) Each strategic workforce plan under subsection (a) shall include a separate chapter to specifically address the shaping and improvement of the financial management workforce of the Department of Defense, including both military and civilian personnel of that workforce.
- (2) For purposes of paragraph (1), each plan shall include, with respect to the financial management workforce of the Department—
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 - (D) a plan for funding needed improvements in the financial management workforce of the Department through the period of the current future years defense program under section 221 of this title, including a description of any continuing short falls in funding available for that workforce.’’.

(ef) Submittals by Secretaries of the Military Departments and Heads of the Defense Agencies.—

The Secretary of Defense shall require the Secretary of each military department and the head of each Defense Agency to submit a report to the Secretary addressing each of the matters described in this section. The Secretary of Defense shall establish a deadline for the submittal of reports under this subsection that enables the Secretary to consider the material submitted in a timely manner and incorporate such material, as appropriate, into the strategic workforce plan required by this section.

(g) Definitions.— In this section:

- (1) The term “senior management, functional, and technical workforce of the Department of Defense” includes the following categories of Department of Defense civilian personnel:
 - (A) Appointees in the Senior Executive Service under section 3131 of title 5.
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 - (C) Highly qualified experts appointed pursuant to section 9903 of title 5.
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 - (E) Scientists and engineers appointed pursuant to section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note).
 - (F) Persons serving in the Defense Intelligence Senior Executive Service under section 1606 of this title.
 - (G) Persons serving in Intelligence Senior Level positions under section 1607 of this title.
- (2) The term “acquisition workforce” includes individuals designated under section 1721 as filling acquisition positions.

TRACKING IMPLEMENTATION OF DEPARTMENT OF DEFENSE EFFICIENCIES
(SEC. 1054)

The House bill contained a provision (sec. 1064) that would require the Comptroller General to assess and report to Congress on the extent to which the Department of Defense has tracked and realized the savings proposed pursuant to the efficiencies initiatives announced by the Secretary of Defense.

The Senate amendment contained no similar provision.

The Senate recesses.

SEC. 1054. TRACKING IMPLEMENTATION OF DEPARTMENT OF DEFENSE
EFFICIENCIES.

- (a) ANNUAL ASSESSMENTS.—For each of fiscal years 2012 through 2016, the Comptroller General of the United States shall carry out an assessment of the extent to which the Department of Defense has tracked and realized the savings proposed pursuant to the initiative led by the Secretary of Defense to identify at least \$100,000,000,000 in efficiencies during fiscal years 2012 through 2016.
- (b) ANNUAL REPORT.—Not later than October 30 of each of 2012 through 2016, the Comptroller General shall submit to the congressional defense committees a report on the assessment carried out under subsection (a) for the fiscal year ending on September 30 of that year. Each such report shall include the recommendations of the Comptroller General with respect to the matter covered by the assessment.

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.

**IMPLEMENTATION OF RECOMMENDATIONS OF DEFENSE SCIENCE BOARD TASK
FORCE ON IMPROVEMENTS TO SERVICE CONTRACTING (SEC. 807)**

The Senate amendment contained a provision (sec. 822) that would require the Department of Defense to develop a plan to implement the recommendations of a Defense Science Board report on service contracting.

The House bill contained no similar provision.

The House recedes with an amendment striking language requiring a taxonomy and definitions for the tracking of contract services. This issue has been already addressed in previously-enacted legislation requiring an inventory of contract services.

**SEC. 807. IMPLEMENTATION OF RECOMMENDATIONS OF DEFENSE SCIENCE BOARD
TASK FORCE ON IMPROVEMENTS TO SERVICE CONTRACTING.**

- (a) **PLAN FOR IMPLEMENTATION.**—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, acting pursuant to the Under Secretary’s responsibility under section 2330 of title 10, United States Code, develop a plan for implementing the recommendations of the Defense Science Board Task Force on Improvements to Service Contracting.
- (b) **ELEMENTS.**—The plan developed pursuant to subsection (a) shall include, to the extent determined appropriate by the Under Secretary for Acquisition, Technology, and Logistics, the following:
- (1) Meaningful incentives to services contractors for high performance at low cost, consistent with the objectives of the Better Buying Power Initiative established by the Under Secretary.
 - (2) Improved means of communication between the Government and the services contracting industry in the process of developing requirements for services contracts.
 - (3) Clear guidance for defense acquisition personnel on the use of appropriate contract types for particular categories of services contracts.
 - (4) Formal certification and training requirements for services acquisition personnel, consistent with the requirements of sections 1723 and 1724 of title 10, United States Code.
 - (5) Appropriate emphasis on the recruiting and training of services acquisition personnel, consistent with the strategic workforce plan developed pursuant to section 115b of title 10, United States Code, and the funds available through the Department of Defense Acquisition Workforce Development Fund established pursuant to section 1705 of title 10, United States Code.
 - (6) Policies and guidance on career development for services acquisition personnel, consistent with the requirements of sections 1722a and 1722b of title 10, United States Code.
 - (7) Actions to ensure that the military departments dedicate portfolio-specific commodity managers to coordinate the procurement of key categories of contract services, as required by section 2330(b)(3)(C) of title 10, United States Code.
 - (8) Actions to ensure that the Department of Defense conducts realistic exercises and training that account for services contracting during contingency operations, as required by section 2333(e) of title 10, United States Code.
- (c) **COMPTROLLER GENERAL REPORT.**—Not later than 18 months 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 the following:
- (1) The actions taken by the Under Secretary of Defense for Acquisition, Technology, and Logistics to carry out the requirements of this section.

- (2) The actions taken by the Under Secretary to carry out the requirements of section 2330 of title 10, United States Code.
- (3) The actions taken by the military departments to carry out the requirements of section 2330 of title 10, United States Code.
- (4) The extent to which the actions described in paragraphs (1), (2), and (3) have resulted in the improved acquisition and management of contract services.

**TEMPORARY LIMITATION ON AGGREGATE ANNUAL AMOUNT AVAILABLE FOR
CONTRACT SERVICES (SEC. 808)**

The Senate amendment contained a provision (sec. 823) that would limit Department of Defense spending for contract services in fiscal years 2012 and 2013 (not including spending from the Overseas Contingency Operations account).

The House bill contained no similar provision.

The House recesses

**SEC. 808. TEMPORARY LIMITATION ON AGGREGATE ANNUAL AMOUNT AVAILABLE
FOR CONTRACT SERVICES.**

- (a) **LIMITATION.**—Except as provided in subsection (b), the total amount obligated by the Department of Defense for contract services in fiscal year 2012 or 2013 may not exceed the total amount requested for the Department for contract services in the budget of the President for fiscal year 2010 (as submitted to Congress pursuant to section 1105(b) of title 31, United States Code) adjusted for net transfers from funding for overseas contingency operations.
- (b) **EXCEPTION.**—Notwithstanding the limitation in subsection (a), the total amount obligated by the Department for contract services in fiscal year 2012 or 2013 may exceed the amount otherwise provided pursuant to subsection (a) by an amount elected by the Secretary of Defense that is not greater than the cost of any increase in such fiscal year in the number of civilian billets at the Department that has been approved by the Secretary over the number of such billets at the Department in fiscal year 2010.
- (c) **GUIDANCE.**—Not later than 60 days after the date of the enactment of this Act, the Secretary shall issue guidance to the military departments and the Defense Agencies on implementation of this section during fiscal years 2012 and 2013. The guidance shall, at a minimum—
- (1) establish a negotiation objective that labor rates and overhead rates in any contract or task order for contract services with an estimated value in excess of \$10,000,000 awarded to a contractor in fiscal year 2012 or 2013 shall not exceed labor rates and overhead rates paid to the contractor for contract services in fiscal year 2010;
 - (2) require the Secretaries of the military departments and the heads of the Defense Agencies to approve in writing any contract or task order for contract services with an estimated value in excess of \$10,000,000 awarded to a contractor in fiscal year 2012 or 2013 that provides for continuing services at an annual cost that exceeds the annual cost paid by the military department or Defense Agency concerned for the same or similar services in fiscal year 2010;
 - (3) require the Secretaries of the military departments and the heads of the Defense Agencies to eliminate any contractor positions identified by the military department or Defense Agency concerned as being responsible for the performance of inherently governmental functions;
 - (4) require the Secretaries of the military departments and the heads of the Defense Agencies to reduce by 10 percent per fiscal year in each of fiscal years 2012 and 2013 the funding of the military department or Defense Agency concerned for—
 - (A) staff augmentation contracts; and
 - (B) contracts for the performance of functions closely associated with inherently governmental functions; and
 - (5) assign responsibility to the management officials designated pursuant to section 2330 of title 10, United States Code, and section 812(b) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3378; 10 23 U.S.C. 2330 note) to provide

oversight and ensure the implementation of the requirements of this section during fiscal years 2012 and 2013.

(d) DEFINITIONS.—In this section:

- (1) The term “contract services” has the meaning given that term in section 235 of title 10, United States Code, except that the term does not include services that are funded out of amounts available for overseas contingency operations.
- (2) The term “function closely associated with inherently governmental functions” has the meaning given that term in section 2383(b)(3) of title 10, United States Code.
- (3) The term “staff augmentation contracts” means contracts for personnel who are subject to the direction of a government official other than the contracting officer for the contract, including, but not limited to, contractor personnel who perform personal services contracts (as that term is defined in section 2330a(g)(5) of title 10, United States Code).
- (4) The term “transfers from funding for overseas contingency operations” means amounts funded out of amounts available for overseas contingency operations in fiscal year 2010 that are funded out of amounts other than amounts so available in fiscal year 2012 or 2013.

**INCLUSION OF CONTRACTOR SUPPORT REQUIREMENTS IN DEPARTMENT OF
DEFENSE PLANNING DOCUMENTS (SEC. 820)**

The House bill contained a provision (sec. 852) that would require the Secretary of Defense to develop and implement a plan to address shortfalls in operational contract support requirements determination, management, oversight, and administration.

The Senate amendment contained a provision (sec. 866) that would require inclusion of contractor support requirements in Department of Defense planning documents.

The House recesses.

The conferees note that the Commission on Wartime Contracting found significant deficiencies in the Department's requirements determination processes, management, oversight, and administration of operational contract support in recent contingency operations. The conferees urge the Secretary of Defense to take aggressive steps to address shortfalls in education, training, information-sharing, pre-deployment exercises and experiments, and workforce planning related to the Department's continued reliance on operational contract support.

**SEC. 820. INCLUSION OF CONTRACTOR SUPPORT REQUIREMENTS IN DEPARTMENT
OF DEFENSE PLANNING DOCUMENTS.**

(a) ELEMENTS IN QDR REPORTS TO CONGRESS.—Section 118(d) of title 10, United States Code, is amended—

(1) in paragraph (4)—

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

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

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

“(F) the roles and responsibilities that would be discharged by contractors.”;

(2) in paragraph (6), by striking “manpower and sustainment” and inserting “manpower, sustainment, and contractor support”; and

(3) in paragraph (8), by inserting “, and the scope of contractor support,” after “Defense Agencies”.

(b) CHAIRMAN OF JOINT CHIEFS OF STAFF ASSESSMENTS OF CONTRACTOR SUPPORT OF ARMED FORCES.—

(1) ASSESSMENTS UNDER CONTINGENCY PLANNING.—Paragraph (3) of subsection (a) of section 153 of such title is amended—

(A) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(B) by inserting after subparagraph (B) the following new subparagraph (C):

“(C) Identifying the support functions that are likely to require contractor performance under those contingency plans, and the risks associated with the assignment of such functions to contractors.”.

(2) ASSESSMENTS UNDER ADVICE ON REQUIREMENTS, PROGRAMS, AND

BUDGET.—Paragraph (4)(E) of such subsection is amended by inserting “and contractor support” after “area of manpower”.

(3) ASSESSMENTS FOR BIENNIAL REVIEW OF NATIONAL MILITARY STRATEGY.—Subsection (d) of such section is amended—

(A) in paragraph (2), by adding at the end the following new subparagraph:

- “(I) Assessment of the requirements for contractor support of the armed forces in conducting peacetime training, peacekeeping, overseas contingency operations, and major combat operations, and the risks associated with such support.”; and
- (B) in paragraph (3)(B), by striking “and the levels of support from allies and other friendly nations” and inserting “the levels of support from allies and other friendly nations, and the levels of contractor support”.

TITLE 10 - ARMED FORCES
SUBTITLE A - GENERAL MILITARY LAW
PART I - ORGANIZATION AND GENERAL MILITARY POWERS
CHAPTER 2 - DEPARTMENT OF DEFENSE

§ 118. Quadrennial defense review

- (a) **Review Required.**— The Secretary of Defense shall every four years, during a year following a year evenly divisible by four, conduct a comprehensive examination (to be known as a “quadrennial defense review”) of the national defense strategy, force structure, force modernization plans, infrastructure, budget plan, and other elements of the defense program and policies of the United States with a view toward determining and expressing the defense strategy of the United States and establishing a defense program for the next 20 years. Each such quadrennial defense review shall be conducted in consultation with the Chairman of the Joint Chiefs of Staff.
- (b) **Conduct of Review.**— Each quadrennial defense review shall be conducted so as—
- (1) to delineate a national defense strategy consistent with the most recent National Security Strategy prescribed by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 404a);
 - (2) to define sufficient force structure, force modernization plans, infrastructure, budget plan, and other elements of the defense program of the United States associated with that national defense strategy that would be required to execute successfully the full range of missions called for in that national defense strategy;
 - (3) to identify
 - (A) the budget plan that would be required to provide sufficient resources to execute successfully the full range of missions called for in that national defense strategy at a low-to-moderate level of risk, and
 - (B) any additional resources (beyond those programmed in the current future-years defense program) required to achieve such a level of risk; and
 - (4) to make recommendations that are not constrained to comply with the budget submitted to Congress by the President pursuant to section 1105 of title 31.
- (c) **Assessment of Risk.**— The assessment of risk for the purposes of subsection (b) shall be undertaken by the Secretary of Defense in consultation with the Chairman of the Joint Chiefs of Staff. That assessment shall define the nature and magnitude of the political, strategic, and military risks associated with executing the missions called for under the national defense strategy.
- (d) **Submission of QDR to Congressional Committees.**— The Secretary shall submit a report on each quadrennial defense review to the Committees on Armed Services of the Senate and the House of Representatives. The report shall be submitted in the year following the year in which the review is conducted, but not later than the date on which the President submits the budget for the next fiscal year to Congress under section 1105 (a) of title 31. The report shall include the following:
- (1) The results of the review, including a comprehensive discussion of the national defense strategy of the United States, the strategic planning guidance, and the force structure best suited to implement that strategy at a low-to-moderate level of risk.

- (2) The assumed or defined national security interests of the United States that inform the national defense strategy defined in the review.
 - (3) The threats to the assumed or defined national security interests of the United States that were examined for the purposes of the review and the scenarios developed in the examination of those threats.
 - (4) The assumptions used in the review, including assumptions relating to—
 - (A) the status of readiness of United States forces;
 - (B) the cooperation of allies, mission-sharing and additional benefits to and burdens on United States forces resulting from coalition operations;
 - (C) warning times;
 - (D) levels of engagement in operations other than war and smaller-scale contingencies and withdrawal from such operations and contingencies; ~~and~~
 - (E) the intensity, duration, and military and political end-states of conflicts and smaller-scale contingencies; ~~and~~
 - (F) the roles and responsibilities that would be discharged by contractors.
 - (5) The effect on the force structure and on readiness for high-intensity combat of preparations for and participation in operations other than war and smaller-scale contingencies.
 - (6) ~~The manpower and sustainment~~ manpower, sustainment, and contractor support policies required under the national defense strategy to support engagement in conflicts lasting longer than 120 days.
 - (7) The anticipated roles and missions of the reserve components in the national defense strategy and the strength, capabilities, and equipment necessary to assure that the reserve components can capably discharge those roles and missions.
 - (8) The appropriate ratio of combat forces to support forces (commonly referred to as the “tooth-to-tail” ratio) under the national defense strategy, including, in particular, the appropriate number and size of headquarters units and Defense Agencies for that purpose.
 - (9) The specific capabilities, including the general number and type of specific military platforms, needed to achieve the strategic and warfighting objectives identified in the review.
 - (10) The strategic and tactical air-lift, sea-lift, and ground transportation capabilities required to support the national defense strategy. (11) The forward presence, pre-positioning, and other anticipatory deployments necessary under the national defense strategy for conflict deterrence and adequate military response to anticipated conflicts.
 - (12) The extent to which resources must be shifted among two or more theaters under the national defense strategy in the event of conflict in such theaters.
 - (13) The advisability of revisions to the Unified Command Plan as a result of the national defense strategy.
 - (14) The effect on force structure of the use by the armed forces of technologies anticipated to be available for the ensuing 20 years.
 - (15) The national defense mission of the Coast Guard.
 - (16) The homeland defense and support to civil authority missions of the active and reserve components, including the organization and capabilities required for the active and reserve components to discharge each such mission.
 - (17) Any other matter the Secretary considers appropriate.
- (e) **CJCS Review.**—
- (1) Upon the completion of each review under subsection (a), the Chairman of the Joint Chiefs of Staff shall prepare and submit to the Secretary of Defense the Chairman’s assessment of the review, including the Chairman’s assessment of risk and a description of the capabilities needed to address such risk.
 - (2) The Chairman’s assessment shall be submitted to the Secretary in time for the inclusion of the assessment in the report. The Secretary shall include the Chairman’s assessment, together with the Secretary’s comments, in the report in its entirety.

(f) Independent Panel Assessment.—

- (1) Not later than six months before the date on which the report on a Quadrennial Defense Review is to be submitted under subsection (d), the Secretary of Defense shall establish a panel to conduct an assessment of the quadrennial defense review.
- (2) Not later than three months after the date on which the report on a quadrennial defense review is submitted under subsection (d) to the congressional committees named in that subsection, the panel appointed under paragraph (1) shall submit to those committees an assessment of the review, including the recommendations of the review, the stated and implied assumptions incorporated in the review, and the vulnerabilities of the strategy and force structure underlying the review. The assessment of the panel shall include analyses of the trends, asymmetries, and concepts of operations that characterize the military balance with potential adversaries, focusing on the strategic approaches of possible opposing forces.

(g) Consideration of Effect of Climate Change on Department Facilities, Capabilities, and Missions.—

- (1) The first national security strategy and national defense strategy prepared after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008 shall include guidance for military planners—
 - (A) to assess the risks of projected climate change to current and future missions of the armed forces;
 - (B) to update defense plans based on these assessments, including working with allies and partners to incorporate climate mitigation strategies, capacity building, and relevant research and development; and
 - (C) to develop the capabilities needed to reduce future impacts.
- (2) The first quadrennial defense review prepared after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008 shall also examine the capabilities of the armed forces to respond to the consequences of climate change, in particular, preparedness for natural disasters from extreme weather events and other missions the armed forces may be asked to support inside the United States and overseas.
- (3) For planning purposes to comply with the requirements of this subsection, the Secretary of Defense shall use—
 - (A) the mid-range projections of the fourth assessment report of the Intergovernmental Panel on Climate Change;
 - (B) subsequent mid-range consensus climate projections if more recent information is available when the next national security strategy, national defense strategy, or quadrennial defense review, as the case may be, is conducted; and
 - (C) findings of appropriate and available estimations or studies of the anticipated strategic, social, political, and economic effects of global climate change and the implications of such effects on the national security of the United States.
- (4) In this subsection, the term “national security strategy” means the annual national security strategy report of the President under section 108 of the National Security Act of 1947 (50 U.S.C. 404a).

TITLE 10 - ARMED FORCES
SUBTITLE A - GENERAL MILITARY LAW
PART I - ORGANIZATION AND GENERAL MILITARY POWERS
CHAPTER 5 - JOINT CHIEFS OF STAFF

§ 153. Chairman: functions

(a) **Planning; Advice; Policy Formulation.**— Subject to the authority, direction, and control of the President and the Secretary of Defense, the Chairman of the Joint Chiefs of Staff shall be responsible for the following:

(1) **Strategic Direction.**— Assisting the President and the Secretary of Defense in providing for the strategic direction of the armed forces.

(2) **Strategic Planning.**—

(A) Preparing strategic plans, including plans which conform with resource levels projected by the Secretary of Defense to be available for the period of time for which the plans are to be effective.

(B) Preparing joint logistic and mobility plans to support those strategic plans and recommending the assignment of logistic and mobility responsibilities to the armed forces in accordance with those logistic and mobility plans.

(C) Performing net assessments to determine the capabilities of the armed forces of the United States and its allies as compared with those of their potential adversaries.

(3) **Contingency Planning; Preparedness.**—

(A) Providing for the preparation and review of contingency plans which conform to policy guidance from the President and the Secretary of Defense.

(B) Preparing joint logistic and mobility plans to support those contingency plans and recommending the assignment of logistic and mobility responsibilities to the armed forces in accordance with those logistic and mobility plans.

(C) Identifying the support functions that are likely to require contractor performance under those contingency plans, and the risks associated with the assignment of such functions to contractors.

~~(D)~~ Advising the Secretary on critical deficiencies and strengths in force capabilities (including manpower, logistic, and mobility support) identified during the preparation and review of contingency plans and assessing the effect of such deficiencies and strengths on meeting national security objectives and policy and on strategic plans.

~~(E)~~ Establishing and maintaining, after consultation with the commanders of the unified and specified combatant commands, a uniform system of evaluating the preparedness of each such command to carry out missions assigned to the command.

(4) **Advice on Requirements, Programs, and Budget.**—

(A) Advising the Secretary, under section 163 (b)(2) of this title, on the priorities of the requirements identified by the commanders of the unified and specified combatant commands.

(B) Advising the Secretary on the extent to which the program recommendations and budget proposals of the military departments and other components of the Department of Defense for a fiscal year conform with the priorities established in strategic plans and with the priorities established for the requirements of the unified and specified combatant commands.

(C) Submitting to the Secretary alternative program recommendations and budget proposals, within projected resource levels and guidance provided by the Secretary, in order to achieve greater conformance with the priorities referred to in clause (B).

(D) Recommending to the Secretary, in accordance with section 166 of this title, a budget proposal for activities of each unified and specified combatant command.

- (E) Advising the Secretary on the extent to which the major programs and policies of the armed forces in the area of manpower and contractor support conform with strategic plans.
- (F) Assessing military requirements for defense acquisition programs.
- (5) Doctrine, Training, and Education.—**
 - (A) Developing doctrine for the joint employment of the armed forces.
 - (B) Formulating policies for the joint training of the armed forces.
 - (C) Formulating policies for coordinating the military education and training of members of the armed forces.
- (6) Other Matters.—**
 - (A) Providing for representation of the United States on the Military Staff Committee of the United Nations in accordance with the Charter of the United Nations. (B) Performing such other duties as may be prescribed by law or by the President or the Secretary of Defense.
- (b) Risks Under National Military Strategy.—**
 - (1) Not later than January 1 of each odd-numbered year, the Chairman shall submit to the Secretary of Defense a report providing the Chairman's assessment of the nature and magnitude of the strategic and military risks associated with executing the missions called for under the current National Military Strategy.
 - (2) The Secretary shall forward the report received under paragraph (1) in any year, with the Secretary's comments thereon (if any), to Congress with the Secretary's next transmission to Congress of the annual Department of Defense budget justification materials in support of the Department of Defense component of the budget of the President submitted under section 1105 of title 31 for the next fiscal year. If the Chairman's assessment in such report in any year is that risk associated with executing the missions called for under the National Military Strategy is significant, the Secretary shall include with the report as submitted to Congress the Secretary's plan for mitigating that risk.
- (c) Annual Report on Combatant Command Requirements.—**
 - (1) At or about the time that the budget is submitted to Congress for a fiscal year under section 1105 (a) of title 31, the Chairman shall submit to the congressional defense committees a report on the requirements of the combatant commands established under section 161 of this title.
 - (2) Each report under paragraph (1) shall contain the following:
 - (A) A consolidation of the integrated priority lists of requirements of the combatant commands.
 - (B) The Chairman's views on the consolidated lists.
 - (C) A description of the extent to which the most recent future-years defense program (under section 221 of this title) addresses the requirements on the consolidated lists.
 - (D) A description of the funding proposed in the President's budget for the next fiscal year, and for the subsequent fiscal years covered by the most recent future-years defense program, to address each deficiency in readiness identified during the joint readiness review conducted under section 117 of this title for the first quarter of the current fiscal year.
- (d) Biennial Review of National Military Strategy.—**
 - (1) Not later than February 15 of each even-numbered year, the Chairman shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the results of a comprehensive examination of the national military strategy. Each such examination shall be conducted by the Chairman in conjunction with the other members of the Joint Chiefs of Staff and the commanders of the unified and specified commands.

- (2) Each report on the examination of the national military strategy under paragraph (1) shall include the following:
- (A) Delineation of a national military strategy consistent with—
 - (i) the most recent National Security Strategy prescribed by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 404a);
 - (ii) the most recent annual report of the Secretary of Defense submitted to the President and Congress pursuant to section 113 of this title; and
 - (iii) the most recent Quadrennial Defense Review conducted by the Secretary of Defense pursuant to section 118 of this title.
 - (B) A description of the strategic environment and the opportunities and challenges that affect United States national interests and United States national security.
 - (C) A description of the regional threats to United States national interests and United States national security.
 - (D) A description of the international threats posed by terrorism, weapons of mass destruction, and asymmetric challenges to United States national security.
 - (E) Identification of United States national military objectives and the relationship of those objectives to the strategic environment, regional, and international threats.
 - (F) Identification of the strategy, underlying concepts, and component elements that contribute to the achievement of United States national military objectives.
 - (G) Assessment of the capabilities and adequacy of United States forces (including both active and reserve components) to successfully execute the national military strategy.
 - (H) Assessment of the capabilities, adequacy, and interoperability of regional allies of the United States and or other friendly nations to support United States forces in combat operations and other operations for extended periods of time.
 - (I) Assessment of the requirements for contractor support of the armed forces in conducting peacetime training, peacekeeping, overseas contingency operations, and major combat operations, and the risks associated with such support.
- (3) (A) As part of the assessment under this subsection, the Chairman, in conjunction with the other members of the Joint Chiefs of Staff and the commanders of the unified and specified commands, shall undertake an assessment of the nature and magnitude of the strategic and military risks associated with successfully executing the missions called for under the current National Military Strategy.
- (B) In preparing the assessment of risk, the Chairman should make assumptions pertaining to the readiness of United States forces (in both the active and reserve components), the length of conflict and the level of intensity of combat operations, ~~and the levels of support from allies and other friendly nations~~ the levels of support from allies and other friendly nations, and the levels of contractor support.

GENERAL POLICY FOR TOTAL FORCE MANAGEMENT (SEC. 931)

The House bill contained a provision (sec. 931) that would amend section 129a of title 10, United States Code, to require the Department of Defense to establish a total force management policy which comprehensively addresses the Department's military, civilian, and contractor workforces.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would clarify the requirements of the provision.

SEC. 931. GENERAL POLICY FOR TOTAL FORCE MANAGEMENT.

(a) REVISION OF GENERAL PERSONNEL POLICY SECTION.—Section 129a of title 10, United States Code, is amended to read as follows:

“§ 129a. General policy for total force management

- (a) POLICIES AND PROCEDURES.—The Secretary of Defense shall establish policies and procedures for determining the most appropriate and cost efficient mix of military, civilian, and contractor personnel to perform the mission of the Department of Defense.
- (b) RISK MITIGATION OVER COST.— In establishing the policies and procedures under subsection (a), the Secretary shall clearly provide that attainment of a Department of Defense workforce sufficiently sized and comprised of the appropriate mix of personnel necessary to carry out the mission of the Department and the core mission areas of the armed forces (as identified pursuant to section 118b of this title) takes precedence over cost.
- (c) DELEGATION OF RESPONSIBILITIES.—The Secretary shall delegate responsibility for implementation of the policies and procedures established under subsection (a) as follows:
 - (1) The Under Secretary of Defense for Personnel and Readiness shall have overall responsibility for guidance to implement such policies and procedures.
 - (2) The Secretaries of the military departments and the heads of the Defense Agencies shall have overall responsibility for the requirements determination, planning, programming, and budgeting for such policies and procedures.
 - (3) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible for ensuring that the defense acquisition system, as defined in section 2545 of this title, is consistent with such policies and procedures and with implementation pursuant to paragraph (1).
 - (4) The Under Secretary of Defense (Comptroller) shall be responsible for ensuring that the budget for the Department of Defense is consistent with such policies and procedures. The Under Secretary shall notify

- the congressional defense committees of any deviations from such policies and procedures that are recommended in the budget.
- (d) **USE OF PLAN, INVENTORY, AND LIST.**—The policies and procedures established by the Secretary under subsection (a) shall specifically require the Department of Defense to use the following when making determinations regarding the appropriate workforce mix necessary to perform its mission:
- (1) The civilian strategic workforce plan (required by section 115b of this title).
 - (2) The civilian positions master plan (required by section 1597(c) of this title).
 - (3) The inventory of contracts for services required by section 2330a(c) of this title.
 - (4) The list of activities required by the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270; 31 U.S.C. 501 note).
- (e) **CONSIDERATIONS IN CONVERTING PERFORMANCE OF FUNCTIONS.**—If conversion of functions to performance by either Department of Defense civilian personnel or contractor personnel is considered, the Under Secretary of Defense for Personnel and Readiness shall ensure compliance with—
- (1) section 2463 of this title (relating to guidelines and procedures for use of civilian employees to perform Department of Defense functions); and
 - (2) section 2461 of this title (relating to public-private competition required before conversion to contractor performance).
- (f) **CONSTRUCTION WITH OTHER REQUIREMENTS.**—Nothing in this title may be construed as authorizing—
- (1) a military department or Defense Agency to directly convert a function to contractor performance without complying with section 2461 of this title;
 - (2) the use of contractor personnel for functions that are inherently governmental even if there is a military or civilian personnel shortfall in the Department of Defense;
 - (3) restrictions on the use by a military department or Defense Agency of contractor personnel to perform functions closely associated with inherently governmental functions, provided that—
 - (A) there are adequate resources to maintain sufficient capabilities within the Department in the functional area being considered for performance by contractor personnel; and
 - (B) there is adequate Government oversight of contractor personnel performing such functions;
 - (4) the establishment of numerical goals or budgetary savings targets for the conversion of functions to performance by either Department of Defense civilian personnel or for conversion to performance by contractor personnel; or
 - (5) the imposition of a civilian hiring freeze that may inhibit the implementation of the policies and procedures established under subsection (a).”

- (b) CLERICAL AMENDMENT.—The item relating to section 129a in the table of sections at the beginning of chapter 3 of such title is amended to read as follows:
“129a. General policy for total force management.”.

TITLE 10 - ARMED FORCES
SUBTITLE A - GENERAL MILITARY LAW
PART I - ORGANIZATION AND GENERAL MILITARY POWERS
CHAPTER 3 - GENERAL POWERS AND FUNCTIONS

§ 129a. ~~General personnel policy~~ General policy for total force management.

~~The Secretary of Defense shall use the least costly form of personnel consistent with military requirements and other needs of the Department. In developing the annual personnel authorization requests to Congress and in carrying out personnel policies, the Secretary shall—~~

- ~~(1) consider particularly the advantages of converting from one form of personnel (military, civilian, or private contract) to another for the performance of a specified job; and~~
~~(2) include in each manpower requirements report submitted under section—~~

(a) POLICIES AND PROCEDURES.—The Secretary of Defense shall establish policies and procedures for determining the most appropriate and cost efficient mix of military, civilian, and contractor personnel to perform the mission of the Department of Defense.

(b) RISK MITIGATION OVER COST.— In establishing the policies and procedures under subsection (a), the Secretary shall clearly provide that attainment of a Department of Defense workforce sufficiently sized and comprised of the appropriate mix of personnel necessary to carry out the mission of the Department and the core mission areas of the armed forces (as identified pursuant to section 118b of this title) takes precedence over cost.

(c) DELEGATION OF RESPONSIBILITIES.—The Secretary shall delegate responsibility for implementation of the policies and procedures established under subsection (a) as follows:

- (1) The Under Secretary of Defense for Personnel and Readiness shall have overall responsibility for guidance to implement such policies and procedures.
- (2) The Secretaries of the military departments and the heads of the Defense Agencies shall have overall responsibility for the requirements determination, planning, programming, and budgeting for such policies and procedures.
- (3) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible for ensuring that the defense acquisition system, as defined in section 2545 of this title, is consistent with such policies and procedures and with implementation pursuant to paragraph (1).
- (4) The Under Secretary of Defense (Comptroller) shall be responsible for ensuring that the budget for the Department of Defense is consistent with such policies and procedures. The Under Secretary shall notify the congressional defense committees of any deviations from such policies and procedures that are recommended in the budget.

- (d) USE OF PLAN, INVENTORY, AND LIST.—The policies and procedures established by the Secretary under subsection (a) shall specifically require the Department of Defense to use the following when making determinations regarding the appropriate workforce mix necessary to perform its mission:
- (1) The civilian strategic workforce plan (required by section 115b of this title).
 - (2) The civilian positions master plan (required by section 1597(c) of this title).
 - (3) The inventory of contracts for services required by section 2330a(c) of this title.
 - (4) The list of activities required by the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270; 31 U.S.C. 501 note).
- (e) CONSIDERATIONS IN CONVERTING PERFORMANCE OF FUNCTIONS.—
If conversion of functions to performance by either Department of Defense civilian personnel or contractor personnel is considered, the Under Secretary of Defense for Personnel and Readiness shall ensure compliance with—
- (1) section 2463 of this title (relating to guidelines and procedures for use of civilian employees to perform Department of Defense functions);
and
 - (2) section 2461 of this title (relating to public-private competition required before conversion to contractor performance).
- (f) CONSTRUCTION WITH OTHER REQUIREMENTS.—Nothing in this title may be construed as authorizing—
- (1) a military department or Defense Agency to directly convert a function to contractor performance without complying with section 2461 of this title;
 - (2) the use of contractor personnel for functions that are inherently governmental even if there is a military or civilian personnel shortfall in the Department of Defense;
 - (3) restrictions on the use by a military department or Defense Agency of contractor personnel to perform functions closely associated with inherently governmental functions, provided that—
 - (A) there are adequate resources to maintain sufficient capabilities within the Department in the functional area being considered for performance by contractor personnel; and
 - (B) there is adequate Government oversight of contractor personnel performing such functions;
 - (4) the establishment of numerical goals or budgetary savings targets for the conversion of functions to performance by either Department of Defense civilian personnel or for conversion to performance by contractor personnel; or
 - (5) the imposition of a civilian hiring freeze that may inhibit the implementation of the policies and procedures established under subsection (a).

**REVISIONS TO DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL
MANAGEMENT CONSTRAINTS (SEC. 932)**

The House bill contained a provision (sec. 932) that would amend section 129 of title 10, United States Code, which prohibits the management of the Department of Defense civilian workforce on the basis of arbitrary ceilings and constraints, to ensure that manpower requirements are established on the basis of the total force management policy developed in accordance with section 129a of title 10, as amended.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment.

**SEC. 932. REVISIONS TO DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL
MANAGEMENT CONSTRAINTS.**

Section 129 of title 10, United States Code, is amended—

- (1) in subsection (a)—
 - (A) by inserting after “(1)” the following: “the total force management policies and procedures established under section 129a of this title, (2)”;
 - (B) by striking “department and (2)” and inserting “department, and (3)”;
- (2) in subsection (d), by striking “within that budget activity for which funds are provided for that fiscal year.” and inserting “within that budget activity as determined under the total force management policies and procedures established under section 129a of this title.”; and
- (3) in subsection (e), by striking the sentence beginning with “With respect to”.

**TITLE 10 - ARMED FORCES
SUBTITLE A - GENERAL MILITARY LAW
PART I - ORGANIZATION AND GENERAL MILITARY POWERS
CHAPTER 3 - GENERAL POWERS AND FUNCTIONS**

§ 129. Prohibition of certain civilian personnel management constraints

- (a) The civilian personnel of the Department of Defense shall be managed each fiscal year solely on the basis of and consistent with
 - (1) the total force management policies and procedures established under section 129a of this title,
 - (2) the workload required to carry out the functions and activities of the department, and
 - (23) the funds made available to the department for such fiscal year. The management of such personnel in any fiscal year shall not be subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. The Secretary of Defense and the Secretaries of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense unless such reduction is necessary

due to a reduction in funds available to the Department or is required under a law that is enacted after February 10, 1996, and that refers specifically to this subsection.

- (b) The number of, and the amount of funds available to be paid to, indirectly funded Government employees of the Department of Defense may not be—
 - (1) subject to any constraint or limitation on the number of such personnel who may be employed on the last day of a fiscal year;
 - (2) managed on the basis of any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees; or
 - (3) controlled under any policy of the Secretary of a military department for control of civilian manpower resources.
- (c) In this section, the term “indirectly funded Government employees” means civilian employees of the Department of Defense—
 - (1) who are employed by industrial-type activities, the Major Range and Test Facility Base, or commercial-type activities described in section 2208 of this title; and
 - (2) whose salaries and benefits are funded from sources other than appropriated funds.
- (d) With respect to each budget activity within an appropriation for a fiscal year for operations and maintenance, the Secretary of Defense shall ensure that there are employed during that fiscal year employees in the number and with the combination of skills and qualifications that are necessary to carry out the functions ~~within that budget activity for which funds are provided for that fiscal year within that budget activity as determined under the total force management policies and procedures established under section 129a of this title.~~
- (e) Subsections (a), (b), and (c) apply to the Major Range and Test Facility Base (MRTFB) at the installation level. ~~With respect to the MRTFB structure, the term “funds made available” includes both direct appropriated funds and funds provided by MRTFB customers.~~
- (f)
 - (1) Not later than February 1 of each year, the Secretary of each military department and the head of each Defense Agency 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 management of the civilian workforce under the jurisdiction of that official.
 - (2) Each report of an official under paragraph (1) shall contain the following:
 - (A) The official’s certification
 - (i) that the civilian workforce under the jurisdiction of the official is not subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees, and
 - (ii) that, during the 12 months preceding the date on which the report is due, such workforce has not been subject to any such constraint or limitation.
 - (B) A description of how the civilian workforce is managed.
 - (C) A detailed description of the analytical tools used to determine civilian workforce requirements during the 12-month period referred to in subparagraph (A).

ADDITIONAL AMENDMENTS RELATING TO TOTAL FORCE MANAGEMENT
(SEC. 933)

The House bill contained a provision (sec. 933) that would make conforming amendments to a series of statutes to ensure that the total force management policy established in accordance with section 129a of title 10, United States Code, as amended, is considered in key workforce decisions of the Department of Defense.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

SEC. 933. ADDITIONAL AMENDMENTS RELATING TO TOTAL FORCE
MANAGEMENT

- (a) AMENDMENTS TO SECRETARY OF DEFENSE REPORT.—Section 113(l) of title 10, United States Code, is amended to read as follows:
- “(l)(1) The Secretary shall include in the annual report to Congress under subsection (c) the following:
- (A) A comparison of the amounts provided in the defense budget for support and for mission activities for each of the preceding five fiscal years.
 - (B) A comparison of the following for each of the preceding five fiscal years:
 - (i) The number of military personnel, shown by major occupational category, assigned to support positions or to mission positions.
 - (ii) The number of civilian personnel, shown by major occupational category, assigned to support positions or to mission positions.
 - (iii) The number of contractor personnel performing support functions.
 - (C) An accounting for each of the preceding five fiscal years of the following:
 - (i) The number of military and civilian personnel, shown by armed force and by major occupational category, assigned to support positions.
 - (ii) The number of contractor personnel performing support functions.
 - (D) An identification, for each of the three workforce sectors (military, civilian, and contractor) of the percentage of the total number of personnel in that workforce sector that is providing support to headquarters and headquarters support activities for each of the preceding five fiscal years.
- (2) Contractor personnel shall be determined for purposes of paragraph (1) by using contractor full-time equivalents, based on the inventory required under section 2330a of this title.”.
- (b) AMENDMENTS RELATING TO CERTAIN GUIDELINES.—Section 1597(b) of title 10, United States Code, is amended by inserting after the first sentence the following: “In establishing the guidelines, the Secretary shall ensure that nothing in the guidelines conflicts with the requirements of section 129 of this title or the policies and procedures established under section 129a of this title.”.

(c) AMENDMENT TO REQUIREMENTS FOR ACQUISITION OF SERVICES.—Section 863 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4293; 10 U.S.C. 2330 note) is amended by adding at the end of subsection (d) the following new paragraph:

“(9) Considerations relating to total force management policies and procedures established under section 129a of this title.”.

TITLE 10 - ARMED FORCES
SUBTITLE A - GENERAL MILITARY LAW
PART I - ORGANIZATION AND GENERAL MILITARY POWERS
CHAPTER 2 - DEPARTMENT OF DEFENSE

§ 113. Secretary of Defense

- (a) There is a Secretary of Defense, who is the head of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Secretary of Defense within seven years after relief from active duty as a commissioned officer of a regular component of an armed force.
- (b) The Secretary is the principal assistant to the President in all matters relating to the Department of Defense. Subject to the direction of the President and to this title and section 2 of the National Security Act of 1947 (50 U.S.C. 401), he has authority, direction, and control over the Department of Defense.
- (c) (1) The Secretary shall report annually in writing to the President and the Congress on the expenditures, work, and accomplishments of the Department of Defense during the period covered by the report, together with—
- (A) a report from each military department on the expenditures, work, and accomplishments of that department;
 - (B) itemized statements showing the savings of public funds, and the eliminations of unnecessary duplications, made under sections 125 and 191 of this title; and
 - (C) such recommendations as he considers appropriate.
- (2) At the same time that the Secretary submits the annual report under paragraph (1), the Secretary shall transmit to the President and Congress a separate report from the Reserve Forces Policy Board on the reserve programs of the Department of Defense and on any other matters that the Reserve Forces Policy Board considers appropriate to include in the report.
- (d) Unless specifically prohibited by law, the Secretary may, without being relieved of his responsibility, perform any of his functions or duties, or exercise any of his powers through, or with the aid of, such persons in, or organizations of, the Department of Defense as he may designate.
- (e) (1) The Secretary shall include in his annual report to Congress under subsection (c)—
- (A) a description of the major military missions and of the military force structure of the United States for the next fiscal year;
 - (B) an explanation of the relationship of those military missions to that force structure; and
 - (C) the justification for those military missions and that force structure.

- (2) In preparing the matter referred to in paragraph (1), the Secretary shall take into consideration the content of the annual national security strategy report of the President under section 108 of the National Security Act of 1947 (50 U.S.C. 404a) for the fiscal year concerned.
- (f) When a vacancy occurs in an office within the Department of Defense and the office is to be filled by a person appointed from civilian life by the President, by and with the advice and consent of the Senate, the Secretary of Defense shall inform the President of the qualifications needed by a person serving in that office to carry out effectively the duties and responsibilities of that office.
- (g) (1) The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall provide annually to the heads of Department of Defense components written policy guidance for the preparation and review of the program recommendations and budget proposals of their respective components. Such guidance shall include guidance on—
- (A) national security objectives and policies;
 - (B) the priorities of military missions; and
 - (C) the resource levels projected to be available for the period of time for which such recommendations and proposals are to be effective.
- (2) The Secretary of Defense, with the approval of the President and after consultation with the Chairman of the Joint Chiefs of Staff, shall provide to the Chairman written policy guidance for the preparation and review of contingency plans, including plans for providing support to civil authorities in an incident of national significance or a catastrophic incident, for homeland defense, and for military support to civil authorities. Such guidance shall be provided every two years or more frequently as needed and shall include guidance on the specific force levels and specific supporting resource levels projected to be available for the period of time for which such plans are to be effective.
- (h) The Secretary of Defense shall keep the Secretaries of the military departments informed with respect to military operations and activities of the Department of Defense that directly affect their respective responsibilities.
- (i) (1) The Secretary of Defense shall transmit to Congress each year a report that contains a comprehensive net assessment of the defense capabilities and programs of the armed forces of the United States and its allies as compared with those of their potential adversaries.
- (2) Each such report shall—
- (A) include a comparison of the defense capabilities and programs of the armed forces of the United States and its allies with the armed forces of potential adversaries of the United States and allies of the United States;
 - (B) include an examination of the trends experienced in those capabilities and programs during the five years immediately preceding the year in which the report is transmitted and an examination of the expected trends in those capabilities and programs during the period covered by the future-years defense program submitted to Congress during that year pursuant to section 221 of this title;
 - (C) include a description of the means by which the Department of Defense will maintain the capability to reconstitute or expand the defense capabilities and

- programs of the armed forces of the United States on short notice to meet a resurgent or increased threat to the national security of the United States;
- (D) reflect, in the overall assessment and in the strategic and regional assessments, the defense capabilities and programs of the armed forces of the United States specified in the budget submitted to Congress under section 1105 of title 31 in the year in which the report is submitted and in the five-year defense program submitted in such year; and
 - (E) identify the deficiencies in the defense capabilities of the armed forces of the United States in such budget and such five-year defense program.
- (3) The Secretary shall transmit to Congress the report required for each year under paragraph (1) at the same time that the President submits the budget to Congress under section 1105 of title 31 in that year. Such report shall be transmitted in both classified and unclassified form.
- (j) (1) Not later than April 8 of each year, the Secretary of Defense shall submit 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 a report on the cost of stationing United States forces outside of the United States. Each such report shall include a detailed statement of the following:
- (A) Costs incurred in the United States and costs incurred outside the United States in connection with the stationing of United States forces outside the United States.
 - (B) The costs incurred outside the United States in connection with operating, maintaining, and supporting United States forces outside the United States, including all direct and indirect expenditures of United States funds in connection with such stationing.
 - (C) The effect of such expenditures outside the United States on the balance of payments of the United States.
- (2) Each report under this subsection shall be prepared in consultation with the Secretary of Commerce.
- (3) In this subsection, the term “United States”, when used in a geographic sense, includes the territories and possessions of the United States.
- (k) The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall provide annually to the Secretaries of the military departments and to the commanders of the combatant commands written guidelines to direct the effective detection and monitoring of all potential aerial and maritime threats to the national security of the United States. Those guidelines shall include guidance on the specific force levels and specific supporting resources to be made available for the period of time for which the guidelines are to be in effect.
- (l) (1) The Secretary shall include in the annual report to Congress under subsection (c) the following:
- (A) A comparison of the amounts provided in the defense budget for support and for mission activities for each of the preceding five fiscal years.
 - (B) A comparison of the following for each of the preceding five fiscal years:
 - (i) The number of military personnel, shown by major occupational category, assigned to support positions or to mission positions.

- (ii) The number of civilian personnel, shown by major occupational category, assigned to support positions or to mission positions.
- (iii) The number of contractor personnel performing support functions.
- (C) An accounting for each of the preceding five fiscal years of the following:
 - (i) The number of military and civilian personnel, shown by armed force and by major occupational category, assigned to support positions.
 - (ii) The number of contractor personnel performing support functions.
- (D) An identification, for each of the three workforce sectors (military, civilian, and contractor) of the percentage of the total number of personnel in that workforce sector that is providing support to headquarters and headquarters support activities for each of the preceding five fiscal years.
- (2) Contractor personnel shall be determined for purposes of paragraph (1) by using contractor full-time equivalents, based on the inventory required under section 2330a of this title.
- ~~(1) A comparison of the amounts provided in the defense budget for support and for mission activities for each of the preceding five fiscal years.~~
- ~~(2) A comparison of the number of military and civilian personnel, shown by major occupational category, assigned to support positions and to mission positions for each of the preceding five fiscal years.~~
- ~~(3) An accounting, shown by service and by major occupational category, of the number of military and civilian personnel assigned to support positions during each of the preceding five fiscal years.~~
- ~~(4) A listing of the number of military and civilian personnel assigned to management headquarters and headquarters support activities as a percentage of military end strength for each of the preceding five fiscal years.~~
- (m) Information To Accompany Funding Request for Contingency Operation.— Whenever the President submits to Congress a request for appropriations for costs associated with a contingency operation that involves, or likely will involve, the deployment of more than 500 members of the armed forces, the Secretary of Defense shall submit to Congress a report on the objectives of the operation. The report shall include a discussion of the following:
 - (1) What clear and distinct objectives guide the activities of United States forces in the operation.
 - (2) What the President has identified on the basis of those objectives as the date, or the set of conditions, that defines the endpoint of the operation.

**TITLE 10 - ARMED FORCES
SUBTITLE A - GENERAL MILITARY LAW
PART II - PERSONNEL
CHAPTER 81 - CIVILIAN EMPLOYEES**

§ 1597. Civilian positions: guidelines for reductions

- (a) Requirement of Guidelines for Reductions in Civilian Positions.— Reductions in the number of civilian positions of the Department of Defense during a fiscal year, if any, shall be carried out in accordance with the guidelines established pursuant to subsection (b).
- (b) Guidelines.— The Secretary of Defense shall establish guidelines for the manner in which reductions in the number of civilian positions of the Department of Defense are made. In establishing the guidelines, the Secretary shall ensure that nothing in the guidelines conflicts with the requirements of section 129 of this title or the policies and procedures established

under section 129a of this title. The guidelines shall include procedures for reviewing civilian positions for reductions according to the following order:

- (1) Positions filled by foreign national employees overseas.
- (2) All other positions filled by civilian employees overseas.
- (3) Overhead, indirect, and administrative positions in headquarters or field operating agencies in the United States.
- (4) Direct operating or production positions in the United States.

(c) Master Plan.—

- (1) The Secretary of Defense shall include in the materials submitted to Congress in support of the budget request for the Department of Defense for each fiscal year a civilian positions master plan described in paragraph (2) for the Department of Defense as a whole and for each military department, Defense Agency, and other principal component of the Department of Defense.
- (2) The master plan referred to in paragraph (1) shall include the information described in paragraph (3). Such information shall include information for each of the two fiscal years immediately preceding such fiscal year and projected information for such fiscal year and each of the two fiscal years immediately following such fiscal year.
- (3) The information referred to in paragraph (2) is the following:
 - (A) A profile of the levels of civilian positions sufficient to establish and maintain a baseline for tracking annual accessions and losses of civilian positions and to provide for the analysis of trends in the levels of civilian positions within the Department of Defense as a whole and for each military department, major subordinate command of each military department, Defense Agency, and other principal component of the Department of Defense. The profile shall include information on the following
 - (i) The total number of civilian employees.
 - (ii) Of the total number of civilian employees, the number of civilian employees in the United States, the number of civilian employees overseas, and the number of foreign national employees overseas.
 - (iii) Of the total number of civilian employees at the end of each fiscal year covered by the master plan, the number of full-time employees, the number of part-time employees, and the number of temporary and on-call employees.
 - (iv) Accessions and losses of civilian positions, shown in the aggregate and by the number of full-time employees, the number of part-time employees, and the number of temporary and on-call employees.
 - (v) The number of losses of civilian positions, by appropriation account, due to reductions in force, furloughs, or functional transfers or other significant transfers of work away from the military
 - (vi) The extent to which accessions and losses of civilian positions are due to functional transfers or competitive actions that are related to the Department of Defense management review initiatives of the Secretary of Defense.
 - (vii) The total number of individuals employed by contractors and subcontractors of the Department of Defense under a contract or subcontract entered into pursuant to Office of Management and

Budget Circular A-76 to perform commercial activities for the Department of Defense, a military department, a defense agency, or other component.

- (B) For industrial-type and commercial-type activities funded through the Defense Business Operations Fund, the following information:
 - (i) Annual trends in the amount of funded workload for each activity, based upon the average number of months of accumulated, funded workload to be performed, or projected to be performed, by the activity.
 - (ii) The extent to which such workload is funded by funds that are appropriated from appropriation accounts and managed through the Defense Business Operations Fund.
 - (C) Information that indicates trends in the extent to which the military department, Defense Agency, or other component enters into contracts with persons outside of the Department of Defense, rather than uses civilian positions, to perform work for the military department, Defense Agency, or other component.
 - (D) Information that indicates the extent to which the Department of Defense management review initiatives of the Secretary of Defense and other productivity enhancement programs of the Department of Defense significantly affect the number of losses of civilian positions, particularly administrative and management positions.
- (4) The Secretary of Defense shall include in the materials referred to in paragraph (1) a report on the implementation of the master plan for the fiscal year immediately preceding the fiscal year for which such materials are submitted.
- (d) Exceptions.— The Secretary of Defense may permit a variation from the guidelines established under subsection (b) or a master plan prepared under subsection (c) if the Secretary determines that such variation is critical to the national security. The Secretary shall immediately notify the Congress of any such variation and the reasons for such variation.
 - (e) Involuntary Reductions of Civilian Positions.— The Secretary of Defense may not implement any involuntary reduction or furlough of civilian positions in a military department, Defense Agency, or other component of the Department of Defense until the expiration of the 45-day period beginning on the date on which the Secretary submits to Congress a report setting forth the reasons why such reductions or furloughs are required and a description of any change in workload or positions requirements that will result from such reductions or furloughs.

**P.L. 111-383 SEC. 863. REQUIREMENTS FOR THE ACQUISITION OF SERVICES
IKE SKELTON NATIONAL DEFENSE AUTHORIZATION ACT (NDAA), FY 2011**

- (a) ESTABLISHMENT OF REQUIREMENTS PROCESSES FOR THE ACQUISITION OF SERVICES.—The Secretary of Defense shall ensure that the military departments and Defense Agencies each establish a process for identifying, assessing, reviewing, and validating requirements for the acquisition of services.

- (b) **OPERATIONAL REQUIREMENTS.**—With regard to requirements for the acquisition of services in support of combatant commands and military operations, the Secretary shall ensure—
- (1) that the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air within the Armed Force concerned, the process established pursuant to subsection (a) for such Armed Force; and
 - (2) that commanders of unified combatant commands and other officers identified or designated as joint qualified officers have an opportunity to participate in the process of each military department to provide input on joint requirements for the acquisition of services.
- (c) **SUPPORTING REQUIREMENTS.**—With regard to requirements for the acquisition of services not covered by subsection (b), the Secretary shall ensure that the secretaries of the military departments and the heads of the Defense Agencies implement and bear chief responsibility for carrying out, within the military department or Defense Agency concerned, the process established pursuant to subsection (a) for such military department or Defense Agency.
- (d) **IMPLEMENTATION PLANS REQUIRED.**—The Secretary shall ensure that an implementation plan is developed for each process established pursuant to subsection (a) that addresses, at a minimum, the following:
- (1) The organization of such process.
 - (2) The level of command responsibility required for identifying, assessing, reviewing, and validating requirements for the acquisition of services in accordance with the requirements of this section and the categories established under section 2330(a)(1)(C) of title 10, United States Code.
 - (3) The composition of positions necessary to operate such process.
 - (4) The training required for personnel engaged in such process.
 - (5) The relationship between doctrine and such process.
 - (6) Methods of obtaining input on joint requirements for the acquisition of services.
 - (7) Procedures for coordinating with the acquisition process.
 - (8) Considerations relating to opportunities for strategic sourcing.
 - (9) Considerations relating to total force management policies and procedures established under section 129a of this title.
- (e) **MATTERS REQUIRED IN IMPLEMENTATION PLAN.**—Each plan required under subsection (d) shall provide for initial implementation of a process for identifying, assessing, reviewing, and validating requirements for the acquisition of services not later than one year after the date of the enactment of this Act and shall provide for full implementation of such process at the earliest date practicable.
- (f) **CONSISTENCY WITH JOINT GUIDANCE.**—Whenever, at any time, guidance is issued by the Chairman of the Joint Chiefs of Staff relating to requirements for the acquisition of services in support of combatant commands and military operations, each process established pursuant to subsection (a) shall be revised in accordance with such joint guidance.
- (g) **DEFINITION.**—The term “requirements for the acquisition of services” means objectives to be achieved through acquisitions primarily involving the procurement of services.
- (h) **REVIEW OF SUPPORTING REQUIREMENTS TO IDENTIFY SAVINGS.**—The secretaries of the military departments and the heads of the Defense Agencies shall review and validate each requirement described in subsection (c) with an anticipated cost in excess

of \$10,000,000 with the objective of identifying unneeded or low priority requirements that can be reduced or eliminated, with the savings transferred to higher priority objectives. Savings identified and transferred to higher priority objectives through review and revalidation under this subsection shall count toward the savings objectives established in the June 4, 2010, guidance of the Secretary of Defense on improved operational efficiencies and the annual reduction in funding for service support contractors required by the August 16, 2010, guidance of the Secretary of Defense on efficiency initiatives. As provided by the Secretary, cost avoidance shall not count toward these objectives.

- (i) **EXTENSION OF AUTHORITY.**—Subsection (e) of section 834 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (15 U.S.C. 637 note) is amended by striking “September 30, 2010” and inserting “December 31, 2011”.

MODIFICATIONS OF ANNUAL DEFENSE MANPOWER REQUIREMENTS REPORT
(SEC. 934)

The House bill contained a provision (sec. 934) that would revise the annual defense manpower requirements report required by section 115a, to ensure that the report addresses all components of the Department of Defense workforce, including the military, civilian, and contractor workforce.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

SEC. 934. MODIFICATIONS OF ANNUAL DEFENSE MANPOWER REQUIREMENTS REPORT.

Section 115a(a) of title 10, United States Code, is amended—

- (1) by striking “and” at the end of paragraph(1); and
- (2) by striking paragraph (2) and inserting the following new paragraphs (2) and (3):
 - “(2) the annual civilian personnel requirements level for each component of the Department of Defense for the next fiscal year and the civilian end strength level for the prior fiscal year; and
 - “(3) the projected number of contractor personnel full-time equivalents required to provide contract services (as that term is defined in section 235 of this title) for each component of the Department of Defense for the next fiscal year and the contractor personnel full-time equivalents that provided contract services for each component of the Department of Defense for the prior fiscal year as reported in the inventory of contracts for services required by section 2330a(c) of this title.”.

TITLE 10 - ARMED FORCES
SUBTITLE A - GENERAL MILITARY LAW
PART I - ORGANIZATION AND GENERAL MILITARY POWERS
CHAPTER 2 - DEPARTMENT OF DEFENSE

§ 115a. Annual manpower requirements report

- (a) The Secretary of Defense shall submit to Congress an annual defense manpower requirements report. The report, which shall be in writing, shall be submitted each year not later than 45 days after the date on which the President submits to Congress the budget for the next fiscal year under section 1105 of title 31. The report shall contain the Secretary’s recommendations for—
 - (1) the annual active-duty end-strength level for each component of the armed forces for the next fiscal year; ~~and~~
 - ~~(2) the annual civilian personnel end strength level for each component of the Department of Defense for the next fiscal year.~~

- (2) the annual civilian personnel requirements level for each component of the Department of Defense for the next fiscal year and the civilian end strength level for the prior fiscal year; and
- (3) the projected number of contractor personnel full-time equivalents required to provide contract services (as that term is defined in section 235 of this title) for each component of the Department of Defense for the next fiscal year and the contractor personnel full-time equivalents that provided contract services for each component of the Department of Defense for the prior fiscal year as reported in the inventory of contracts for services required by section 2330a(c) of this title.

(b)

- (1) The Secretary shall include in each report under subsection (a) justification for the strength levels recommended and an explanation of the relationship between the personnel strength levels recommended for that fiscal year and the national security policies of the United States in effect at the time.
 - (2) The justification and explanation shall specify in detail for all major military force units (including each land force division, carrier and other major combatant vessel, air wing, and other comparable unit) the following:
 - (A) Unit mission and capability.
 - (B) Strategy which the unit supports.
 - (3) The justification and explanation shall also specify in detail the manpower required to perform the medical missions of each of the armed forces and of the Department of Defense.
- (c) The Secretary shall include in each report under subsection (a) a detailed discussion of the following:
- (1) The manpower required for support and overhead functions within the armed forces and the Department of Defense.
 - (2) The relationship of the manpower required for support and overhead functions to the primary combat missions and support policies.
 - (3) The manpower required to be stationed or assigned to duty in foreign countries and aboard vessels located outside the territorial limits of the United States, its territories, and possessions.
- (d) The Secretary shall also include in each such report, with respect to each armed force under the jurisdiction of the Secretary of a military department, the following:
- (1) The number of positions that require warrant officers or commissioned officers serving on active duty in each of the officer grades during the current fiscal year and the estimated number of such positions for each of the next five fiscal years.
 - (2) The estimated number of officers that will be serving on active duty in each grade on the last day of the current fiscal year and the estimated numbers of officers that will be needed on active duty on the last day of each of the next five fiscal years.
 - (3) An estimate and analysis for the current fiscal year and for each of the next five fiscal years of gains to and losses from the number of members on active duty in each officer grade, including a tabulation of—
 - (A) retirements displayed by year of active commissioned service;
 - (B) discharges;
 - (C) other separations;

- (D) deaths;
 - (E) promotions; and
 - (F) reserve and regular officers ordered to active duty.
- (e)
- (1) In each such report, the Secretary shall also include recommendations for the end-strength levels for medical personnel for each component of the armed forces as of the end of the next fiscal year.
 - (2) For purposes of this subsection, the term “medical personnel” includes—
 - (A) in the case of the Army, members of the Medical Corps, Dental Corps, Nurse Corps, Medical Service Corps, Veterinary Corps, and Army Medical Specialist Corps;
 - (B) in the case of the Navy, members of the Medical Corps, Dental Corps, Nurse Corps, and Medical Service Corps;
 - (C) in the case of the Air Force, members designated as medical officers, dental officers, Air Force nurses, medical service officers, and biomedical science officers;
 - (D) enlisted members engaged in or supporting medically related activities; and
 - (E) such other personnel as the Secretary considers appropriate.
- (f) The Secretary shall also include in each such report the following information with respect to personnel assigned to or supporting major Department of Defense headquarters activities:
- (1) The military end strength and civilian full-time equivalents assigned to major Department of Defense headquarters activities for the preceding fiscal year and estimates of such numbers for the current fiscal year and subsequent fiscal years.
 - (2) A summary of the replacement during the preceding fiscal year of contract workyears providing support to major Department of Defense headquarters activities with military end strength or civilian full-time equivalents, including an estimate of the number of contract workyears associated with the replacement of contracts performing inherently governmental or exempt functions.
 - (3) The plan for the continued review of contract personnel supporting major Department of Defense headquarters activities for possible conversion to military or civilian performance in accordance with section 2463 of this title.
 - (4) The amount of any adjustment in the limitation on personnel made by the Secretary of Defense or the Secretary of a military department, and, for each adjustment made pursuant to section 1111(b)(2) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (10 U.S.C. 143 note), the purpose of the adjustment.
- [(g) Redesignated (e)]
- (h) In each such report, the Secretary shall include a separate report on the Army and Air Force military technician programs. The report shall include a presentation, shown by reserve component and shown both as of the end of the preceding fiscal year and for the next fiscal year, of the following (displayed in the aggregate and separately for military technicians (dual status) and non-dual status military technicians):
- (1) The number of military technicians required to be employed (as specified in accordance with Department of Defense procedures), the number authorized to be employed under Department of Defense personnel procedures, and the number actually employed.
 - (2) Within each of the numbers under paragraph (1)—

- (A) the number applicable to a reserve component management headquarter organization; and
- (B) the number applicable to high-priority units and organizations (as specified in section 10216 (a) of this title).

REVISIONS TO STRATEGIC WORKFORCE PLAN (SEC. 935)

The House bill contained a provision (sec. 935) that would amend section 115b of title 10, United States Code, to revise the requirements established in that section for a Department of Defense strategic workforce plan.

The Senate amendment contained no similar provision.

The Senate recesses.

SEC. 935. REVISIONS TO STRATEGIC WORKFORCE PLAN.

(a) REVISION IN REPORTING PERIOD.—

(1) IN GENERAL.—Section 115b of title 10, United States Code, is amended—

(A) in the section heading, by striking “Annual strategic” and inserting “Biennial strategic”;

(B) in the heading of subsection (a), by striking “ANNUAL” and inserting “BIENNIAL”; and

(C) in subsection (a)(1), by striking “on an annual basis” and inserting “in every even numbered year”.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 2 of such title is amended by striking the item relating to section 115b and inserting the following:

“115b. Biennial strategic workforce plan.”.

(b) REVISION IN ASSESSMENT CONTENTS AND PERIOD.—Section 115b(b)(1) of such title is amended—

(1) in subparagraph (A), by striking “seven year period following the year in which the plan is submitted” and inserting “five-year period corresponding to the current future-years defense program under section 221 of this title”; and

(2) in subparagraph (B), by inserting before the semicolon at the end the following: “, as determined under the total force management policies and procedures established under section 129a of this title”.

(c) REFERENCE TO SECTION 129a.—Section 115b(c)(2)(D) of such title is amended by inserting before the period at the end the following: “and the policies and procedures established under section 129a of this title”.

TITLE 10 - ARMED FORCES SUBTITLE A - GENERAL MILITARY LAW PART I - ORGANIZATION AND GENERAL MILITARY POWERS CHAPTER 2 - DEPARTMENT OF DEFENSE

§ 115B. ~~ANNUAL-BIENNIAL~~ STRATEGIC WORKFORCE PLAN

(a) ~~AnnualBiennial~~-Plan Required.—

(1) The Secretary of Defense shall submit to the congressional defense committees ~~on an annual basis~~ in every even numbered year a strategic workforce plan to shape and improve the civilian employee workforce of the Department of Defense.

- (2) The Under Secretary of Defense for Personnel and Readiness shall have overall responsibility for developing and implementing the strategic workforce plan, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics.
- (b) Contents.— Each strategic workforce plan under subsection (a) shall include, at a minimum, the following:
- (1) An assessment of—
 - (A) the critical skills and competencies that will be needed in the future within the civilian employee workforce by the Department of Defense to support national security requirements and effectively manage the Department during the seven-year period following the year in which the plan is submitted five-year period corresponding to the current future-years defense program under section 221 of this title;
 - (B) the appropriate mix of military, civilian, and contractor personnel capabilities as determined under the total force management policies and procedures established under section 129a of this title;
 - (C) the critical skills and competencies of the existing civilian employee workforce of the Department and projected trends in that workforce based on expected losses due to retirement and other attrition; and
 - (D) gaps in the existing or projected civilian employee workforce of the Department that should be addressed to ensure that the Department has continued access to the critical skills and competencies described in subparagraphs (A) and (C).
 - (2) A plan of action for developing and reshaping the civilian employee workforce of the Department to address the gaps in critical skills and competencies identified under paragraph (1)(D), including—
 - (A) specific recruiting and retention goals, especially in areas identified as critical skills and competencies under paragraph (1), including the program objectives of the Department to be achieved through such goals and the funding needed to achieve such goals;
 - (B) specific strategies for developing, training, deploying, compensating, and motivating the civilian employee workforce of the Department, including the program objectives of the Department to be achieved through such strategies and the funding needed to implement such strategies;
 - (C) any incentives necessary to attract or retain any civilian personnel possessing the skills and competencies identified under paragraph (1);
 - (D) any changes in the number of personnel authorized in any category of personnel listed in subsection (f)(1) or in the acquisition workforce that may be needed to address such gaps and effectively meet the needs of the Department;
 - (E) any changes in resources or in the rates or methods of pay for any category of personnel listed in subsection (f)(1) or in the acquisition workforce that may be needed to address inequities and ensure that the Department has full access to appropriately qualified personnel to address such gaps and meet the needs of the Department; and

- (F) any legislative changes that may be necessary to achieve the goals referred to in subparagraph (A).
- (3) An assessment, using results-oriented performance measures, of the progress of the Department in implementing the strategic workforce plan under this section during the previous year.
- (4) Any additional matters the Secretary of Defense considers necessary to address.
- (c) Senior Management, Functional, and Technical Workforce.—
 - (1) Each strategic workforce plan under subsection (a) shall include a separate chapter to specifically address the shaping and improvement of the senior management, functional, and technical workforce (including scientists and engineers) of the Department of Defense.
 - (2) For purposes of paragraph (1), each plan shall include, with respect to such senior management, functional, and technical workforce—
 - (A) an assessment of the matters set forth in subparagraphs (A) through (D) of subsection (b)(1);
 - (B) a plan of action meeting the requirements set forth in subparagraphs (A) through (F) of subsection (b)(2);
 - (C) specific strategies for developing, training, deploying, compensating, motivating, and designing career paths and career opportunities; and
 - (D) specific steps that the Department has taken or plans to take to ensure that such workforce is managed in compliance with the requirements of section 129 of this title and the policies and procedures established under section 129a of this title.
- (d) Defense Acquisition Workforce.—
 - (1) Each strategic workforce plan under subsection (a) shall include a separate chapter to specifically address the shaping and improvement of the defense acquisition workforce, including both military and civilian personnel.
 - (2) For purposes of paragraph (1), each plan shall include, with respect to the defense acquisition workforce—
 - (A) an assessment of the matters set forth in subparagraphs (A) through (D) of subsection (b)(1);
 - (B) a plan of action meeting the requirements set forth in subparagraphs (A) through (F) of subsection (b)(2);
 - (C) specific steps that the Department has taken or plans to take to develop appropriate career paths for civilian employees in the acquisition field and to implement the requirements of section 1722a of this title with regard to members of the armed forces in the acquisition field; and
 - (D) a plan for funding needed improvements in the acquisition workforce of the Department through the period of the future-years defense program, including—
 - (i) the funding programmed for defense acquisition workforce improvements, including a specific identification of funding provided in the Department of Defense Acquisition Workforce Fund established under section 1705 of this title, along with a description of how such funding is being implemented and whether it is being fully used; and

- (ii) a description of any continuing shortfalls in funding available for the acquisition workforce.
- (e) Submittals by Secretaries of the Military Departments and Heads of the Defense Agencies.— The Secretary of Defense shall require the Secretary of each military department and the head of each Defense Agency to submit a report to the Secretary addressing each of the matters described in this section. The Secretary of Defense shall establish a deadline for the submittal of reports under this subsection that enables the Secretary to consider the material submitted in a timely manner and incorporate such material, as appropriate, into the strategic workforce plan required by this section.
- (f) Definitions.— In this section:
 - (1) The term “senior management, functional, and technical workforce of the Department of Defense” includes the following categories of Department of Defense civilian personnel:
 - (A) Appointees in the Senior Executive Service under section 3131 of title 5.
 - (B) Persons serving in positions described in section 5376 (a) of title 5.
 - (C) Highly qualified experts appointed pursuant to section 9903 of title 5.
 - (D) Scientists and engineers appointed pursuant to section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721), as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398 (114 Stat. 1654A–315)).
 - (E) Scientists and engineers appointed pursuant to section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note).
 - (F) Persons serving in the Defense Intelligence Senior Executive Service under section 1606 of this title.
 - (G) Persons serving in Intelligence Senior Level positions under section 1607 of this title.
 - (2) The term “acquisition workforce” includes individuals designated under section 1721 as filling acquisition positions.

REVISIONS TO STRATEGIC WORKFORCE PLAN (SEC. 935)

The House bill contained a provision (sec. 935) that would amend section 115b of title 10, United States Code, to revise the requirements established in that section for a Department of Defense strategic workforce plan.

The Senate amendment contained no similar provision.

The Senate recesses.

SEC. 935. REVISIONS TO STRATEGIC WORKFORCE PLAN.

(a) REVISION IN REPORTING PERIOD.—

(1) IN GENERAL.—Section 115b of title 10, United States Code, is amended—

(A) in the section heading, by striking “Annual strategic” and inserting “Biennial strategic”;

(B) in the heading of subsection (a), by striking “ANNUAL” and inserting “BIENNIAL”; and

(C) in subsection (a)(1), by striking “on an annual basis” and inserting “in every even numbered year”.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 2 of such title is amended by striking the item relating to section 115b and inserting the following:

“115b. Biennial strategic workforce plan.”.

(b) REVISION IN ASSESSMENT CONTENTS AND PERIOD.—Section 115b(b)(1) of such title is amended—

(1) in subparagraph (A), by striking “seven year period following the year in which the plan is submitted” and inserting “five-year period corresponding to the current future-years defense program under section 221 of this title”; and

(2) in subparagraph (B), by inserting before the semicolon at the end the following: “, as determined under the total force management policies and procedures established under section 129a of this title”.

(c) REFERENCE TO SECTION 129a.—Section 115b(c)(2)(D) of such title is amended by inserting before the period at the end the following: “and the policies and procedures established under section 129a of this title”.

TITLE 10 - ARMED FORCES SUBTITLE A - GENERAL MILITARY LAW PART I - ORGANIZATION AND GENERAL MILITARY POWERS CHAPTER 2 - DEPARTMENT OF DEFENSE

§ 115B. ~~ANNUAL-BIENNIAL~~ STRATEGIC WORKFORCE PLAN

(a) ~~AnnualBiennial~~-Plan Required.—

(1) The Secretary of Defense shall submit to the congressional defense committees ~~on an annual basis~~ in every even numbered year a strategic workforce plan to shape and improve the civilian employee workforce of the Department of Defense.

- (2) The Under Secretary of Defense for Personnel and Readiness shall have overall responsibility for developing and implementing the strategic workforce plan, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics.
- (b) Contents.— Each strategic workforce plan under subsection (a) shall include, at a minimum, the following:
- (1) An assessment of—
 - (A) the critical skills and competencies that will be needed in the future within the civilian employee workforce by the Department of Defense to support national security requirements and effectively manage the Department during the seven-year period following the year in which the plan is submitted five-year period corresponding to the current future-years defense program under section 221 of this title;
 - (B) the appropriate mix of military, civilian, and contractor personnel capabilities as determined under the total force management policies and procedures established under section 129a of this title;
 - (C) the critical skills and competencies of the existing civilian employee workforce of the Department and projected trends in that workforce based on expected losses due to retirement and other attrition; and
 - (D) gaps in the existing or projected civilian employee workforce of the Department that should be addressed to ensure that the Department has continued access to the critical skills and competencies described in subparagraphs (A) and (C).
 - (2) A plan of action for developing and reshaping the civilian employee workforce of the Department to address the gaps in critical skills and competencies identified under paragraph (1)(D), including—
 - (A) specific recruiting and retention goals, especially in areas identified as critical skills and competencies under paragraph (1), including the program objectives of the Department to be achieved through such goals and the funding needed to achieve such goals;
 - (B) specific strategies for developing, training, deploying, compensating, and motivating the civilian employee workforce of the Department, including the program objectives of the Department to be achieved through such strategies and the funding needed to implement such strategies;
 - (C) any incentives necessary to attract or retain any civilian personnel possessing the skills and competencies identified under paragraph (1);
 - (D) any changes in the number of personnel authorized in any category of personnel listed in subsection (f)(1) or in the acquisition workforce that may be needed to address such gaps and effectively meet the needs of the Department;
 - (E) any changes in resources or in the rates or methods of pay for any category of personnel listed in subsection (f)(1) or in the acquisition workforce that may be needed to address inequities and ensure that the Department has full access to appropriately qualified personnel to address such gaps and meet the needs of the Department; and

- (F) any legislative changes that may be necessary to achieve the goals referred to in subparagraph (A).
 - (3) An assessment, using results-oriented performance measures, of the progress of the Department in implementing the strategic workforce plan under this section during the previous year.
 - (4) Any additional matters the Secretary of Defense considers necessary to address.
- (c) Senior Management, Functional, and Technical Workforce.—
- (1) Each strategic workforce plan under subsection (a) shall include a separate chapter to specifically address the shaping and improvement of the senior management, functional, and technical workforce (including scientists and engineers) of the Department of Defense.
 - (2) For purposes of paragraph (1), each plan shall include, with respect to such senior management, functional, and technical workforce—
 - (A) an assessment of the matters set forth in subparagraphs (A) through (D) of subsection (b)(1);
 - (B) a plan of action meeting the requirements set forth in subparagraphs (A) through (F) of subsection (b)(2);
 - (C) specific strategies for developing, training, deploying, compensating, motivating, and designing career paths and career opportunities; and
 - (D) specific steps that the Department has taken or plans to take to ensure that such workforce is managed in compliance with the requirements of section 129 of this title and the policies and procedures established under section 129a of this title.
- (d) Defense Acquisition Workforce.—
- (1) Each strategic workforce plan under subsection (a) shall include a separate chapter to specifically address the shaping and improvement of the defense acquisition workforce, including both military and civilian personnel.
 - (2) For purposes of paragraph (1), each plan shall include, with respect to the defense acquisition workforce—
 - (A) an assessment of the matters set forth in subparagraphs (A) through (D) of subsection (b)(1);
 - (B) a plan of action meeting the requirements set forth in subparagraphs (A) through (F) of subsection (b)(2);
 - (C) specific steps that the Department has taken or plans to take to develop appropriate career paths for civilian employees in the acquisition field and to implement the requirements of section 1722a of this title with regard to members of the armed forces in the acquisition field; and
 - (D) a plan for funding needed improvements in the acquisition workforce of the Department through the period of the future-years defense program, including—
 - (i) the funding programmed for defense acquisition workforce improvements, including a specific identification of funding provided in the Department of Defense Acquisition Workforce Fund established under section 1705 of this title, along with a description of how such funding is being implemented and whether it is being fully used; and

- (ii) a description of any continuing shortfalls in funding available for the acquisition workforce.
- (e) Submittals by Secretaries of the Military Departments and Heads of the Defense Agencies.— The Secretary of Defense shall require the Secretary of each military department and the head of each Defense Agency to submit a report to the Secretary addressing each of the matters described in this section. The Secretary of Defense shall establish a deadline for the submittal of reports under this subsection that enables the Secretary to consider the material submitted in a timely manner and incorporate such material, as appropriate, into the strategic workforce plan required by this section.
- (f) Definitions.— In this section:
 - (1) The term “senior management, functional, and technical workforce of the Department of Defense” includes the following categories of Department of Defense civilian personnel:
 - (A) Appointees in the Senior Executive Service under section 3131 of title 5.
 - (B) Persons serving in positions described in section 5376 (a) of title 5.
 - (C) Highly qualified experts appointed pursuant to section 9903 of title 5.
 - (D) Scientists and engineers appointed pursuant to section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721), as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398 (114 Stat. 1654A–315)).
 - (E) Scientists and engineers appointed pursuant to section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note).
 - (F) Persons serving in the Defense Intelligence Senior Executive Service under section 1606 of this title.
 - (G) Persons serving in Intelligence Senior Level positions under section 1607 of this title.
 - (2) The term “acquisition workforce” includes individuals designated under section 1721 as filling acquisition positions.

AMENDMENTS TO REQUIREMENT FOR INVENTORY OF CONTRACTS FOR SERVICES (SEC. 936)

The House bill contained a provision (sec. 936) that would make clarifying amendments to section 2330a of title 10, United States Code, which requires the Department to develop an inventory of contract services.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment.

The conferees note that the inventory, when fully developed in accordance with statutory requirements, will provide the Department with useful workforce information for identifying inherently governmental functions inappropriately performed under contract, informing strategic human capital planning, and facilitating an appropriate mix of military, civilian, and contractor personnel. At the same time, a compliant inventory will be an important acquisition tool, enabling the Department to better leverage its buying power, rationalize its supplier base, foster competitive procurements, and ensure the best value for the taxpayers' dollar.

The conferees are disappointed that the Department has yet to take the steps needed to achieve full compliance with the statutory requirements. The conferees are encouraged by the Department's recent development of a plan to achieve such compliance and urge the Department to implement this plan as rapidly and completely as practicable.

SEC. 936. AMENDMENTS TO REQUIREMENT FOR INVENTORY OF CONTRACTS FOR SERVICES.

(a) AMENDMENTS RELATING TO INVENTORY.—Section 2330a(c)(1) of title 10, United States Code, is amended—

(1) by inserting after “pursuant to contracts for services” the following: “(and pursuant to contracts for goods to the extent services are a significant component of performance as identified in a separate line item of a contract)”;

(2) in subparagraph (A)—

(A) by striking “and” at the end of clause (i); and

(B) by striking clause (ii) and inserting the following:

“(ii) the calculation of contractor full-time equivalents for direct labor, using direct labor hours in a manner that is comparable to the calculation of Department of Defense civilian full-time employees; and

“(iii) the conduct and completion of the annual review required under subsection (e)(1).”;

(3) in subparagraph (B), by inserting “for requirements relating to acquisition” before the period.

(b) AMENDMENTS RELATING TO REVIEW AND PLANNING REQUIREMENTS.—

Section 2330a(e) of such title is amended—

(1) by inserting “and” at the end of paragraph (2);

- (2) by striking “; and” at the end of paragraph (3) and inserting a period; and
- (3) by striking paragraph (4).

(c) DEVELOPMENT OF PLAN AND ENFORCEMENT AND APPROVAL

MECHANISMS.—Section 2330a of such title is further amended—

- (1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and
- (2) by inserting after subsection (e) the following new subsection (f):

“(f) DEVELOPMENT OF PLAN AND ENFORCEMENT AND APPROVAL

MECHANISMS.—The Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall develop a plan, including an enforcement mechanism and approval process, to—

- “(1) provide for the use of the inventory by the military department or Defense Agency to implement the requirements of section 129a of this title;
- “(2) ensure the inventory is used to inform strategic workforce planning;
- “(3) facilitate use of the inventory for compliance with section 235 of this title; and
- “(4) provide for appropriate consideration of the conversion of activities identified under subsection (e)(3) within a reasonable period of time.”.

**TITLE 10 - ARMED FORCES
SUBTITLE A - GENERAL MILITARY LAW
PART IV - SERVICE, SUPPLY, AND PROCUREMENT
CHAPTER 137 - PROCUREMENT GENERALLY**

§ 2330A. PROCUREMENT OF SERVICES: TRACKING OF PURCHASES

- (a) Data Collection Required.— The Secretary of Defense shall establish a data collection system to provide management information with regard to each purchase of services by a military department or Defense Agency in excess of the simplified acquisition threshold, regardless of whether such a purchase is made in the form of a contract, task order, delivery order, military interdepartmental purchase request, or any other form of interagency agreement.
- (b) Data To Be Collected.— The data required to be collected under subsection (a) includes the following:
 - (1) The services purchased.
 - (2) The total dollar amount of the purchase.
 - (3) The form of contracting action used to make the purchase.
 - (4) Whether the purchase was made through—
 - (A) a performance-based contract, performance-based task order, or other performance-based arrangement that contains firm fixed prices for the specific tasks to be performed;
 - (B) any other performance-based contract, performance-based task order, or performance-based arrangement; or
 - (C) any contract, task order, or other arrangement that is not performance based.

- (5) In the case of a purchase made through an agency other than the Department of Defense, the agency through which the purchase is made.
- (6) The extent of competition provided in making the purchase and whether there was more than one offer.
- (7) Whether the purchase was made from—
 - (A) a small business concern;
 - (B) a small business concern owned and controlled by socially and economically disadvantaged individuals; or
 - (C) a small business concern owned and controlled by women.

(c) Inventory.—

- (1) Not later than the end of the third quarter of each fiscal year, the Secretary of Defense shall submit to Congress an annual inventory of the activities performed during the preceding fiscal year pursuant to contracts for services (and pursuant to contracts for goods to the extent services are a significant component of performance as identified in a separate line item of a contract) for or on behalf of the Department of Defense. The guidance for compiling the inventory shall be issued by the Under Secretary of Defense for Personnel and Readiness, the Under Secretary of Defense (Comptroller), and the Under Secretary of Defense for Acquisition, Technology, and Logistics, as follows:
 - (A) The Under Secretary of Defense for Personnel and Readiness, as supported by the Under Secretary of Defense (Comptroller), shall be responsible for developing guidance for—
 - (i) the collection of data regarding functions and missions performed by contractors in a manner that is comparable to the manpower data elements used in inventories of functions performed by Department of Defense employees; ~~and~~
 - ~~(ii) the calculation of contractor manpower equivalents in a manner that is comparable to the calculation of full-time equivalents for use in inventories of functions performed by Department of Defense employees.~~
 - (ii) the calculation of contractor full-time equivalents for direct labor, using direct labor hours in a manner that is comparable to the calculation of Department of Defense civilian full-time employees; and
 - (iii) the conduct and completion of the annual review required under subsection (e)(1).
 - (B) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible for developing guidance on other data elements and implementing procedures for requirements relating to acquisition.
- (2) The entry for an activity on an inventory under this subsection shall include, for the fiscal year covered by such entry, the following:
 - (A) The functions and missions performed by the contractor.
 - (B) The contracting organization, the component of the Department of Defense administering the contract, and the organization whose requirements are being met through contractor performance of the function.

- (C) The funding source for the contract under which the function is performed by appropriation and operating agency.
 - (D) The fiscal year for which the activity first appeared on an inventory under this section.
 - (E) The number of contractor employees, expressed as full-time equivalents for direct labor, using direct labor hours and associated cost data collected from contractors (except that estimates may be used where such data is not available and cannot reasonably be made available in a timely manner for the purpose of the inventory).
 - (F) A determination whether the contract pursuant to which the activity is performed is a personal services contract.
 - (G) A summary of the data required to be collected for the activity under subsection (a).
- (3) The inventory required under this subsection shall be submitted in unclassified form, but may include a classified annex.
- (d) Public Availability of Inventories.— Not later than 30 days after the date on which an inventory under subsection (c) is required to be submitted to Congress, the Secretary shall—
- (1) make the inventory available to the public; and
 - (2) publish in the Federal Register a notice that the inventory is available to the public.
- (e) Review and Planning Requirements.— Within 90 days after the date on which an inventory is submitted under subsection (c), the Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall—
- (1) review the contracts and activities in the inventory for which such Secretary or agency head is responsible;
 - (2) ensure that—
 - (A) each contract on the list that is a personal services contract has been entered into, and is being performed, in accordance with applicable statutory and regulatory requirements; =
 - (B) the activities on the list do not include any inherently governmental functions; and
 - (C) to the maximum extent practicable, the activities on the list do not include any functions closely associated with inherently governmental functions; and
 - (3) identify activities that should be considered for conversion—
 - (A) to performance by civilian employees of the Department of Defense pursuant to section 2463 of this title; or
 - (B) to an acquisition approach that would be more advantageous to the Department of Defense; and
 - ~~(4) develop a plan, including an enforcement mechanism and approval process, to provide for appropriate consideration of the conversion of activities identified under paragraph (3) within a reasonable period of time.~~
- (f) Development of Plan and Enforcement and Approval Mechanism.—The Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall develop a plan, including an enforcement mechanism and approval process, to—
- (1) provide for the use of the inventory by the military department or Defense Agency to implement the requirements of section 129a of this title;
 - (2) ensure the inventory is used to inform strategic workforce planning;

- (3) facilitate use of the inventory for compliance with section 235 of this title; and
- (4) provide for appropriate consideration of the conversion of activities identified under subsection (e)(3) within a reasonable period of time.”.

(fg) Rule of Construction.— Nothing in this section shall be construed to authorize the performance of personal services by a contractor except where expressly authorized by a provision of law other than this section.

(gh) Definitions.— In this section:

- (1) The term “performance-based”, with respect to a contract, task order, or arrangement, means that the contract, task order, or arrangement, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.
- (2) The definitions set forth in section 2225 (f) of this title for the terms “simplified acquisition threshold”, “small business concern”, “small business concern owned and controlled by socially and economically disadvantaged individuals”, and “small business concern owned and controlled by women” shall apply.
- (3) Function closely associated with inherently governmental functions.— The term “function closely associated with inherently governmental functions” has the meaning given that term in section 2383 (b)(3) of this title.
- (4) Inherently governmental functions.— The term “inherently governmental functions” has the meaning given that term in section 2383 (b)(2) of this title.
- (5) Personal services contract.— The term “personal services contract” means a contract under which, as a result of its terms or conditions or the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of one or more Government officers or employees, except that the giving of an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that makes a contract a personal services contract.

AMENDMENTS TO REQUIREMENT FOR INVENTORY OF CONTRACTS FOR SERVICES (SEC. 936)

The House bill contained a provision (sec. 936) that would make clarifying amendments to section 2330a of title 10, United States Code, which requires the Department to develop an inventory of contract services.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment.

The conferees note that the inventory, when fully developed in accordance with statutory requirements, will provide the Department with useful workforce information for identifying inherently governmental functions inappropriately performed under contract, informing strategic human capital planning, and facilitating an appropriate mix of military, civilian, and contractor personnel. At the same time, a compliant inventory will be an important acquisition tool, enabling the Department to better leverage its buying power, rationalize its supplier base, foster competitive procurements, and ensure the best value for the taxpayers' dollar.

The conferees are disappointed that the Department has yet to take the steps needed to achieve full compliance with the statutory requirements. The conferees are encouraged by the Department's recent development of a plan to achieve such compliance and urge the Department to implement this plan as rapidly and completely as practicable.

SEC. 936. AMENDMENTS TO REQUIREMENT FOR INVENTORY OF CONTRACTS FOR SERVICES.

(a) AMENDMENTS RELATING TO INVENTORY.—Section 2330a(c)(1) of title 10, United States Code, is amended—

(1) by inserting after “pursuant to contracts for services” the following: “(and pursuant to contracts for goods to the extent services are a significant component of performance as identified in a separate line item of a contract)”;

(2) in subparagraph (A)—

(A) by striking “and” at the end of clause (i); and

(B) by striking clause (ii) and inserting the following:

“(ii) the calculation of contractor full-time equivalents for direct labor, using direct labor hours in a manner that is comparable to the calculation of Department of Defense civilian full-time employees; and

“(iii) the conduct and completion of the annual review required under subsection (e)(1).”;

(3) in subparagraph (B), by inserting “for requirements relating to acquisition” before the period.

(b) AMENDMENTS RELATING TO REVIEW AND PLANNING REQUIREMENTS.—

Section 2330a(e) of such title is amended—

(1) by inserting “and” at the end of paragraph (2);

- (2) by striking “; and” at the end of paragraph (3) and inserting a period; and
- (3) by striking paragraph (4).

(c) DEVELOPMENT OF PLAN AND ENFORCEMENT AND APPROVAL

MECHANISMS.—Section 2330a of such title is further amended—

- (1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and
- (2) by inserting after subsection (e) the following new subsection (f):

“(f) DEVELOPMENT OF PLAN AND ENFORCEMENT AND APPROVAL

MECHANISMS.—The Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall develop a plan, including an enforcement mechanism and approval process, to—

- “(1) provide for the use of the inventory by the military department or Defense Agency to implement the requirements of section 129a of this title;
- “(2) ensure the inventory is used to inform strategic workforce planning;
- “(3) facilitate use of the inventory for compliance with section 235 of this title; and
- “(4) provide for appropriate consideration of the conversion of activities identified under subsection (e)(3) within a reasonable period of time.”.

**TITLE 10 - ARMED FORCES
SUBTITLE A - GENERAL MILITARY LAW
PART IV - SERVICE, SUPPLY, AND PROCUREMENT
CHAPTER 137 - PROCUREMENT GENERALLY**

§ 2330A. PROCUREMENT OF SERVICES: TRACKING OF PURCHASES

- (a) Data Collection Required.— The Secretary of Defense shall establish a data collection system to provide management information with regard to each purchase of services by a military department or Defense Agency in excess of the simplified acquisition threshold, regardless of whether such a purchase is made in the form of a contract, task order, delivery order, military interdepartmental purchase request, or any other form of interagency agreement.
- (b) Data To Be Collected.— The data required to be collected under subsection (a) includes the following:
 - (1) The services purchased.
 - (2) The total dollar amount of the purchase.
 - (3) The form of contracting action used to make the purchase.
 - (4) Whether the purchase was made through—
 - (A) a performance-based contract, performance-based task order, or other performance-based arrangement that contains firm fixed prices for the specific tasks to be performed;
 - (B) any other performance-based contract, performance-based task order, or performance-based arrangement; or
 - (C) any contract, task order, or other arrangement that is not performance based.

- (5) In the case of a purchase made through an agency other than the Department of Defense, the agency through which the purchase is made.
- (6) The extent of competition provided in making the purchase and whether there was more than one offer.
- (7) Whether the purchase was made from—
 - (A) a small business concern;
 - (B) a small business concern owned and controlled by socially and economically disadvantaged individuals; or
 - (C) a small business concern owned and controlled by women.

(c) Inventory.—

- (1) Not later than the end of the third quarter of each fiscal year, the Secretary of Defense shall submit to Congress an annual inventory of the activities performed during the preceding fiscal year pursuant to contracts for services (and pursuant to contracts for goods to the extent services are a significant component of performance as identified in a separate line item of a contract) for or on behalf of the Department of Defense. The guidance for compiling the inventory shall be issued by the Under Secretary of Defense for Personnel and Readiness, the Under Secretary of Defense (Comptroller), and the Under Secretary of Defense for Acquisition, Technology, and Logistics, as follows:
 - (A) The Under Secretary of Defense for Personnel and Readiness, as supported by the Under Secretary of Defense (Comptroller), shall be responsible for developing guidance for—
 - (i) the collection of data regarding functions and missions performed by contractors in a manner that is comparable to the manpower data elements used in inventories of functions performed by Department of Defense employees; ~~and~~
 - ~~(ii) the calculation of contractor manpower equivalents in a manner that is comparable to the calculation of full-time equivalents for use in inventories of functions performed by Department of Defense employees.~~
 - (ii) the calculation of contractor full-time equivalents for direct labor, using direct labor hours in a manner that is comparable to the calculation of Department of Defense civilian full-time employees; and
 - (iii) the conduct and completion of the annual review required under subsection (e)(1).
 - (B) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible for developing guidance on other data elements and implementing procedures for requirements relating to acquisition.
- (2) The entry for an activity on an inventory under this subsection shall include, for the fiscal year covered by such entry, the following:
 - (A) The functions and missions performed by the contractor.
 - (B) The contracting organization, the component of the Department of Defense administering the contract, and the organization whose requirements are being met through contractor performance of the function.

- (C) The funding source for the contract under which the function is performed by appropriation and operating agency.
 - (D) The fiscal year for which the activity first appeared on an inventory under this section.
 - (E) The number of contractor employees, expressed as full-time equivalents for direct labor, using direct labor hours and associated cost data collected from contractors (except that estimates may be used where such data is not available and cannot reasonably be made available in a timely manner for the purpose of the inventory).
 - (F) A determination whether the contract pursuant to which the activity is performed is a personal services contract.
 - (G) A summary of the data required to be collected for the activity under subsection (a).
- (3) The inventory required under this subsection shall be submitted in unclassified form, but may include a classified annex.
- (d) Public Availability of Inventories.— Not later than 30 days after the date on which an inventory under subsection (c) is required to be submitted to Congress, the Secretary shall—
- (1) make the inventory available to the public; and
 - (2) publish in the Federal Register a notice that the inventory is available to the public.
- (e) Review and Planning Requirements.— Within 90 days after the date on which an inventory is submitted under subsection (c), the Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall—
- (1) review the contracts and activities in the inventory for which such Secretary or agency head is responsible;
 - (2) ensure that—
 - (A) each contract on the list that is a personal services contract has been entered into, and is being performed, in accordance with applicable statutory and regulatory requirements; =
 - (B) the activities on the list do not include any inherently governmental functions; and
 - (C) to the maximum extent practicable, the activities on the list do not include any functions closely associated with inherently governmental functions; and
 - (3) identify activities that should be considered for conversion—
 - (A) to performance by civilian employees of the Department of Defense pursuant to section 2463 of this title; or
 - (B) to an acquisition approach that would be more advantageous to the Department of Defense; and
 - ~~(4) develop a plan, including an enforcement mechanism and approval process, to provide for appropriate consideration of the conversion of activities identified under paragraph (3) within a reasonable period of time.~~
- (f) Development of Plan and Enforcement and Approval Mechanism.—The Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall develop a plan, including an enforcement mechanism and approval process, to—
- (1) provide for the use of the inventory by the military department or Defense Agency to implement the requirements of section 129a of this title;
 - (2) ensure the inventory is used to inform strategic workforce planning;

- (3) facilitate use of the inventory for compliance with section 235 of this title; and
- (4) provide for appropriate consideration of the conversion of activities identified under subsection (e)(3) within a reasonable period of time.”.

(fg) Rule of Construction.— Nothing in this section shall be construed to authorize the performance of personal services by a contractor except where expressly authorized by a provision of law other than this section.

(gh) Definitions.— In this section:

- (1) The term “performance-based”, with respect to a contract, task order, or arrangement, means that the contract, task order, or arrangement, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.
- (2) The definitions set forth in section 2225 (f) of this title for the terms “simplified acquisition threshold”, “small business concern”, “small business concern owned and controlled by socially and economically disadvantaged individuals”, and “small business concern owned and controlled by women” shall apply.
- (3) Function closely associated with inherently governmental functions.— The term “function closely associated with inherently governmental functions” has the meaning given that term in section 2383 (b)(3) of this title.
- (4) Inherently governmental functions.— The term “inherently governmental functions” has the meaning given that term in section 2383 (b)(2) of this title.
- (5) Personal services contract.— The term “personal services contract” means a contract under which, as a result of its terms or conditions or the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of one or more Government officers or employees, except that the giving of an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that makes a contract a personal services contract.

**PRELIMINARY PLANNING AND DURATION OF PUBLIC-PRIVATE
COMPETITIONS (SEC. 937)**

The House bill contained a provision (sec. 938) that would amend section 2461 of title 10, United States Code, to clarify when “preliminary planning” begins for the purpose of public-private competitions governed by that provision.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment.

**SEC. 937. PRELIMINARY PLANNING AND DURATION OF PUBLIC-PRIVATE
COMPETITIONS.**

Section 2461(a)(5) of title 10, United States Code, is amended—

(1) in subparagraph (E)—

- (A) by striking “, begins” and inserting “shall be conducted in accordance with guidance and procedures that shall be issued and maintained by the Under Secretary of Defense for Personnel and Readiness and shall begin”;
- (B) by inserting after “the date on which” the following: “a component of”;
- (C) by inserting “first” before “obligates”;
- (D) by inserting “specifically” after “funds”;
- (E) by inserting “for the preliminary planning effort” after “support”; and
- (F) in clause (i), by inserting “a public-private” before “competition”; and

(2) in subparagraph (F)—

- (A) by inserting “or Defense Agency” after “military department”;
- (B) by striking “of such date” and inserting “of the actions intended to be taken during the preliminary planning process”;
- (C) by inserting “of such actions” after “public notice”;
- (D) by inserting after “website” the following: “and through other means as determined necessary”; and
- (E) by striking “Such date is the first day of preliminary planning for a public-private competition for” and inserting “The date of such announcement shall be used for”.

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

§ 2461. PUBLIC-PRIVATE COMPETITION REQUIRED BEFORE CONVERSION TO CONTRACTOR PERFORMANCE

(a) Public-Private Competition.—

- (1) No function of the Department of Defense performed by Department of Defense civilian employees may be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition that—
 - (A) formally compares the cost of performance of the function by Department of Defense civilian employees with the cost of performance by a contractor;
 - (B) creates an agency tender, including a most efficient organization plan, in accordance with Office of Management and Budget Circular A-76, as implemented on May 29, 2003, or any successor circular;
 - (C) includes the issuance of a solicitation;
 - (D) determines whether the submitted offers meet the needs of the Department of Defense with respect to factors other than cost, including quality, reliability, and timeliness;
 - (E) examines the cost of performance of the function by Department of Defense civilian employees and the cost of performance of the function by one or more contractors to demonstrate whether converting to performance by a contractor will result in savings to the Government over the life of the contract, including—
 - (i) the estimated cost to the Government (based on offers received) for performance of the function by a contractor;
 - (ii) the estimated cost to the Government for performance of the function by Department of Defense civilian employees; and
 - (iii) an estimate of all other costs and expenditures that the Government would incur because of the award of such a contract;
 - (F) requires continued performance of the function by Department of Defense civilian employees unless the difference in the cost of performance of the function by a contractor compared to the cost of performance of the function by Department of Defense civilian employees would, over all performance periods required by the solicitation, be equal to or exceed the lesser of—
 - (i) 10 percent of the personnel-related costs for performance of that function in the agency tender; or
 - (ii) \$10,000,000;
 - (G) requires that the contractor shall not receive an advantage for a proposal that would reduce costs for the Department of Defense by—
 - (i) not making an employer-sponsored health insurance plan (or payment that could be used in lieu of such a plan), health savings account, or

subsection (c), written notification that explains the basis of such determination.

(ii) The notification under clause (i)(II) shall also address each of the following:

(I) Any efforts of the Secretary to break up the study geographically or functionally.

(II) The Secretary's justification for undertaking a public-private competition instead of using internal reengineering alternatives.

(III) The cost savings that the Secretary expects to achieve as a result of the public-private competition.

(iii) If the Secretary specifies an alternative time period under this subparagraph, the alternative time period shall be binding on the Department in the same manner and to the same extent as the limitation provided in subparagraph (A).

(C) The time period specified in subparagraph (A) for a public-private competition does not include any day during which the public-private competition is delayed by reason of the filing of a protest before the Government Accountability Office or a complaint in the United States Court of Federal Claims up until the day the decision or recommendation of either authority becomes final. In the case of a protest before the Government Accountability Office, the recommendation becomes final after the period of time for filing a request for reconsideration, or if a request for reconsideration is filed, on the day the Government Accountability Office issues a decision on the reconsideration.

(D) If a protest with respect to a public-private competition before the Government Accountability Office or the United States Court of Federal Claims is sustained, and the recommendation is final as described in subparagraph (C), and if such protest and recommendation result in an unforeseen delay in implementing a final performance decision, the Secretary of Defense may terminate the public-private competition or extend the period of time specified for the public-private competition under subparagraph (A) or subparagraph (B). If the Secretary decides not to terminate a competition, the Secretary shall submit to Congress written notice of such decision. Any such notification shall include a justification for the Secretary's decision and a new time limitation for the competition, which shall not exceed 12 months from the final decision and shall be binding on the Department.

(E) For the purposes of this paragraph, preliminary planning with respect to a public-private competition, begins shall be conducted in accordance with guidance and procedures that shall be issued and maintained by the Under Secretary of Defense for Personnel and Readiness and shall begin on the date on which a component of the Department of Defense first obligates funds specifically for the acquisition of contract support for the preliminary planning effort, or formally assigns Department of Defense personnel, to carry out any of the following activities:

(i) Determining the scope of thea public-private competition.

- (ii) Conducting research to determine the appropriate grouping of functions for the competition.
 - (iii) Assessing the availability of workload data, quantifiable outputs of functions, and agency or industry performance standards applicable to the competition.
 - (iv) Determining the baseline cost of any function for which the competition is conducted.
 - (F) To effectively establish the date that is the first day of preliminary planning for a public-private competition, the head of a military department or Defense Agency shall submit to Congress written notice ~~of such date of the actions intended to be taken during the preliminary planning process~~ -and shall provide public notice of such actions by announcing such date on an appropriate Internet website and through other means as determined necessary. ~~Such date is the first day of preliminary planning for a public-private competition for~~ The date of such announcement shall be used for the purpose of computing the duration of the public private competition for purposes of this section.
 - (G) The Secretary of Defense shall submit to the congressional defense committees an annual report on the use, during the year covered by the report, of alternative time periods for public-private competitions under this section, and the explanations of the Secretary for such alternative time periods.
- (b) Requirement to Consult DOD Employees.—
- (1) Each officer or employee of the Department of Defense responsible for determining under Office of Management and Budget Circular A-76 whether to convert to contractor performance any function of the Department of Defense—
 - (A) shall, at least monthly during the development and preparation of the performance work statement and the management efficiency study used in making that determination, consult with civilian employees who will be affected by that determination and consider the views of such employees on the development and preparation of that statement and that study; and
 - (B) may consult with such employees on other matters relating to that determination.
 - (2)
 - (A) In the case of employees represented by a labor organization accorded exclusive recognition under section 7111 of title 5, consultation with representatives of that labor organization shall satisfy the consultation requirement in paragraph (1).
 - (B) In the case of employees other than employees referred to in subparagraph (A), consultation with appropriate representatives of those employees shall satisfy the consultation requirement in paragraph (1).
 - (C) The Secretary of Defense shall prescribe regulations to carry out this subsection. The regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to in subparagraph (B) for purposes of the consultation required by paragraph (1).
- (c) Congressional Notification.—

- (1) Before commencing a public-private competition under subsection (a), the Secretary of Defense shall submit to Congress a report containing the following:
 - (A) The function for which such public-private competition is to be conducted.
 - (B) The location at which the function is performed by Department of Defense civilian employees.
 - (C) The number of Department of Defense civilian employee positions potentially affected.
 - (D) The anticipated length and cost of the public-private competition, and a specific identification of the budgetary line item from which funds will be used to cover the cost of the public-private competition.
 - (E) A certification that a proposed performance of the function by a contractor is not a result of a decision by an official of a military department or Defense Agency to impose predetermined constraints or limitations on such employees in terms of man years, end strengths, full-time equivalent positions, or maximum number of employees.
- (2) The report required under paragraph (1) shall include an examination of the potential economic effect of performance of the function by a contractor on—
 - (A) Department of Defense civilian employees who would be affected by such a conversion in performance; and
 - (B) the local community and the Government, if more than 50 Department of Defense civilian employees perform the function.
- (3)
 - (A) A representative individual or entity at a facility where a public-private competition is conducted may submit to the Secretary of Defense an objection to the public-private competition on the grounds that the report required by paragraph (1) has not been submitted or that the certification required by paragraph (1)(E) is not included in the report submitted as a condition for the public-private competition. The objection shall be in writing and shall be submitted within 90 days after the following date:
 - (i) In the case of a failure to submit the report when required, the date on which the representative individual or an official of the representative entity authorized to pose the objection first knew or should have known of that failure.
 - (ii) In the case of a failure to include the certification in a submitted report, the date on which the report was submitted to Congress.
 - (B) If the Secretary determines that the report required by paragraph (1) was not submitted or that the required certification was not included in the submitted report, the function for which the public-private competition was conducted for which the objection was submitted may not be the subject of a solicitation of offers for, or award of, a contract until, respectively, the report is submitted or a report containing the certification in full compliance with the certification requirement is submitted.
- (d) Exemption for the Purchase of Products and Services of the Blind and Other Severely Handicapped Persons.— This section shall not apply to a commercial or industrial type function of the Department of Defense that—
 - (1) is included on the procurement list established pursuant to section 8503 of title 41; or

(2) is planned to be changed to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped persons in accordance with that Act.

(e) **Inapplicability During War or Emergency.**— The provisions of this section shall not apply during war or during a period of national emergency declared by the President or Congress.

**PRELIMINARY PLANNING AND DURATION OF PUBLIC-PRIVATE
COMPETITIONS (SEC. 937)**

The House bill contained a provision (sec. 938) that would amend section 2461 of title 10, United States Code, to clarify when “preliminary planning” begins for the purpose of public-private competitions governed by that provision.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment.

**SEC. 937. PRELIMINARY PLANNING AND DURATION OF PUBLIC-PRIVATE
COMPETITIONS.**

Section 2461(a)(5) of title 10, United States Code, is amended—

(1) in subparagraph (E)—

- (A) by striking “, begins” and inserting “shall be conducted in accordance with guidance and procedures that shall be issued and maintained by the Under Secretary of Defense for Personnel and Readiness and shall begin”;
- (B) by inserting after “the date on which” the following: “a component of”;
- (C) by inserting “first” before “obligates”;
- (D) by inserting “specifically” after “funds”;
- (E) by inserting “for the preliminary planning effort” after “support”; and
- (F) in clause (i), by inserting “a public-private” before “competition”; and

(2) in subparagraph (F)—

- (A) by inserting “or Defense Agency” after “military department”;
- (B) by striking “of such date” and inserting “of the actions intended to be taken during the preliminary planning process”;
- (C) by inserting “of such actions” after “public notice”;
- (D) by inserting after “website” the following: “and through other means as determined necessary”; and
- (E) by striking “Such date is the first day of preliminary planning for a public-private competition for” and inserting “The date of such announcement shall be used for”.

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

§ 2461. PUBLIC-PRIVATE COMPETITION REQUIRED BEFORE CONVERSION TO CONTRACTOR PERFORMANCE

(a) Public-Private Competition.—

- (1) No function of the Department of Defense performed by Department of Defense civilian employees may be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition that—
 - (A) formally compares the cost of performance of the function by Department of Defense civilian employees with the cost of performance by a contractor;
 - (B) creates an agency tender, including a most efficient organization plan, in accordance with Office of Management and Budget Circular A-76, as implemented on May 29, 2003, or any successor circular;
 - (C) includes the issuance of a solicitation;
 - (D) determines whether the submitted offers meet the needs of the Department of Defense with respect to factors other than cost, including quality, reliability, and timeliness;
 - (E) examines the cost of performance of the function by Department of Defense civilian employees and the cost of performance of the function by one or more contractors to demonstrate whether converting to performance by a contractor will result in savings to the Government over the life of the contract, including—
 - (i) the estimated cost to the Government (based on offers received) for performance of the function by a contractor;
 - (ii) the estimated cost to the Government for performance of the function by Department of Defense civilian employees; and
 - (iii) an estimate of all other costs and expenditures that the Government would incur because of the award of such a contract;
 - (F) requires continued performance of the function by Department of Defense civilian employees unless the difference in the cost of performance of the function by a contractor compared to the cost of performance of the function by Department of Defense civilian employees would, over all performance periods required by the solicitation, be equal to or exceed the lesser of—
 - (i) 10 percent of the personnel-related costs for performance of that function in the agency tender; or
 - (ii) \$10,000,000;
 - (G) requires that the contractor shall not receive an advantage for a proposal that would reduce costs for the Department of Defense by—
 - (i) not making an employer-sponsored health insurance plan (or payment that could be used in lieu of such a plan), health savings account, or

- medical savings account available to the workers who are to be employed to perform the function under the contract;
 - (ii) offering to such workers an employer-sponsored health benefits plan that requires the employer to contribute less towards the premium or subscription share than the amount that is paid by the Department of Defense for health benefits for civilian employees of the Department under chapter 89 of title 5; or
 - (iii) offering to such workers a retirement benefit that, in any year, costs less than the annual retirement cost factor applicable to civilian employees of the Department of Defense under chapter 84 of title 5; and
- (H) examines the effect of performance of the function by a contractor on the military mission associated with the performance of the function.
- (2) A function that is performed by the Department of Defense and is reengineered, reorganized, modernized, upgraded, expanded, or changed to become more efficient, but still essentially provides the same service, shall not be considered a new requirement.
- (3) In no case may a function being performed by Department of Defense personnel be—
- (A) modified, reorganized, divided, or in any way changed for the purpose of exempting the conversion of the function from the requirements of this section; or
 - (B) converted to performance by a contractor to circumvent a civilian personnel ceiling.
- (4) A military department or Defense Agency may not be required to conduct a public-private competition under Office of Management and Budget Circular A-76 or any other provision of law at the end of the performance period specified in a letter of obligation or other agreement entered into with Department of Defense civilian employees pursuant to a public-private competition for any function of the Department of Defense performed by Department of Defense civilian employees.
- (5)
- (A) Except as provided in subparagraph (B), the duration of a public-private competition conducted pursuant to Office of Management and Budget Circular A-76 or any other provision of law for any function of the Department of Defense performed by Department of Defense civilian employees may not exceed a period of 24 months, commencing on the date on which the preliminary planning for the public-private competition begins and ending on the date on which a performance decision is rendered with respect to the function.
 - (B)
 - (i) The Secretary of Defense may specify an alternative period of time for a public-private competition, which may not exceed 33 months, if the Secretary—
 - (I) determines that the competition is of such complexity that it cannot be completed within 24 months; and
 - (II) submits to Congress, as part of the formal congressional notification of a public-private competition pursuant to

subsection (c), written notification that explains the basis of such determination.

(ii) The notification under clause (i)(II) shall also address each of the following:

(I) Any efforts of the Secretary to break up the study geographically or functionally.

(II) The Secretary's justification for undertaking a public-private competition instead of using internal reengineering alternatives.

(III) The cost savings that the Secretary expects to achieve as a result of the public-private competition.

(iii) If the Secretary specifies an alternative time period under this subparagraph, the alternative time period shall be binding on the Department in the same manner and to the same extent as the limitation provided in subparagraph (A).

(C) The time period specified in subparagraph (A) for a public-private competition does not include any day during which the public-private competition is delayed by reason of the filing of a protest before the Government Accountability Office or a complaint in the United States Court of Federal Claims up until the day the decision or recommendation of either authority becomes final. In the case of a protest before the Government Accountability Office, the recommendation becomes final after the period of time for filing a request for reconsideration, or if a request for reconsideration is filed, on the day the Government Accountability Office issues a decision on the reconsideration.

(D) If a protest with respect to a public-private competition before the Government Accountability Office or the United States Court of Federal Claims is sustained, and the recommendation is final as described in subparagraph (C), and if such protest and recommendation result in an unforeseen delay in implementing a final performance decision, the Secretary of Defense may terminate the public-private competition or extend the period of time specified for the public-private competition under subparagraph (A) or subparagraph (B). If the Secretary decides not to terminate a competition, the Secretary shall submit to Congress written notice of such decision. Any such notification shall include a justification for the Secretary's decision and a new time limitation for the competition, which shall not exceed 12 months from the final decision and shall be binding on the Department.

(E) For the purposes of this paragraph, preliminary planning with respect to a public-private competition, begins shall be conducted in accordance with guidance and procedures that shall be issued and maintained by the Under Secretary of Defense for Personnel and Readiness and shall begin on the date on which a component of the Department of Defense first obligates funds specifically for the acquisition of contract support for the preliminary planning effort, or formally assigns Department of Defense personnel, to carry out any of the following activities:

(i) Determining the scope of thea public-private competition.

- (ii) Conducting research to determine the appropriate grouping of functions for the competition.
 - (iii) Assessing the availability of workload data, quantifiable outputs of functions, and agency or industry performance standards applicable to the competition.
 - (iv) Determining the baseline cost of any function for which the competition is conducted.
 - (F) To effectively establish the date that is the first day of preliminary planning for a public-private competition, the head of a military department or Defense Agency shall submit to Congress written notice ~~of such date of the actions intended to be taken during the preliminary planning process~~ -and shall provide public notice of such actions by announcing such date on an appropriate Internet website and through other means as determined necessary. ~~Such date is the first day of preliminary planning for a public-private competition for~~ The date of such announcement shall be used for the purpose of computing the duration of the public private competition for purposes of this section.
 - (G) The Secretary of Defense shall submit to the congressional defense committees an annual report on the use, during the year covered by the report, of alternative time periods for public-private competitions under this section, and the explanations of the Secretary for such alternative time periods.
- (b) Requirement to Consult DOD Employees.—
- (1) Each officer or employee of the Department of Defense responsible for determining under Office of Management and Budget Circular A-76 whether to convert to contractor performance any function of the Department of Defense—
 - (A) shall, at least monthly during the development and preparation of the performance work statement and the management efficiency study used in making that determination, consult with civilian employees who will be affected by that determination and consider the views of such employees on the development and preparation of that statement and that study; and
 - (B) may consult with such employees on other matters relating to that determination.
 - (2)
 - (A) In the case of employees represented by a labor organization accorded exclusive recognition under section 7111 of title 5, consultation with representatives of that labor organization shall satisfy the consultation requirement in paragraph (1).
 - (B) In the case of employees other than employees referred to in subparagraph (A), consultation with appropriate representatives of those employees shall satisfy the consultation requirement in paragraph (1).
 - (C) The Secretary of Defense shall prescribe regulations to carry out this subsection. The regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to in subparagraph (B) for purposes of the consultation required by paragraph (1).
- (c) Congressional Notification.—

- (1) Before commencing a public-private competition under subsection (a), the Secretary of Defense shall submit to Congress a report containing the following:
 - (A) The function for which such public-private competition is to be conducted.
 - (B) The location at which the function is performed by Department of Defense civilian employees.
 - (C) The number of Department of Defense civilian employee positions potentially affected.
 - (D) The anticipated length and cost of the public-private competition, and a specific identification of the budgetary line item from which funds will be used to cover the cost of the public-private competition.
 - (E) A certification that a proposed performance of the function by a contractor is not a result of a decision by an official of a military department or Defense Agency to impose predetermined constraints or limitations on such employees in terms of man years, end strengths, full-time equivalent positions, or maximum number of employees.
- (2) The report required under paragraph (1) shall include an examination of the potential economic effect of performance of the function by a contractor on—
 - (A) Department of Defense civilian employees who would be affected by such a conversion in performance; and
 - (B) the local community and the Government, if more than 50 Department of Defense civilian employees perform the function.
- (3)
 - (A) A representative individual or entity at a facility where a public-private competition is conducted may submit to the Secretary of Defense an objection to the public-private competition on the grounds that the report required by paragraph (1) has not been submitted or that the certification required by paragraph (1)(E) is not included in the report submitted as a condition for the public-private competition. The objection shall be in writing and shall be submitted within 90 days after the following date:
 - (i) In the case of a failure to submit the report when required, the date on which the representative individual or an official of the representative entity authorized to pose the objection first knew or should have known of that failure.
 - (ii) In the case of a failure to include the certification in a submitted report, the date on which the report was submitted to Congress.
 - (B) If the Secretary determines that the report required by paragraph (1) was not submitted or that the required certification was not included in the submitted report, the function for which the public-private competition was conducted for which the objection was submitted may not be the subject of a solicitation of offers for, or award of, a contract until, respectively, the report is submitted or a report containing the certification in full compliance with the certification requirement is submitted.
- (d) Exemption for the Purchase of Products and Services of the Blind and Other Severely Handicapped Persons.— This section shall not apply to a commercial or industrial type function of the Department of Defense that—
 - (1) is included on the procurement list established pursuant to section 8503 of title 41; or

(2) is planned to be changed to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped persons in accordance with that Act.

(e) Inapplicability During War or Emergency.— The provisions of this section shall not apply during war or during a period of national emergency declared by the President or Congress.

**CONVERSION OF CERTAIN FUNCTIONS FROM CONTRACTOR PERFORMANCE
TO PERFORMANCE BY DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES
(SEC. 938)**

The House bill contained a provision (sec. 939) that would amend section 2463 of title 10, United States Code, to clarify the requirements for conversion of functions from contractor performance to performance by Department of Defense civilian employees

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would clarify the provision.

The conferees expect the use of insourcing to be focused, in accordance with the total force management policy developed in accordance with section 129a of title 10, United States Code, as amended, on ensuring appropriate government capacity to perform acquisition workforce and other critical government functions. The conferees note that section 7.503 of the Federal Acquisition Regulation states that contracts “shall not be used for the performance of inherently governmental functions.”

**SEC. 938. CONVERSION OF CERTAIN FUNCTIONS FROM CONTRACTOR
PERFORMANCE TO PERFORMANCE BY DEPARTMENT OF DEFENSE CIVILIAN
EMPLOYEES.**

Section 2463 of title 10, United States Code, is amended—

(1) in subsection (b)(1)—

(A) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (E), and (F), respectively;

(B) by striking subparagraph (A) and inserting the following new subparagraphs (A) and (B):

“(A) is a critical function that—

(i) is necessary to maintain sufficient Government expertise and technical capabilities; or

(ii) entails operational risk associated with contractor performance;

“(B) is an acquisition workforce function;” and

(C) by inserting after subparagraph (C), as redesignated by subparagraph (A), the following new subparagraph (D):

“(D) has been performed by Department of Defense civilian employees at any time during the previous 10-year period;”;

(2) by redesignating subsection (e) as subsection (g);

(3) by inserting after subsection (d) the following new subsections (e) and (f):

“(e) DETERMINATIONS RELATING TO THE CONVERSION OF CERTAIN FUNCTIONS.—

(1) Except as provided in paragraph (2), in determining whether a function should be converted to performance by Department of Defense civilian employees, the Secretary of Defense shall—

“(A) develop methodology for determining costs based on the guidance outlined in the Directive-Type Memorandum 09–007 entitled ‘Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contractor Support’ or any successor guidance for the determination of costs when costs are the sole basis for the determination;

“(B) take into consideration any supplemental guidance issued by the Secretary of a military department for determinations affecting functions of that military department; and

“(C) ensure that the difference in the cost of performing the function by a contractor compared to the cost of performing the function by Department of Defense civilian employees would be equal to or exceed the lesser of—

(i) 10 percent of the personnel-related costs for performance of that function; or

(ii) \$10,000,000.

(2) Paragraph (1) shall not apply to any function that is inherently governmental or any function described in subparagraph (A), (B), or (C) of subsection (b)(1).

“(f) NOTIFICATION RELATING TO THE CONVERSION OF CERTAIN FUNCTIONS.—The Secretary of Defense shall establish procedures for the timely notification of any contractor who performs a function that the Secretary plans to convert to performance by Department of Defense civilian employees pursuant to subsection (a). The Secretary shall provide a copy of any such notification to the congressional defense committees.”; and

(4) in subsection (g), as redesignated by paragraph (2)—

(A) by striking “this section” and all that follows and inserting “this section:”; and

(B) by adding at the end the following new paragraphs:

“(1) The term ‘functions closely associated with inherently governmental functions’ has the meaning given that term in section 2383(b)(3) of this title.

“(2) The term ‘acquisition function’ has the meaning given that term under section 1721(a) of this title.

“(3) The term ‘inherently governmental function’ has the meaning given that term in the Federal Activities Inventory Reform Act of 1998 (Public 2 Law 105–270; 31 U. S.C. 501 note).”.

**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**

§ 2463. GUIDELINES AND PROCEDURES FOR USE OF CIVILIAN EMPLOYEES TO PERFORM DEPARTMENT OF DEFENSE FUNCTIONS

(a) Guidelines Required.—

- (1) The Under Secretary of Defense for Personnel and Readiness shall devise and implement guidelines and procedures to ensure that consideration is given to using, on a regular basis, Department of Defense civilian employees to perform new functions and functions that are performed by contractors and could be performed by Department of Defense civilian employees. The Secretary of a military department may prescribe supplemental regulations, if the Secretary determines such regulations are necessary for implementing such guidelines within that military department.
- (2) The guidelines and procedures required under paragraph (1) may not include any specific limitation or restriction on the number of functions or activities that may be converted to performance by Department of Defense civilian employees.

(b) Special Consideration for Certain Functions.— The guidelines and procedures required under subsection (a) shall provide for special consideration to be given to using Department of Defense civilian employees to perform any function that—

(1) is performed by a contractor and—

~~(A) has been performed by Department of Defense civilian employees at any time during the previous 10 years;~~

~~(A) is a critical function that—~~

~~(i) is necessary to maintain sufficient Government expertise and technical capabilities; or~~

~~(ii) entails operational risk associated with contractor performance;~~

~~(B) is an acquisition workforce function;~~

~~(BC) is a function closely associated with the performance of an inherently governmental function;~~

~~(D) has been performed by Department of Defense civilian employees at any time during the previous 10-year period;~~

~~(EE) has been performed pursuant to a contract awarded on a non-competitive basis; or~~

~~(DF) has been performed poorly, as determined by a contracting officer during the 5-year period preceding the date of such determination, because of excessive costs or inferior quality; or~~

- (2) is a new requirement, with particular emphasis given to a new requirement that is similar to a function previously performed by Department of Defense civilian employees or is a function closely associated with the performance of an inherently governmental function.

- (c) Exclusion of Certain Functions From Competitions.— The Secretary of Defense may not conduct a public-private competition under this chapter, Office of Management and Budget Circular A–76, or any other provision of law or regulation before—
- (1) in the case of a new Department of Defense function, assigning the performance of the function to Department of Defense civilian employees;
 - (2) in the case of any Department of Defense function described in subsection (b), converting the function to performance by Department of Defense civilian employees; or
 - (3) in the case of a Department of Defense function performed by Department of Defense civilian employees, expanding the scope of the function.
- (d) Use of Flexible Hiring Authority.—
- (1) The Secretary of Defense may use the flexible hiring authority available to the Secretary pursuant to section 9902 of title 5, to facilitate the performance by Department of Defense civilian employees of functions described in subsection (b).
 - (2) The Secretary shall make use of the inventory required by section 2330a (c) of this title for the purpose of identifying functions that should be considered for performance by Department of Defense civilian employees pursuant to subsection (b).
- (e) Determinations Relating to the Conversion of Certain Functions.—
- (1) Except as provided in paragraph (2), in determining whether a function should be converted to performance by Department of Defense civilian employees, the Secretary of Defense shall—
 - (A) develop methodology for determining costs based on the guidance outlined in the Directive-Type Memorandum 09–007 entitled ‘Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contractor Support’ or any successor guidance for the determination of costs when costs are the sole basis for the determination;
 - (B) take into consideration any supplemental guidance issued by the Secretary of a military department for determinations affecting functions of that military department; and
 - (C) ensure that the difference in the cost of performing the function by a contractor compared to the cost of performing the function by Department of Defense civilian employees would be equal to or exceed the lesser of—
 - (i) 10 percent of the personnel-related costs for performance of that function; or
 - (ii) \$10,000,000.
 - (2) Paragraph (1) shall not apply to any function that is inherently governmental or any function described in subparagraph (A), (B), or (C) of subsection (b)(1).
- (f) Notification Relating to the Conversion of Certain Functions.—The Secretary of Defense shall establish procedures for the timely notification of any contractor who performs a function that the Secretary plans to convert to performance by Department of Defense civilian employees pursuant to subsection (a). The Secretary shall provide a copy of any such notification to the congressional defense committees.
- (g) Definitions.— In this section the term “functions closely associated with inherently governmental functions” has the meaning given that term in section 2383 (b)(3) of this title. this section:

- (1) The term ‘functions closely associated with inherently governmental functions’ has the meaning given that term in section 2383(b)(3) of this title.
- (2) The term ‘acquisition function’ has the meaning given that term under section 1721(a) of this title.
- (3) The term ‘inherently governmental function’ has the meaning given that term in the Federal Activities Inventory Reform Act of 1998 (Public 2 Law 105–270; 31 U. S.C. 501 note).

**CONVERSION OF CERTAIN FUNCTIONS FROM CONTRACTOR PERFORMANCE
TO PERFORMANCE BY DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES
(SEC. 938)**

The House bill contained a provision (sec. 939) that would amend section 2463 of title 10, United States Code, to clarify the requirements for conversion of functions from contractor performance to performance by Department of Defense civilian employees

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would clarify the provision.

The conferees expect the use of insourcing to be focused, in accordance with the total force management policy developed in accordance with section 129a of title 10, United States Code, as amended, on ensuring appropriate government capacity to perform acquisition workforce and other critical government functions. The conferees note that section 7.503 of the Federal Acquisition Regulation states that contracts “shall not be used for the performance of inherently governmental functions.”

**SEC. 938. CONVERSION OF CERTAIN FUNCTIONS FROM CONTRACTOR
PERFORMANCE TO PERFORMANCE BY DEPARTMENT OF DEFENSE CIVILIAN
EMPLOYEES.**

Section 2463 of title 10, United States Code, is amended—

(1) in subsection (b)(1)—

(A) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (E), and (F), respectively;

(B) by striking subparagraph (A) and inserting the following new subparagraphs (A) and (B):

“(A) is a critical function that—

(i) is necessary to maintain sufficient Government expertise and technical capabilities; or

(ii) entails operational risk associated with contractor performance;

“(B) is an acquisition workforce function;” and

(C) by inserting after subparagraph (C), as redesignated by subparagraph (A), the following new subparagraph (D):

“(D) has been performed by Department of Defense civilian employees at any time during the previous 10-year period;”;

(2) by redesignating subsection (e) as subsection (g);

(3) by inserting after subsection (d) the following new subsections (e) and (f):

“(e) DETERMINATIONS RELATING TO THE CONVERSION OF CERTAIN FUNCTIONS.—

(1) Except as provided in paragraph (2), in determining whether a function should be converted to performance by Department of Defense civilian employees, the Secretary of Defense shall—

“(A) develop methodology for determining costs based on the guidance outlined in the Directive-Type Memorandum 09–007 entitled ‘Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contractor Support’ or any successor guidance for the determination of costs when costs are the sole basis for the determination;

“(B) take into consideration any supplemental guidance issued by the Secretary of a military department for determinations affecting functions of that military department; and

“(C) ensure that the difference in the cost of performing the function by a contractor compared to the cost of performing the function by Department of Defense civilian employees would be equal to or exceed the lesser of—

(i) 10 percent of the personnel-related costs for performance of that function; or

(ii) \$10,000,000.

(2) Paragraph (1) shall not apply to any function that is inherently governmental or any function described in subparagraph (A), (B), or (C) of subsection (b)(1).

“(f) NOTIFICATION RELATING TO THE CONVERSION OF CERTAIN FUNCTIONS.—The Secretary of Defense shall establish procedures for the timely notification of any contractor who performs a function that the Secretary plans to convert to performance by Department of Defense civilian employees pursuant to subsection (a). The Secretary shall provide a copy of any such notification to the congressional defense committees.”; and

(4) in subsection (g), as redesignated by paragraph (2)—

(A) by striking “this section” and all that follows and inserting “this section:”; and

(B) by adding at the end the following new paragraphs:

“(1) The term ‘functions closely associated with inherently governmental functions’ has the meaning given that term in section 2383(b)(3) of this title.

“(2) The term ‘acquisition function’ has the meaning given that term under section 1721(a) of this title.

“(3) The term ‘inherently governmental function’ has the meaning given that term in the Federal Activities Inventory Reform Act of 1998 (Public 2 Law 105–270; 31 U. S.C. 501 note).”.

**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**

§ 2463. GUIDELINES AND PROCEDURES FOR USE OF CIVILIAN EMPLOYEES TO PERFORM DEPARTMENT OF DEFENSE FUNCTIONS

(a) Guidelines Required.—

- (1) The Under Secretary of Defense for Personnel and Readiness shall devise and implement guidelines and procedures to ensure that consideration is given to using, on a regular basis, Department of Defense civilian employees to perform new functions and functions that are performed by contractors and could be performed by Department of Defense civilian employees. The Secretary of a military department may prescribe supplemental regulations, if the Secretary determines such regulations are necessary for implementing such guidelines within that military department.
- (2) The guidelines and procedures required under paragraph (1) may not include any specific limitation or restriction on the number of functions or activities that may be converted to performance by Department of Defense civilian employees.

(b) Special Consideration for Certain Functions.— The guidelines and procedures required under subsection (a) shall provide for special consideration to be given to using Department of Defense civilian employees to perform any function that—

(1) is performed by a contractor and—

~~(A) has been performed by Department of Defense civilian employees at any time during the previous 10 years;~~

~~(A) is a critical function that—~~

~~(i) is necessary to maintain sufficient Government expertise and technical capabilities; or~~

~~(ii) entails operational risk associated with contractor performance;~~

~~(B) is an acquisition workforce function;~~

~~(BC) is a function closely associated with the performance of an inherently governmental function;~~

~~(D) has been performed by Department of Defense civilian employees at any time during the previous 10-year period;~~

~~(EE) has been performed pursuant to a contract awarded on a non-competitive basis; or~~

~~(FF) has been performed poorly, as determined by a contracting officer during the 5-year period preceding the date of such determination, because of excessive costs or inferior quality; or~~

- (2) is a new requirement, with particular emphasis given to a new requirement that is similar to a function previously performed by Department of Defense civilian employees or is a function closely associated with the performance of an inherently governmental function.

- (c) Exclusion of Certain Functions From Competitions.— The Secretary of Defense may not conduct a public-private competition under this chapter, Office of Management and Budget Circular A–76, or any other provision of law or regulation before—
- (1) in the case of a new Department of Defense function, assigning the performance of the function to Department of Defense civilian employees;
 - (2) in the case of any Department of Defense function described in subsection (b), converting the function to performance by Department of Defense civilian employees; or
 - (3) in the case of a Department of Defense function performed by Department of Defense civilian employees, expanding the scope of the function.
- (d) Use of Flexible Hiring Authority.—
- (1) The Secretary of Defense may use the flexible hiring authority available to the Secretary pursuant to section 9902 of title 5, to facilitate the performance by Department of Defense civilian employees of functions described in subsection (b).
 - (2) The Secretary shall make use of the inventory required by section 2330a (c) of this title for the purpose of identifying functions that should be considered for performance by Department of Defense civilian employees pursuant to subsection (b).
- (e) Determinations Relating to the Conversion of Certain Functions.—
- (1) Except as provided in paragraph (2), in determining whether a function should be converted to performance by Department of Defense civilian employees, the Secretary of Defense shall—
 - (A) develop methodology for determining costs based on the guidance outlined in the Directive-Type Memorandum 09–007 entitled ‘Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contractor Support’ or any successor guidance for the determination of costs when costs are the sole basis for the determination;
 - (B) take into consideration any supplemental guidance issued by the Secretary of a military department for determinations affecting functions of that military department; and
 - (C) ensure that the difference in the cost of performing the function by a contractor compared to the cost of performing the function by Department of Defense civilian employees would be equal to or exceed the lesser of—
 - (i) 10 percent of the personnel-related costs for performance of that function; or
 - (ii) \$10,000,000.
 - (2) Paragraph (1) shall not apply to any function that is inherently governmental or any function described in subparagraph (A), (B), or (C) of subsection (b)(1).
- (f) Notification Relating to the Conversion of Certain Functions.—The Secretary of Defense shall establish procedures for the timely notification of any contractor who performs a function that the Secretary plans to convert to performance by Department of Defense civilian employees pursuant to subsection (a). The Secretary shall provide a copy of any such notification to the congressional defense committees.
- (eg) Definitions.— In this section the term “functions closely associated with inherently governmental functions” has the meaning given that term in section 2383 (b)(3) of this title. this section:

- (1) The term ‘functions closely associated with inherently governmental functions’ has the meaning given that term in section 2383(b)(3) of this title.
- (2) The term ‘acquisition function’ has the meaning given that term under section 1721(a) of this title.
- (3) The term ‘inherently governmental function’ has the meaning given that term in the Federal Activities Inventory Reform Act of 1998 (Public 2 Law 105–270; 31 U. S.C. 501 note).

**MODIFICATION OF TEMPORARY SUSPENSION OF PUBLIC-PRIVATE
COMPETITIONS FOR CONVERSION OF DEPARTMENT OF DEFENSE FUNCTIONS
TO CONTRACTOR PERFORMANCE**

The House bill contained a provision (sec. 937) that would lift the temporary suspension of public-private competitions that was included in section 325 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84).

The Senate amendment contained no similar provision.

The House recesses.

The conferees recognize that the conduct of public-private competitions can be a useful tool for implementing total force management decisions. However, the conferees note that the Department has not yet complied with the statutory requirements for an inventory of contract services. The conferees conclude that the appropriate use of public-private competition is predicated on a sound planning process and the availability of accurate information, including the information that would be supplied by a compliant inventory.

**ASSESSMENT OF APPROPRIATE DEPARTMENT OF DEFENSE AND
CONTRACTOR PERSONNEL FOR THE DEFENSE MEDICAL READINESS
TRAINING INSTITUTE**

The House bill contained a provision (sec. 940) that would require the Secretary of Defense to conduct an assessment of the appropriate mix of military, civilians, and contractor personnel to carry out the mission of the Defense Medical Readiness Training Institute.

The Senate amendment contained no similar provision.

The House recesses.

The conferees note that elsewhere in this Act the Secretary is required to establish policies and procedures for determining the most appropriate and cost efficient mix of military, civilian and contractor personnel to perform the mission of the Department of Defense. The conferees expect that the Secretary will implement such policies across all programs, including medical readiness training programs.

**SENSE OF CONGRESS REGARDING THE PERFORMANCE OF COMMERCIALY
AVAILABLE ACTIVITIES BY DEPARTMENT OF DEFENSE CIVILIAN
EMPLOYEES**

The House bill contained a provision (sec. 965) that would express the sense of Congress regarding the performance of commercially-available activities by Department of Defense civilian employees.

The Senate amendment contained no similar provision.

The House recesses.

EXPANSION OF OVERSIGHT OFFICES IN DEPARTMENT OF DEFENSE

The House bill contained a provision (sec. 967) that would require the establishment of a new Senate-confirmed position of Assistant Secretary of Defense for Contingency Contracting and a new Office of Contingency Contracting.

The Senate amendment contained no similar provision.

The House recesses.