

# Calendar No. 45

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 454

To improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 23, 2009

Mr. LEVIN (for himself, Mr. MCCAIN, Mr. NELSON of Florida, Mr. CARPER, Mr. KAUFMAN, Mr. NELSON of Nebraska, and Mr. UDALL of Colorado) introduced the following bill; which was read twice and referred to the Committee on Armed Services

APRIL 2, 2009

Reported by Mr. LEVIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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## A BILL

To improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) ~~SHORT TITLE.—~~This Act may be cited as the  
5 ~~“Weapon Systems Acquisition Reform Act of 2009”.~~

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

- Sec. 1. Short title; table of contents.  
 Sec. 2. Congressional defense committees.

#### TITLE I—ACQUISITION ORGANIZATION

- Sec. 101. Reports on systems engineering capabilities of the Department of Defense.  
 Sec. 102. Director of Developmental Test and Evaluation.  
 Sec. 103. Assessment of technological maturity of critical technologies of major defense acquisition programs by the Director of Defense Research and Engineering.  
 Sec. 104. Director of Independent Cost Assessment.  
 Sec. 105. Role of the commanders of the combatant commands in identifying joint military requirements.

#### TITLE II—ACQUISITION POLICY

- Sec. 201. Consideration of trade-offs among cost, schedule, and performance in the acquisition of major weapon systems.  
 Sec. 202. Preliminary design review for major defense acquisition programs.  
 Sec. 203. Maximization of competition throughout the life cycle of major defense acquisition programs.  
 Sec. 204. Critical cost growth in major defense acquisition programs.  
 Sec. 205. Organizational conflicts of interest in the acquisition of major weapon systems.  
 Sec. 206. Awards for Department of Defense personnel for excellence in the acquisition of products and services.

### 3 **SEC. 2. CONGRESSIONAL DEFENSE COMMITTEES.**

4 In this Act, the term “congressional defense commit-  
 5 tees” has the meaning given that term in section  
 6 101(a)(16) of title 10, United States Code.

## 7 **TITLE I—ACQUISITION** 8 **ORGANIZATION**

### 9 **SEC. 101. REPORTS ON SYSTEMS ENGINEERING CAPABILI-** 10 **TIES OF THE DEPARTMENT OF DEFENSE.**

11 (a) REPORTS BY SERVICE ACQUISITION EXECU-  
 12 TIVES.—Not later than 180 days after the date of the en-  
 13 actment of this Act, the service acquisition executive of

1 each military department shall submit to the Under Sec-  
2 retary of Defense for Acquisition, Technology, and Logis-  
3 ties a report setting forth the following:

4           (1) A description of the extent to which such  
5 military department has in place development plan-  
6 ning organizations and processes staffed by adequate  
7 numbers of personnel with appropriate training and  
8 expertise to ensure that—

9                   (A) key requirements, acquisition, and  
10 budget decisions made for each major weapon  
11 system prior to Milestones A and B are sup-  
12 ported by a rigorous systems analysis and sys-  
13 tems engineering process;

14                   (B) the systems engineering strategy for  
15 each major weapon system includes a robust  
16 program for improving reliability, availability,  
17 and maintainability as an integral part of de-  
18 sign and development; and

19                   (C) systems engineering requirements, in-  
20 cluding reliability, availability, and maintain-  
21 ability requirements, are identified during the  
22 Joint Capabilities Integration Development Sys-  
23 tem process and incorporated into contract re-  
24 quirements for each major weapon system.

1           (2) A description of the actions that such mili-  
2       tary department has taken, or plans to take, to—

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

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

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

20           (1) An assessment by the Under Secretary of  
21       the reports submitted by the service acquisition ex-  
22       ecutives pursuant to subsection (a) and of the ade-  
23       quacy of the actions that each military department  
24       has taken, or plans to take, to meet the systems en-

1       gineering and development planning needs of such  
2       military department.

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

12   **SEC. 102. DIRECTOR OF DEVELOPMENTAL TEST AND EVAL-**  
13                                   **UATION.**

14      (a) ESTABLISHMENT OF POSITION.—

15               (1) IN GENERAL.—Chapter 4 of title 10, United  
16      States Code, is amended by inserting after section  
17      139b the following new section:

18   **“§ 139c. Director of Developmental Test and Evalua-**  
19                                   **tion**

20      “(a) There is a Director of Developmental Test and  
21      Evaluation, who shall be appointed by the Secretary of De-  
22      fense from among individuals with an expertise in acquisi-  
23      tion and testing.

24      “(b)(1) The Director of Developmental Test and  
25      Evaluation shall be the principal advisor to the Secretary

1 of Defense and the Under Secretary of Defense for Acqui-  
2 sition, Technology, and Logistics on developmental test  
3 and evaluation in the Department of Defense.

4 “(2) The Director shall be subject to the supervision  
5 of the Under Secretary of Defense for Acquisition, Tech-  
6 nology, and Logistics and shall report to the Under Sec-  
7 retary.

8 “(e) The Director of Developmental Test and Evalua-  
9 tion shall—

10 “(1) develop policies and guidance for the devel-  
11 opmental test and evaluation activities of the De-  
12 partment of Defense;

13 “(2) monitor and review the developmental test  
14 and evaluation activities of the Department of De-  
15 fense;

16 “(3) review and approve the test and evaluation  
17 master plan for each major defense acquisition pro-  
18 gram of the Department of Defense;

19 “(4) supervise the activities of the Director of  
20 the Department of Defense Test Resource Manage-  
21 ment Center under section 196 of this title;

22 “(5) review the organizations and capabilities of  
23 the military departments with respect to develop-  
24 mental test and evaluation and identify needed

1 changes or improvements to such organizations and  
2 capabilities; and

3 “(6) perform such other activities relating to  
4 the developmental test and evaluation activities of  
5 the Department of Defense as the Under Secretary  
6 of Defense for Acquisition, Technology, and Logis-  
7 tics may prescribe.

8 “(d) The Director of Developmental Test and Eval-  
9 uation shall have access to all records and data of the De-  
10 partment of Defense (including the records and data of  
11 each military department) that the Director considers nec-  
12 essary in order to carry out the Director’s duties under  
13 this section.

14 “(e) The Director of Developmental Test and Evalua-  
15 tion shall submit to Congress each year a report on the  
16 developmental test and evaluation activities of the Depart-  
17 ment of Defense during the preceding year.”.

18 (2) CLERICAL AMENDMENT.—The table of sec-  
19 tions at the beginning of chapter 4 of such title is  
20 amended by inserting after the item relating to sec-  
21 tion 139b the following new item:

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

22 (3) CONFORMING AMENDMENT.—Section 196(f)  
23 of such title is amended by striking “the Under Sec-  
24 retary of Defense for Acquisition, Technology, and  
25 Logistics” and all that follows and inserting “the

1 Under Secretary of Defense for Acquisition, Tech-  
2 nology, and Logistics and the Director of Develop-  
3 mental Test and Evaluation.”.

4 (b) REPORTS ON DEVELOPMENTAL TESTING ORGA-  
5 NIZATIONS AND PERSONNEL.—

6 (1) REPORTS BY SERVICE ACQUISITION EXECU-  
7 TIVES.—Not later than 180 days after the date of  
8 the enactment of this Act, the service acquisition ex-  
9 ecutive of each military department shall submit to  
10 the Director of Developmental Test and Evaluation  
11 a report on the extent to which the test organiza-  
12 tions of such military department have in place, or  
13 have effective plans to develop, adequate numbers of  
14 personnel with appropriate expertise for each pur-  
15 pose as follows:

16 (A) To ensure that testing requirements  
17 are appropriately addressed in the translation  
18 of operational requirements into contract speci-  
19 fications, in the source selection process, and in  
20 the preparation of requests for proposals on all  
21 major defense acquisition programs.

22 (B) To participate in the planning of de-  
23 velopmental test and evaluation activities, in-  
24 cluding the preparation and approval of a test



1 and evaluation master plan for each major de-  
 2 fense acquisition program.

3 ~~(C)~~ To participate in and oversee the con-  
 4 duct of developmental testing, the analysis of  
 5 data, and the preparation of evaluations and re-  
 6 ports based on such testing.

7 ~~(2) FIRST ANNUAL REPORT BY DIRECTOR OF~~  
 8 ~~DEVELOPMENTAL TEST AND EVALUATION.—~~The  
 9 first annual report submitted to Congress by the Di-  
 10 rector of Developmental Test and Evaluation under  
 11 section 139e(e) of title 10, United States Code (as  
 12 added by subsection (a)), shall be submitted not  
 13 later than one year after the date of the enactment  
 14 of this Act, and shall include an assessment by the  
 15 Director of the reports submitted by the service ac-  
 16 quisition executives to the Director under paragraph  
 17 ~~(1)~~.

18 **SEC. 103. ASSESSMENT OF TECHNOLOGICAL MATURITY OF**  
 19 **CRITICAL TECHNOLOGIES OF MAJOR DE-**  
 20 **FENSE ACQUISITION PROGRAMS BY THE DI-**  
 21 **RECTOR OF DEFENSE RESEARCH AND ENGI-**  
 22 **NEERING.**

23 ~~(a) ASSESSMENT BY DIRECTOR OF DEFENSE RE-~~  
 24 ~~SEARCH AND ENGINEERING.—~~

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

4           “(e)(1) The Director of Defense Research and Engi-  
5           neering shall periodically review and assess the techno-  
6           logical maturity and integration risk of critical tech-  
7           nologies of the major defense acquisition programs of the  
8           Department of Defense and report on the findings of such  
9           reviews and assessments to the Under Secretary of De-  
10          fense for Acquisition, Technology, and Logistics.

11          “(2) The Director shall submit to the Secretary of  
12          Defense and to Congress each year a report on the techno-  
13          logical maturity and integration risk of critical tech-  
14          nologies of the major defense acquisition programs of the  
15          Department of Defense.”.

16          (2) FIRST ANNUAL REPORT.—The first annual  
17          report under subsection (e)(2) of section 139a of  
18          title 10, United States Code (as added by paragraph  
19          (1)), shall be submitted to Congress not later than  
20          March 1, 2011, and shall address the results of re-  
21          views and assessments conducted by the Director of  
22          Defense Research and Engineering pursuant to sub-  
23          section (e)(1) of such section (as so added) during  
24          the preceding calendar year.

1 (b) REPORT ON RESOURCES FOR IMPLEMENTA-  
 2 TION.—Not later than 120 days after the date of the en-  
 3 actment of this Act, the Director of Defense Research and  
 4 Engineering shall submit to the congressional defense  
 5 committees a report describing any additional resources  
 6 that may be required by the Director, and by other science  
 7 and technology elements of the Department of Defense,  
 8 to carry out the following:

9 (1) The requirements under the amendment  
 10 made by subsection (a):

11 (2) The technological maturity assessments re-  
 12 quired by section 2366b(a) of title 10, United States  
 13 Code, as amended by section 202 of this Act.

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

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

17 (a) DIRECTOR OF INDEPENDENT COST ASSESS-  
 18 MENT.—

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

23 **“§ 139d. Director of Independent Cost Assessment**

24 “(a) There is a Director of Independent Cost Assess-  
 25 ment in the Department of Defense, appointed by the

1 President, by and with the advice and consent of the Sen-  
2 ate. The Director shall be appointed without regard to po-  
3 litical affiliation and solely on the basis of fitness to per-  
4 form the duties of the Director.

5       “(b) The Director is the principal advisor to the Sec-  
6 retary of Defense, the Under Secretary of Defense for Ac-  
7 quisition, Technology, and Logistics, and the Under Sec-  
8 retary of Defense (Comptroller) on cost estimation and  
9 cost analyses for the acquisition programs of the Depart-  
10 ment of Defense and the principal cost estimation official  
11 within the senior management of the Department of De-  
12 fense. The Director shall—

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

17           “(2) provide guidance to and consult with the  
18 Secretary of Defense, the Under Secretary of De-  
19 fense for Acquisition, Technology, and Logistics, the  
20 Under Secretary of Defense (Comptroller), and the  
21 Secretaries of the military departments with respect  
22 to cost estimation in the Department of Defense in  
23 general and with respect to specific cost estimates  
24 and cost analyses to be conducted in connection with  
25 a major defense acquisition program under chapter

1 144 of this title or a major automated information  
2 system program under chapter 144A of this title;

3 “(3) establish guidance on confidence levels for  
4 cost estimates on major defense acquisition pro-  
5 grams and require the disclosure of all such con-  
6 fidence levels;

7 “(4) monitor and review all cost estimates and  
8 cost analyses conducted in connection with major de-  
9 fense acquisition programs and major automated in-  
10 formation system programs; and

11 “(5) conduct independent cost estimates and  
12 cost analyses for major defense acquisition programs  
13 and major automated information system pro-  
14 grams—

15 “(A) in advance of—

16 “(i) any certification under section  
17 2366a or 2366b of this title;

18 “(ii) any certification under section  
19 2433(e)(2) of this title; and

20 “(iii) any report under section  
21 2445e(f) of this title; and

22 “(B) whenever necessary to ensure that an  
23 estimate or analysis under paragraph (4) is un-  
24 biased, fair, and reliable.

1       “(c)(1) The Director may communicate views on mat-  
2 ters within the responsibility of the Director directly to  
3 the Secretary of Defense and the Deputy Secretary of De-  
4 fense without obtaining the approval or concurrence of any  
5 other official within the Department of Defense.

6       “(2) The Director shall consult closely with, but the  
7 Director and the Director’s staff shall be independent of,  
8 the Under Secretary of Defense for Acquisition, Tech-  
9 nology, and Logistics, the Under Secretary of Defense  
10 (Comptroller), and all other officers and entities of the De-  
11 partment of Defense responsible for acquisition and budg-  
12 eting.

13       “(d)(1) The Secretary of a military department shall  
14 report promptly to the Director the results of all cost esti-  
15 mates and cost analyses conducted by the military depart-  
16 ment and all studies conducted by the military department  
17 in connection with cost estimates and cost analyses for  
18 major defense acquisition programs of the military depart-  
19 ment.

20       “(2) The Director may make comments on cost esti-  
21 mates and cost analyses conducted by a military depart-  
22 ment for a major defense acquisition program; request  
23 changes in such cost estimates and cost analyses to ensure  
24 that they are fair and reliable; and develop or require the  
25 development of independent cost estimates or cost anal-

1 yses for such program, as the Director determines to be  
2 appropriate.

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

8       “(e)(1) The Director shall prepare an annual report  
9 summarizing the cost estimation and cost analysis activi-  
10 ties of the Department of Defense during the previous  
11 year and assessing the progress of the Department in im-  
12 proving the accuracy of its costs estimates and analyses.

13       “(2) Each report under this subsection shall be sub-  
14 mitted concurrently to the Secretary of Defense, the  
15 Under Secretary of Defense for Acquisition, Technology,  
16 and Logistics, the Under Secretary of Defense (Comp-  
17 troller), and Congress not later than 10 days after the  
18 transmission of the budget for the next fiscal year under  
19 section 1105 of title 31. The Director shall ensure that  
20 a report submitted under this subsection does not include  
21 any information, such as proprietary or source selection  
22 sensitive information, that could undermine the integrity  
23 of the acquisition process.

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

1       “(f) The President shall include in the budget trans-  
 2 mitted to Congress pursuant to section 1105 of title 31  
 3 for each fiscal year a separate statement of estimated ex-  
 4 penditures and proposed appropriations for that fiscal  
 5 year for the Director of Independent Cost Assessment in  
 6 carrying out the duties and responsibilities of the Director  
 7 under this section.

8       “(g) The Secretary of Defense shall ensure that the  
 9 Director has sufficient professional staff of military and  
 10 civilian personnel to enable the Director to carry out the  
 11 duties and responsibilities of the Director under this sec-  
 12 tion.”.

13               (2) CLERICAL AMENDMENT.—The table of sec-  
 14 tions at the beginning of chapter 4 of such title, as  
 15 so amended, is further amended by inserting after  
 16 the item relating to section 139e the following new  
 17 item:

“139d. Director of Independent Cost Assessment.”.

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

20               (1) REPORT TO SECRETARY OF DEFENSE.—Not  
 21 later than one year after the date of the enactment  
 22 of this Act, the Director of Independent Cost Assess-  
 23 ment under section 139d of title 10 United States  
 24 Code (as added by subsection (a)), shall review exist-  
 25 ing systems and methods of the Department of De-



1       fense for tracking and assessing operating and sup-  
2       port costs on major defense acquisition programs  
3       and submit to the Secretary of Defense a report on  
4       the finding and recommendations of the Director as  
5       a result of the review.

6           (2) ~~TRANSMITTAL TO CONGRESS.~~—Not later  
7       than 30 days after receiving the report required by  
8       paragraph (1), the Secretary shall transmit the re-  
9       port to the congressional defense committees, to-  
10      gether with any comments on the report the Sec-  
11      retary considers appropriate.

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

19       (d) ~~CONFORMING AMENDMENTS.~~—

20           (1) Section 2306b(i)(1)(B) of title 10, United  
21       States Code, is amended by striking “Cost Analysis  
22       Improvement Group of the Department of Defense”  
23       and inserting “Director of Independent Cost Assess-  
24       ment”.

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

5           (3) Section 2366b(a)(1)(C) of such title is  
6 amended by striking “have been developed to exe-  
7 cute” and inserting “have been approved by the Di-  
8 rector of Independent Cost Assessment to provide  
9 for the execution of”.

10          (4) Section 2433(e)(2)(B)(iii) of such title is  
11 amended by striking “are reasonable” and inserting  
12 “have been determined by the Director of Inde-  
13 pendent Cost Assessment to be reasonable”.

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

16                 “(A) be prepared or approved by the Di-  
17 rector of Independent Cost Assessment; and”.

18          (6) Section 2445e(f)(3) of such title is amended  
19 by striking “are reasonable” and inserting “have  
20 been determined by the Director of Independent  
21 Cost Assessment to be reasonable”.

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

4 Section 181(d) of title 10, United States Code, is  
 5 amended—

6 (1) by inserting “(1)” before “The Under Sec-  
 7 retary”; and

8 (2) by adding at the end the following new  
 9 paragraph:

10 “(2) The Council shall seek and consider input from  
 11 the commanders of the combatant commands in carrying  
 12 out its mission under paragraphs (1) and (2) of subsection  
 13 (b) and in conducting periodic reviews in accordance with  
 14 the requirements of subsection (c).”.

15 **TITLE II—ACQUISITION POLICY**

16 **SEC. 201. CONSIDERATION OF TRADE-OFFS AMONG COST,**  
 17 **SCHEDULE, AND PERFORMANCE IN THE AC-**  
 18 **QUISITION OF MAJOR WEAPON SYSTEMS.**

19 (a) CONSIDERATION OF TRADE-OFFS.—

20 (1) IN GENERAL.—The Secretary of Defense  
 21 shall develop and implement mechanisms to ensure  
 22 that trade-offs between cost, schedule, and perform-  
 23 ance are considered as part of the process for devel-  
 24 oping requirements for major weapon systems.

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

4           (A) Department of Defense officials re-  
5 sponsible acquisition, budget, and cost esti-  
6 mating functions are provided an appropriate  
7 opportunity to develop estimates and raise cost  
8 and schedule matters before performance re-  
9 quirements are established for major weapon  
10 systems; and

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

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

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

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

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

3           (3) by adding at the end the following new sub-  
4           paragraph:

5                   “(C) in ensuring the consideration of  
6                   trade-offs among cost, schedule and perform-  
7                   ance for joint military requirements;”.

8   **SEC. 202. PRELIMINARY DESIGN REVIEW FOR MAJOR DE-**  
9                   **FENSE ACQUISITION PROGRAMS.**

10          Section 2366b(a) of title 10, United States Code, is  
11          amended—

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

14           (2) by redesignating paragraph (2) as para-  
15           graph (3);

16           (3) by inserting after paragraph (1) the fol-  
17           lowing new paragraph (2):

18                   “(2) has received a preliminary design review  
19                   (PDR) and conducted a formal post-preliminary de-  
20                   sign review assessment, and certifies on the basis of  
21                   such assessment that the program demonstrates a  
22                   high likelihood of accomplishing its intended mis-  
23                   sion; and”;

24           (4) in paragraph (3), as redesignated by para-  
25           graph (2) of this section—

1           (A) in subparagraph (D), by striking the  
 2           semicolon and inserting “, as determined by the  
 3           Milestone Decision Authority on the basis of an  
 4           independent review and assessment by the Di-  
 5           rector of Defense Research and Engineering;  
 6           and”;

7           (B) by striking subparagraph (E); and

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

10 **SEC. 203. MAXIMIZATION OF COMPETITION THROUGHOUT**  
 11 **THE LIFE CYCLE OF MAJOR DEFENSE ACQUI-**  
 12 **SITION PROGRAMS.**

13       (a) **MAXIMIZATION OF COMPETITION.**—The Sec-  
 14       retary of Defense shall ensure that the acquisition plan  
 15       for each major defense acquisition program includes meas-  
 16       ures to maximize competition at both the prime contract  
 17       level and the subcontract level of such program throughout  
 18       the life cycle of such program.

19       (b) **MEASURES TO MAXIMIZE COMPETITION.**—The  
 20       measures to maximize competition utilized for purposes of  
 21       subsection (a) may include, but are not limited to, meas-  
 22       ures to achieve the following, where cost-effective:

23           (1) Competitive prototyping.

24           (2) Dual-sourcing.

1           (3) Funding of a second source for interchangeable,  
2           next-generation prototype systems or sub-  
3           systems.

4           (4) Utilization of modular, open architectures  
5           to enable competition for upgrades.

6           (5) Periodic competitions for subsystem up-  
7           grades.

8           (6) Licensing of additional suppliers.

9           (7) Requirements for Government oversight or  
10          approval of make or buy decisions to ensure com-  
11          petition at the subsystem level.

12          (8) Periodic system or program reviews to ad-  
13          dress long-term competitive effects of program deci-  
14          sions.

15          (9) Consideration of competition at the sub-  
16          contract level and in make or buy decisions as a fac-  
17          tor in proposal evaluations.

18          (c) COMPETITIVE PROTOTYPING.—The Secretary of  
19          Defense shall modify the acquisition regulations of the De-  
20          partment of Defense to ensure with respect to competitive  
21          prototyping for major defense acquisition programs the  
22          following:

23                 (1) That the acquisition strategy for each major  
24                 defense acquisition program provides for two or  
25                 more competing teams to produce prototypes before

1 Milestone B approval (or Key Decision Point B ap-  
2 proval in the case of a space program) unless the  
3 milestone decision authority for such program waives  
4 the requirement on the basis of a determination  
5 that, but for such waiver, the Department would be  
6 unable to meet critical national security objectives.

7 (2) That if the milestone decision authority  
8 waives the requirement for prototypes produced by  
9 two or more teams for a major defense acquisition  
10 program under paragraph (1), the acquisition strat-  
11 egy for the program provides for the production of  
12 at least one prototype before Milestone B approval  
13 (or Key Decision Point B approval in the case of a  
14 space program) unless the milestone decision author-  
15 ity waives such requirement on the basis of a deter-  
16 mination that, but for such waiver, the Department  
17 would be unable to meet critical national security ob-  
18 jectives.

19 (3) That whenever a milestone decision author-  
20 ity authorizes a waiver under paragraph (1) or (2),  
21 the waiver, the determination upon which the waiver  
22 is based, and the reasons for the determination are  
23 submitted in writing to the congressional defense  
24 committees not later than 30 days after the waiver  
25 is authorized.



1 (d) MAJOR DEFENSE ACQUISITION PROGRAM DE-  
 2 FINED.—In this section, the term “major defense acquisi-  
 3 tion program” has the meaning given that term in section  
 4 2430 of title 10, United States Code.

5 (e) APPLICABILITY.—This section shall apply to any  
 6 acquisition plan for a major defense acquisition program  
 7 that is developed or revised on or after the date that is  
 8 60 days after the date of the enactment of this Act.

9 **SEC. 204. CRITICAL COST GROWTH IN MAJOR DEFENSE AC-**  
 10 **QUISITION PROGRAMS.**

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

14 (1) by redesignating subparagraph (C) as sub-  
 15 paragraph (D);

16 (2) by striking subparagraph (B); and

17 (3) by inserting after subparagraph (A) the fol-  
 18 lowing new subparagraphs (B) and (C):

19 “(B) terminate such acquisition program, un-  
 20 less the Secretary determines that the continuation  
 21 of such program is essential to the national security  
 22 of the United States and submits a written certifi-  
 23 cation in accordance with subparagraph (C)(i) ac-  
 24 companied by a report setting forth the assessment  
 25 carried out pursuant to subparagraph (A) and the

1 basis for each determination made in accordance  
2 with clauses (I) through (IV) of subparagraph  
3 ~~(C)(i)~~, together with supporting documentation;

4 ~~“(C) if the program is not terminated—~~

5 ~~“(i) submit to Congress, before the end of~~  
6 ~~the 60-day period beginning on the day the Se-~~  
7 ~~lected Acquisition Report containing the infor-~~  
8 ~~mation described in subsection (g) is required~~  
9 ~~to be submitted under section 2432(f) of this~~  
10 ~~title; a written certification stating that—~~

11 ~~“(I) such acquisition program is es-~~  
12 ~~sential to national security;~~

13 ~~“(II) there are no alternatives to such~~  
14 ~~acquisition program which will provide~~  
15 ~~equal or greater capability to meet a joint~~  
16 ~~military requirement (as that term is de-~~  
17 ~~defined in section 181(g)(1) of this title) at~~  
18 ~~less cost;~~

19 ~~“(III) the new estimates of the pro-~~  
20 ~~gram acquisition unit cost or procurement~~  
21 ~~unit cost were arrived at in accordance~~  
22 ~~with the requirements of section 139d of~~  
23 ~~this title and are reasonable; and~~

24 ~~“(IV) the management structure for~~  
25 ~~the acquisition program is adequate to~~

1 manage and control program acquisition  
2 unit cost or procurement unit cost;

3 “(ii) rescind the most recent Milestone ap-  
4 proval (or Key Decision Point approval in the  
5 ease of a space program) for such program and  
6 withdraw any associated certification under sec-  
7 tion 2366a or 2366b of this title; and

8 “(iii) require a new Milestone approval (or  
9 Key Decision Point approval in the ease of a  
10 space program) for such program before enter-  
11 ing into a new contract, exercising an option  
12 under an existing contract, or otherwise extend-  
13 ing the scope of an existing contract under such  
14 program; and”.

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

20 **SEC. 205. ORGANIZATIONAL CONFLICTS OF INTEREST IN**  
21 **THE ACQUISITION OF MAJOR WEAPON SYS-**  
22 **TEMS.**

23 (a) **REVISED REGULATIONS REQUIRED.**—Not later  
24 than 180 days after the date of the enactment of this Act,  
25 the Under Secretary of Defense for Acquisition, Tech-

1 nology, and Logistics shall revise the Defense Supplement  
2 to the Federal Acquisition Regulation to address organiza-  
3 tional conflicts of interest by contractors in the acquisition  
4 of major weapon systems.

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

7 (1) ensure that the Department of Defense re-  
8 ceives advice on systems architecture and systems  
9 engineering matters with respect to major weapon  
10 systems from federally funded research and develop-  
11 ment centers or other sources independent of the  
12 prime contractor;

13 (2) require that a contract for the performance  
14 of systems engineering and technical assistance  
15 (SETA) functions with regard to a major weapon  
16 system contains a provision prohibiting the con-  
17 tractor or any affiliate of the contractor from having  
18 a direct financial interest in the development or con-  
19 struction of the weapon system or any component  
20 thereof; and

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

24 (A) requiring prime contractors to give full  
25 and fair consideration to qualified sources other

1 than the prime contractor for the development  
2 or construction of major subsystems and com-  
3 ponents of the weapon system;

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

9 (C) where appropriate, requiring that pro-  
10 gram managers, rather than prime contractors,  
11 make the determination whether such develop-  
12 ment or construction should be conducted in-  
13 house or through a subcontract; and

14 (D) providing for the consideration of  
15 prime contractors "make-buy" decisions in past  
16 performance evaluations.

17 (e) ORGANIZATIONAL CONFLICT OF INTEREST RE-  
18 VIEW BOARD.—

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

1           (2) DUTIES.—The Board shall have the fol-  
2           lowing duties:

3                   (A) To advise the Under Secretary of De-  
4                   fense for Acquisition, Technology, and Logistics  
5                   on policies relating to organizational conflicts of  
6                   interest in the acquisition of major weapon sys-  
7                   tems:

8                   (B) To advise program managers on steps  
9                   to comply with the requirements of the revised  
10                  regulations required by this section and to ad-  
11                  dress organizational conflicts of interest in the  
12                  acquisition of major weapon systems:

13                  (C) To advise appropriate officials of the  
14                  Department on organizational conflicts of inter-  
15                  est arising in proposed mergers of defense con-  
16                  tractors:

17           (d) MAJOR WEAPON SYSTEM DEFINED.—In this sec-  
18           tion, the term “major weapon system” has the meaning  
19           given that term in section 2379(d) of title 10, United  
20           States Code.

21           **SEC. 206. AWARDS FOR DEPARTMENT OF DEFENSE PER-**  
22                                   **SONNEL FOR EXCELLENCE IN THE ACQUISI-**  
23                                   **TION OF PRODUCTS AND SERVICES.**

24           (a) IN GENERAL.—Not later than 180 days after the  
25           date of the enactment of this Act, the Secretary of Defense

1 shall commence carrying out a program to recognize excel-  
2 lent performance by individuals and teams of members of  
3 the Armed Forces and civilian personnel of the Depart-  
4 ment of Defense in the acquisition of products and serv-  
5 ices for the Department of Defense.

6 (b) ELEMENTS.—The program required by sub-  
7 section (a) shall include the following:

8 (1) Procedures for the nomination by the per-  
9 sonnel of the military departments and the Defense  
10 Agencies of individuals and teams of members of the  
11 Armed Forces and civilian personnel of the Depart-  
12 ment of Defense for eligibility for recognition under  
13 the program.

14 (2) Procedures for the evaluation of nomina-  
15 tions for recognition under the program by one or  
16 more panels of individuals from the government,  
17 academia, and the private sector who have such ex-  
18 pertise, and are appointed in such manner, as the  
19 Secretary shall establish for purposes of the pro-  
20 gram.

21 (c) AWARD OF CASH BONUSES.—As part of the pro-  
22 gram required by subsection (a), the Secretary may award  
23 to any individual recognized pursuant to the program a  
24 cash bonus authorized by any other provision of law to  
25 the extent that the performance of such individual so rec-

1 ognized warrants the award of such bonus under such pro-  
 2 vision of law.

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*  
 5 *“Weapon Systems Acquisition Reform Act of 2009”.*

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

*Sec. 1. Short title; table of contents.*

*Sec. 2. Definitions.*

*TITLE I—ACQUISITION ORGANIZATION*

*Sec. 101. Reports on systems engineering capabilities of the Department of De-*  
*fense.*

*Sec. 102. Director of Developmental Test and Evaluation.*

*Sec. 103. Assessment of technological maturity of critical technologies of major de-*  
*fense acquisition programs by the Director of Defense Research*  
*and Engineering.*

*Sec. 104. Director of Independent Cost Assessment.*

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

*TITLE II—ACQUISITION POLICY*

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

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

*Sec. 203. Ensuring competition throughout the life cycle of major defense acqui-*  
*sition programs.*

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

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

*Sec. 206. Awards for Department of Defense personnel for excellence in the acqui-*  
*sition of products and services.*

8 **SEC. 2. DEFINITIONS.**

9 *In this Act:*

10 (1) *The term “congressional defense committees”*  
 11 *has the meaning given that term in section*  
 12 *101(a)(16) of title 10, United States Code.*



1           (2) *The term “major defense acquisition pro-*  
2           *gram” has the meaning given that term in section*  
3           *2430 of title 10, United States Code.*

4                           **TITLE I—ACQUISITION**  
5                           **ORGANIZATION**

6   **SEC. 101. REPORTS ON SYSTEMS ENGINEERING CAPABILI-**  
7                           **TIES OF THE DEPARTMENT OF DEFENSE.**

8           (a) *REPORTS BY SERVICE ACQUISITION EXECU-*  
9           *TIVES.—Not later than 180 days after the date of the enact-*  
10          *ment of this Act, the service acquisition executive of each*  
11          *military department shall submit to the Under Secretary*  
12          *of Defense for Acquisition, Technology, and Logistics a re-*  
13          *port setting forth the following:*

14                  (1) *A description of the extent to which such*  
15                  *military department has in place development plan-*  
16                  *ning organizations and processes staffed by adequate*  
17                  *numbers of personnel with appropriate training and*  
18                  *expertise to ensure that—*

19                          (A) *key requirements, acquisition, and*  
20                          *budget decisions made for each major weapon*  
21                          *system prior to Milestones A and B are sup-*  
22                          *ported by a rigorous systems analysis and sys-*  
23                          *tems engineering process;*

24                          (B) *the systems engineering strategy for*  
25                          *each major weapon system includes a robust pro-*

1           *gram for improving reliability, availability,*  
2           *maintainability, and sustainability as an inte-*  
3           *gral part of design and development; and*

4           (C) *systems engineering requirements, in-*  
5           *cluding reliability, availability, maintainability,*  
6           *and sustainability requirements, are identified*  
7           *during the Joint Capabilities Integration Devel-*  
8           *opment System process and incorporated into*  
9           *contract requirements for each major weapon*  
10           *system.*

11           (2) *A description of the actions that such mili-*  
12           *tary department has taken, or plans to take, to—*

13           (A) *establish needed development planning*  
14           *and systems engineering organizations and proc-*  
15           *esses; and*

16           (B) *attract, develop, retain, and reward sys-*  
17           *tems engineers with appropriate levels of hands-*  
18           *on experience and technical expertise to meet the*  
19           *needs of such military department.*

20           (b) *REPORT BY UNDER SECRETARY OF DEFENSE FOR*  
21           *ACQUISITION, TECHNOLOGY, AND LOGISTICS.—Not later*  
22           *than 270 days after the date of the enactment of this Act,*  
23           *the Under Secretary of Defense for Acquisition, Technology,*  
24           *and Logistics shall submit to the Committee on Armed*  
25           *Services of the Senate and the Committee on Armed Serv-*

1 ices of the House of Representatives a report on the system  
 2 engineering capabilities of the Department of Defense. The  
 3 report shall include, at a minimum, the following:

4           (1) An assessment by the Under Secretary of the  
 5 reports submitted by the service acquisition executives  
 6 pursuant to subsection (a) and of the adequacy of the  
 7 actions that each military department has taken, or  
 8 plans to take, to meet the systems engineering and de-  
 9 velopment planning needs of such military depart-  
 10 ment.

11           (2) An assessment of each of the recommenda-  
 12 tions of the report on Pre-Milestone A and Early-  
 13 Phase Systems Engineering of the Air Force Studies  
 14 Board of the National Research Council, including  
 15 the recommended checklist of systems engineering  
 16 issues to be addressed prior to Milestones A and B,  
 17 and the extent to which such recommendations should  
 18 be implemented throughout the Department of De-  
 19 fense.

20 **SEC. 102. DIRECTOR OF DEVELOPMENTAL TEST AND EVAL-**  
 21 **UATION.**

22 (a) *ESTABLISHMENT OF POSITION.*—

23           (1) *IN GENERAL.*—Chapter 4 of title 10, United  
 24 States Code, is amended by inserting after section  
 25 139b the following new section:

1 **“§ 139c. Director of Developmental Test and Evalua-**  
2 **tion**

3 “(a) *There is a Director of Developmental Test and*  
4 *Evaluation, who shall be appointed by the Secretary of De-*  
5 *fense from among individuals with an expertise in acquisi-*  
6 *tion and testing.*

7 “(b)(1) *The Director of Developmental Test and Eval-*  
8 *uation shall be the principal advisor to the Secretary of*  
9 *Defense and the Under Secretary of Defense for Acquisition,*  
10 *Technology, and Logistics on developmental test and eval-*  
11 *uation in the Department of Defense.*

12 “(2) *The individual serving as the Director of Develop-*  
13 *mental Test and Evaluation may also serve concurrently*  
14 *as the Director of the Department of Defense Test Resource*  
15 *Management Center under section 196 of this title.*

16 “(3) *The Director shall be subject to the supervision*  
17 *of the Under Secretary of Defense for Acquisition, Tech-*  
18 *nology, and Logistics and shall report to the Under Sec-*  
19 *retary.*

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

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

1           “(i) developmental test and evaluation require-  
2           ments are fully integrated into the Systems Engineer-  
3           ing Master Plan for each major defense acquisition  
4           program; and

5           “(ii) systems engineering and development plan-  
6           ning requirements are fully considered in the Test  
7           and Evaluation Master Plan for each major defense  
8           acquisition program.

9           “(c) The Director of Developmental Test and Evalua-  
10          tion shall—

11           “(1) develop policies and guidance for the devel-  
12           opmental test and evaluation activities of the Depart-  
13           ment of Defense (including integration and develop-  
14           mental testing of software);

15           “(2) monitor and review the developmental test  
16           and evaluation activities of the major defense acquisi-  
17           tion programs and major automated information sys-  
18           tems programs of the Department of Defense;

19           “(3) review and approve the test and evaluation  
20           master plan for each major defense acquisition pro-  
21           gram of the Department of Defense;

22           “(4) supervise the activities of the Director of the  
23           Department of Defense Test Resource Management  
24           Center under section 196 of this title, or carry out  
25           such activities if serving concurrently as the Director

1       *of Developmental Test and Evaluation and the Direc-*  
2       *tor of the Department of Defense Test Resource Man-*  
3       *agement Center under subsection (b)(2);*

4             “(5) review the organizations and capabilities of  
5       *the military departments with respect to develop-*  
6       *mental test and evaluation and identify needed*  
7       *changes or improvements to such organizations and*  
8       *capabilities; and*

9             “(6) perform such other activities relating to the  
10       *developmental test and evaluation activities of the De-*  
11       *partment of Defense as the Under Secretary of De-*  
12       *fense for Acquisition, Technology, and Logistics may*  
13       *prescribe.*

14            “(d) *The Director of Developmental Test and Evalua-*  
15       *tion shall have access to all records and data of the Depart-*  
16       *ment of Defense (including the records and data of each*  
17       *military department) that the Director considers necessary*  
18       *in order to carry out the Director’s duties under this sec-*  
19       *tion.*

20            “(e)(1) *The Director of Developmental Test and Eval-*  
21       *uation shall submit to Congress each year a report on the*  
22       *developmental test and evaluation activities of the major*  
23       *defense acquisition programs and major automated infor-*  
24       *mation system programs of the of the Department of De-*

1 *fense. Each report shall include, at a minimum, the fol-*  
 2 *lowing:*

3           “(A) *A discussion of any waivers to testing ac-*  
 4 *tivities included in the Test and Evaluation Master*  
 5 *Plan for a major defense acquisition program in the*  
 6 *preceding year.*”

7           “(B) *An assessment of the organization and ca-*  
 8 *pabilities of the Department of Defense for test and*  
 9 *evaluation.*”

10          “(2) *The Secretary of Defense may include in any re-*  
 11 *port submitted to Congress under this subsection such com-*  
 12 *ments on such report as the Secretary considers appro-*  
 13 *priate.*”.

14           (2) *CLERICAL AMENDMENT.—The table of sec-*  
 15 *tions at the beginning of chapter 4 of such title is*  
 16 *amended by inserting after the item relating to sec-*  
 17 *tion 139b the following new item:*

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

18           (3) *CONFORMING AMENDMENTS.—*

19           (A) *Section 196(f) of title 10, United States*  
 20 *Code, is amended by striking “the Under Sec-*  
 21 *retary of Defense for Acquisition, Technology,*  
 22 *and Logistics” and all that follows and inserting*  
 23 *“the Under Secretary of Defense for Acquisition,*  
 24 *Technology, and Logistics and the Director of*  
 25 *Developmental Test and Evaluation.*”.

1                   (B) Section 139(b) of such title is amend-  
2                   ed—

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

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

8                   “(4) review and approve the test and evaluation  
9                   master plan for each major defense acquisition pro-  
10                  gram of the Department of Defense;”.

11               (b) *REPORTS ON DEVELOPMENTAL TESTING ORGANI-  
12               ZATIONS AND PERSONNEL.—*

13               (1) *REPORTS BY SERVICE ACQUISITION EXECU-  
14               TIVES.—Not later than 180 days after the date of the  
15               enactment of this Act, the service acquisition executive  
16               of each military department shall submit to the Di-  
17               rector of Developmental Test and Evaluation a report  
18               on the extent to which the test organizations of such  
19               military department have in place, or have effective  
20               plans to develop, adequate numbers of personnel with  
21               appropriate expertise for each purpose as follows:*

22               (A) *To ensure that testing requirements are  
23               appropriately addressed in the translation of  
24               operational requirements into contract specifica-  
25               tions, in the source selection process, and in the*



1           *preparation of requests for proposals on all*  
2           *major defense acquisition programs.*

3           *(B) To participate in the planning of devel-*  
4           *opmental test and evaluation activities, includ-*  
5           *ing the preparation and approval of a test and*  
6           *evaluation master plan for each major defense*  
7           *acquisition program.*

8           *(C) To participate in and oversee the con-*  
9           *duct of developmental testing, the analysis of*  
10          *data, and the preparation of evaluations and re-*  
11          *ports based on such testing.*

12          (2) *FIRST ANNUAL REPORT BY DIRECTOR OF DE-*  
13          *VELOPMENTAL TEST AND EVALUATION.—The first an-*  
14          *nuual report submitted to Congress by the Director of*  
15          *Developmental Test and Evaluation under section*  
16          *139c(e) of title 10, United States Code (as added by*  
17          *subsection (a)), shall be submitted not later than one*  
18          *year after the date of the enactment of this Act, and*  
19          *shall include an assessment by the Director of the re-*  
20          *ports submitted by the service acquisition executives*  
21          *to the Director under paragraph (1).*

1 **SEC. 103. ASSESSMENT OF TECHNOLOGICAL MATURITY OF**  
2 **CRITICAL TECHNOLOGIES OF MAJOR DE-**  
3 **FENSE ACQUISITION PROGRAMS BY THE DI-**  
4 **RECTOR OF DEFENSE RESEARCH AND ENGI-**  
5 **NEERING.**

6 (a) *ASSESSMENT BY DIRECTOR OF DEFENSE RE-*  
7 *SEARCH AND ENGINEERING.—*

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

11 “(c)(1) *The Director of Defense Research and Engi-*  
12 *neering shall periodically review and assess the techno-*  
13 *logical maturity and integration risk of critical technologies*  
14 *of the major defense acquisition programs of the Depart-*  
15 *ment of Defense and report on the findings of such reviews*  
16 *and assessments to the Under Secretary of Defense for Ac-*  
17 *quisition, Technology, and Logistics.*

18 “(2) *The Director shall submit to the Secretary of De-*  
19 *fense and to Congress each year a report on the techno-*  
20 *logical maturity and integration risk of critical technologies*  
21 *of the major defense acquisition programs of the Depart-*  
22 *ment of Defense.”.*

23 (2) *FIRST ANNUAL REPORT.—The first annual*  
24 *report under subsection (c)(2) of section 139a of title*  
25 *10, United States Code (as added by paragraph (1)),*  
26 *shall be submitted to Congress not later than March*

1       1, 2011, and shall address the results of reviews and  
2       assessments conducted by the Director of Defense Re-  
3       search and Engineering pursuant to subsection (c)(1)  
4       of such section (as so added) during the preceding cal-  
5       endar year.

6       **(b) REPORT ON RESOURCES FOR IMPLEMENTATION.**—

7       Not later than 120 days after the date of the enactment of  
8       this Act, the Director of Defense Research and Engineering  
9       shall submit to the congressional defense committees a re-  
10      port describing any additional resources, including special-  
11      ized workforce, that may be required by the Director, and  
12      by other science and technology elements of the Department  
13      of Defense, to carry out the following:

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

16           (2) The technological maturity assessments re-  
17      quired by section 2366b(a) of title 10, United States  
18      Code, as amended by section 202 of this Act.

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

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

22      **(a) DIRECTOR OF INDEPENDENT COST ASSESS-**  
23      **MENT.**—

24           (1) **IN GENERAL.**—Chapter 4 of title 10, United  
25      States Code, as amended by section 102 of this Act,

1        *is further amended by inserting after section 139c the*  
2        *following new section:*

3        **“§ 139d. Director of Independent Cost Assessment**

4        *“(a) There is a Director of Independent Cost Assess-*  
5        *ment in the Department of Defense, appointed by the Presi-*  
6        *dent, by and with the advice and consent of the Senate.*  
7        *The Director shall be appointed without regard to political*  
8        *affiliation and solely on the basis of fitness to perform the*  
9        *duties of the Director.*

10        *“(b) The Director is the principal advisor to the Sec-*  
11        *retary of Defense, the Under Secretary of Defense for Acqui-*  
12        *sition, Technology, and Logistics, and the Under Secretary*  
13        *of Defense (Comptroller) on cost estimation and cost anal-*  
14        *yses for the acquisition programs of the Department of De-*  
15        *fense and the principal cost estimation official within the*  
16        *senior management of the Department of Defense. The Di-*  
17        *rector shall—*

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

22                *“(2) provide guidance to and consult with the*  
23        *Secretary of Defense, the Under Secretary of Defense*  
24        *for Acquisition, Technology, and Logistics, the Under*  
25        *Secretary of Defense (Comptroller), and the Secre-*

1 *taries of the military departments with respect to cost*  
2 *estimation in the Department of Defense in general*  
3 *and with respect to specific cost estimates and cost*  
4 *analyses to be conducted in connection with a major*  
5 *defense acquisition program under chapter 144 of this*  
6 *title or a major automated information system pro-*  
7 *gram under chapter 144A of this title;*

8 *“(3) establish guidance on confidence levels for*  
9 *cost estimates on major defense acquisition programs*  
10 *and require the disclosure of all such confidence levels;*

11 *“(4) monitor and review all cost estimates and*  
12 *cost analyses conducted in connection with major de-*  
13 *fense acquisition programs and major automated in-*  
14 *formation system programs; and*

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

21 *“(A) in advance of—*

22 *“(i) any certification under section*  
23 *2366a or 2366b of this title;*

24 *“(ii) any certification under section*  
25 *2433(e)(2) of this title; and*

1                   “(iii) any report under section  
2                   2445c(f) of this title; and

3                   “(B) whenever necessary to ensure that an  
4                   estimate or analysis under paragraph (4) is un-  
5                   biased, fair, and reliable.

6                   “(c)(1) The Director may communicate views on mat-  
7                   ters within the responsibility of the Director directly to the  
8                   Secretary of Defense and the Deputy Secretary of Defense  
9                   without obtaining the approval or concurrence of any other  
10                  official within the Department of Defense.

11                  “(2) The Director shall consult closely with, but the  
12                  Director and the Director’s staff shall be independent of,  
13                  the Under Secretary of Defense for Acquisition, Technology,  
14                  and Logistics, the Under Secretary of Defense (Comp-  
15                  troller), and all other officers and entities of the Department  
16                  of Defense responsible for acquisition and budgeting.

17                  “(d)(1) The Secretary of a military department shall  
18                  report promptly to the Director the results of all cost esti-  
19                  mates and cost analyses conducted by the military depart-  
20                  ment and all studies conducted by the military department  
21                  in connection with cost estimates and cost analyses for  
22                  major defense acquisition programs of the military depart-  
23                  ment.

24                  “(2) The Director may make comments on cost esti-  
25                  mates and cost analyses conducted by a military depart-

1 *ment for a major defense acquisition program, request*  
2 *changes in such cost estimates and cost analyses to ensure*  
3 *that they are fair and reliable, and develop or require the*  
4 *development of independent cost estimates or cost analyses*  
5 *for such program, as the Director determines to be appro-*  
6 *priate.*

7       “(3) *The Director shall have access to any records and*  
8 *data in the Department of Defense (including the records*  
9 *and data of each military department) that the Director*  
10 *considers necessary to review in order to carry out the Di-*  
11 *rector’s duties under this section.*

12       “(e)(1) *The Director shall prepare an annual report*  
13 *summarizing the cost estimation and cost analysis activi-*  
14 *ties of the Department of Defense during the previous year*  
15 *and assessing the progress of the Department in improving*  
16 *the accuracy of its costs estimates and analyses.*

17       “(2) *Each report under this subsection shall be sub-*  
18 *mitted concurrently to the Secretary of Defense, the Under*  
19 *Secretary of Defense for Acquisition, Technology, and Lo-*  
20 *gistics, the Under Secretary of Defense (Comptroller), and*  
21 *Congress not later than 10 days after the transmission of*  
22 *the budget for the next fiscal year under section 1105 of*  
23 *title 31. The Director shall ensure that a report submitted*  
24 *under this subsection does not include any information,*  
25 *such as proprietary or source selection sensitive informa-*

1 *tion, that could undermine the integrity of the acquisition*  
 2 *process.*

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

5       “(f) *The President shall include in the budget trans-*  
 6 *mitted to Congress pursuant to section 1105 of title 31 for*  
 7 *each fiscal year a separate statement of estimated expendi-*  
 8 *tures and proposed appropriations for that fiscal year for*  
 9 *the Director of Independent Cost Assessment in carrying*  
 10 *out the duties and responsibilities of the Director under this*  
 11 *section.*

12       “(g) *The Secretary of Defense shall ensure that the Di-*  
 13 *rector has sufficient professional staff of military and civil-*  
 14 *ian personnel to enable the Director to carry out the duties*  
 15 *and responsibilities of the Director under this section.”.*

16               (2) *CLERICAL AMENDMENT.—The table of sec-*  
 17 *tions at the beginning of chapter 4 of such title, as*  
 18 *so amended, is further amended by inserting after the*  
 19 *item relating to section 139c the following new item:*  
 “139d. *Director of Independent Cost Assessment.”.*

20               (3) *EXECUTIVE SCHEDULE LEVEL IV.—Section*  
 21 *5315 of title 5, United States Code, is amended by in-*  
 22 *serting after the item relating to the Director of Oper-*  
 23 *ational Test and Evaluation, Department of Defense*  
 24 *the following new item:*



1           “*Director of Independent Cost Assessment, De-*  
2           *fense of Defense.*”.

3           **(b) REPORT ON MONITORING OF OPERATING AND SUP-**  
4           **PORT COSTS FOR MDAPS.—**

5           **(1) REPORT TO SECRETARY OF DEFENSE.—***Not*  
6           *later than one year after the date of the enactment of*  
7           *this Act, the Director of Independent Cost Assessment*  
8           *under section 139d of title 10 United States Code (as*  
9           *added by subsection (a)), shall review existing systems*  
10           *and methods of the Department of Defense for track-*  
11           *ing and assessing operating and support costs on*  
12           *major defense acquisition programs and submit to the*  
13           *Secretary of Defense a report on the finding and rec-*  
14           *ommendations of the Director as a result of the re-*  
15           *view.*

16           **(2) TRANSMITTAL TO CONGRESS.—***Not later than*  
17           *30 days after receiving the report required by para-*  
18           *graph (1), the Secretary shall transmit the report to*  
19           *the congressional defense committees, together with*  
20           *any comments on the report the Secretary considers*  
21           *appropriate.*

22           **(c) TRANSFER OF PERSONNEL AND FUNCTIONS OF**  
23           **COST ANALYSIS IMPROVEMENT GROUP.—***The personnel*  
24           *and functions of the Cost Analysis Improvement Group of*  
25           *the Department of Defense are hereby transferred to the Di-*

1 *rector of Independent Cost Assessment under section 139d*  
2 *of title 10, United States Code (as so added), and shall re-*  
3 *port directly to the Director.*

4 *(d) CONFORMING AMENDMENTS.—*

5 *(1) Section 181(d) of title 10, United States*  
6 *Code, is amended by inserting “the Director of Inde-*  
7 *pendent Cost Assessment,” before “and the Director”.*

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

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

16 *(4) Section 2366b(a)(1)(C) of such title is*  
17 *amended by striking “have been developed to execute”*  
18 *and inserting “have been approved by the Director of*  
19 *Independent Cost Assessment to provide for the execu-*  
20 *tion of”.*

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

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

3                   “(A) be prepared or approved by the Direc-  
4                   tor of Independent Cost Assessment; and”.

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

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

12           Section 181 of title 10, United States Code, as amend-  
13           ed by section 104(d)(1) of this Act, is further amended—

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

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

18                   “(e) *INPUT FROM COMBATANT COMMANDERS ON JOINT*  
19                   *MILITARY REQUIREMENTS.*—The Council shall seek and  
20                   consider input from the commanders of the combatant com-  
21                   mands in carrying out its mission under paragraphs (1)  
22                   and (2) of subsection (b) and in conducting periodic reviews  
23                   in accordance with the requirements of subsection (f).”.

1 **TITLE II—ACQUISITION POLICY**

2 **SEC. 201. CONSIDERATION OF TRADE-OFFS AMONG COST,**  
3 **SCHEDULE, AND PERFORMANCE IN THE AC-**  
4 **QUISITION OF MAJOR WEAPON SYSTEMS.**

5 (a) *CONSIDERATION OF TRADE-OFFS.—*

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

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

14 (A) *Department of Defense officials respon-*  
15 *sible for acquisition, budget, and cost estimating*  
16 *functions are provided an appropriate oppor-*  
17 *tunity to develop estimates and raise cost and*  
18 *schedule matters before performance requirements*  
19 *are established for major weapon systems; and*

20 (B) *consideration is given to fielding major*  
21 *weapon systems through incremental or spiral*  
22 *acquisition, while deferring technologies that are*  
23 *not yet mature, and capabilities that are likely*  
24 *to significantly increase costs or delay produc-*  
25 *tion, until later increments or spirals.*

1           (3) *MAJOR WEAPONS SYSTEM DEFINED.*—*In this*  
2           *subsection, the term “major weapon system” has the*  
3           *meaning given that term in section 2379(d) of title*  
4           *10, United States Code.*

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

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

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

12          (3) *by adding at the end the following new sub-*  
13          *paragraph:*

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

18          (c) *ANALYSIS OF ALTERNATIVES.*—

19           (1) *REQUIREMENT AT MATERIAL SOLUTION*  
20           *ANALYSIS PHASE.*—*The Under Secretary of Defense*  
21           *for Acquisition, Technology, and Logistics shall en-*  
22           *sure that Department of Defense guidance on major*  
23           *defense acquisition programs requires the Milestone*  
24           *Decision Authority to conduct an analysis of alter-*

1 *natives (AOA) during the Material Solution Analysis*  
 2 *Phase of each major defense acquisition program.*

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

5 (A) *solicit and consider alternative ap-*  
 6 *proaches proposed by the military departments*  
 7 *and Defense Agencies to meet joint military re-*  
 8 *quirements; and*

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

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

17 **SEC. 202. PRELIMINARY DESIGN REVIEW AND CRITICAL DE-**  
 18 **SIGN REVIEW FOR MAJOR DEFENSE ACQUISI-**  
 19 **TION PROGRAMS.**

20 (a) *PRELIMINARY DESIGN REVIEW.—Section 2366b(a)*  
 21 *of title 10, United States Code, as amended by section*  
 22 *201(d) of this Act, is further amended—*

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

1           (2) by redesignating paragraph (2) as para-  
2 graph (3);

3           (3) by inserting after paragraph (1) the fol-  
4 lowing new paragraph (2):

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

11           (4) in paragraph (3), as redesignated by para-  
12 graph (2) of this section—

13           (A) in subparagraph (D), by striking the  
14 semicolon and inserting “, as determined by the  
15 Milestone Decision Authority on the basis of an  
16 independent review and assessment by the Direc-  
17 tor of Defense Research and Engineering; and”;

18           (B) by striking subparagraph (E); and

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

21           (b) *CRITICAL DESIGN REVIEW.*—The Under Secretary  
22 of Defense for Acquisition, Technology, and Logistics shall  
23 ensure that Department of Defense guidance on major de-  
24 fense acquisition programs requires a critical design review  
25 and a formal post-critical design review assessment for each

1 *major defense acquisition program to ensure that such pro-*  
2 *gram has attained an appropriate level of design maturity*  
3 *before such program is approved for System Capability and*  
4 *Manufacturing Process Development.*

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

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

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

20 (1) *Competitive prototyping.*

21 (2) *Dual-sourcing.*

22 (3) *Funding of a second source for interchange-*  
23 *able, next-generation prototype systems or subsystems.*

24 (4) *Utilization of modular, open architectures to*  
25 *enable competition for upgrades.*



1           (5) *Periodic competitions for subsystem up-*  
2 *grades.*

3           (6) *Licensing of additional suppliers.*

4           (7) *Requirements for Government oversight or*  
5 *approval of make or buy decisions to ensure competi-*  
6 *tion at the subsystem level.*

7           (8) *Periodic system or program reviews to ad-*  
8 *dress long-term competitive effects of program deci-*  
9 *sions.*

10          (9) *Consideration of competition at the sub-*  
11 *contract level and in make or buy decisions as a fac-*  
12 *tor in proposal evaluations.*

13          (c) *COMPETITIVE PROTOTYPING.—The Secretary of*  
14 *Defense shall modify the acquisition regulations of the De-*  
15 *partment of Defense to ensure with respect to competitive*  
16 *prototyping for major defense acquisition programs the fol-*  
17 *lowing:*

18           (1) *That the acquisition strategy for each major*  
19 *defense acquisition program provides for two or more*  
20 *competing teams to produce prototypes before Mile-*  
21 *stone B approval (or Key Decision Point B approval*  
22 *in the case of a space program) unless the milestone*  
23 *decision authority for such program waives the re-*  
24 *quirement on the basis of a determination that—*

1           (A) but for such waiver, the Department  
2 would be unable to meet critical national secu-  
3 rity objectives; or

4           (B) the cost of producing competitive proto-  
5 types exceeds the potential life-cycle benefits of  
6 such competition, including the benefits of im-  
7 proved performance and increased technological  
8 and design maturity that may be achieved  
9 through prototyping.

10          (2) That if the milestone decision authority  
11 waives the requirement for prototypes produced by  
12 two or more teams for a major defense acquisition  
13 program under paragraph (1), the acquisition strat-  
14 egy for the program provides for the production of at  
15 least one prototype before Milestone B approval (or  
16 Key Decision Point B approval in the case of a space  
17 program) unless the milestone decision authority  
18 waives such requirement on the basis of a determina-  
19 tion that—

20           (A) but for such waiver, the Department  
21 would be unable to meet critical national secu-  
22 rity objectives; or

23           (B) the cost of producing a prototype ex-  
24 ceeds the potential life-cycle benefits of such  
25 prototyping, including the benefits of improved

1           *performance and increased technological and de-*  
2           *sign maturity that may be achieved through*  
3           *prototyping.*

4           (3) *That whenever a milestone decision authority*  
5           *authorizes a waiver under paragraph (1) or (2), the*  
6           *waiver, the determination upon which the waiver is*  
7           *based, and the reasons for the determination are sub-*  
8           *mitted in writing to the congressional defense com-*  
9           *mittees not later than 30 days after the waiver is au-*  
10          *thorized.*

11          (4) *That prototypes may be required under para-*  
12          *graph (1) or (2) for the system to be acquired or, if*  
13          *prototyping of the system is not feasible, for critical*  
14          *subsystems of the system.*

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

19       **SEC. 204. CRITICAL COST GROWTH IN MAJOR DEFENSE AC-**  
20                        **QUISITION PROGRAMS.**

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

24                (1) *by redesignating subparagraph (C) as sub-*  
25                *paragraph (D);*

1           (2) *by striking subparagraph (B); and*

2           (3) *by inserting after subparagraph (A) the fol-*  
3 *lowing new subparagraphs (B) and (C):*

4           “(B) *terminate such acquisition program, unless*  
5 *the Secretary determines that the continuation of such*  
6 *program is essential to the national security of the*  
7 *United States and submits a written certification in*  
8 *accordance with subparagraph (C)(i) accompanied by*  
9 *a report setting forth the assessment carried out pur-*  
10 *suant to subparagraph (A) and the basis for each de-*  
11 *termination made in accordance with clauses (I)*  
12 *through (IV) of subparagraph (C)(i), together with*  
13 *supporting documentation;*

14           “(C) *if the program is not terminated—*

15           “(i) *submit to Congress, before the end of*  
16 *the 60-day period beginning on the day the Se-*  
17 *lected Acquisition Report containing the infor-*  
18 *mation described in subsection (g) is required to*  
19 *be submitted under section 2432(f) of this title,*  
20 *a written certification stating that—*

21           “(I) *such acquisition program is essen-*  
22 *tial to national security;*

23           “(II) *there are no alternatives to such*  
24 *acquisition program which will provide*  
25 *equal or greater capability to meet a joint*

1            *military requirement (as that term is de-*  
2            *defined in section 181(h)(1) of this title) at*  
3            *less cost;*

4            *“(III) the new estimates of the pro-*  
5            *gram acquisition unit cost or procurement*  
6            *unit cost were arrived at in accordance*  
7            *with the requirements of section 139d of this*  
8            *title and are reasonable; and*

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

13           *“(ii) rescind the most recent Milestone ap-*  
14           *proval (or Key Decision Point approval in the*  
15           *case of a space program) for such program and*  
16           *withdraw any associated certification under sec-*  
17           *tion 2366a or 2366b of this title; and*

18           *“(iii) require a new Milestone approval (or*  
19           *Key Decision Point approval in the case of a*  
20           *space program) for such program before entering*  
21           *into a new contract, exercising an option under*  
22           *an existing contract, or otherwise extending the*  
23           *scope of an existing contract under such pro-*  
24           *gram; and”.*

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

6 **SEC. 205. ORGANIZATIONAL CONFLICTS OF INTEREST IN**  
7                           **THE ACQUISITION OF MAJOR WEAPON SYS-**  
8                           **TEMS.**

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

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

18                   (1) *ensure that the Department of Defense re-*  
19 *ceives advice on systems architecture and systems en-*  
20 *gineering matters with respect to major weapon sys-*  
21 *tems from federally funded research and development*  
22 *centers or other sources independent of the prime con-*  
23 *tractor;*

24                   (2) *require that a contract for the performance*  
25 *of systems engineering and technical assistance*

1        *(SETA) functions with regard to a major weapon*  
2        *system contains a provision prohibiting the con-*  
3        *tractor or any affiliate of the contractor from having*  
4        *a direct financial interest in the development or con-*  
5        *struction of the weapon system or any component*  
6        *thereof;*

7            *(3) provide for an exception to the requirement*  
8        *in paragraph (2) for an affiliate that is separated*  
9        *from the contractor by structural mechanisms, ap-*  
10       *proved by the Secretary of Defense, that are similar*  
11       *to those required under rules governing foreign owner-*  
12       *ship, control, or influence over United States compa-*  
13       *nies that have access to classified information, includ-*  
14       *ing, at a minimum—*

15            *(A) establishment of the affiliate as a sepa-*  
16        *rate business entity, geographically separated*  
17        *from related entities, with its own employees and*  
18        *management and restrictions on transfers for*  
19        *personnel;*

20            *(B) a governing board for the affiliate that*  
21        *has organizational separation from related enti-*  
22        *ties and governance procedures that require the*  
23        *board to act solely in the interest of the affiliate,*  
24        *without regard to the interests of related entities,*  
25        *except in specified circumstances;*

1           (C) complete informational separation, in-  
2           cluding the execution of non-disclosure agree-  
3           ments;

4           (D) initial and recurring training on orga-  
5           nizational conflicts of interest and protections  
6           against organizational conflicts of interest; and

7           (E) annual compliance audits in which De-  
8           partment of Defense personnel are authorized to  
9           participate;

10          (4) prohibit the use of the exception in para-  
11          graph (3) for any category of systems engineering and  
12          technical assistance functions (including, but not lim-  
13          ited to, advice on source selection matters) for which  
14          the potential for an organizational conflict of interest  
15          or the appearance of an organizational conflict of in-  
16          terest makes mitigation in accordance with that para-  
17          graph an inappropriate approach;

18          (5) authorize waiver of the requirement in para-  
19          graph (2) in cases in which the agency head deter-  
20          mines in writing that—

21               (A) the financial interest of the contractor  
22               or its affiliate in the development or construction  
23               of the weapon system is not substantial and does  
24               not include a prime contract, a first-tier sub-  
25               contract, or a joint venture or similar relation-



1           *ship with a prime contractor or first-tier subcon-*  
2           *tractor; or*

3                   *(B) the contractor—*

4                           *(i) has unique systems engineering ca-*  
5                           *pabilities that are not available from other*  
6                           *sources;*

7                           *(ii) has taken appropriate actions to*  
8                           *mitigate any organizational conflict of in-*  
9                           *terest; and*

10                           *(iii) has made a binding commitment*  
11                           *to comply with the requirement in para-*  
12                           *graph (2) by not later than January 1,*  
13                           *2011; and*

14           *(6) provide for fair and objective “make-buy” de-*  
15           *cisions by the prime contractor on a major weapon*  
16           *system by—*

17                           *(A) requiring prime contractors to give full*  
18                           *and fair consideration to qualified sources other*  
19                           *than the prime contractor for the development or*  
20                           *construction of major subsystems and compo-*  
21                           *nents of the weapon system;*

22                           *(B) providing for government oversight of*  
23                           *the process by which prime contractors consider*  
24                           *such sources and determine whether to conduct*

1           *such development or construction in-house or*  
2           *through a subcontract;*

3           (C) *authorizing program managers to dis-*  
4           *approve the determination by a prime contractor*  
5           *to conduct development or construction in-house*  
6           *rather than through a subcontract in cases in*  
7           *which—*

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

11                   (ii) *implementation of the determina-*  
12                  *tion by the prime contractor is likely to un-*  
13                  *dermine future competition or the defense*  
14                  *industrial base; and*

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

18           (c) *ORGANIZATIONAL CONFLICT OF INTEREST REVIEW*  
19           *BOARD.—*

20                   (1) *ESTABLISHMENT REQUIRED.—Not later than*  
21           *90 days after the date of the enactment of this Act,*  
22           *the Secretary of Defense shall establish within the De-*  
23           *partment of Defense a board to be known as the “Or-*  
24           *ganizational Conflict of Interest Review Board”.*

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

3                   (A) *To advise the Under Secretary of De-*  
4 *fense for Acquisition, Technology, and Logistics*  
5 *on policies relating to organizational conflicts of*  
6 *interest in the acquisition of major weapon sys-*  
7 *tems.*

8                   (B) *To advise program managers on steps*  
9 *to comply with the requirements of the revised*  
10 *regulations required by this section and to ad-*  
11 *dress organizational conflicts of interest in the*  
12 *acquisition of major weapon systems.*

13                   (C) *To advise appropriate officials of the*  
14 *Department on organizational conflicts of inter-*  
15 *est arising in proposed mergers of defense con-*  
16 *tractors.*

17           (d) *MAJOR WEAPON SYSTEM DEFINED.*—*In this sec-*  
18 *tion, the term “major weapon system” has the meaning*  
19 *given that term in section 2379(d) of title 10, United States*  
20 *Code.*

21 **SEC. 206. AWARDS FOR DEPARTMENT OF DEFENSE PER-**  
22 **SONNEL FOR EXCELLENCE IN THE ACQUISI-**  
23 **TION OF PRODUCTS AND SERVICES.**

24           (a) *IN GENERAL.*—*Not later than 180 days after the*  
25 *date of the enactment of this Act, the Secretary of Defense*

1 *shall commence carrying out a program to recognize excel-*  
2 *lent performance by individuals and teams of members of*  
3 *the Armed Forces and civilian personnel of the Department*  
4 *of Defense in the acquisition of products and services for*  
5 *the Department of Defense.*

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

8 (1) *Procedures for the nomination by the per-*  
9 *sonnel of the military departments and the Defense*  
10 *Agencies of individuals and teams of members of the*  
11 *Armed Forces and civilian personnel of the Depart-*  
12 *ment of Defense for eligibility for recognition under*  
13 *the program.*

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

20 (c) *AWARD OF CASH BONUSES.*—*As part of the pro-*  
21 *gram required by subsection (a), the Secretary may award*  
22 *to any individual recognized pursuant to the program a*  
23 *cash bonus authorized by any other provision of law to the*  
24 *extent that the performance of such individual so recognized*

- 1 *warrants the award of such bonus under such provision of*
- 2 *law.*

**Calendar No. 45**

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 454**

**A BILL**

To improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes.

APRIL 2, 2009

Reported with an amendment