AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

108TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
108–56

DEFENSE PRODUCTION ACT REAUTHORIZATION OF 2003

APRIL 2, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. OXLEY, from the Committee on Financial Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1280]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1280) to reauthorize the Defense Production Act of 1950, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment	1
Purpose and Summary	2
Background and Need for Legislation	2
Hearings	3
Committee Consideration	4
Committee Votes	4
Committee Oversight Findings	6
Performance Goals and Objectives	6
New Budget Authority, Entitlement Authority, and Tax Expenditures	7
Committee Cost Estimate	7
Congressional Budget Office Cost Estimate	7
Federal Mandates Statement	8
Advisory Committee Statement	9
Constitutional Authority Statement	9
Applicability to Legislative Branch	9
Section-by-Section Analysis	9
Changes in Existing Law Made by the Bill, as Reported	10
Dissenting Views	12

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Defense Production Act Reauthorization of 2003".

SEC. 2. REAUTHORIZATION OF DEFENSE PRODUCTION ACT OF 1950.

(a) IN GENERAL.—The 1st sentence of section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended—

(1) by striking "sections 708" and inserting "sections 707, 708,"; and

(2) by striking "September 30, 2003" and inserting "September 30, 2007".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 711(b) of the Defense Production Act of 1950 (50 U.S.C. App. 2161(b)) is amended by striking "1996 through 2003" and inserting "2004 through 2007".

SEC. 3. RESOURCE SHORTFALL FOR RADIATION-HARDENED ELECTRONICS.

Notwithstanding the limitation contained in section 303(a)(6)(C) of the Defense Production Act of 1950 (50 U.S.C. App. 2093(a)(6)(C)), the President is authorized to take actions under section 303 of the Defense Production Act of 1950 to correct the industrial resource shortfall for radiation-hardened electronics, to the extent that such Presidential actions do not cause the aggregate outstanding amount of all such actions to exceed $200,000,000.

SEC. 4. CLARIFICATION OF PRESIDENTIAL AUTHORITY.

Subsection (a) of section 705 of the Defense Production Act of 1950 (50 U.S.C. App. 2155(a)) is amended by inserting after the end of the 1st sentence the following new sentence: "The authority of the President under this section includes the authority to obtain information in order to perform industry studies assessing the capabilities of the United States industrial base to support the national defense.".

SEC. 5. REPORT ON CONTRACTING WITH MINORITY- AND WOMEN-OWNED BUSINESSES.

(a) REPORT REQUIRED.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Secretary of Defense shall submit a report to the Committee on Financial Services of the House of Representatives on the extent to which contracts entered into during the fiscal year ending before the end of such 1-year period under the Defense Production Act of 1950 have been contracts with minority- and women-owned businesses.

(b) CONTENTS OF REPORTS.—The report submitted under subsection (a) shall include the following:

(1) The types of goods and services obtained under contracts with minority- and women-owned businesses under the Defense Production Act of 1950 in the fiscal year covered in the report.

(2) The dollar amounts of such contracts.

(3) The ethnicity of the majority owners of such minority- and women-owned businesses.

(4) A description of the types of barriers in the contracting process, such as requirements for security clearances, that limit contracting opportunities for minority- and women-owned businesses, together with such recommendations for legislative or administrative action as the Secretary of Defense may determine to be appropriate for increasing opportunities for contracting with minority- and women-owned businesses and removing barriers to such increased participation.

(c) DEFINITIONS.—For purposes of this section, the terms "women-owned business" and "minority-owned business" have the meanings given such terms in section 21A(r) of the Federal Home Loan Bank Act, and the term "minority" has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

PURPOSE AND SUMMARY

H.R. 1280, the Defense Production Act Reauthorization of 2003, reauthorizes the Defense Production Act of 1950 for 4 years, until September 30, 2007, and makes 3 minor technical amendments to the underlying legislation.

BACKGROUND AND NEED FOR LEGISLATION

The Defense Production Act of 1950 allows the Government to prioritize deliveries of materials needed for national defense or in

the case of natural or man-made disaster, and allows the use of financial incentives to create defense-related production capacity where none exists. Unlike most defense-related legislation, the authorities under this legislation address the means of production and manufacturing, a great power with dire consequences for the economy if it is misused. For the same reason, the Act is not a permanent authority but requires regular re-authorization. This legislation reauthorizes the underlying Act for a period of four years; the Committee intends to study whether any changes need to be made to the underlying Act, to modernize it, outside of the authorization cycle.

The most regular users of the Act, however, asked that three minor changes be made to the Act to improve its usefulness immediately: The act imposes a per-project cap of $50 million for efforts to create defense production capacity, and a project to develop such capacity for radiation-hardened electronics—already authorized to about $100 million by previous act of Congress—will likely run to $167, according to the Defense Department, which has asked for a $200 million cap in case that amount is somewhat low. Separately, section 708 of the Act indemnifies persons for acts they take in complying with the Act's authorities. The Defense Department requested that this section be made permanent, pointing to a period during the Gulf War a decade ago in which the Act temporarily expired. In that instance, commercial airlines were providing troop transportation on commercial aircraft, displacing previous contracts for performance. The airlines could have incurred liability during the period in which the Act was unauthorized as its powers provided the backing for the airlines' actions.

Finally, while section 705 of the Act provides that the President's investigatory authority—delegated to the Department of Commerce—may be exercised where "necessary or appropriate to the enforcement or administration of the [DPA] and the regulations or orders issued thereunder," the provision does not specifically reference studies conducted pursuant to section 401(4) of Executive Order 12656. However, Executive Order 12656 specifically authorizes the Secretary of Commerce to perform industry analyses to assess capabilities of the commercial industrial base to support the national defense under the authority of the DPA. This legislation clarifies the President's investigative authority in this instance.

HEARINGS

The Subcommittee on Domestic and International Monetary Policy, Trade and Technology held a hearing on March 19, 2003, on H.R. 1280, the Defense Production Act Reauthorization of 2003. The following witnesses testified: Ms. Suzanne D. Patrick, Deputy Undersecretary for Defense and Industrial Policy, Department of Defense; Dr. Ronald M. Sega, Director of Defense Research and Engineering, Department of Defense; Ms. Karan K. Bhatia, Deputy Under Secretary for Industry and Security, Department of Commerce; and Mr. R. David Poulison, Director of the Preparedness Division, Department of Homeland Security.

COMMITTEE CONSIDERATION

The Subcommittee on Domestic and International Monetary Policy met in open session on March 19, 2003, and approved H.R. 1280 for full Committee consideration, as amended.

The Committee on Financial Services met in open session on March 26, 2003, and ordered H.R. 1280 reported to the House with a favorable recommendation, with an amendment.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Oxley to report the bill to the House with a favorable recommendation was agreed to by a voice vote. The following amendments were considered by record votes:

An amendment by Ms. Waters, no. 2, preventing conflicts of interest for contracts under the Defense Production Act, was not agreed to by a record vote of 14 yeas and 41 nays (Record vote no. FC–5).

Record vote no. FC–5

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Oxley		X		Mr. Frank (MA)	X		
Mr. Leach		X		Mr. Kanjorski			
Mr. Bereuter				Ms. Waters	X		
Mr. Baker		X		Mr. Sanders*	X		
Mr. Bachus		X		Mrs. Maloney		X	
Mr. Castle				Mr. Gutierrez			
Mr. King		X		Ms. Velázquez	X		
Mr. Royce		X		Mr. Watt	X		
Mr. Lucas (OK)		X		Mr. Ackerman		X	
Mr. Ney				Ms. Hooley (OR)	X		
Mrs. Kelly		X		Ms. Carson (IN)	X		
Mr. Paul	X			Mr. Sherman		X	
Mr. Gillmor		X		Mr. Meeks (NY)	X		
Mr. Ryun (KS)				Ms. Lee	X		
Mr. LaTourette		X		Mr. Inslee			
Mr. Manzullo		X		Mr. Moore		X	
Mr. Jones (NC)		X		Mr. Gonzalez		X	
Mr. Ose		X		Mr. Capuano		X	
Mrs. Biggert				Mr. Ford		X	
Mr. Green (WI)				Mr. Hinojosa			
Mr. Toomey		X		Mr. Lucas (KY)		X	
Mr. Shays		X		Mr. Crowley		X	
Mr. Shadegg				Mr. Clay			
Mr. Fossella		X		Mr. Israel		X	
Mr. Gary G. Miller (CA)				Mr. Ross		X	
Ms. Hart		X		Mrs. McCarthy (NY)		X	
Mrs. Capito		X		Mr. Baca	X		
Mr. Tiberi		X		Mr. Matheson		X	
Mr. Kennedy (MN)		X		Mr. Lynch			
Mr. Feeney		X		Mr. Miller (NC)		X	
Mr. Hensarling		X		Mr. Emanuel	X		
Mr. Garrett (NJ)		X		Mr. Scott (GA)	X		
Mr. Murphy		X		Mr. Davis (AL)	X		
Ms. Ginny Brown-Waite (FL)		X					
Mr. Barrett (SC)		X					
Ms. Harris							
Mr. Renzi		X					

*Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

An amendment by Ms. Waters (as modified by unanimous consent), no. 4, requiring certain officials to recuse themselves, was not agreed to by a record vote of 32 yeas and 35 nays (Record vote no. FC–6).

Record vote no. FC–6

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Oxley		X		Mr. Frank (MA)	X		
Mr. Leach		X		Mr. Kanjorski	X		
Mr. Bereuter		X		Ms. Waters	X		
Mr. Baker		X		Mr. Sanders*	X		
Mr. Bachus		X		Mrs. Maloney	X		
Mr. Castle		X		Mr. Gutierrez			
Mr. King		X		Ms. Velázquez	X		
Mr. Royce		X		Mr. Watt	X		
Mr. Lucas (OK)		X		Mr. Ackerman	X		
Mr. Ney		X		Ms. Hooley (OR)	X		
Mrs. Kelly		X		Ms. Carson (IN)	X		
Mr. Paul	X			Mr. Sherman	X		
Mr. Gillmor		X		Mr. Meeks (NY)	X		
Mr. Ryun (KS)		X		Ms. Lee	X		
Mr. LaTourette		X		Mr. Inslee	X		
Mr. Manzullo		X		Mr. Moore	X		
Mr. Jones (NC)		X		Mr. Gonzalez	X		
Mr. Ose		X		Mr. Capuano	X		
Mrs. Biggert		X		Mr. Ford	X		
Mr. Green (WI)		X		Mr. Hinojosa	X		
Mr. Toomey		X		Mr. Lucas (KY)		X	
Mr. Shays		X		Mr. Crowley	X		
Mr. Shadegg		X		Mr. Clay	X		
Mr. Fossella		X		Mr. Israel	X		
Mr. Gary G. Miller (CA)		X		Mr. Ross	X		
Ms. Hart		X		Mrs. McCarthy (NY)	X		
Mrs. Capito		X		Mr. Baca	X		
Mr. Tiberi		X		Mr. Matheson	X		
Mr. Kennedy (MN)		X		Mr. Lynch			
Mr. Feeney		X		Mr. Miller (NC)	X		
Mr. Hensarling		X		Mr. Emanuel	X		
Mr. Garrett (NJ)		X		Mr. Scott (GA)	X		
Mr. Murphy		X		Mr. Davis (AL)	X		
Ms. Ginny Brown-Waite (FL)	X						
Mr. Barrett (SC)		X					
Ms. Harris							
Mr. Renzi		X					

*Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

An amendment by Ms. Waters (as modified by unanimous consent), no. 7, prohibiting the use of contracting authority under the Defense Production Act for the production of chemical and biological weapons, was NOT AGREED TO by a record vote of 23 yeas and 43 nays (Record vote no. FC–7).

Record vote no. FC-7

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Oxley		X		Mr. Frank (MA)	X		
Mr. Leach		X		Mr. Kanjorski	X		
Mr. Bereuter		X		Ms. Waters	X		
Mr. Baker		X		Mr. Sanders*	X		
Mr. Bachus		X		Mrs. Maloney	X		
Mr. Castle		X		Mr. Gutierrez			
Mr. King		X		Ms. Velázquez	X		

Record vote no. FC-7—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Royce		X		Mr. Watt	X		
Mr. Lucas (OK)		X		Mr. Ackerman	X		
Mr. Ney		X		Ms. Hooley (OR)		X	
Mrs. Kelly		X		Ms. Carson (IN)	X		
Mr. Paul		X		Mr. Sherman			
Mr. Gillmor		X		Mr. Meeks (NY)	X		
Mr. Ryun (KS)		X		Ms. Lee	X		
Mr. LaTourette		X		Mr. Inslee	X		
Mr. Manzullo		X		Mr. Moore	X		
Mr. Jones (NC)		X		Mr. Gonzalez		X	
Mr. Ose		X		Mr. Capuano	X		
Mrs. Biggert		X		Mr. Ford	X		
Mr. Green (WI)		X		Mr. Hinojosa		X	
Mr. Toomey		X		Mr. Lucas (KY)		X	
Mr. Shays		X		Mr. Crowley	X		
Mr. Shadegg		X		Mr. Clay	X		
Mr. Fossella		X		Mr. Israel	X		
Mr. Gary G. Miller (CA)		X		Mr. Ross		X	
Ms. Hart		X		Mrs. McCarthy (NY)	X		
Mrs. Capito		X		Mr. Baca	X		
Mr. Tiberi		X		Mr. Matheson		X	
Mr. Kennedy (MN)		X		Mr. Lynch			
Mr. Feeney		X		Mr. Miller (NC)	X		
Mr. Hensarling		X		Mr. Emanuel		X	
Mr. Garrett (NJ)		X		Mr. Scott (GA)		X	
Mr. Murphy		X		Mr. Davis (AL)	X		
Ms. Ginny Brown-Waite (FL)		X					
Mr. Barrett (SC)		X					
Ms. Harris							
Mr. Renzi		X					

*Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

The following amendments were also considered:

An amendment by Ms. Waters, no. 1, preventing conflict of interest for all contracts, was ruled nongermane by the Chair.

An amendment by Mr. Paul, no. 3, restricting the use of title III authority only to military and military purposes, was not agreed to by a voice vote.

An amendment by Mr. Meeks, no. 5, requiring the Secretary of Defense to submit a report to the Financial Services Committee on the extent to which contracts under the DPA have been with minority and women owned businesses, was agreed to by a voice vote.

An amendment by Ms. Waters, no. 6, of chemical and biological weapons, was ruled nongermane by the Chair.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The Executive Branch agencies delegated authorities of the Act will exercise them judiciously, providing appropriate materials for national security at home and abroad while minimizing effects on the economy that might result from market distortions.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 28, 2003.

Hon. MICHAEL G. OXLEY,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1280, the Defense Production Act Reauthorization of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are David Newman (for federal costs) and Adam Talaber (for the private-sector impact).

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 1280—Defense Production Act Reauthorization of 2003

H.R. 1280 would extend the authorities of the Defense Production Act of 1950 (DPA) for an additional four years through September 30, 2007, and would authorize all necessary appropriations for that period. The DPA provides the President the authority to require preferential performance on contracts and orders to meet approved national defense requirements; and to allocate materials, services and facilities as necessary to promote the national defense in a major national emergency (Title I); authorizes loan guarantees, direct loans, direct purchases, and purchase guarantees for those goods necessary for national defense (Title III); and allows the President to void international mergers that would adversely affect national security (Title VII). These authorities are set to expire on

September 30, 2003. CBO estimates that implementing H.R. 1280 would cost about $110 million over the 2004–2008 period, assuming appropriation of the necessary amounts. The bill would not affect direct spending or receipts.

The bill would authorize the appropriation of such sums as necessary for purchases and purchase guarantees under title III to correct for shortfalls in domestic industrial capacity. Although the DPA gives the Department of Defense (DoD) the authority to make direct loans and loan guarantees, under an agreement with the Office of Management and Budget, DoD does not use those authorities.

In recent years, DoD has used the authority to purchase equipment that it furnishes to contractors for manufacturing radiation-hardened microprocessors. Section 3 of this bill would increase the limit on total obligations for this purpose from $50 million to $200 million, permitting the expenditure of funds requested by the President for fiscal year 2004. A significant portion of spending for this purpose, however, will come from funds already appropriated for fiscal year 2003. Thus, the estimated costs for implementing H.R. 1280 include only the additional outlays that would come from future appropriations.

Appropriations for purchase and purchase guarantees under the DPA have averaged about $23 million a year over the 1992–2003 period, ranging from $100 million in 1994 to $3 million in 2001. (A purchase guarantee is a commitment to buy a specified quantity of defense goods if the contractor cannot sell it elsewhere). No money was appropriated for this purpose in 1992, 1993, or over the 1996–1999 period. More recently, the Congress appropriated $40 million in 2002 and $72 million in 2003 for these purposes. The Administration has requested an appropriation of $68 million for 2004. Because of the sharp variations in annual funding, specific yearly amounts for the indefinite authorization are difficult to project.

Based on information from DoD and the historical average over the past 10 years, CBO estimates that extending the authorization would require about $140 million in appropriations for the four-year period covered by the bill. Based on historical spending patterns, CBO estimates outlays from that funding would total $110 million over the 2004–2008 period.

To date, no funds have been appropriated for other provisions of the DPA. As a result, CBO has no basis for estimating any additional costs that could be triggered by extending its authorization for three more years.

Section 4 of the Unfunded Mandates Reform Act excludes from the application of that act any legislative provisions that are necessary for the national security. CBO has determined that the provisions of the DPA would fall under that exclusion.

The CBO staff contacts are David Newman (for federal costs) and Adam Talaber (for the private-sector impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the defense and general welfare of the United States), and clause 3 (relating to the power to regulate foreign and interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section establishes the short title of the bill, the "Defense Production Act Reauthorization of 2003."

Section 2. Reauthorization of Defense Production Act of 1950

This section extends authorization of the act for 4 years, to September 30, 2007. It also makes permanent section 708 of the Act which provides that no person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with a rule, regulation, or order issued pursuant to the DPA.

Section 3. Resource shortfall for radiation-hardened electronics

This section lifts the $50 million per-project cap for activities taken under section 303 of the Act, to $200 million for a single project, involving radiation-hardened electronics.

Section 4. Clarification of Presidential authority

This section amends section 705 of the Act to clarify Presidential authority to assess the capacity of the national defense industrial base.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

DEFENSE PRODUCTION ACT OF 1950

* * * * * * *

TITLE VII—GENERAL PROVISIONS

* * * * * * *

SEC. 705. (a) The President shall be entitled, while this Act is in effect and for a period of two years thereafter, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this Act and the regulations or orders issued thereunder. *The authority of the President under this section includes the authority to obtain information in order to perform industry studies assessing the capabilities of the United States industrial base to support the national defense.* The President shall issue regulations insuring that the authority of this subsection will be utilized only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority, and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency. In case of contumacy by, or refusal to obey a subpoena served upon, any person referred to in this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the President, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

* * * * * * *

SEC. 711. (a) * * *

(b) TITLE III AUTHORIZATION.—There are authorized to be appropriated for each of fiscal years [1996 through 2003] *2004 through 2007*, such sums as may be necessary to carry out title III.

* * * * * * *

SEC. 717. (a) Title I (except section 104), title III, and title VII (except sections [708] *707, 708,* and 721), and all authority conferred thereunder, shall terminate at the close of September 30, [2003] *2007*: *Provided,* That all authority hereby or hereafter extended under title III of this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts. Section 714 of this Act, and all authority conferred thereunder, shall terminate at the close of July 31, 1953. Section 104, title II, and title VI of this Act, and all authority conferred thereunder shall terminate at the close of June 30, 1953. Title IV and V of this Act, and all authority conferred thereunder, shall terminate at the close of April 30, 1953.

* * * * * * *

DISSENTING VIEWS

No one questions the need for the Federal Government to obtain the necessary resources to fulfill its constitutional role of providing for the common defense. However, the Federal government must fulfill this duty in a manner that does not conflict in any way with the Constitution or endanger republican government. The Defense Production Reauthorization Act (DPA), which gives almost unchecked power to the executive to interfere in the economy in the name of "national security," fails both of these standards. In fact, when I inquired at the sole hearing held on this bill as to which section of the Constitution authorized such sweeping grants of power to the Executive, I was greeted by silence from the "expert" witnesses!

Under this bill, the President is given authority to void private contracts in order to ensure that federal defense priorities, as determined by the executive, are met. The only limitation on the President's judgment is a requirement that he submit a series of "findings" to Congress. The Executive also has what appears to be unchecked authority to use financial incentives such as loan guarantees, direct loans, and purchase guarantees to ensure production of items he determines are in the national interest.

Congress appears to have no ability to perform any real oversight of a Presidential action under the DPA. In fact, my office has been informed by the Congressional Research Service that past Presidents may have invoked the DPA without even submitting the required findings to Congress!

The wide grant of unchecked power to the Executive runs counter to the intent of the drafters of the Constitution. The Founders carefully limited the executive power because they recognized that an executive with unfettered power was a threat to liberty.

In recent years we have seen administrations of both parties undermine the Constitutional separation of powers via enhanced reliance on executive orders and unilateral decision-making. The Defense Production Reauthorization Act provides Congressional blessing to this usurpation of power, and not just in areas clearly related to national defense. For example, the DPA has been used to justify Federal interference in the energy market. It is an open question what other exercise of federal power could be justified as related to defense. For example, federal education programs have been justified on the grounds that an educated population is vital to national defense, so perhaps a future president will use DPA to impose a national curriculum! At the least, it has been confirmed that the DPA will be invoked to reduce Congress' role in overseeing the use of taxpayer dollars in the reconstruction of Iraq.

I am also concerned that this bill violates the Fifth Amendment's takings clause. In particular, DPA allows the government to seize

private property by interfering with the performance of private contracts in order to give a greater priority to military production. This action reduces the value of the affected parties' proprietary interests, and thus is a taking, requiring the government to provide just compensation to the affected party. The Fifth Amendment intends to assure that the government does not unfairly burden one group of citizens in carrying out its constitutional functions. By not providing for just compensation, DPA allows the executive to unfairly burden one group of citizens for costs that the Constitution requires be shared among the entire population.

In conclusion, the Defense Production Act gives the executive unchecked power to meddle in the economy, flying the face of the original constitutional structure and endangering the very liberty it claims to protect. Therefore, I must oppose this bill.

RON PAUL.

○