

Calendar No. 294

108TH CONGRESS }
1st Session }

SENATE

{ REPORT
108–156

DEFENSE PRODUCTION REAUTHORIZATION ACT OF 2003

SEPTEMBER 30 (legislative day, SEPTEMBER 29), 2003.—Ordered to be printed

Mr. SHELBY, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

R E P O R T

[To accompany S. 1680]

The Committee on Banking, Housing, and Urban Affairs, having had under consideration an original bill to reauthorize the Defense Production Act of 1950, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

I. PURPOSE

The Defense Production Reauthorization Act of 2003 reauthorizes the Defense Production Act of 1950 for five years, until September 30, 2008, and amends the Defense Production Act of 1950 by incorporating into its text increased emphasis on the threat to U.S. national and economic security from terrorism. In addition, the bill makes explicit authority to use the Defense Production Act to protect critical infrastructure. Finally, the reauthorizing legislation clarifies the authority of the Executive Branch to collect information required to provide assessments of the nation's industrial base for national defense.

II. BACKGROUND AND DESCRIPTION OF BILL

The Defense Production Act of 1950 authorizes the President to prioritize and allocate contracts with private industry for the purpose of promoting the national defense. In addition to the Act's authorities for prioritizing and allocating federal contracts, it also provides the Government the legal authority to guarantee financing for the recapitalization of private industry consistent with national security requirements. Over the years, the Act's authorities have been expanded to include crises resulting from natural disas-

ters and from man-caused events not necessarily related to or categorized as an armed attack on the United States. Most notably, in 1994, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (hereafter, The Stafford Act) was formally incorporated into the Defense Production Act of 1950, thereby ensuring that the underlying legal authorities would be available for crises other than direct military threats to the United States.

Since the terrorist attacks on U.S. embassies in East Africa in 1998, the October 2000 attack on the USS *Cole* in the port of Aden, and the September 11, 2001, attacks on the World Trade Center and the Pentagon, there has been increased emphasis in U.S. national security planning on the threat of continued terrorist attacks. Because terrorists seek out vulnerabilities in their intended victims when planning to strike, there has been increasing focus on the vulnerability of this nation's telecommunications systems, financial and banking networks, transportation systems, power grids, food and water supplies, and other elements of what is referred to as the nation's critical infrastructure.

During a June 5, 2003, public hearing held by the Committee on Banking, Housing, and Urban Affairs, witnesses from the Administration testified that, in the view of the departments they represented, the Defense Production Act's authorities do apply to critical infrastructure protection and restoration. In response to a question as to whether the authorities of the Defense Production Act can be used to protect critical infrastructures, R. David Paulison, Director, Emergency Preparedness Division, U.S. Department of Homeland Security, stated: "That is our understanding. It can be either civil or military. The Department of Defense uses it for military, and I think the other agencies here would use it for civil emergencies or disasters within the United States."

The Committee agreed with the view expressed by Mr. Paulison and other Administration witnesses and believed it important to make this authority explicit in the statute. In reaching this judgment, the Committee consulted the 1997 recommendations of the President's Commission on Critical Infrastructure Protection as well as the analysis contained in the President's Report to Congress on Modernization of the Authorities of the Defense Production Act, also from 1997. The former, in its comprehensive look at statutory and organizational changes it deemed important for the future protection of the nation's critical infrastructure recommended the following:

Congress could consider amending the DPA [Defense Production Act] Declaration of Policy to include a finding of how critical infrastructures are essential to national security.

The latter report, mandated by Congress, stated that, since the 1994 inclusion of the Stafford Act:

Consequently, DPA authorities are available for meeting requirements in a civil disaster—such as a catastrophic earthquake or a terrorist attack [Emphasis added]

The Report to Congress stated that "further amendments are required to have the declaration of policy conform with evolving national defense policies." Combined with the conclusion of the Com-

mission on Critical Infrastructure Protection, the Committee was convinced that amendments to the Defense Production Act were warranted. For this reason, the accompanying legislation amends the Findings and Declaration of Policy consistent with Committee concerns regarding critical infrastructure protection.

During consideration of the bill, the Committee accepted by voice vote an amendment by Senator Bennett of Utah to change the definition of "national defense" in the Defense Production Act to include the phrase "critical infrastructure protection and restoration." The Committee accepted the Senator's argument that this change was needed to ensure the Defense Production Act authorities are available for use in preparing for and responding to attacks on the nation's critical infrastructure. In addition, a definition of "critical infrastructure" is added to the Act's text.

Under the terms of the Defense Production Act (Section 303(a)(6)(C)/50 USC 2093(a)(6)(C)), there is a maximum of \$50 million that can be allocated for individual programs. The Department of Defense has an ongoing program to recapitalize the nation's industrial base for radiation-hardened electronics. The fiscal year 2003 National Defense Authorization Act provided the department authority to allocate up to \$106,000,000. In its budget request for fiscal year 2004, the Department of Defense requested additional budget authority, up to an aggregate total of \$200,000,000, to complete the program. The Committee agrees that the additional funding is warranted and the accompanying legislation provides the requested budget authority.

While the Committee agrees that additional funding is needed to recapitalize the nation's industrial base for base for radiation-hardened electronics, it is concerned regarding the Department of Defense's assessment of the state of the industrial base for these components. The department briefed Committee staff that two companies exist with the requisite capabilities. The Committee believes there may be more companies that possess the requisite capabilities, based upon a review of the Defense Department's recent history of awarding contracts for radiation-hardened electronic components. For this reason, the bill includes a requirement that the department report within six months of passage of the Defense Production Act of 2003 on its findings regarding that industrial base.

The Department of Defense also requested that Section 707 of the Defense Production Act, which indemnifies contractors against damages or penalties resulting from lawsuits filed as a result of the contractors' compliance with U.S. Government directives issued under Defense Production Act authorities, be made permanent. The Department justifies this request on the basis of its experiences when Civil Reserve Air Fleet carriers were exposed to potential liability from commercial customers after they were mobilized in support of Operations Desert Shield and Desert Storm despite the expiration of appropriate legal authorities. The Committee agrees that Section 707 should be made permanent. The Department of Commerce requested that a provision be added to the bill clarifying its authority to conduct investigations for the purpose of obtaining information necessary to conduct assessments on the capabilities of the United States industrial base to support national defense. Under Section 705 of the Defense Production Act, the department is provided authority to obtain information relative to the state of

the defense industrial base. Additionally, Executive Order 12656 requires the Secretary of Commerce “to perform industry analyses to assess capabilities of the commercial industrial base to support the national defense . . .” The department believes that the clarification it requested will remove any ambiguity regarding its authority to conduct industry studies as required. The Committee agrees that the requested amendment to Section 705 is warranted.

III. HEARINGS

The Committee on Banking, Housing, Urban Affairs held a public hearing on reauthorization of the Defense Production Act on June 5, 2003. The following witnesses testified: Mr. Ronald Sega, Director, Office of Defense Research and Engineering, Department of Defense; Ms. Suzanne Patrick, Deputy Under Secretary of Defense for Industrial Policy, Department of Defense; Mr. Karan Bhatia, Deputy Under Secretary of Commerce for Industry and Security, Department of Commerce; Mr. R. David Paulison, Director, Preparedness, Emergency and Response Directorate, Department of Homeland Security; and Ms. Denise Swink, Acting Director for Energy Assurance, Department of Energy.

IV. COMMITTEE CONSIDERATION

The Committee on Banking, Housing, and Urban Affairs met in open session on September 23, 2003, and ordered the bill reported, as amended.

V. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Section 11(b) of rule XXVI of the Standing Rules of the Senate, and Section 403 of the Congressional Budget Impoundment and Control Act, require that each committee report on a bill contain a statement estimating the cost of the proposed legislation. The Congressional Budget Office has provided the following cost estimate and estimate of costs of private-sector mandates.

VI. REGULATORY IMPACT STATEMENT

Because the legislation reauthorizes existing statutes, while providing no new authorities, the Committee has determined that a report on the regulatory impact of the legislation is not warranted. Further, because the existing statutes expire on September 30, 2003, the Committee believes that the requirement for their uninterrupted reauthorization supercedes the benefit of any analysis that would otherwise be performed pursuant to rule XXVI(b), were such analysis deemed warranted.