

him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3436. Mr. MCCONNELL (for himself, Mr. BUNNING, Mr. BINGAMAN, Mr. GRASSLEY, Mrs. CLINTON, Mr. DOMENICI, Ms. CANTWELL, Mr. VOINOVICH, Mr. SCHUMER, Mr. ALEXANDER, Mr. KENNEDY, Mrs. MURRAY, Mr. DEWINE, and Mr. TALENT) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3437. Mr. MCCONNELL (for himself, Mr. BUNNING, Mr. BINGAMAN, Mr. GRASSLEY, Mrs. CLINTON, Mr. DOMENICI, Ms. CANTWELL, Mr. VOINOVICH, Mr. SCHUMER, Mr. ALEXANDER, Mr. KENNEDY, Ms. MURKOWSKI, Mrs. MURRAY, Mr. DEWINE, and Mr. TALENT) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3438. Mr. MCCONNELL (for himself, Mr. BUNNING, Mr. BINGAMAN, Mr. GRASSLEY, Mrs. CLINTON, Mr. DOMENICI, Ms. CANTWELL, Mr. VOINOVICH, Mr. SCHUMER, Mr. ALEXANDER, Mr. KENNEDY, Ms. MURKOWSKI, Mrs. MURRAY, Mr. DEWINE, and Mr. TALENT) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3439. Mr. FRIST submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3440. Mr. ENSIGN (for himself, Mr. GRAHAM, of South Carolina, and Mr. CHAMBLISS) submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3441. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3442. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3443. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3444. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3445. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3446. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

SA 3447. Mr. FRIST submitted an amendment intended to be proposed by him to the bill S. 2400, supra; which was ordered to lie on the table.

## TEXT OF AMENDMENTS

### PREVIOUSLY SUBMITTED

SA 3230. Ms. COLLINS (for herself, Mr. BAYH, Mr. ROBERTS, Mr. REED, Mr. DORGAN, and Mr. BIDEN) submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

### SEC. 313. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) CONTRACTS AUTHORIZED.—The Secretary of Defense may enter into an energy savings performance contract under this section for the sole purpose of achieving energy savings and benefits ancillary to that purpose. The Secretary may incur obligations under the contract to finance energy conservation measures so long as guaranteed savings exceed the debt service requirements.

#### (b) TERMS AND CONDITIONS.—

(1) CONTRACT PERIOD.—Notwithstanding any other provision of law, an energy savings performance contract may be for a period of up to 25 years beginning on the date on which the first payment is made by the Secretary pursuant to the contract. The contract need not include funding of cancellation charges (if any) before cancellation, if—

(A) the contract was awarded in a competitive manner, using procedures and methods established under this section;

(B) the Secretary determines that funds are available and adequate for payment of the costs of the contract for the first fiscal year;

(C) the contract is governed by part 17.1 of the Federal Acquisition Regulation; and

(D) if the contract contains a clause setting forth a cancellation ceiling in excess of \$10,000,000, the Secretary provides notice to Congress of the proposed contract and the proposed cancellation ceiling at least 30 days before the award of the contract.

(2) COSTS AND SAVINGS.—An energy savings performance contract shall require the contractor to incur the costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel, in exchange for a share of any energy savings directly resulting from implementation of such measures during the term of the contract.

(3) OTHER TERMS AND CONDITIONS.—An energy savings performance contract shall require an annual energy audit and specify the terms and conditions of any Government payments and performance guarantees. Any such performance guarantee shall provide that either the Government or the contractor is responsible for maintenance and repair services for any energy related equipment, including computer software systems.

(c) LIMITATION ON ANNUAL CONTRACT PAYMENTS.—Aggregate annual payments by the Secretary to a contractor for energy, operations, and maintenance under an energy savings performance contract may not exceed the amount that the Department of Defense would have paid for energy, operations, and maintenance in the absence of the contract (as estimated through the procedures developed pursuant to this section) during term of the contract. The contract shall provide for a guarantee of savings to the Department, and shall establish payment schedules reflecting such guarantee, taking into account any capital costs under the contract.

(d) RULEMAKING.—Not later than 90 days after the date of the enactment of this Act, the Secretary, with the concurrence of the Federal Acquisition Regulatory Council, shall issue final rules to establish the procedures and methods for use by the Department of Defense to select, monitor, and terminate energy savings performance contracts in accordance with laws governing Federal procurement that will achieve the intent of this section in a cost-effective manner. In developing such procedures and methods, the Secretary, with the concurrence of the Federal Acquisition Regulatory Council, shall determine which existing regulations are inconsistent with the intent of this sec-

tion and shall formulate substitute regulations consistent with laws governing Federal procurement.

(e) IMPLEMENTATION PROCEDURES AND METHODS.—The procedures and methods established by rule under subsection (d) shall—

(1) provide for the calculation of energy savings based on sound engineering and financial practices;

(2) allow the Secretary to request statements of qualifications, which shall, at a minimum, include prior experience and capabilities of contractors to perform the proposed types of energy savings services and financial and performance information from firms engaged in providing energy savings services;

(3) allow the Secretary to presume that a contractor meets the requirements of paragraph (2) if the contractor either—

(A) has carried out contracts with a value of at least \$1,000,000,000 with the Federal Government over the previous 10 years; or

(B) is listed by a Federal agency pursuant to section 801(b)(2) of the National Energy Policy Act (42 U.S.C. 8287(b)(2));

(4) allow the Secretary to, from the statements received, designate and prepare a list, with an update at least annually, of those firms that are qualified to provide energy savings services;

(5) allow the Secretary to select firms from such list to conduct discussions concerning a particular proposed energy savings project, including requesting a technical and price proposal from such selected firms for such project;

(6) allow the Secretary to select from such firms the most qualified firm to provide energy savings services based on technical and price proposals and any other relevant information;

(7) allow the Secretary to permit receipt of unsolicited proposals for energy savings performance contracting services from a firm that the Department of Defense has determined is qualified to provide such services under the procedures established pursuant to subsection (d) and require facility managers to place a notice in the Commerce Business Daily announcing they have received such a proposal and invite other similarly qualified firms to submit competing proposals;

(8) allow the Secretary to enter into an energy savings performance contract with a firm qualified under paragraph (7), consistent with the procedures and methods established pursuant to subsection (d); and

(9) allow a firm not designated as qualified to provide energy savings services under paragraph (4) to request a review of such decision to be conducted in accordance with procedures, substantially equivalent to procedures established under section 759(f) of title 40, United States Code, to be developed by the board of contract appeals of the General Services Administration.

(f) TRANSITION RULE FOR CERTAIN ENERGY SAVINGS PERFORMANCE CONTRACTS.—In the case of any energy savings performance contract entered into by the Secretary, or the Secretary of Energy, before October 1, 2003, for services to be provided at Department of Defense facilities, the Secretary may issue additional task orders pursuant to such contract and may make whatever contract modifications the parties to such contract agree are necessary to conform to the provisions of this section.

(g) PILOT PROGRAM FOR NONBUILDING APPLICATIONS.—

(1) IN GENERAL.—The Secretary may carry out a pilot program to enter into up to 10 energy savings performance contracts for the purpose of achieving energy savings, secondary savings, and benefits incidental to those purposes, in nonbuilding applications.

(2) **SELECTION.**—The Secretary shall select the contract projects to demonstrate the applicability and benefits of energy savings performance contracting to a range of non-building applications.

(3) **REPORT.**—Not later than three years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the progress and results of the pilot program. The report shall include a description of projects undertaken; the energy and cost savings, secondary savings and other benefits that resulted from such projects; and recommendations on whether the pilot program should be extended, expanded, or authorized.

(h) **DEFINITIONS.**—In this section:

(1) **ENERGY SAVINGS.**—The term “energy savings” means a reduction in the cost of energy, from a base cost established through a methodology set forth in the energy savings performance contract, utilized in an existing federally owned building or buildings or other federally owned facilities as a result of—

(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, increased capacity or payload, or technical services; or

(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities.

(2) **ENERGY SAVINGS PERFORMANCE CONTRACT.**—The term “energy savings performance contract” means a contract that provides for the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair of an identified energy conservation measure or series of measures at one or more locations. Such contracts—

(A) may provide for appropriate software licensing agreements; and

(B) shall, with respect to an agency facility that is a public building, as defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Accountability Act of 1959 (40 U.S.C. 606).

(3) **NONBUILDING APPLICATION.**—The term “nonbuilding application” means—

(A) any class of vehicles, devices, or equipment that is transportable under its own power by land, sea, or air that consumes energy from any fuel source for the purpose of such transportability, or to maintain a controlled environment within such vehicle, device, or equipment; or

(B) any Federally owned equipment used to generate electricity or transport water.

(4) **SECONDARY SAVINGS.**—The term “secondary savings” means additional energy or cost savings that are a direct consequence of the energy savings that result from the energy efficiency improvements that were financed and implemented pursuant to the energy savings performance contract. Such secondary savings may include energy and cost savings that result from a reduction in the need for fuel delivery and logistical support, personnel cost savings and environmental benefits. In the case of electric generation equipment, secondary savings may include the benefits of increased efficiency in the production of electricity, including revenue received by the Federal Government from the sale of electricity so produced.

(5) **SECRETARY.**—The term “Secretary” means the Secretary of Defense.

**SA 3265.** Ms. SNOWE (for herself, Mr. ALLEN, Mr. COLEMAN, and Mr. KERRY) submitted an amendment intended to be proposed by her to the bill S. 2400, to

authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 167, strike line 6 and all that follows through page 169, line 21, and insert the following:

(B) persons who are representative of labor organizations associated with the defense industry, and persons who are representative of small business concerns or organizations of small business concerns that are involved in Department of Defense contracting and other Federal Government contracting.

(3) The appointment of the members of the Commission under this subsection shall be made not later than March 1, 2005.

(4) Members shall be appointed for the life of the Commission. A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(5) The President shall designate one member of the Commission to serve as the Chairman of the Commission.

(c) **MEETINGS.**—(1) The Commission shall meet at the call of the Chairman.

(2) A majority of the members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(d) **DUTIES.**—(1) The Commission shall—

(A) study the issues associated with the future of the national technology and industrial base in the global economy, particularly with respect to its effect on United States national security; and

(B) assess the future ability of the national technology and industrial base to attain the national security objectives set forth in section 2501 of title 10, United States Code.

(2) In carrying out the study and assessment under paragraph (1), the Commission shall consider the following matters:

(A) Existing and projected future capabilities of the national technology and industrial base.

(B) The impact on the national technology and industrial base of civil-military integration and the growing dependence of the Department of Defense on the commercial market for defense products and services.

(C) The effects of domestic source restrictions on the strength of the national technology and industrial base.

(D) The effects of the policies and practices of United States allies and trading partners on the national technology and industrial base.

(E) The effects on the national technology and industrial base of laws and regulations related to international trade and the export of defense technologies and dual-use technologies.

(F) The adequacy of programs that support science and engineering education, including programs that support defense science and engineering efforts at institutions of higher learning, with respect to meeting the needs of the national technology and industrial base.

(G) The implementation of policies and planning required under subchapter II of chapter 148 of title 10, United States Code, and other provisions of law designed to support the national technology and industrial base.

(H) The role of the Manufacturing Technology program, other Department of Defense research and development programs, and the utilization of the authorities of the Defense Production Act of 1950 to provide

transformational breakthroughs in advanced manufacturing technologies and processes that ensure the strength and productivity of the national technology and industrial base.

(I) The role of small business concerns in strengthening the national technology and industrial base.

**SA 3272.** Ms. SNOWE submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 195, between lines 10 and 11, insert the following:

**SEC. 868. REQUIREMENT TO PROVIDE DOCUMENTS TO CONGRESS TO ENHANCE TRANSPARENCY IN DEPARTMENT OF DEFENSE CONTRACTING.**

(a) **REQUIREMENT TO PROVIDE REQUESTED DOCUMENTS.**—Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

**“§ 2333. Congressional oversight: submittal of contract documents**

“(a) **REQUIREMENT TO PROVIDE REQUESTED DOCUMENTS.**—Not later than 14 days after receiving from the chairman or ranking member of a committee of Congress named in subsection (b) a request for documents described in subsection (c) regarding a Department of Defense contract, the Secretary of Defense shall transmit an unredacted copy of each such document to the chairman or ranking member making the request.

“(b) **REQUESTING COMMITTEES.**—The committees of Congress referred to in subsection (a) are as follows:

“(1) The Committee on Armed Services of the Senate.

“(2) The Committee on Armed Services of the House of Representatives.

“(3) The Committee on Small Business and Entrepreneurship of the Senate.

“(4) The Committee on Small Business of the House of Representatives.

“(5) The Committee on Governmental Affairs of the Senate.

“(6) The Committee on Government Reform of the House of Representatives.

“(c) **DOCUMENTS TO BE PROVIDED.**—The requirement under subsection (a) applies to documents, relating to a contract, that are required to be maintained in the contracting office contract file, the contract administration office contract file, and the paying office contract file pursuant to subpart 4.8 of the Federal Acquisition Regulation, including—

“(1) copies of the contract and all modifications;

“(2) orders issued under the contract;

“(3) justifications and approvals;

“(4) any Government estimate of contract price;

“(5) source selection documentation;

“(6) cost or price analysis;

“(7) audit reports;

“(8) justification for type of contract;

“(9) authority for deviations from regulations, statutory requirements, or other restrictions;

“(10) bills, invoices, vouchers, and supporting documents; and

“(11) records of payments or receipts.

“(d) **CONTRACT INCLUDES TASK OR DELIVERY ORDER.**—In this section, the term “contract” includes a task or delivery order under a task or delivery order contract.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2333. Congressional oversight: submittal of contract documents.”.

**SA 3273.** Ms. SNOWE (for herself, Mr. COLEMAN, and Mr. KERRY) submitted an amendment intended to be proposed by her to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 158, between lines 6 and 7, insert the following:

**SEC. 805. REVISION AND EXTENSION OF AUTHORITY FOR ADVISORY PANEL ON REVIEW OF GOVERNMENT PROCUREMENT LAWS AND REGULATIONS.**

(a) RELATIONSHIP OF RECOMMENDATIONS TO SMALL BUSINESSES.—Section 1423 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 106-136; 117 Stat. 1669; 41 U.S.C. 405 note) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection (d):

“(d) ISSUES RELATING TO SMALL BUSINESSES.—In developing recommendations under subsection (c)(2), the panel shall—

“(1) consider the effects of its recommendations on small business concerns; and

“(2) include any recommended modifications of laws, regulations, and policies that the panel considers necessary to enhance and ensure competition in contracting that affords small business concerns meaningful opportunity to participate in Federal Government contracts.”.

(b) MEMBERSHIP.—Subsection (b) of such section is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B);

(2) by inserting “(1)” after “(b) MEMBERSHIP.”; and

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

“(2) The Chief Counsel for Advocacy of the Small Business Administration, or a representative of the Chief Counsel designated by the Chief Counsel, shall be an ex officio member of the panel.”.

(c) REVISION AND EXTENSION OF REPORTING REQUIREMENT.—Subsection (e) of such section, as redesignated by subsection (a)(1), is amended—

(1) by striking “REPORT.—”, and inserting “REPORTING REQUIREMENTS.—(1)”;

(2) by striking “one year after the establishment of the panel” and inserting “one year after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2005”;

(3) by striking “Services and” both places it appears and inserting “Services.”;

(4) by inserting “, and Small Business” after “Government Reform”;

(5) by inserting “, and Small Business and Entrepreneurship” after “Governmental Affairs”; and

(6) by adding at the end the following new paragraph:

“(2) If the panel completes the report under paragraph (1) before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2005, the panel may submit the report in accordance with that paragraph, but shall also—

“(A) review its findings and recommendations for consistency with subsection (d); and

“(B) not later than one year after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2005, submit to the committees of Congress specified in paragraph (1) a supplemental report that contains the conclusions of the panel upon review under subparagraph (A), together with any revised or additional recommendations resulting from the application of subsection (d)(2).”.

**TEXT OF AMENDMENTS**

**SA 3285.** Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes; which was ordered to lie on the table; as follows:

On page 208, between lines 16 and 17, insert the following:

**SEC. 906. HOMELAND SECURITY ACTIVITIES OF THE NATIONAL GUARD.**

(a) AUTHORITY.—Chapter 1 of title 32, United States Code, is amended by adding at the end the following new section:

**“§ 116. Homeland security activities**

“(a) USE OF PERSONNEL PERFORMING FULL-TIME NATIONAL GUARD DUTY.—The Governor of a State may, upon the request by the head of a Federal agency and with the concurrence of the Secretary of Defense, order any personnel of the National Guard of the State to perform full-time National Guard duty under section 502(f) of this title for the purpose of carrying out homeland security activities, as described in subsection (b).

“(b) PURPOSE AND DURATION.—(1) The purpose for the use of personnel of the National Guard of a State under this section is to temporarily provide trained and disciplined personnel to a Federal agency to assist that agency in carrying out homeland security activities.

“(2) The duration of the use of the National Guard of a State under this section shall be limited to a period of 179 days. The Governor of the State may, with the concurrence of the Secretary of Defense, extend the period one time for an additional 90 days to meet extraordinary circumstances.

“(c) RELATIONSHIP TO REQUIRED TRAINING.—A member of the National Guard serving on full-time National Guard duty under orders authorized under subsection (a) shall participate in the training required under section 502(a) of this title in addition to the duty performed for the purpose authorized under that subsection. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing duty for the purpose of carrying out homeland security activities. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502(a)(1) of this title.

“(d) READINESS.—To ensure that the use of units and personnel of the National Guard of a State for homeland security activities does not degrade the training and readiness of such units and personnel, the following requirements shall apply in determining the homeland security activities that units and personnel of the National Guard of a State may perform:

“(1) The performance of the activities may not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.

“(2) National Guard personnel will not degrade their military skills as a result of performing the activities.

“(3) The performance of the activities will not result in a significant increase in the cost of training.

“(4) In the case of homeland security performed by a unit organized to serve as a unit, the activities will support valid unit training requirements.

“(e) PAYMENT OF COSTS.—(1) The Secretary of Defense shall provide funds to the Governor of a State to pay costs of the use of personnel of the National Guard of the State for the performance of homeland security activities under this section. Such funds shall be used for the following costs:

“(A) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses (including all associated training expenses, as determined by the Secretary), as authorized by State law, of personnel of the National Guard of that State used, while not in Federal service, for the purpose of homeland security activities.

“(B) The operation and maintenance of the equipment and facilities of the National Guard of that State used for the purpose of homeland security activities.

“(2) The Secretary of Defense shall require the head of an agency receiving support from the National Guard of a State in the performance of homeland security activities under this section to reimburse the Department of Defense for the payments made to the State for such support under paragraph (1).

“(f) MEMORANDUM OF AGREEMENT.—The Secretary of Defense and the Governor of a State shall enter into a memorandum of agreement with the head of each Federal agency to which the personnel of the National Guard of that State are to provide support in the performance of homeland security activities under this section. The memorandum of agreement shall—

“(1) specify how personnel of the National Guard are to be used in homeland security activities;

“(2) include a certification by the Adjutant General of the State that those activities are to be performed at a time when the personnel are not in Federal service;

“(3) include a certification by the Adjutant General of the State that—

“(A) participation by National Guard personnel in those activities is service in addition to training required under section 502 of this title; and

“(B) the requirements of subsection (d) of this section will be satisfied;

“(4) include a certification by the Attorney General of the State (or, in the case of a State with no position of Attorney General, a civilian official of the State equivalent to a State attorney general), that the use of the National Guard of the State for the activities provided for under the memorandum of agreement is authorized by, and is consistent with, State law;

“(5) include a certification by the Governor of the State or a civilian official of the State designated by the Governor that the activities provided for under the memorandum of agreement serve a State security purpose; and

“(6) include a certification by the head of the Federal agency that the agency will have a plan to ensure that the agency's requirement for National Guard support ends not later than 179 days after the commencement of the support.