

them so they never pose a hazard to our country. For those who can be tried, let's try them before our courts of law.

President Obama is going through that arduous, specific process now on each one of these detainees. While his administration is working to clean up this mess that he inherited from the previous administration, the Republicans in the Senate are doing everything they can to block his way and make it impossible for him to resolve the situation at Guantanamo.

I would say the McConnell amendment, page 3, paragraph (2), is a dangerous amendment. It is an amendment that could compromise the ability of the United States of America to prosecute those who could be a danger to our country. Why would we possibly do that?

I urge my colleagues, if I am not given the authority under the rules of the Senate to strike that paragraph, to oppose this amendment.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BENNET). Without objection, it is so ordered.

Mr. DURBIN. Mr. President, what is the business pending before the Senate?

The PRESIDING OFFICER. The McConnell amendment No. 1136.

AMENDMENT NO. 1199 TO AMENDMENT NO. 1136

Mr. DURBIN. I have sent an amendment to the desk. I ask the clerk to report the amendment.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 1199 to amendment No. 1136.

On page 3, strike lines 1-4 and insert the following:

(2) A current summary of the evidence, intelligence, and information used to justify the detention of each detainee listed under paragraph (1) at Guantanamo Bay.

Mr. DURBIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1199 WITHDRAWN

Mr. DURBIN. Mr. President, I would like to withdraw the pending amendment I just filed.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. DURBIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. McCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### WEAPON SYSTEMS ACQUISITION REFORM ACT OF 2009—CONFERENCE REPORT

Mr. McCAIN. Mr. President, the majority leader requested that I begin the discussion on the conference report for the Weapon Systems Acquisition Reform Act of 2009. We await the presence of the chairman of the Armed Services Committee. I begin by thanking him for his leadership, his really non-partisan addressing of this compelling issue.

The last time I was on the floor, I talked a lot about the terrible cost overruns that were associated recently with literally every new weapon system we have acquired. When I tell some of my constituents and friends, they are staggered by the numbers—a small littoral combat ship that is supposed to cost \$90 million ends up costing \$400 million and has to be scrapped; airplanes costing, depending on how you look at it, half a billion dollars each.

Working together on both sides of the aisle, and under the leadership of Chairman LEVIN, we have come up with legislation that has gone through the Congress rather rapidly.

I would also like to say that the President of the United States called us, Members of the House, leaders of the Armed Services Committees, to the White House, where we pledged our support and our rapid addressing of this challenge.

The only thing more important than the substance of this conference report is the demonstration of bipartisanship that went into how the underlying bills were created and guided through the legislative process.

As I said, I know the chairman of the committee is going to be here shortly, and he will discuss many of the specific aspects of this bill. But it does emphasize starting major weapons systems off right by having those systems obtain reliable and independent cost estimates and subjecting them to rigorous developmental testing and systems engineering early in their acquisition cycle. It does a lot of things. As I say, Senator LEVIN will enumerate many of them.

What we are trying to do is address a process where there is a need for a weapon system which takes years to develop. Technical changes are incorporated time after time in a desire—and a laudable one—to reach 100 percent perfection. But then the cost overruns grow and grow.

The Future Combat Systems, an Army innovation to address conflicts of the future, was supposed to cost \$90

billion. It is up to \$120 billion. Even more, we still do not have operational vehicles. So, very appropriately, the Secretary of Defense announced that he would be eliminating much of this program to try to get the costs under control.

I would like to say a word about the Secretary of Defense, who has agreed to continue to serve this country under one of the most difficult and trying positions one can have in Government. The Secretary of Defense has announced, I think very appropriately, that we would be reducing and eliminating some programs that have maybe had a good reason for a beginning but certainly have had such incredible cost overruns that they no longer are a worthwhile expenditure of the taxpayers' dollars.

Early in the first couple of weeks of the new administration, a group of us attended a gathering. The President of the United States and I had an exchange about the Presidential helicopter. Some years ago, we decided the Presidential helicopter, which is 30 years old, needed replacement. We finally reached a point where we had not built one completely yet, and it was more than the cost of Air Force One—you cannot make that up; it is hard to believe—as one technological change after another was piled on, to the point where neither the President nor the Secretary of Defense felt it was worth the cost. The President does need a new helicopter. We need to embark on that effort. But what we just went through should be an object lesson, and we should learn from the lessons and cost overruns.

I note the presence of the distinguished chairman of the Armed Services Committee in the Chamber. I again thank him for his leadership.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I am pleased to join with Senator McCAIN in bringing to the floor the Weapon Systems Acquisition Reform Act. We introduced this bill. We did it on February 23, I believe, and we did it to address some of the problems in the performance of the Department of Defense major defense acquisition programs at a time when growth and cost overruns on these programs have simply reached levels which are unaffordable, unsustainable, and unconscionable, in some cases. Since that time, the bill has made rapid legislative progress.

I thank Senator McCAIN for all he has done. This was a bipartisan effort. Our colleagues on the Armed Services Committee worked out the differences that existed, and we unanimously recommended it to the Senate. But the magnitude of this problem is such that we must move quickly on it. The President has asked us to get the bill to his desk by Memorial Day, and it is our hope we will be able to do that.

On May 7, the bill passed the Senate unanimously. A week later, a companion bill passed the House. We

worked out the differences between the Senate and the House in record speed. The ability to do this was based on the working relationship which has been built up here. We work on a bipartisan basis in the Armed Services Committee. We work on a bicameral basis with the House and the Senate. When it comes to issues of national security, particularly, we are able to act so quickly.

I publicly thank not only Senator MCCAIN, as I have, and colleagues of ours on the Armed Services Committee, but also Chairman IKE SKELTON and JOHN MCHUGH of the House Armed Services Committee.

This is a tremendously important bill. It has major reforms. It is going to address some of the most persistent underlying problems we have had that led to the failure of defense acquisition programs. What are those problems? The Department relies too often on unreasonable cost and schedule estimates. Second, too often the Department insists on unrealistic performance expectations. Third, the Department too often uses immature technologies. Fourth, too often the Department adopts these very costly changes to program requirements, to production quantities, and to funding levels right in the middle of the ongoing program.

The conference report I hope we will be able to consider in the next few minutes is going to address these problems in the following ways:

First, we provide for a strong new Senate-confirmed Director of Cost Assessment and Program Evaluation. That person is going to report directly to the Secretary of Defense to ensure that defense acquisition programs are based on sound cost estimates. The independence of that office is new, and it is essential. That person goes directly to the Office of the Secretary of Defense, not as the situation is now where there is a level of bureaucracy between the cost estimator and assessor and the Secretary of Defense.

Second, we require the Department to rebuild systems engineering and developmental testing organizations and capabilities which have been almost dismantled or reduced significantly. We want to ensure that design problems are understood and addressed early in the process.

Third, we establish mechanisms to ensure early tradeoffs are made between cost, schedule, and performance objectives so that we do not overcommit to what the Secretary of Defense has called "exquisite" program requirements.

Fourth, we require the increased use of competitive prototyping so that we select the best systems and prove they can work before we start building them.

Fifth, we establish new requirements for continuing competition.

Sixth, we address the problem of organizational conflicts of interest to ensure we get the best possible results out of the defense industry.

Seventh, we require regular program reviews and root cause analyses to address developing programs in acquisition programs.

Finally, we establish tough new Nunn-McCurdy requirements, so-called. We put teeth in the Nunn-McCurdy approach. We establish a presumption of program termination and the requirement that continuing programs be justified from the ground up to ensure we do not throw good money after bad on failing programs. If a program is failing, now it is too easy to get by the Nunn-McCurdy test of continuing a program. It is going to be a lot harder to jump that hurdle should programs be failing in the middle or costing a lot more or taking a lot longer.

So we have a strong bill. It is going to help change the acquisition culture of the Department of Defense, and it is going to point our acquisition system in the direction it needs to go. We hope Members of the Senate will join us in supporting this effort and send the bill to the President for his signature.

Our staff has done extraordinary work, particularly Peter Levine and Creighton Greene on my staff, and Chris Paul and Pablo Corrillo on Senator MCCAIN's staff. And, again, I thank all Members and the leadership for bringing this bill, pushing it along, and giving us the encouragement and support that is so essential to get a bill of this magnitude to the floor of the Senate in record time.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate now proceed to the conference report to accompany S. 454 and vote immediately on adoption of the conference report; that upon adoption of the conference report, the Senate then resume consideration of H.R. 2346 and the McConnell amendment No. 1136, as modified by the Levin language to the McConnell amendment, with the time equally divided and controlled between Senators MCCONNELL and DURBIN or their designees; that upon disposition of the McConnell amendment, the Senate then proceed to vote in relation to the Brownback amendment No. 1140, as modified; that prior to the first and third vote, there be 2 minutes of debate equally divided and controlled in the usual form; that after the first vote in this sequence, the succeeding votes be 10 minutes in duration, with no amendments in order to the amendments in this agreement.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the Senate will proceed to the consideration of the

conference report to accompany S. 454. The report will be stated.

The bill clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 454) to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of today, May 20, 2009.)

Ms. COLLINS. Mr. President, the Weapon Systems Acquisition Reform Act of 2009 would strengthen and reform the Department of Defense acquisition processes by bringing increased accountability and transparency to major defense acquisition programs. Simply put, the bill would build discipline into the planning and requirements process, keep projects focused, help prevent cost overruns and schedule delays, and ultimately save taxpayer dollars.

I would like to thank Senators CARL LEVIN and JOHN MCCAIN, and Representatives IKE SKELTON and JOHN MCHUGH for their work on this important issue and their continued efforts to improve procurement at the Department of Defense. I was proud to join Senators LEVIN and MCCAIN in co-sponsoring this bill in the Senate.

This legislation would improve DOD's planning and program oversight in many ways. First, the bill would create a new Senate-confirmed Director of Independent Cost Assessment and Program Evaluation to be the "principal cost estimation official" at the Department.

The bill also mandates that the Department carefully balance cost, schedule, and performance as part of the requirements development process, building discipline into the procurement process long before a request for proposals is issued or a contract is awarded.

I applaud the "bright lines" this legislation would establish regarding organizational conflicts of interest by DOD contractors. These reforms would strengthen the wall between government employees and contractors, helping to ensure that ethical boundaries are respected. While contractors are important partners with military and civilian employees at DOD, their roles and responsibilities must be well defined and free of conflicts of interest as they undertake their critical work supporting our Nation's military.

I appreciate the conferees including an amendment that I offered on the floor with Senator CLAIRE MCCASKILL regarding earned value management, EVM. EVM provides important visibility into the scope, schedule, and cost of a program in a single integrated system, and when properly applied, EVM

can provide an early warning of performance problems.

GAO has observed that contractor reporting on EVM often lacks consistency, leading to inaccurate data and faulty application of the EVM metric. In other words, garbage in, garbage out.

The conference report would require that the Department of Defense issue an implementation plan for applying EVM consistently and reliably to all projects that use this project management tool.

The implementation plan would also provide enforcement mechanisms to ensure that contractors establish and use approved EVM systems and require DOD to consider the quality of the contractor's EVM systems and reporting in the past performance evaluation for a contract. With improved EVM data quality, both the government and the contractor will be able to improve program oversight, leading to better acquisition outcomes.

The conference report would strengthen the Department's acquisition planning, increase and improve program oversight, and help prevent contracting waste, fraud, and mismanagement. Ultimately, it will help ensure that our military personnel have the equipment they need, when they need it, and that tax dollars are not wasted on programs that were doomed to fail.

Mr. DURBIN. Mr. President, the Weapons Systems Acquisition Reform Act of 2009 takes steps in the right direction to reform the way the Department of Defense buys major weapons systems.

When it comes to these multi-billion-dollar systems, the challenges of managing acquisitions are tremendous.

Officials at the Department of Defense manage 96 major defense acquisition programs—the Department's most expensive programs.

Each program costs hundreds of millions of dollars to research and develop and billions of dollars more to purchase. Together, these programs account for \$1.6 trillion in defense spending.

These major defense acquisition programs have seen a shocking growth in cost. Over the last 20 years, the costs of these programs have ballooned by \$296 billion.

Costs especially exploded during the previous administration. Since 2003, the cost of major defense acquisition programs rose by \$113 billion.

The Weapons Systems Acquisition Reform Act of 2009 takes important steps to bring this spending under control, without compromising on the quality of the systems purchased.

This is not the first time Congress has tried to reform the defense acquisition process. Nor will it likely be the last. But it is an important step at a critical time.

The legislation would create an independent director of cost assessment who would verify the estimated cost of

a program before allowing it to go forward.

It builds in additional checkpoints to help make sure that programs are ready on time.

It enhances the R&D capabilities at the Department of Defense. Numerous studies have found that the R&D capabilities of the Army, Navy, and Air Force are in desperate need of strengthening.

It requires defense contractors to build a strong wall between their R&D and construction offices when both offices work on the same defense project.

Finally, it gives combatant commanders more authority to procure products that meet the immediate needs of troops in theater.

Secretary Gates has been rightly frustrated with the inability of the regular procurement process to field equipment, like MRAPs, that are needed immediately by troops on the ground. This legislation will help change that.

I commend Senators LEVIN and MCCAIN for their leadership in developing this thoughtful and needed legislation. I look forward to its being signed into law by President Obama.

The PRESIDING OFFICER. There is now 2 minutes of debate equally divided prior to a vote on the adoption of the conference report.

Mr. LEVIN. Mr. President, both Senator MCCAIN and I spoke on this matter. I ask unanimous consent to yield back all remaining time. I think I can do this with the consent of Senator MCCAIN.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the conference report.

Mr. LEVIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

I further announce that if present and voting, the Senator from West Virginia (Mr. ROCKEFELLER), would vote "yea."

Mr. KYL. The following Senator is necessarily absent: the Senator from Utah (Mr. HATCH).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 197 Leg.]

YEAS—95

Akaka	Begich	Boxer
Alexander	Bennet	Brown
Barrasso	Bennett	Brownback
Baucus	Bingaman	Bunning
Bayh	Bond	Burr

Burr	Hutchison	Nelson (NE)
Cantwell	Inhofe	Nelson (FL)
Cardin	Inouye	Pryor
Carper	Isakson	Reed
Casey	Johanns	Reid
Chambliss	Johnson	Risch
Coburn	Kaufman	Roberts
Cochran	Kerry	Sanders
Collins	Klobuchar	Schumer
Conrad	Kohl	Sessions
Corker	Kyl	Shaheen
Cornyn	Landrieu	Shelby
Crapo	Lautenberg	Snowe
DeMint	Leahy	Specter
Dodd	Levin	Stabenow
Dorgan	Lieberman	Tester
Durbin	Lincoln	Thune
Ensign	Lugar	Udall (CO)
Enzi	Martinez	Udall (NM)
Feingold	McCain	Vitter
Feinstein	McCaskill	Voivovich
Gillibrand	McConnell	Warner
Graham	Menendez	Webb
Grassley	Merkley	Whitehouse
Gregg	Mikulski	Wicker
Hagan	Murkowski	Wyden
Harkin	Murray	

NOT VOTING—4

Byrd	Kennedy
Hatch	Rockefeller

The conference report was agreed to. Mr. DURBIN. I move to reconsider the vote by which the conference report was adopted.

Mr. MENENDEZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SUPPLEMENTAL APPROPRIATIONS ACT, 2009—Continued

AMENDMENT NO. 1136

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 2346, and there will be 10 minutes of debate prior to a vote in relation to amendment No. 1136 offered by the Senator from Kentucky, Mr. MCCONNELL.

The Senator from Illinois.

Mr. DURBIN. Mr. President, I urge my colleagues to take a close look at Senator MITCH MCCONNELL's amendment, which is next up to be considered. Particularly, I ask you to turn to page 3 of this amendment. You will find in the first paragraph on page 3 a troubling requirement which Senator MCCONNELL will make of this administration.

What Senator MCCONNELL is asking is that 60 days from the passage of this bill and every 90 days thereafter, the President of the United States provide to Members of the Senate and the House:

a current summary of the evidence, intelligence, and information used to justify the detention of each detainee listed under paragraph (1) at Naval Station Guantanamo Bay.

It is not enough for Senator MCCONNELL to ask for the identity of these people, the countries they are from, the likelihood they will be transferred to some other place, the likelihood they might be engaged in terrorism, he is asking for the President to disclose the work product of the prosecutors who are holding these detainees and determining whether a criminal case can be brought against them. For what