

M E M O R A N D U M

TO: REVIEW & ANALYSIS TEAM LEADERS
FROM: MARY ANN HOOK

ISSUE PAPER ON LEGAL ASPECTS RE: DEPOT MAINTENANCE

This is a brief synopsis on the legal aspects of depot maintenance.

A depot maintenance activity is defined as an industrial type facility established to perform depot-level maintenance on weapon systems, equipment and components. The term includes DoD installations and commercial contractors.¹

The current legal authority regarding depot maintenance contracts is 10 U.S.C. section 2466 which was amended by the FY93 Authorization Act. The statute states that the Secretary of a military department and with respect to a Defense Agency, the Secretary of Defense, may not contract for more than 40 percent of the depot-level maintenance workload for the military department or the Defense Agency to be performed by nonfederal personnel.

The Army is required to provide Army aviation depot work to DOD employees of not less than 50 percent in fiscal year 1993, 55 percent in fiscal year 1994 and 60 percent in fiscal year 1995.²

The departments apply the provision per year, per dollar amount. The departments regulate their compliance individually. (The Secretary applies the statute for a Defense Agency.) Each department ensures that 40-60 is met for the entire department across commodity lines. For example the Navy does not need to meet 40-60 for shipyards and 40-60 for Naval Depots. It can contract 20-80 in shipyards and compensate in NADEP maintenance.³ When contracts are for five years the contract is prorated per year based on performance.

The statute permits that the Secretary of Defense may waive the 40-

¹ DoD Directive 4151.1, July 15, 1982.

² 10 U.S.C. 2466 (a)(2) A,B,C.

³ Conversation with Mr. Pybis, Sr. Policy Analyst, Maintenance Directorate, Office of the Assistant Secretary for Production and Logistics, on June 11, 1993. See also legal hist.

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60 restriction if the Secretary determines that the waiver is necessary for national security reasons and notifies Congress of such determination.⁴

Donna M. Heivilin, of GAO testified to the Subcommittee on Readiness, Committee on Armed Services, House of Representatives, that currently about 33 percent of the depot work is being done by the private sector.⁵ Discussions with other DOD personnel confirm this estimate. The percent was not broken down by services.

The legislative background of the 40-60 division indicates that the percentages were based in part on the amount of work that must remain within the services--otherwise known as the core requirement or core logistics functions. Core logistics functions are defined as the minimal work that must be maintained by the Department in-house in the event of threats to national security. It includes the logistics capability (including personnel, equipment and facilities) to ensure effective and timely response to a mobilization, national defense contingency situations and other emergency requirements.⁶

GAO reported that the military departments are assessing their core logistics requirements. If the requirements are assessed at less than the 60 percent, Congress might amend the 40-60 provision. As of May 1993, the naval aviation community is the only one to have developed a draft strategy.⁷

GAO stated that any private sector initiative to increase appreciably its current share of the depot maintenance workload

⁴ 10 U.S.C. 2466 (c).

⁵ Depot Maintenance, Issues in Management and Restructuring to Support a Downsized Military, statement of Donna M. Heivilin to the Subcommittee on Readiness, Committee on Armed Services, House of Representative, May 6, 1993, "Heivilin Statement," page 20.

⁶ 10 U.S.C. 2464(a).

⁷ Heivilin Statement at 20.

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could require a change to the statutory limit ⁸.

Interservicing

Another issue relating to depot maintenance costs is the possibility of increasing interservicing for depot maintenance. "Interservicing achieves cost saving by transferring work on comparable systems to the depot of another Service to take advantage of economics of scale, and to avoid the cost of maintaining dual capabilities in a second service." ⁹ In FY 1991, interservicing amounted to less than 3 percent of the overall Service depot maintenance budget. ¹⁰

Requirement of Competition

10 U.S.C. 2469 directs that the Secretary of Defense or the Secretary of a military department may not change the performance of a depot-level maintenance workload that has a threshold value of not less than 3 million dollars and is being performed by a depot-level activity of the DoD unless, prior to the such change, the Secretary uses competitive procedures to make the change. ¹¹ The DoD interpretation of this provision is that it is a prohibition to move workload to a private facility and not movement as a result of a realignment via a Commission recommendation. ¹²

⁸Id at 20.

⁹ Depot Maintenance Consolidation Study, December 2, 1993, page II-5.

¹⁰ Id at II-6.

¹¹ 10 U.S.C. 2469.

¹² Conversation with Pybis on June 11, 1993. Depot Maintenance Consolidation Study, December 2, 1993, page II-6. *Legisl. hist*

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Conclusion

The studies and reports indicate currently there is still room within the 40-60 requirement for more private sector contractors to perform depot maintenance for the military departments. Estimates are that about 7 percent more depot maintenance could be contracted to the private sector. This was not indicated by service or commodity.

At this time, it is difficult to determine the exact capacity for depot maintenance that can be contracted to the private sector in any one group (i.e. shipyards) since the departments do not determine it by commodity.

The studies also indicate that the amount of core logistics functions that each department must maintain is currently being assessed at this time. If and when the core logistics is reviewed and DoD states that 60 percent is too high, which will likely be the case, Congress might amend the 40-60 provision to 50-50 or 60-40 and thereby increase the amount that can be contracted to the private sector.

In an effort to reduce dramatically the public depots (below which level at which the 60 percent requirement could be met):

- 1) DoD could reevaluate work that has been categorized as core function and seek legislative relief so more functions could be competed to the private sector. The provision could be legislatively changed to 50-50 or 60-40.
- 2) The Secretary could exercise his waiver authority if necessary for national security reasons.
- 3) The departments could increase interservicing agreements and/or consolidate work at the DoD depots and attempt to persuade Congress that it should amend the 40-60 provision to 50-50 or 60-40 even if the core logistics percent does not change.

p. 6413. See, also, Pub.L. 100-180, 1987 U.S. Code Cong. and Adm. News, p. 1018; Pub.L. 100-370, 1988 U.S. Code Cong. and Adm. News, p. 1077.

LIBRARY REFERENCES

United States 659 et seq.
C.J.S. United States § 81 et seq.

§ 2466. Limitations on the performance of depot-level maintenance of materiel

(a) **Percentage limitation.**—(1) Except as provided in paragraph (2), the Secretary of a military department and, with respect to a Defense Agency, the Secretary of Defense, may not contract for the performance by non-Federal Government personnel of more than 40 percent of the depot-level maintenance workload for the military department or the Defense Agency.

(2) The Secretary of the Army shall provide for the performance by employees of the Department of Defense of not less than the following percentages of Army aviation depot-level maintenance workload:

- (A) For fiscal year 1993, 50 percent.
- (B) For fiscal year 1994, 55 percent.
- (C) For fiscal year 1995, 60 percent.

(b) **Prohibition on management by end strength.**—The civilian employees of the Department of Defense involved in the depot-level maintenance of materiel may not be managed on the basis of any end-strength constraint or limitation on the number of such employees who may be employed on the last day of a fiscal year. Such employees shall be managed solely on the basis of the available workload and the funds made available for such depot-level maintenance.

(c) **Waiver of limitation.**—The Secretary of the military department concerned and, with respect to a Defense Agency, the Secretary of Defense may waive the applicability of subsection (a) for a fiscal year, to a particular workload, or to a particular depot-level activity if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(d) **Exception.**—Subsection (a) shall not apply with respect to the Sacramento Army Depot, Sacramento, California.

(e) **Reports.**—(1) Not later than January 15, 1992, and January 15, 1993, the Secretary of the Army and the Secretary of the Air Force shall jointly submit to Congress a report describing the progress during the preceding fiscal year to achieve and maintain the percentage of depot-level maintenance required to be performed by employees of the Department of Defense pursuant to subsection (a).

(2) Not later than January 15, 1994, the Secretary of each military department and the Secretary of Defense, with respect to the Defense Agencies, shall jointly submit to Congress a report described in paragraph (1).

(Added Pub.L. 100-456, Div. A, Title III, § 326(a), Sept. 29, 1988, 102 Stat. 1955, and amended Pub.L. 101-189, Div. A, Title III, § 313, Nov. 29, 1989, 103 Stat. 1412; Pub.L. 102-190, Div. A, Title III, § 314(a)(1), Dec. 5, 1991, 105 Stat. 1336; Pub.L. 102-484, Div. A, Title III, § 352(a)-(c), Oct. 23, 1992, 106 Stat. 2378.)

HISTORICAL AND STATUTORY NOTES

1991 Amendment

Pub.L. 102-190 in catchline and in text substituted provisions relating to limitations on performance of depot-level maintenance of materiel, for provisions prohibiting certain depot maintenance workload competitions

1989 Amendment

Pub.L. 101-189, § 313, substituted "The Secretary of Defense" for "the Secretary of the

or the Secretary of the Air Force, in selecting an entity to perform any depot maintenance workload, to carry out a competition for such selection—" in provisions preceding par. (1).

Effect of Amendments on Existing Contracts

Section 352(d) of Pub.L. 102-484 provided that "The Secretary of a military department and the Secretary of Defense, with respect to the Defense Agencies, may not cancel a depot-level maintenance contract on the date of the enact-

Cancellation of Contracts in Effect Dec. 5, 1991

Section 314(a)(3) of Pub.L. 102-190 provided that:

"(3) The Secretary of the Army and the Secretary of the Air Force may not cancel a depot-level maintenance contract in effect on the date of the enactment of this Act [Dec. 5, 1991] in order to comply with the requirements of section 2466(a) of such title, as amended by subsection (a) [subsection (a) of this section]."

Competition Pilot Program for Depot-Level Maintenance of Materiel

Section 314(b)-(d) of Pub.L. 102-190, amended Pub.L. 102-484, Div. A, Title III, § 354, Oct. 23, 1992, 106 Stat. 2379, provided that:

[(b). Repealed. Pub.L. 102-484, Div. A, Title III, § 354, Oct. 23, 1992, 106 Stat. 2379]

"(c) **Review by Comptroller General.**—Not later than February 1, 1994, the Comptroller General shall submit to Congress an evaluation of all depot maintenance workloads of the Department of Defense, including Navy depot maintenance workloads, that are performed by an entity selected pursuant to competitive procedures.

LIBRARY REFERENCES

United States 64.10.
WESTLAW Topic No. 393.
C.J.S. United States § 87.

§ 2467. Cost comparisons: requirements with respect to retirement costs and consultation with employees

(a) **Requirement to include retirement costs.**—(1) In any comparison conducted by the Department of Defense under Office of Management and Budget Circular A-76 (or any successor administrative regulation or policy) of the cost of performing commercial activities by Department of Defense personnel and the cost of performing such activities by contractor personnel, the Secretary of Defense shall include retirement system costs (as described in paragraphs (2) and (3)) of both the Department of Defense and the contractor.

(2) The retirement system costs of the Department of Defense shall include (to the extent applicable) the following:

(A) The cost of the Federal Employees' Retirement System, valued by using the normal-cost percentage (as defined by section 8401(23) of title 5, United States Code).

(B) The cost of the Civil Service Retirement System under subchapter III of chapter 83 of such title 5.

(C) The cost of the thrift savings plan under subchapter III of chapter 84 of such title 5.

(D) The cost of the old age, survivors, and disability insurance taxes imposed under section 3111(a) of the Internal Revenue Code of 1986.

(3) The retirement system costs of the contractor shall include the cost of the old age, survivors, and disability insurance taxes imposed under section 3111(a) of the Internal Revenue Code of 1986, the cost of thrift or other retirement savings plans, and other relevant retirement costs.

(b) **Requirement to consult DOD employees.**—(1) Each officer or employee of the Department of Defense responsible for determining under Office of Management and Budget Circular A-76 whether to convert to contractor performance any commercial activity of the Department—

"(d) Report by Secretary of Defense.—Not later than December 1, 1993, the Secretary of Defense shall submit to Congress a report—

"(1) containing a five-year strategy of the Department of Defense to use competitive procedures for the selection of entities to perform depot maintenance workloads; and

"(2) describing the cost savings anticipated through the use of those procedures."

Pilot Program for Depot Maintenance Workload Competition

Pub.L. 101-510, Div. A, Title IX, § 922, Nov. 5, 1990, 104 Stat. 1627, which authorized a depot maintenance workload competition pilot program during fiscal year 1991, was repealed by Pub.L. 102-190, Div. A, Title III, § 314(b)(2), Dec. 5, 1991, 105 Stat. 1337.

Legislative History

For legislative history and purpose of Pub.L. 100-456, see 1988 U.S. Code Cong. and Adm. News, p. 2503. See also, Pub.L. 101-189, 1989 U.S. Code Cong. and Adm. News, p. 838; Pub.L. 102-190, see 1991 U.S. Code Cong. and Adm. News, p. 918; Pub.L. 102-484, see 1992 U.S. Code Cong. and Adm. News, p. 1636.

NOTES OF DECISIONS

Discretion of Secretary 1
Scope of review 2

cost less; governing statute requires a measurable, objective comparison of costs. Diebold v. U.S. C.A.6 (Ky.) 1991, 947 F.2d 787.

1. Discretion of Secretary

Secretary of Defense may not contract out services to private company as a matter of discretion, nor may that decision rest on whether the Secretary deems the contract or the in house service to

2. Scope of review

Army is not entitled to sweeping deference with respect to its determination to privatize certain operations. Diebold v. U.S. C.A.6 (Ky.) 1991, 947 F.2d 787.

§ 2463. Reports on savings or costs from increased use of DOD civilian personnel

(a) In general.—Whenever during a fiscal year to which this section applies the performance of a commercial or industrial type activity of the Department of Defense that is being performed by 50 or more employees of a private contractor is changed to performance by civilian employees of the Department of Defense, the Secretary of Defense shall maintain data in which a comparison is made of the estimated costs of (1) continued performance of such activity by private contractor employees, and (2) performance of such activity by civilian employees of the Department of Defense.

(b) Applicability of section.—This section applies only with respect to a fiscal year during which there is no statutory limit (commonly known as an "end strength") on the number of civilian employees that may be employed by the Department of Defense as of the last day of that fiscal year.

(Added Pub.L. 100-370, § 2(a)(1), July 19, 1988, 102 Stat. 853, and amended Pub.L. 101-189, Div. A, Title XVI, § 1622(c)(7), Nov. 29, 1989, 103 Stat. 1604; Pub.L. 101-510, Div. A, Title XIII, § 1301(14), Nov. 5, 1990, 104 Stat. 1668.)

HISTORICAL AND STATUTORY NOTES

1990 Amendment

Subsec. (b). Pub.L. 101-510, § 1301(14)(A), struck out former subsec. (b), which required semiannual reports showing savings or losses to House and Senate Committees on Armed Services and Appropriations.

Pub.L. 101-510, § 1301(14)(B), redesignated former subsec. (c) as (b).

Subsec. (c). Pub.L. 101-510, § 1301(14)(B), redesignated former subsec. (c) as (b).

1989 Amendment

Subsec. (b). Pub.L. 101-189, § 1622(c)(7), substituted "Committees on Appropriations" for "Committee on Appropriations".

§ 2464. Core logistics functions

(a) Necessity for core logistics capability.—(1) It is essential for the national defense that Department of Defense activities maintain a logistics capability (including personnel, equipment, and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.

(2) The Secretary of Defense shall identify those logistics activities that are necessary to maintain the logistics capability described in paragraph (1).

(b) Limitation on contracting.—(1) Except as provided in paragraph (2), performance of a function of the Department of Defense described in section 1231(b)

(2) The Secretary of Defense may waive paragraph (1) in the case of any such logistics activity or function and provide that performance of such activity or function shall be considered for conversion to contractor performance in accordance with OMB Circular A-76. Any such waiver shall be made under regulations prescribed by the Secretary and shall be based on a determination by the Secretary that Government performance of the activity or function is no longer required for national defense reasons. Such regulations shall include criteria for determining whether Government performance of any such activity or function is no longer required for national defense reasons.

(3) A waiver under paragraph (2) may not take effect until—

(A) the Secretary submits a report on the waiver to the Committees on Armed Services and the committees on Appropriations of the Senate and House of Representatives; and

(B) a period of 20 days of continuous session of Congress or 40 calendar days has passed after the receipt of the report by those committees.

(4) For purposes of paragraph (3)(B), the continuity of a session of Congress is broken only by an adjournment sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of such 20-day period.

(Added Pub.L. 100-370, § 2(a)(1), July 19, 1988, 102 Stat. 853, and amended Pub.L. 101-189, Div. A, Title XVI, § 1622(c)(7), Nov. 29, 1989, 103 Stat. 1604.)

HISTORICAL AND STATUTORY NOTES

References in Text

Section 1231(b) of the Department of Defense Authorization Act, 1986, referred to subsec. (b)(1), is section 1231(b) of Pub.L. 99-145, Title XII, Nov. 8, 1985, 99 Stat. 731, and is classified as a note under section 2304 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100-370, see 1988 U.S. Code Cong. and Adm. News, p. 1077. See, also, Pub.L. 101-189, 1989 U.S. Code Cong. and Adm. News, p. 838.

§ 2465. Prohibition on contracts for performance of firefighting or security-guard functions

(a) Except as provided in subsection (b), funds appropriated to the Department of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of firefighting or security-guard functions at any military installation or facility.

(b) The prohibition in subsection (a) does not apply—

(1) to a contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which members of the armed forces would have to be used for the performance of a function described in subsection (a) at the expense of unit readiness;

(2) to a contract to be carried out on a Government-owned but privately operated installation; or

(3) to a contract (or the renewal of a contract) for the performance of a function under contract or September 24, 1983.

(Added Pub.L. 99-661, Div. A, Title XII, § 1222(a)(1), Nov. 14, 1986, 100 Stat. 3976, § 2693, and amended Pub.L. 100-180, Div. A, Title XI, § 1112(a), (b)(1), (2), Dec. 4, 1987, 101 Stat. 1147, and renumbered § 2465, Pub.L. 100-370, § 2(f)(1), July 19, 1988, 102 Stat. 854.)

HISTORICAL AND STATUTORY NOTES

1987 Amendment

Heading. Pub.L. 100-180, § 1112(b)(2), inserted reference to security-guard functions.

Subsec. (a). Pub.L. 100-180, § 1112(a), substituted "firefighting or security-guard functions" for "firefighting functions".

Subsec. (b)(1). Pub.L. 100-180, § 1112(b)(1), substituted "a function" for "the function".

public law; regulation, rule, or order in effect under law so replaced to continue in effect under provision enacted until repealed, amended, or superseded; and action taken or offense committed under law replaced treated as taken or committed under provision enacted, see section 4 of Pub.L. 100-370, set out as a note under section 101 of this title.

by that determination and consider the views of such employees on the development and preparation of that statement and that study; and

(B) may consult with such employees on other matters relating to that determination.

(2)(A) In the case of employees represented by a labor organization accorded exclusive recognition under section 7111 of title 5, United States Code, consultation with representatives of that labor organization shall satisfy the consultation requirement in paragraph (1).

(B) In the case of employees other than employees referred to in subparagraph (A), consultation with appropriate representatives of those employees shall satisfy the consultation requirement in paragraph (1).

(3) The Secretary of Defense shall prescribe regulations to carry out this subsection. The regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to in paragraph (2)(B) for purposes of consultation required by paragraph (1).

(Added Pub.L. 100-456, Div. A, Title III, § 831(a), Sept. 29, 1988, 102 Stat. 1957.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 100-456, see 1988 U.S. Code Cong. and Adm. News, p. 2503.

LIBRARY REFERENCES

United States ¶60.
WESTLAW Topic No. 393.
C.J.S. United States § 83.

§ 2468. Military installations: authority of base commanders over contracting for commercial activities

(a) Authority of base commander.—The Secretary of Defense shall direct that the commander of each military installation shall have the authority and the responsibility to enter into contracts in accordance with this section for the performance of a commercial activity on the military installation.

(b) Yearly duties of base commander.—To enter into a contract under subsection (a) for a fiscal year, the commander of a military installation shall—

(1) prepare an inventory for that fiscal year of commercial activities carried out by Government personnel on the military installation;

(2) decide which commercial activities shall be reviewed under the procedures and requirements of Office of Management and Budget Circular A-76 (or any successor administrative regulation or policy); and

(3) conduct a solicitation for contracts for the performance of those commercial activities selected for conversion to contractor performance under the Circular A-76 process.

(c) Limitations.—(1) The Secretary of Defense shall prescribe regulations under which the commander of each military installation may exercise the authority and responsibility provided under subsection (a).

(2) The authority and responsibility provided under subsection (a) are subject to the authority, direction, and control of the Secretary.

(d) Assistance to displaced employees.— If the commander of a military installation enters into a contract under subsection (a), the commander shall, to the maximum extent practicable, assist in finding suitable employment for any employee who is displaced because of that contract.

(f) Termination of authority.—The authority provided to commanders of military installations by subsection (a) shall terminate on September 30, 1993.

(Added Pub.L. 101-189, Div. A, Title XI, § 1131(a)(1), Nov. 29, 1989, 103 Stat. 1560, and amended Pub.L. 101-510, Div. A, Title IX, § 921, Nov. 5, 1990, 104 Stat. 1627; Pub.L. 102-190, Div. A, Title III, § 816(a), Dec. 6, 1991, 105 Stat. 1837.)

HISTORICAL AND STATUTORY NOTES

1991 Amendment

Subsec. (f). Pub.L. 102-190 extended date on which authority shall terminate from Sept. 30, 1991 to Sept. 30, 1993.

1990 Amendment

Subsec. (f). Pub.L. 101-510, § 921, substituted "September 30, 1991" for "September 30, 1990".

Effective Date of 1991 Amendment

Section 315(b) of Pub.L. 102-190 provided that: "The amendment made by subsection (a) [amending subsec. (f) of this section] shall take effect as of September 30, 1991."

Effective Date

Section 1131(b) of Pub.L. 101-189 provided that: "Section 2468 of title 10, United States Code [this section] (as added by subsection (a)), shall take effect as of October 1, 1989."

Legislative History

For legislative history and purpose of Pub.L. 101-189, see 1989 U.S. Code Cong. and Adm. News, p. 838. See, also, Pub.L. 101-510, 1990 U.S. Code Cong. and Adm. News, p. 2931; Pub.L. 102-190, 1991 U.S. Code Cong. and Adm. News, p. 918.

LIBRARY REFERENCES

Armed Services ¶28.
WESTLAW Topic No. 34.
C.J.S. Armed Services §§ 21, 22.

§ 2469. Contracts to perform workloads previously performed by depot-level activities of the Department of Defense: requirement of competition

The Secretary of Defense or the Secretary of a military department may not change the performance of a depot-level maintenance workload that has a threshold value of not less than \$9,000,000 and is being performed by a depot-level activity of the Department of Defense unless, prior to any such change, the Secretary uses competitive procedures to make the change.

(Added Pub.L. 102-484, Div. A, Title III, § 353(a), Oct. 23, 1992, 106 Stat. 2379.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102-484, see 1992 U.S. Code Cong. and Adm. News, p. 1636.

CHAPTER 147—UTILITIES AND SERVICES

Sec.		Sec.	
2483.	Sale of electricity from alternate energy and cogeneration production facilities	2488.	Nonappropriated fund instrumentalities: purchase of alcoholic beverages
2484.	Commissary stores: expenses.	2489.	Overseas package stores: treatment of United States wines.
2485.	Donation of unusable food: commissary stores and other activities.	2490.	Utility services: furnishing for certain buildings.
2486.	Commissary stores: merchandise that may be sold; uniform surcharges and pricing.	2490a.	Nonappropriated fund instrumentalities: financial management and use of non-appropriated funds.
2487.	Commissary stores: limitations on release of sales information.		

HISTORICAL AND STATUTORY NOTES

1990 Amendment

Pub.L. 101-510, Div. A, Title III, § 324(b)(2), Nov. 5, 1990, 104 Stat. 1531, substituted "Dona-

1988 Amendment

Pub.L. 100-370, § 1(j)(2), July 19, 1988, 102 Stat. 848, added item 2490.

M E M O R A N D U M

TO: Mary Ann Hook
FROM: Marni Langbert
RE: Legislative History of Limitations on Depot Maintenance

See 95.

In section 326 of FY 1989 Defense Authorization (Public Law 100-456), the original provision concerning limitations on depot maintenance workload competitions was passed by Congress in 1988. The section did not regulate the Department of the Navy. Specifically, the bill "prohibited the Secretary of Defense from requiring the Secretary of the Army or the Secretary of the Air Force from competing depot workloads between themselves or with private contractors." U.S.C.C.A.N., 1988, p.2518.

Since then, various amendments have changed the depot maintenance provision. In 1991, the House bill "contained a provision that would allow the Department of Defense to compete annually between \$5.0 to \$15.0 million of depot maintenance workload with the private sector. This provision would also limit the competition to not more than 40 percent of each depot's workload." U.S.C.C.A.N., 1991, p.1082-National Defense Authorization Act for FY1991 (Public Law 101-510). The Senate wanted to "repeal section 2464 of title 10, United States Code, which currently prohibits the Army and the Air Force from competing depot maintenance tasks between the Army and the Air Force or

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MEMORANDUM

TO: Mary Ann Hook
FROM: Marni Langbert
RE: Legislative History of Limitations on Depot Maintenance

between the Army or the Air Force and a private contractor." Id., p.1082.

The conferees agreed upon a section that provided "that not less than 60 percent of the total depot maintenance of material in the Army and the Air Force shall be performed by employees of the Department of Defense. This percentage limitation should be measured in dollars." Id., p.1082. But Congress did not permit the "Secretary of the Army and the Secretary of the Air Force to just cancel a depot-level maintenance contract... in order to comply with the requirements of this provision. The Secretary of the Army and the Secretary of the Air Force may waive the operation of this provision for their respective services if the Secretary concerned determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver." Id., p.1082.

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Then, in 1992, the conferees agreed to extend the limitations on the performance of depot-level maintenance to the Department of the Navy. U.S.C.C.A.N., 1992, p.1778. However, the conferees disagreed on establishing "a limit of no more than 40 percent of the depot-level maintenance workload by each type of equipment and

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FROM: Marni Langbert
RE: Legislative History of Limitations on Depot Maintenance

material that may be offered for contract by non-government personnel." Id., p.1778. In addition, Congress agreed that the "Secretary of the Army shall provide for the performance by employees of the Department of Defense of not less than 50 percent in fiscal year 1993, 55 percent in fiscal year 1994 and 60 percent in fiscal year 1995 of Army aviation depot-level maintenance. The Secretary concerned may not cancel a depot-level maintenance contract in effect on the date of enactment of this act in order to comply with the requirements of this provision." Id., p.1778-9.

Furthermore, another 1992 amendment provided that "the Secretary of Defense or the Secretary of a military department may not change the performance of a depot-level maintenance workload that has a threshold value of \$3.0 million and that is being performed by a depot-level activity of the Department of Defense to performance by a private contractor unless, prior to selection of the private contractor, the Secretary uses competitive procedures for the selection." Id., 1992, p.1779.

The conferees also discussed a repeal of the requirement for a competition pilot program for depot-level maintenance of materials. The House wanted to amend the National Defense

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PRIVILEGED & CONFIDENTIAL
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DRAFT
JUNE 16, 1993

M E M O R A N D U M

TO: Mary Ann Hook
FROM: Marni Langbert
RE: Legislative History of Limitations on Depot Maintenance

Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) "to increase the limit of non-care workload that can be competed among depots with private industry from 10 to 20 percent." Id., p.1779. The Senate opted to "delete the limitation on the amount of depot maintenance workload in the Army and the Air Force above the core level that can be opened to competition during fiscal year 1993." Id., p.1779. The conferees decided that "depot maintenance workload selected for competition not be drawn disproportionately from one or several depot maintenance activities of the military Services." Id., p.1779.

JUNE 16, 1993

MEMORANDUM

TO: Mary Ann Hook
FROM: Marni Langbert
RE: Legislative History of Limitations on Depot Maintenance

I have attached the conference reports for 1988, 1989, 1991 and 1992. I hope these are of help (1991 and 1992 give some explanation of the 60/40 rule). Unfortunately though, none of the reports indicate why this depot maintenance limitation was originally enacted. If you have any suggestions as to where else I could look, please let me know.

- Please start -
Today - first enacted - 1988
The first depot ^{provision} was passed by
Congress in 1988 -
1989 - changed
1990 - changed ^{Senate} House
1991 - Senate/House

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Qualifications for head of auditing function in Military Departments (sec. 325)

The House bill contained a provision (sec. 325) that would establish minimum qualifications for auditors general within each Service and would give the Department of Defense Inspector General authority to approve each new auditor general selectee. In addition, this provision would prohibit the use of military personnel in certain key supervisory positions within the Naval Audit Service.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment.

The conferees agree to establish minimum qualifications for auditors general within each Service, and agree to prohibit the use of military personnel in certain key supervisory positions within the Naval Audit Service. The conferees also agree that the Navy should replace the military officers serving in these key supervisory positions within one year with highly skilled and professional civilian audit managers. The conferees direct the Navy to conduct a thorough and extensive search for candidates to fill these positions. The conferees do not agree that approval by the Department of Defense Inspector General of each auditor general selectee should be required.

Prohibition on certain depot maintenance workload competitions (sec. 326)

The House bill contained a provision (sec. 326) that would prohibit the Secretary of Defense from requiring the Secretary of the Army or the Secretary of the Air Force from competing depot workloads between themselves or with private contractors.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment. - (?)

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Report on manpower, mobility, sustainability and equipment (sec. 327)

The House bill contained a provision (sec. 328) that would make permanent the annual reporting requirement contained in section 317 of the fiscal year 1988/1989 Defense Authorization Act (Public Law 100-180). Under this requirement, the Secretary of Defense must submit a report to the Committees on Armed Services of the Senate and House of Representatives on the status of Department of Defense efforts to identify and measure readiness and to relate such indicators and measurements to the budget process.

The Senate amendment contained no similar provision. However, the Senate report (S. Rept. 100-326) directed the Secretary of Defense to submit a consolidated report on manpower, mobilization, sustainability and readiness to the Committees on Armed Services of the Senate and House of Representatives not later than February 15, 1988.

The Senate recedes with an amendment. The conferees agree to require a report from the Secretary of Defense for fiscal year 1989 as outlined in the Senate report.

Lease of aircraft for (sec. 328)

The Senate amendment would authorize the warfare activities.

The House bill contained
The House recedes

Requirements for ce.

The House bill contained the Secretary of Defense of the Department of Defense under Operation A-76. The provision for determining to contractor performance monthly during who will be affected

The Senate bill contained
The Senate recedes

Performance of firefighting, Alaska (sec. 329)

The Senate amendment of the Secretary of Defense firefighting and security Amchitka, Alaska.

The House bill contained
The House recedes

Defense supply management (sec. 341)

The House bill contained the Secretary of Defense after enactment a process of Department and control for submitted to the Committee House of Representatives reviewed by the General also require the Secretary of Defense to develop individual methods of armament that are susceptible to modernization of the supplies of each of the

The Senate amendment
The House recedes
modify the requirement

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consultation with the Secretary of Education, up to \$10 million in assistance to eligible local educational agencies.

Prohibition on payment of severance pay to foreign nationals in the event of certain base closures (sec. 311)

The House bill contained a provision (sec. 311) that would prohibit the Department of Defense from paying severance pay to foreign

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employees whose employment is terminated when an overseas U.S. military facility is closed or curtailed at the request of the host government.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would apply the prohibition on the payment of severance pay to employees who work at overseas U.S. military facilities that are closed or curtailed as the result of agreements entered into with the host countries after the date of the enactment of this Act.

Prohibition on joint use of the Marine Corps Air Station at El Toro, California (sec. 312)

The House bill contained a provision (sec. 313) that would prohibit the Secretary of the Navy from entering into any agreement to permit use of civil aircraft at Marine Corps Air Station, El Toro, California.

The Senate amendment contained a similar provision (sec. 322).
The House recedes.

Clarification of prohibition on certain depot maintenance workload competitions (sec. 313)

The House bill contained a provision (sec. 314) that would require the Secretary of Defense to prohibit the Secretary of the Army and the Secretary of the Air Force from competing workload competitions between themselves or with private industry.

The Senate amendment contained no similar provision.
The Senate recedes.

Reduction in the number of civilian personnel authorized for duty in Europe (sec. 314)

The House bill contained a provision (sec. 316) that would reduce civilian employees of the Defense Department in Europe by October 1, 1991 by a number equal to the number related to the U.S. intermediate-range nuclear forces on December 8, 1987.

The Senate amendment contained no similar provision.
The Senate recedes with a clarifying amendment.

Repeal of limitation on the use of operation and maintenance funds to purchase investment items (sec. 315)

The Senate amendment contained a similar provision (sec. 321) that would repeal section 303 of the National Defense Authorization Act for Fiscal years 1988 and 1989 which provided that operation and maintenance funds may not be used to purchase items costing more than \$5,000 in fiscal year 1990 if purchases of the items prior to 1988 were chargeable to procurement appropriations.

The House bill contained no provision
The House recedes.

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SECTION 311—PROHIBITION ON PAYMENT OF SEVERANCE PAY TO FOREIGN NATIONALS IN THE EVENT OF CERTAIN BASE CLOSURES

As part of the new base rights treaty with Spain, the Spanish Government has given the United States three years to withdraw the 401st Tactical Fighter Wing and accompanying operational forces from the Torrejon Air Base. This termination action was a sovereign decision by the Spanish Government that the U.S. Government protested. As a result of this action, the U.S. Government may have to pay severance pay to approximately 440 foreign nationals at an estimated cost of \$11 million.

Base rights treaties are continuously being negotiated, and several agreements are currently in that status. The United States has put billions of dollars into the construction and operation of these bases. Paying for severance of host nation employees when the host nation forces base closure should not be permitted. Section 311 would prohibit use of funds for this purpose when employment is terminated as a result of closing of a United States military facility in the country at the request of the host government. This prohibition would also apply to severance pay for foreign national employees of contractors when the contract is terminated as a result of a base closure.

SECTION 312—PROHIBITION ON RELEASING CIVILIAN PERSONNEL AT THE SAN ANTONIO REAL PROPERTY MAINTENANCE AGENCY

Section 312 would prohibit the Secretary of Defense from terminating or laying off any full time, on-call or temporary employees of the San Antonio Real Property Maintenance Agency starting from the date of enactment of this Act until the disestablishment of the Real Property Maintenance Agency.

SECTION 313—PROHIBITION ON JOINT USE OF THE MCAS AT EL TORO, CA WITH CIVIL AVIATION

Section 313 would prohibit any commercial expansion of MCAS El Toro, California. This section would ensure that El Toro remains available for military training.

SECTION 314—CLARIFICATION OF PROHIBITION ON CERTAIN DEPOT MAINTENANCE WORKLOAD COMPETITIONS

Section 326 of the fiscal year 1989 Defense Authorization Act (Public Law 100-456) prohibits the Secretary of Defense from requiring the Secretary of the Army or the Secretary of the Air Force from competing workloads between themselves or with private industry.

During fiscal year 1989 such workload competition studies have continued at the request of the Secretary of the Air Force. Section 314 would specify that the Secretary of Defense shall prohibit the Secretary of the Army and the Secretary of the Air Force from competing workload competitions between themselves or with private industry.

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are completed, including the development and implementation of the required automatic data processing systems. The Defense Department would have to report to Congress on the results of its analysis before it began any further consolidations.

The Senate amendment contained no similar provision. The Senate recedes with an amendment.

Limitation on depot maintenance workload competitions (sec. 314)

The House bill contained a provision (sec. 322) that would allow the Department of Defense to compete annually between \$5.0 to \$15.0 million of depot maintenance workload with the private sector. This provision would also limit the competition to not more than 40 percent of each depot's workload. (A)

The Senate amendment contained a provision (sec. 313) that would amend section 922(a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510) to extend the depot maintenance workload competition pilot program through fiscal year 1992. This provision would also repeal section 2464 of title 10, United States Code, which currently prohibits the Army and the Air Force from competing depot maintenance tasks between the Army and the Air Force or between the Army or the Air Force and a private contractor.

The Senate recedes with an amendment. The conference provision would provide that not less than 60 percent of the total depot maintenance of material in the Army and the Air Force shall be performed by employees of the Department of Defense. This percentage limitation should be measured in dollars. The conference provision would also provide that the civilian employees of the Department of Defense involved in the depot-level maintenance of material may not be managed on the basis of any end-strength constraint or limitation on the number of such employees who may be employed on the last day of a fiscal year. Such employees shall be managed solely on the basis of the available workload and the funds made available for such depot-level maintenance.

The Secretary of the Army and the Secretary of the Air Force may not cancel a depot-level maintenance contract in effect on the date of enactment of this Act in order to comply with the requirements of this provision. The Secretary of the Army and the Secretary of the Air Force may waive the operation of this provision for their respective Services if the Secretary concerned determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver. Not later than January 15 of 1992 and 1993, the Secretary of the Army and the Secretary of the Air Force shall jointly submit to Congress a report describing the progress during the preceding fiscal year to achieve and maintain the percentage limitation of depot-level maintenance required to be performed by employees of the Department of Defense pursuant to this provision. (B)

The conference provision would also authorize a depot maintenance competition pilot program for the Army and the Air Force. During fiscal years 1992 and 1993, the Secretary of Defense shall conduct a pilot program under which competitive procedures are used to select entities to perform depot-level maintenance of material for the Army and the Air Force. The program may not involve

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more than 10 percent of all depot-level maintenance of material that is not required to be performed by employees of the Department of Defense pursuant to the limitations in this provision. The conferees direct that depot maintenance programs selected for this competition pilot program not be drawn disproportionately from one or several Army or Air Force depot maintenance activities. Not later than December 1, 1993, the Secretary of Defense shall submit a report to Congress containing a five-year strategy of the Department of Defense to use competitive procedures for the selection of entities to perform depot maintenance workloads and describing the cost savings anticipated through the use of these procedures.

Authority of base commanders over contracting for commercial activities (sec. 315)

The House bill contained a provision (sec. 323) that would make permanent the authority of base commanders over contracting for commercial activities in section 2468 of title 10, United States Code.

The Senate amendment contained a provision (sec. 314) that would repeal section 2468 of title 10, United States Code.

The Senate recedes with an amendment that would extend the temporary authority of base commanders over contracting for commercial activities through September 30, 1993. The conferees direct the Secretary of Defense to submit a report to the congressional defense committees no later than March 1, 1993, pertaining to the impact of this provision on the commercial activities of the Department of Defense.

Defense Business Operations Fund (sec. 316)

The House bill contained a provision (sec. 341) that would prohibit the Department of Defense from establishing a Defense Business Operations Fund (DBOF).

The Senate amendment contained no similar provision, and would authorize funds for the DBOF for fiscal year 1992.

The Senate recedes with an amendment that would authorize the establishment and operation of the DBOF through April 15, 1993. This fund would consolidate the activities previously funded in the existing stock and industrial funds, as well as the Defense Finance and Accounting Service, the Defense Commissary Agency, the Defense Technical Information Center (including the Information Analysis Centers), the Defense Reutilization and Marketing Service, and the Defense Industrial Plant Equipment Center. The Defense Department shall maintain the separate identity of each working-capital fund and industrial, commercial, or support type activity managed through the DBOF for purposes of accounting, financial reporting, and auditing. The conferees endorse the concept of capital budgeting for equipment for the DBOF, but disapprove funding military construction projects through this new fund.

The conferees direct that no new activities be funded through the DBOF in fiscal year 1993 in order to give Congress an opportunity to evaluate the execution of this fund in fiscal year 1993 before any further expansion. No later than January 1, 1992, the Defense Department shall provide overall policy, implementation plans, and management performance factors to the congressional defense com-

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Capital asset subaccount (sec. 342)

The House bill contained a provision (sec. 332) that would limit the use of the capital asset subaccount within the Defense Business Operations Fund and would also require a report by the Secretary of Defense on this account.

The Senate amendment contained no similar provision.
The Senate recedes with an amendment.

Limitations on obligations against Defense Business Operations Fund (sec. 343)

The Senate amendment contained a provision (sec. 352) that would prohibit the Secretary of Defense from incurring obligations against the Defense Business Operations Fund during fiscal year 1993, except for obligations for fuel, subsistence and commissary items, retail operations, repair of equipment, and the cost of operations, in excess of 65 percent of the sales from the Defense Business Operations Fund during the fiscal year. This provision would allow the Secretary of Defense to waive this 65 percent limitation cap if he determines that such action is essential to the national security of the United States.

The House bill contained no similar provision.
The House recedes.

SUBTITLE E—DEPOT-LEVEL ACTIVITIES

Competitive bidding for tactical missile maintenance (sec. 351)

The House bill contained a provision (sec. 341) that would require the Secretary of Defense to use competitive procedures if the Secretary decides to consolidate tactical missile maintenance.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary of Defense to ensure that the Systems Management Activity and the Depot Systems Command are relocated to Rock Island Arsenal, Illinois, in accordance with the recommendation of the Base Closure and Realignment Commission dated July 1, 1991.

Limitations on the performance of depot-level maintenance of material (sec. 352)

The House bill contained a provision (sec. 342) that would establish a limit of no more than 40 percent of the depot-level maintenance workload by each type of equipment and materiel that may be offered for contract by non-governmental personnel. The provision would also extend the limitations on the performance of depot-level maintenance by the Army and Air Force in section 2466 of title 10, United States Code, to the Navy.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment.

The conferees agree to include the Navy under the limitations on the performance of depot-level maintenance in section 2466 of title 10, United States Code. The conferees do not agree to establish a limit of no more than 40 percent of the depot-level maintenance workload by each type of equipment and materiel that may be offered for contract by non-governmental personnel. However, the conferees agree that the Secretary of the Army shall provide for

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the performance by employees of the Department of Defense of not less than 50 percent in fiscal year 1993, 55 percent in fiscal year 1994 and 60 percent in fiscal year 1995 of Army aviation depot-level maintenance. The Secretary concerned may not cancel a depot-level maintenance contract in effect on the date of enactment of this act in order to comply with the requirements of this provision. (D)

Requirement of competition for the performance of workloads previously performed by depot-level activities of the Department of Defense (sec. 353)

The House bill contained a provision (sec. 343) that would require the Department of Defense to use competitive procedures for awarding any workload currently being performed in a military depot.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would provide that the Secretary of Defense or the Secretary of a military department may not change the performance of a depot-level maintenance workload that has a threshold value of \$3.0 million and that is being performed by a depot-level activity of the Department of Defense to performance by a private contractor unless, prior to selection of the private contractor, the Secretary uses competitive procedures for the selection.

Repeal of requirement for competition pilot program for depot-level maintenance of materials (sec. 354)

The House bill contained a provision (sec. 345) that would amend section 314 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) to increase the limit of non-core workload that can be competed among depots or with private industry from 10 percent to 20 percent.

The Senate amendment contained a provision (sec. 358) that would amend section 314 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 by deleting the limitation on the amount of depot maintenance workload in the Army and the Air Force above the core level that can be opened to competition during fiscal year 1993.

The House recedes. The conferees direct that depot maintenance workload selected for competition not be drawn disproportionately from one or several depot maintenance activities of the military Services.

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SUBTITLE F—COMMISSARIES AND MILITARY EXCHANGES

Standardization of certain programs and activities of military exchanges (sec. 361)

The House bill contained a provision (sec. 351) that would require the Secretary of Defense to standardize among the military departments certain programs and activities of the military exchanges of the military departments not later than October 1, 1993. The provision would also require the Secretary of Defense to submit to the Congress a report on other programs and activities of the military exchanges that the Secretary determines can be eco-

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SECTION 333—PROHIBITION ON MANAGEMENT OF COMMISSARY FUNDS THROUGH DEFENSE BUSINESS OPERATIONS FUND

This section would prohibit the inclusion of the Defense Commissary Agency in the Defense Business Operations Fund.

SECTION 341—COMPETITIVE BIDDING AMONG CERTAIN DEFENSE DEPOT-LEVEL ACTIVITIES FOR TACTICAL MISSILE MAINTENANCE

This section would require the Secretary of Defense to use competitive procedures if the Secretary decides to consolidate tactical missile maintenance.

SECTION 342—LIMITATIONS ON THE PERFORMANCE OF DEPOT-LEVEL MAINTENANCE OF MATERIEL

This section would establish a limit of no more than 40 percent of a depot-level maintenance workload by each type of equipment and materiel that may be offered for contract by non-governmental personnel.

SECTION 343—REQUIREMENT OF COMPETITION FOR SELECTION OF PRIVATE CONTRACTORS TO PERFORM WORKLOADS PREVIOUSLY PERFORMED BY DEPOT-LEVEL ACTIVITIES OF THE DEPARTMENT OF DEFENSE

This section would require the Department of Defense to use competitive procedures for awarding any workload currently being performed in a military depot.

SECTION 344—REQUIREMENT OF COMPARABLE OFFERING FROM PRIVATE CONTRACTOR CONTRACTS AND DEPARTMENT OF DEFENSE CONTRACTS FOR CONTRACTS OFFERED FOR COMPETITION

This section would require the Secretary of Defense, in offering for competition contracts for the performance of depot-level maintenance workloads, to offer contracts for the performance of workloads that are being performed by private contractors at least to the same extent as offers for contracts performed by depot-level activities of the Department of Defense.

SECTION 345—EXPANSION OF COMPETITION PILOT PROGRAM

This section would increase the limit of non-core workload that can be competed among depots or with private industry from 10 percent to 20 percent.

SECTION 351—STANDARDIZATION OF CERTAIN PROGRAMS AND ACTIVITIES OF MILITARY EXCHANGES

This section would require the Secretary of Defense to provide a single agency of the Department of Defense for the operation and management of all military exchange stores.

SECTION 352—MANAGEMENT OF DEFENSE ASSETS

This section would require the Secretary of Defense to issue regulations for the management of defense assets and to issue regulations for the management of defense assets for violation.

SECTION 353—DEVELOPMENT OF CERTAIN COMMISSARIAL ACTIVITIES

This section would require the Secretary of Defense to determine the feasibility of the development of commissarial activities by the Secretary of Defense demonstration program similar programs.

SECTION 354—REGULATION OF COMMISSARIAL ACTIVITIES

This section would require the Secretary of Defense to issue regulations, that contain the Code, that contain the regulations of commissarial activities.

SECTION 355—USE OF DEFENSE ASSETS

This section would require the Secretary of Defense to issue regulations for the use of the Ready Reserve reserve points in which was paid for duty.

SECTION 361—EXTENSION OF THE NUMBER OF COMMISSARIAL ACTIVITIES

This section would require the Secretary of Defense to issue regulations for the extension of the number of commissarial activities of the Nation (Public Law 101-508) personnel reduction master plan and budget submission.

SECTION 362—MANAGEMENT OF DEFENSE ASSETS

This section would require the Secretary of Defense to issue regulations for the management of defense assets for an annual submission would expand.

SECTION 363—TREATMENT OF DEFENSE ASSETS

This section would require the Secretary of Defense to issue regulations for the treatment of defense assets to derive the items in the United States.

Is this just house?

M E M O R A N D U M

TO: Mary Ann Hook
FROM: Marni Langbert
RE: Legislative History of Limitations on Depot Maintenance

In section 326 of FY 1989 Defense Authorization (Public Law 100-456), the original provision concerning limitations on depot maintenance workload competitions was passed by Congress in 1988. The section did not regulate the Department of the Navy. Specifically, the bill "prohibited the Secretary of Defense from requiring the Secretary of the Army or the Secretary of the Air Force from competing depot workloads between themselves or with private contractors." U.S.C.C.A.N., 1988, p.2518.

Since then, various amendments have changed the depot maintenance provision. In 1991, the House bill "contained a provision that would allow the Department of Defense to compete annually between \$5.0 to \$15.0 million of depot maintenance workload with the private sector. This provision would also limit the competition to not more than 40 percent of each depot's workload." U.S.C.C.A.N., 1991, p.1082-National Defense Authorization Act for FY1991 (Public Law 101-510). The Senate wanted to "repeal section 2464 of title 10, United States Code, which currently prohibits the Army and the Air Force from competing depot maintenance tasks between the Army and the Air Force or

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between the Army or the Air Force and a private contractor." Id., p.1082.

The conferees agreed upon a section that provided "that not less than 60 percent of the total depot maintenance of material in the Army and the Air Force shall be performed by employees of the Department of Defense. This percentage limitation should be measured in dollars." Id., p.1082. But Congress did not permit the "Secretary of the Army and the Secretary of the Air Force to just cancel a depot-level maintenance contract... in order to comply with the requirements of this provision. The Secretary of the Army and the Secretary of the Air Force may waive the operation of this provision for their respective services if the Secretary concerned determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver." Id., p.1082.

Then, in 1992, the conferees agreed to extend the limitations on the performance of depot-level maintenance to the Department of the Navy. U.S.C.C.A.N., 1992, p.1778. However, the conferees disagreed on establishing "a limit of no more than 40 percent of the depot-level maintenance workload by each type of equipment and

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material that may be offered for contract by non-government personnel." *Id.*, p.1778. In addition, Congress agreed that the "Secretary of the Army shall provide for the performance by employees of the Department of Defense of not less than 50 percent in fiscal year 1993, 55 percent in fiscal year 1994 and 60 percent in fiscal year 1995 of Army aviation depot-level maintenance. The Secretary concerned may not cancel a depot-level maintenance contract in effect on the date of enactment of this act in order to comply with the requirements of this provision." *Id.*, p.1778-9.

Furthermore, another 1992 amendment provided that "the Secretary of Defense or the Secretary of a military department may not change the performance of a depot-level maintenance workload that has a threshold value of \$3.0 million and that is being performed by a depot-level activity of the Department of Defense to performance by a private contractor unless, prior to selection of the private contractor, the Secretary uses competitive procedures for the selection." *Id.*, 1992, p.1779.

The conferees also discussed a repeal of the requirement for a competition pilot program for depot-level maintenance of materials. The House wanted to amend the National Defense

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Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190) "to increase the limit of non-care workload that can be competed among depots with private industry from 10 to 20 percent." Id., p.1779. The Senate opted to "delete the limitation on the amount of depot maintenance workload in the Army and the Air Force above the core level that can be opened to competition during fiscal year 1993." Id., p.1779. The conferees decided that "depot maintenance workload selected for competition not be drawn disproportionately from one or several depot maintenance activities of the military Services." Id., p.1779.