

Public Law 100-370
100th Congress

An Act

July 19, 1988

[H.R. 4229]

To amend title 10, United States Code, to codify in that title certain defense-related permanent free-standing provisions of law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Armed
Forces.

SECTION 1. CODIFICATION OF CERTAIN PERMANENT PROVISIONS OF LAW IN TITLE 10, UNITED STATES CODE.

(a) **ENLISTMENT QUALIFICATIONS.**—(1) Section 520(b) of title 10, United States Code, is amended by striking out the period at the end and inserting in lieu thereof the following: “; however, a person may not be denied enlistment in the armed forces solely because of his not having a high school diploma if his enlistment is needed to meet established strength requirements.”.

(2) Section 3262 of title 10, United States Code, is amended by striking out “Of” and inserting in lieu thereof “Notwithstanding section 520(b) of this title, of”.

10 USC 520 note.

(3) Section 401 of the Department of Defense Supplemental Appropriation Authorization Act, 1974 (Public Law 93-307; 88 Stat. 234), is repealed.

(b) **CAP ON NUMBER OF GENERAL AND FLAG OFFICERS ON ACTIVE DUTY.**—(1) Chapter 32 of title 10, United States Code, is amended—

(A) by redesignating section 526 as section 527; and

(B) by inserting after section 525 the following new section 526:

10 USC 526.

“§ 526. Authorized strength: general and flag officers on active duty

“The total number of general officers on active duty in the Army, Air Force, and Marine Corps and flag officers on active duty in the Navy may not exceed 1,073.”.

(2)(A) Section 527 (as redesignated by paragraph (1)(A)) is amended by striking out “or 525” and inserting in lieu thereof “525, or 526”.

(B) The heading of such section is amended to read as follows:

“§ 527. Authority to suspend sections 523, 524, 525, and 526”.

(3) The table of sections at the beginning of such chapter is amended by striking out the item relating to section 526 and inserting in lieu thereof the following:

“526. Authorized strength: general and flag officers on active duty.

“527. Authority to suspend sections 523, 524, 525, and 526.”.

(4) Section 811(a) of the Department of Defense Appropriation Authorization Act, 1978 (10 U.S.C. 523 note), is repealed.

(c) **COMMISSARY AND EXCHANGE ELIGIBILITY.**—(1) Part II of subtitle A of title 10, United States Code, is amended by inserting after chapter 53 the following new chapter:

“CHAPTER 54—COMMISSARY AND EXCHANGE BENEFITS

“Sec.

“1061. Survivors of certain Reserve and Guard members.

“1062. Certain former spouses.

“1063. Period for use of commissary stores: eligibility attributable to active duty for training.

“§ 1061. Survivors of certain Reserve and Guard members

10 USC 1061.

“(a) **BENEFITS.**—The Secretary of Defense shall prescribe regulations to allow dependents of members of the uniformed services described in subsection (b) to use commissary and exchange stores on the same basis as dependents of members of the uniformed services who die while on active duty for a period of more than 30 days.

Regulations.

“(b) **COVERED DEPENDENTS.**—A dependent referred to in subsection (a) is a dependent of a member of a uniformed service who died—

“(1) while on active duty, active duty for training, or inactive-duty training (regardless of the period of such duty); or

“(2) while traveling to or from the place at which the member was to perform, or has performed, active duty, active duty for training, or inactive-duty training (regardless of the period of such duty).

“§ 1062. Certain former spouses

10 USC 1062.

“The Secretary of Defense shall prescribe such regulations as may be necessary to provide that an unmarried former spouse described in subparagraph (F)(i) of section 1072(2) of this title is entitled to commissary and exchange privileges to the same extent and on the same basis as the surviving spouse of a retired member of the uniformed services.”

Regulations.

(2)(A) Section 1052 of such title is transferred to the end of chapter 54 of such title (as added by paragraph (1)) and redesignated as section 1063.

(B) The table of sections at the beginning of chapter 53 of such title is amended by striking out the item relating to such section 1052.

(3) The tables of chapters at the beginning of subtitle A, and at the beginning of part II of subtitle A, of such title are each amended by inserting after the item relating to chapter 53 the following new item:

“54. Commissary and Exchange Benefits..... 1061”.

(4) Section 308 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 618), is repealed.

10 USC 1052
note.

(5) Section 1005 of the Uniformed Services Former Spouses' Protection Act (10 U.S.C. 1408 note) is repealed.

(d) **FINANCIAL MANAGEMENT.**—(1)(A) Chapter 131 of title 10, United States Code, is amended by inserting before section 2202 the following new section:

“§ 2201. Apportionment of funds: authority for exemption; excepted expenses

10 USC 2201.

“(a) **EXEMPTION FROM APPORTIONMENT REQUIREMENT.**—If the President determines such action to be necessary in the interest of national defense, the President may exempt from the provisions of section 1512 of title 31 appropriations, funds, and contract

Contracts.

authorizations available for military functions of the Department of Defense.

“(b) AIRBORNE ALERTS.—Upon a determination by the President that such action is necessary, the Secretary of Defense may provide for the cost of an airborne alert as an excepted expense under section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)).

“(c) MEMBERS ON ACTIVE DUTY.—Upon a determination by the President that it is necessary to increase (subject to limits imposed by law) the number of members of the armed forces on active duty beyond the number for which funds are provided in appropriation Acts for the Department of Defense, the Secretary of Defense may provide for the cost of such additional members as an excepted expense under section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)).

“(d) NOTIFICATION TO CONGRESS.—The Secretary of Defense—

“(1) shall immediately notify Congress of the use of any authority under this section; and

Reports.

“(2) shall submit monthly reports to Congress on the estimated obligations incurred pursuant to subsections (b) and (c).”

10 USC 114 note.

(B) Section 8009 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190 (99 Stat. 1204)), is repealed.

(2)(A) Chapter 131 of title 10, United States Code, is further amended by inserting after section 2211 the following new section:

10 USC 2212.

“§ 2212. Contracted advisory and assistance services: accounting procedures

“(a) ACCOUNTING PROCEDURE.—The Secretary of Defense shall require that there be maintained within each military department an accounting procedure to aid in the identification and control of expenditures for services identified as contracted advisory and assistance services.

“(b) REGULATIONS TO IDENTIFY CONTRACTED ADVISORY AND ASSISTANCE SERVICES.—(1) The Secretary shall prescribe regulations which specifically describe—

“(A) those services which the Department of Defense considers to be contracted advisory and assistance services; and

“(B) of those services, which services are carried out in direct support of a weapons system and are essential to the development, production, or maintenance of the system.

“(2) In prescribing regulations under paragraph (1), the Secretary shall consider the following areas:

“(A) Management and professional services.

“(B) Special studies and analyses.

“(C) Management and support services for research and development activities.

“(D) Training.

“(E) Management review of program funded organizations.

“(F) Public relations.

“(G) Other consulting services.

“(H) Engineering development and operational systems development related to research and development activities and production activities.

“(I) Technical assistance.

“(J) Technical representation.

“(K) Quality control, testing, and inspection services.

“(L) Specialized medical services.

“(M) Architectural and engineering services, other than in connection with construction.

“(N) Technical and management assistance for weapons systems management and review.

“(c) CONGRESSIONAL BUDGET DOCUMENTS.—Budget documents presented to Congress in support of the budget for the Department of Defense for any fiscal year—

“(1) shall identify the total amount requested for contracted advisory and assistance services (as defined under regulations prescribed under subsection (b));

“(2) shall identify the amount requested for each category of such services established by regulations prescribed under subsection (b); and

“(3) within each such category, shall separately set forth amounts for such services described in subsection (b)(1)(B).”.

(B) Section 918 of the Defense Procurement Improvement Act of 1985 (title IX of Public Law 99-145) is repealed.

(3)(A) Chapter 131 of title 10, United States Code, is further amended by adding at the end the following new section:

10 USC 2304
note.

“§ 2217. Comparable budgeting for common procurement weapon systems

10 USC 2217.

“(a) MATTERS TO BE INCLUDED IN ANNUAL DEFENSE BUDGETS.—In preparing the defense budget for any fiscal year, the Secretary of Defense shall—

“(1) specifically identify each common procurement weapon system included in the budget;

“(2) take all feasible steps to minimize variations in procurement unit costs for any such system as shown in the budget requests of the different armed forces requesting procurement funds for the system; and

“(3) identify and justify in the budget all such variations in procurement unit costs for common procurement weapon systems.

“(b) COMPTROLLER.—The Secretary shall carry out this section through the Comptroller of the Department of Defense.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘defense budget’ means the budget of the Department of Defense included in the President’s budget submitted to Congress under section 1105 of title 31 for a fiscal year.

“(2) The term ‘common procurement weapon system’ means a weapon system for which two or more of the Army, Navy, Air Force, and Marine Corps request procurement funds in a defense budget.”.

(B) Section 955 of the Defense Acquisition Improvement Act of 1986 is repealed.

10 USC 113 note.

(4) The table of sections at the beginning of chapter 131 of title 10 United States Code, is amended—

(A) by inserting before the item relating to section 2202 the following new item:

“2201. Apportionment of funds: authority for exemption; excepted expenses.”;

(B) by inserting after the item relating to section 2211 the following new item:

“2212. Contracted advisory and assistance services: accounting procedures.”;
and

(C) by adding at the end the following new item:

"2217. Comparable budgeting for common procurement weapon systems."

(e) MISCELLANEOUS ADMINISTRATIVE PROVISIONS.—(1) Subtitle A of title 10, United States Code, is amended by inserting after chapter 133 the following new chapter:

"CHAPTER 134—MISCELLANEOUS ADMINISTRATIVE PROVISIONS

"Subchapter	Sec.
"I. Miscellaneous Authorities, Prohibitions, and Limitations on the Use of Appropriated Funds.	2241
"II. Miscellaneous Administrative Authority	2251

"SUBCHAPTER I—MISCELLANEOUS AUTHORITIES, PROHIBITIONS, AND LIMITATIONS ON THE USE OF APPROPRIATED FUNDS

"Sec.

"2241. Availability of appropriations for certain purposes.

"2242. Authority to use appropriated funds for certain investigations and security services.

10 USC 2241.

"§ 2241. Availability of appropriations for certain purposes

"(a) OPERATION AND MAINTENANCE APPROPRIATIONS.—Amounts appropriated to the Department of Defense for operation and maintenance of the active forces may be used for the following purposes:

- "(1) Morale, welfare, and recreation.
- "(2) Modification of personal property.
- "(3) Design of vessels.
- "(4) Industrial mobilization.
- "(5) Military communications facilities on merchant vessels.
- "(6) Acquisition of services, special clothing, supplies, and equipment.
- "(7) Expenses for the Reserve Officers' Training Corps and other units at educational institutions.

"(b) NECESSARY EXPENSES.—Amounts appropriated to the Department of Defense may be used for all necessary expenses, at the seat of the Government or elsewhere, in connection with communication and other services and supplies that may be necessary for the national defense.

10 USC 2242.

"§ 2242. Authority to use appropriated funds for certain investigations and security services

"The Secretary of Defense and the Secretary of each military department may—

- "(1) pay in advance for the expenses of conducting investigations in foreign countries incident to matters relating to the Department of Defense, to the extent such expenses are determined by the investigating officer to be necessary and in accord with local custom;
- "(2) pay expenses incurred in connection with the administration of occupied areas;
- "(3) pay expenses of military courts, boards, and commissions; and

“(4) reimburse the Administrator of General Services for security guard services furnished by the Administrator to the Department of Defense for the protection of confidential files.

Classified information.

“SUBCHAPTER II—MISCELLANEOUS ADMINISTRATIVE AUTHORITY

“Sec.

“2251. Household furnishings and other property: personnel outside the United States or in Alaska or Hawaii.

“2252. Rewards: missing property.

“2253. Motor vehicles.

“§ 2251. Household furnishings and other property: personnel outside the United States or in Alaska or Hawaii 10 USC 2251.

“(a) IN GENERAL.—Subject to subsection (b), the Secretary of the military department concerned may—

“(1) purchase household furnishings and automobiles from members of the armed forces and civilian employees of the Department of Defense on duty outside the United States or in Hawaii for resale at cost to incoming personnel; and

“(2) provide household furnishings, without charge, in other than public quarters occupied by members of the armed forces or civilian employees of the Department of Defense who are on duty outside the United States or in Alaska or Hawaii.

“(b) REQUIRED DETERMINATION.—The authority provided in subsection (a) may be used only when it is determined, under regulations approved by the Secretary of Defense, that the use of that authority would be advantageous to the United States.

“§ 2252. Rewards: missing property 10 USC 2252.

“The Secretary of Defense and the Secretary of each military department may pay a reward of not more than \$500 in any case for information leading to the discovery of missing property under the jurisdiction of that Secretary or leading to the recovery of such property.

“§ 2253. Motor vehicles 10 USC 2253.

“(a) GENERAL AUTHORITIES.—The Secretary of Defense and the Secretary of each military department may—

“(1) provide for insurance of official motor vehicles in a foreign country when the laws of such country require such insurance; and Insurance.

“(2) purchase right-hand drive vehicles at a cost of not more than \$12,000 each.

“(b) HIRE OF PASSENGER VEHICLES.—Amounts appropriated to the Department of Defense for operation and maintenance of the active forces may be used for the hire of passenger motor vehicles.”.

(2) The tables of chapters at the beginning of subtitle A, and at the beginning of part IV of subtitle A, of such title are each amended by inserting after the item relating to chapter 133 the following new item:

“134. Miscellaneous Administrative Provisions 2241”.

(3)(A) Section 7209 of such title is repealed.

(B) The table of sections at the beginning of chapter 631 of such title is amended by striking out the item relating to section 7209.

(f) **PROCUREMENT GENERALLY.**—(1)(A) Section 2307 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(e)(1) The Secretary of Defense shall ensure that any payment for work in progress (including materials, labor, and other items) under a defense contract that provides for such payments is commensurate with the work, which meets standards of quality established under the contract, that has been accomplished.

“(2) The Secretary shall ensure that progress payments referred to in paragraph (1) are not made for more than 80 percent of the work accomplished under a defense contract so long as the Secretary has not made the contractual terms, specifications, and price definite.

“(3) This subsection does not apply to contracts for amounts less than the maximum amount for small purchases specified in section 2304(g)(2) of this title.”.

10 USC 2307
note.

(B) Section 916 of the Defense Procurement Improvement Act of 1985 (title IX of Public Law 99-145; 99 Stat. 688) is repealed.

(2)(A) Section 2324(e)(1) of such title (as amended by section 805 of Public Law 100-180) is amended by adding at the end the following new subparagraph:

Insurance.

“(L) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor’s own defects in materials or workmanship.”.

(B) Section 2399 of such title is repealed.

(3)(A) Section 2324 of such title is further amended—

(i) by redesignating subsections (j) and (k) as subsections (k) and (l), respectively; and

(ii) by inserting after subsection (i) the following new subsection (j):

“(j) In a proceeding before the Armed Services Board of Contract Appeals, the United States Claims Court, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the Department of Defense is in issue, the burden of proof shall be upon the contractor to establish that those costs are reasonable.”.

10 USC 2324
note.

(B) Section 933 of the Defense Procurement Improvement Act of 1985 (title IX of Public Law 99-145; 99 Stat. 700) is repealed.

(g) **RESEARCH AND DEVELOPMENT.**—(1) Section 2361 of title 10, United States Code, is transferred within chapter 139 to appear immediately before section 2352, redesignated as section 2351, and amended—

(A) by inserting “(a)” before “Funds”; and

(B) by adding at the end the following new subsection:

“(b) Funds appropriated to the Department of Defense for research and development may be used—

“(1) for the purposes of section 2353 of this title; and

“(2) for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Department of Defense.”.

(2) Section 8015 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190 (99 Stat. 1205)), is repealed.

10 USC 2353
note.

(3) Section 2358 of title 10, United States Code, is amended—

(A) by inserting “(a) IN GENERAL.—” before “Subject to approval” in the first sentence;

(B) by striking out “or his designee” both places it appears; and

(C) by adding at the end the following new subsection:

“(b) REQUIREMENT OF POTENTIAL MILITARY RELATIONSHIP.—Funds appropriated to the Department of Defense may not be used to finance any research project or study unless the project or study has, in the opinion of the Secretary of Defense, a potential relationship to a military function or operation.”

(4) The table of sections at the beginning of chapter 139 of title 10, United States Code, is amended—

(A) by inserting before the item relating to section 2352 the following new item:

“2351. Availability of appropriations.”;

and

(B) by striking out the item relating to section 2361.

(5) Section 204 of Public Law 91-441 (10 U.S.C. 2358 note) is repealed.

(h) MISCELLANEOUS PROCUREMENT PROVISIONS.—(1)(A) Section 2389 of title 10, United States Code, is amended—

(i) by inserting “(a)” before “Under regulations”; and

(ii) by adding at the end the following new subsection:

“(b)(1) Funds appropriated to the Department of Defense may be used to purchase for enlisted members milk made available to the Department of Defense under section 202 of the Agricultural Act of 1949 (7 U.S.C. 1446a).

Dairy products.

“(2) The cost of milk so purchased (as determined by the Secretary of Defense) shall be included in the value of the commuted ration of enlisted members.”

(B) The heading of such section is amended to read, as follows:

“§ 2389. Contracts for the procurement of milk: price adjustments; purchases from the Commodity Credit Corporation”.

(2) Chapter 141 of such title is amended by adding at the end the following new sections:

“§ 2410. Contract claims: certification

10 USC 2410.

“A contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804 (50 U.S.C. 1431 et seq.), or other similar request by a contractor that exceeds \$100,000 may not be paid unless a senior official of the contractor in charge at the plant or location involved certifies at the time the claim or request is submitted that—

“(1) the claim or request is made in good faith; and

“(2) all supporting data submitted in connection with the claim or request are accurate and complete to the best of such official's knowledge and belief.

“§ 2410a. Appropriated funds: availability for certain contracts for 12 months

10 USC 2410a.

“Funds appropriated to the Department of Defense for a fiscal year shall be available for payments under contracts for any of the following purposes for 12 months beginning at any time during the fiscal year:

“(1) The maintenance of tools and facilities.

“(2) The lease of real or personal property, including the maintenance of such property when contracted for as part of the lease agreement.

Real property.

“(3) Depot maintenance.”

(3) The table of sections at the beginning of such chapter is amended—

(A) by striking out the item relating to section 2389 and inserting in lieu thereof the following:

"2389. Contracts for the procurement of milk: price adjustments; purchases from the Commodity Credit Corporation.";

(B) by striking out the item relating to section 2399; and
(C) by adding at the end the following new items:

"2410. Contract claims: certification.

"2410a. Appropriated funds: availability for certain contracts for 12 months."

(i) **OVERSIGHT OF MAJOR PROGRAMS.**—(1) Section 2435 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) **STABILITY OF PROGRAM MANAGERS.**—(1) The tour of duty of an officer of the armed forces as a program manager of a major defense acquisition program shall be (A) not less than four years, or (B) until completion of a major program milestone (as defined in regulations prescribed by the Secretary of Defense).

"(2) The Secretary of the military department concerned may waive the length of the tour of duty prescribed in paragraph (1). The authority under the preceding sentence may not be delegated."

(2) Section 1243 of the Defense Procurement Reform Act of 1984 (title XII of Public Law 98-525; 98 Stat. 2609) is repealed.

(j) **UTILITIES AND SERVICES.**—(1) Chapter 147 of title 10, United States Code, is amended by adding at the end the following new section:

10 USC 2432
note.

10 USC 2490.

"§ 2490. Utility services: furnishing for certain buildings

"Appropriations for the Department of Defense may be used for utility services for—

"(1) buildings constructed at private cost, as authorized by law; and

"(2) buildings on military reservations authorized by regulation to be used for morale, welfare, and recreational purposes."

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2490. Utility services: furnishing for certain buildings."

(k) **INTERDEPARTMENTAL TRANSFER OF VESSELS.**—(1) Chapter 153 of title 10, United States Code, is amended by adding at the end the following new section:

10 USC 2578.

"§ 2578. Vessels: transfer between departments

"A vessel under the jurisdiction of a military department may be transferred or otherwise made available without reimbursement to another military department or to the Department of Transportation, and a vessel under the jurisdiction of the Department of Transportation may be transferred or otherwise made available without reimbursement to a military department. Any such transfer may be made only upon the request of the Secretary of the military department concerned or the Secretary of Transportation, as the case may be, and with the approval of the Secretary of the department having jurisdiction of the vessel."

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2578. Vessels: transfer between departments."

(3) Section 8012 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190 (40 U.S.C. 483a)), is repealed.

(1) REAL PROPERTY.—(1) Chapter 159 of title 10, United States Code, is amended by inserting after section 2672a the following new section:

"§ 2673. Acquisition of certain interests in land: availability of funds 10 USC 2673.

"Appropriations available to the Department of Defense for maintenance or construction may be used for the acquisition of land or interests in land under section 2672 of this title and for the acquisition of interests in land under section 2675 of this title."

(2) Section 2828 of such title is amended by adding at the end the following new subsection:

"(h) Appropriations available to the Department of Defense for maintenance or construction may be used for the acquisition of interests in land under this section."

(3) Chapter 159 of such title is further amended by inserting after the table of sections the following new section:

"§ 2661. Miscellaneous administrative provisions relating to real property 10 USC 2661.

"(a) Appropriations for operation and maintenance of the active forces shall be available for the following:

"(1) The repair of facilities.

"(2) The installation of equipment in public and private plants.

"(b) The Secretary of Defense and the Secretary of each military department may provide for the following:

"(1) The leasing of buildings and facilities (including the payment of rentals for special purpose space at the seat of Government). Rental for such leases may be paid in advance in connection with—

"(A) the conduct of field exercises and maneuvers; and

"(B) the administration of the Act of July 9, 1942 (43 U.S.C. 315q).

"(2) The maintenance of defense access roads which are certified to the Secretary of Transportation as important to the national defense under the provisions of section 210 of title 23." Highways.

(4) The table of sections at the beginning of such chapter is amended—

(A) by inserting before the item relating to section 2662 the following new item:

"2661. Miscellaneous administrative provisions relating to real property.;"

and

(B) by inserting after the item relating to section 2672a the following new item:

"2673. Acquisition of certain interests in land: availability of funds."

(m) ACCOUNTABILITY AND RESPONSIBILITY.—(1) Chapter 165 of title 10, United States Code, is amended by adding at the end the following new section:

10 USC 2781.

“§ 2781. Availability of appropriations: exchange fees; losses in accounts

“Amounts appropriated to the Department of Defense may be used for—

“(1) exchange fees; and

“(2) losses in the accounts of disbursing officials and agents in accordance with law.”

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2781. Availability of appropriations: exchange fees; losses in accounts.”

(n) **SHIP OVERHAUL WORK.**—(1) Chapter 633 of title 10, United States Code, is amended by adding at the end the following new section:

Contracts.

10 USC 7313.

“§ 7313. Ship overhaul work: availability of appropriations for unusual cost overruns and for changes in scope of work

“(a) **UNUSUAL COST OVERRUNS.**—(1) Appropriations available to the Department of Defense for a fiscal year may be used for payment of unusual cost overruns incident to ship overhaul, maintenance, and repair for a vessel inducted into an industrial-fund activity or contracted for during a prior fiscal year.

“(2) The Secretary of Defense shall notify Congress promptly before an obligation is incurred for any payment under paragraph (1).

“(b) **CHANGES IN SCOPE OF WORK.**—An appropriation available to the Department of Defense for a fiscal year may be used after the otherwise-applicable expiration of the availability for obligation of that appropriation—

“(1) for payments to an industrial-fund activity for amounts required because of changes in the scope of work for ship overhaul, maintenance, and repair, in the case of work inducted into the industrial-fund activity during the fiscal year; and

“(2) for payments under a contract for amounts required because of changes in the scope of work, in the case of a contract entered into during the fiscal year for ship overhaul, maintenance, and repair.”

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“7313. Ship overhaul work: availability of appropriations for unusual cost overruns and for changes in scope of work.”

(o) **ANNUAL REPORT ON STATIONING FORCES OVERSEAS.**—(1) Section 113 of title 10, United States Code (as amended by section 1214 of Public Law 100-180), is amended by adding at the end the following new subsection:

“(k)(1) Not later than April 8 of each year, the Secretary of Defense shall submit to the Committees on Armed Services and Committees on Appropriations of the Senate and House of Representatives a report on the cost of stationing United States forces outside of the United States. Each such report shall include a detailed statement of the following:

“(A) Costs incurred in the United States and costs incurred outside the United States in connection with the stationing of United States forces outside the United States.

“(B) The costs incurred outside the United States in connection with operating, maintaining, and supporting United States

forces outside the United States, including all direct and indirect expenditures of United States funds in connection with such stationing.

“(C) The effect of such expenditures outside the United States on the balance of payments of the United States.

“(2) Each report under this subsection shall be prepared in consultation with the Secretary of Commerce.

“(3) In this subsection, the term ‘United States’, when used in a geographic sense, includes the territories and possessions of the United States.”

(2) Section 8042 of the Department of Defense Appropriations Act, 1988 (as contained in section 101(b) of Public Law 100-202 (101 Stat. 1329-69)), is repealed.

10 USC 113 note.

(p) **GENERAL REPEALS.**—The following provisions of law are repealed:

(1) Sections 705, 707, 723, 728, and 735 of the Department of Defense Appropriation Act, 1984 (Public Law 98-212; 97 Stat. 1437 et seq.).

10 USC 114 note.

(2) Section 8078 of the Department of Defense Appropriations Act, 1985 (as contained in section 101(h) of Public Law 98-473 (98 Stat. 1933)).

10 USC 2304 note.

(3) Sections 8005 and 8006 of the Department of Defense Appropriations Act, 1986 (as contained in section 101(b) of Public Law 99-190 (99 Stat. 1185)).

10 USC 114 note.

(4) Section 813 of the Department of Defense Appropriation Authorization Act, 1979 (Public Law 95-485; 92 Stat. 1624).

10 USC 2304 note.

SEC. 2. CODIFICATION OF LAWS RELATING TO CONTRACTING FOR PERFORMANCE OF CIVILIAN FUNCTIONS.

(a) **CONSOLIDATION AND CODIFICATION.**—(1) Part IV of subtitle A of title 10, United States Code, is amended by inserting after chapter 145 the following new chapter:

“CHAPTER 146—CONTRACTING FOR PERFORMANCE OF CIVILIAN COMMERCIAL OR INDUSTRIAL TYPE FUNCTIONS

“Sec.

“2461. Commercial or industrial type functions: required studies and reports before conversion to contractor performance.

“2462. Contracting for certain supplies and services required when cost is lower.

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

“2464. Core logistics functions.

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

“§ 2461. Commercial or industrial type functions: required studies and reports before conversion to contractor performance

10 USC 2461.

“(a) **REQUIRED NOTICE TO CONGRESS.**—A commercial or industrial type function of the Department of Defense that on October 1, 1980, was being performed by Department of Defense civilian employees may not be converted to performance by a private contractor unless the Secretary of Defense provides to Congress in a timely manner—

“(1) notification of any decision to study such function for possible performance by a private contractor;

“(2) a detailed summary of a comparison of the cost of performance of such function by Department of Defense civilian employees and by private contractor which demonstrates that

the performance of such function by a private contractor will result in a cost savings to the Government over the life of the contract and a certification that the entire cost comparison is available;

“(3) a certification that the Government calculation for the cost of performance of such function by Department of Defense civilian employees is based on an estimate of the most efficient and cost effective organization for performance of such function by Department of Defense civilian employees; and

“(4) a report, to be submitted with the certification required by paragraph (3), showing—

“(A) the potential economic effect on employees affected, and the potential economic effect on the local community and Federal Government if more than 75 employees are involved, of contracting for performance of such function;

“(B) the effect of contracting for performance of such function on the military mission of such function; and

“(C) the amount of the bid accepted for the performance of such function by the private contractor whose bid is accepted and the cost of performance of such function by Department of Defense civilian employees, together with costs and expenditures which the Government will incur because of the contract.

“(b) CONGRESSIONAL NOTIFICATION OF DECISION TO CONVERT.—If, after completion of the studies required for completion of the certification and report required by paragraphs (3) and (4) of subsection (a), a decision is made to convert the function to contractor performance, the Secretary of Defense shall notify Congress of such decision.

“(c) ANNUAL REPORTS.—Not later than February 1 of each fiscal year, the Secretary of Defense shall submit to Congress a written report describing the extent to which commercial and industrial type functions were performed by Department of Defense contractors during the preceding fiscal year. The Secretary shall include in each such report an estimate of the percentage of commercial and industrial type functions of the Department of Defense that will be performed by Department of Defense civilian employees, and the percentage of such functions that will be performed by private contractors, during the fiscal year during which the report is submitted.

“(d) WAIVER FOR SMALL FUNCTIONS.—Subsections (a) through (c) shall not apply to a commercial or industrial type function of the Department of Defense that is being performed by 45 or fewer Department of Defense civilian employees.

“(e) ADDITIONAL LIMITATIONS.—(1) A commercial or industrial type function of the Department of Defense that on October 1, 1980, was being performed by Department of Defense civilian employees may not be converted to performance by a private contractor to circumvent a civilian personnel ceiling.

“(2) In no case may a commercial or industrial type function being performed by Department of Defense personnel be modified, reorganized, divided, or in any way changed for the purpose of exempting from the requirements of subsection (a) the conversion of all or any part of such function to performance by a private contractor.

“(f) INAPPLICABILITY DURING WAR OR EMERGENCY.—The provisions of this section shall not apply during war or during a period of national emergency declared by the President or Congress.

“§ 2462. Contracting for certain supplies and services required when cost is lower 10 USC 2462.

“(a) **IN GENERAL.**—Except as otherwise provided by law, the Secretary of Defense shall procure each supply or service necessary for or beneficial to the accomplishment of the authorized functions of the Department of Defense (other than functions which the Secretary of Defense determines must be performed by military or Government personnel) from a source in the private sector if such a source can provide such supply or service to the Department at a cost that is lower (after including any cost differential required by law, Executive order, or regulation) than the cost at which the Department can provide the same supply or service.

“(b) **REALISTIC AND FAIR COST COMPARISONS.**—For the purpose of determining whether to contract with a source in the private sector for the performance of a Department of Defense function on the basis of a comparison of the costs of procuring supplies or services from such a source with the costs of providing the same supplies or services by the Department of Defense, the Secretary of Defense shall ensure that all costs considered (including the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs) are realistic and fair.

“§ 2463. Reports on savings or costs from increased use of DOD civilian personnel 10 USC 2463.

“(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. Records.

“(b) **SEMIANNUAL REPORT ON COSTS AND SAVINGS.**—As soon as practicable after the end of the first six months, and after the end of the second six months, of a fiscal year to which this section applies, the Secretary of Defense shall submit to the Committees on Armed Services and the Committee on Appropriations of the Senate and House of Representatives a report showing the estimated savings or loss to the United States, during the preceding six-month period, that is reflected in the data maintained under subsection (a).

“(c) **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.

“§ 2464. Core logistics functions 10 USC 2464.

“(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 logistics activity identified by the Secretary under subsection (a)(2), and performance of a function of the Department of Defense described in section 1231(b) of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 731), may not be contracted for performance by non-Government personnel under the procedures and requirements of Office of Management and Budget Circular A-76 or any successor administrative regulation or policy (hereinafter in this section referred to as OMB Circular A-76).

Regulations.

“(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.

Reports.

“(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 Committee 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.”

(2) The tables of chapters at the beginning of subtitle A, and at the beginning of part IV of subtitle A, of such title are amended by inserting after the item relating to chapter 145 the following new item:

“146. Contracting for Performance of Civilian Commercial or Industrial Type Functions 2461”.

(b) **TRANSFER OF SECTION.**—(1) Section 2693 of title 10, United States Code, is transferred to the end of chapter 146 of such title (as added by subsection (a)) and is redesignated as section 2465.

(2) The table of sections at the beginning of chapter 159 of such title is amended by striking out the item relating to section 2693.

(c) **CONFORMING REPEALS.**—The following provisions of laws are repealed:

(1) Section 502 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2304 note).

(2) Section 307 of the Department of Defense Authorization Act, 1985 (10 U.S.C. 2304 note).

(3) Sections 1223 and 1224 of the Department of Defense Authorization Act, 1987 (10 U.S.C. 2304 note).

SEC. 3. CODIFICATION OF DEFENSE-RELATED BUY AMERICAN LAWS.

(a) **CONSOLIDATION AND CODIFICATION.**—(1) Part IV of subtitle A of title 10, United States Code, is amended by inserting after chapter 147 the following new chapter:

“CHAPTER 148—BUY AMERICAN REQUIREMENTS

“Sec.

“2501. Limitation on use of funds: procurement of goods which are other than American goods.

“2502. Miscellaneous procurement limitations.

“§ 2501. Limitation on use of funds: procurement of goods which are other than American goods 10 USC 2501.

“(a) Funds appropriated to the Department of Defense may not be obligated under a contract for procurement of goods which are other than American goods (as defined in subsection (c)) unless adequate consideration is given to the following:

“(1) The bids or proposals of firms located in labor surplus areas in the United States (as designated by the Department of Labor) which have offered to furnish American goods.

“(2) The bids or proposals of small business firms in the United States which have offered to furnish American goods.

“(3) The bids or proposals of all other firms in the United States which have offered to furnish American goods.

“(4) The United States balance of payments.

“(5) The cost of shipping goods which are other than American goods.

“(6) Any duty, tariff, or surcharge which may enter into the cost of using goods which are other than American goods.

“(b) Consideration of the matters referred to in paragraphs (1) through (6) of subsection (a) shall be given under regulations of the Secretary of Defense and subject to the determinations and exceptions contained in title III of the Act of March 3, 1933 (41 U.S.C. 10a, 10b), popularly known as the ‘Buy American Act’.

“(c) In this section, the term ‘goods which are other than American goods’ means—

“(1) an end product that is not mined, produced, or manufactured in the United States; or

“(2) an end product that is manufactured in the United States but which includes components mined, produced, or manufactured outside the United States the aggregate cost of which exceeds the aggregate cost of the components of such end product that are mined, produced, or manufactured in the United States.”

(2) The tables of chapters at the beginning of subtitle A, and at the beginning of part IV of subtitle A, of such title are amended by inserting after the item relating to chapter 147 the following new item:

“148. Buy American Requirements..... 2501”.

(b) **TRANSFER OF SECTION.**—(1) Section 2400 of such title is transferred to the end of chapter 148 of such title (as added by subsection (a)), redesignated as section 2502, and amended in the second sentence of subsection (a) by striking out “this section” and inserting in lieu thereof “this subsection”.

(2) The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2400.

(c) **CONFORMING REPEAL.**—Section 707 of the Department of Defense Appropriation Authorization Act, 1975 (Public Law 93-365; 10 U.S.C. 2301 note), is repealed.

10 USC 101 note. **SEC. 4. LEGISLATIVE CONSTRUCTION.**

(a) **REFERENCES TO REPLACED LAWS.**—A reference to a law replaced by the provisions of title 10, United States Code, enacted by this Act (including a reference in a regulation, order, or other law) shall be treated as referring to the corresponding provision enacted by this Act.

(b) **SAVINGS PROVISION FOR REGULATIONS.**—A regulation, rule, or order in effect under a law replaced by the provisions of title 10, United States Code, enacted by this Act shall continue in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

(c) **GENERAL SAVINGS PROVISION.**—An action taken or an offense committed under a law replaced by the provisions of title 10, United States Code, enacted by this Act shall be treated as having been taken or committed under the corresponding provision enacted by this Act.

Approved July 19, 1988.

LEGISLATIVE HISTORY—H.R. 4229:

HOUSE REPORTS: No. 100-696 (Comm. on Armed Services).

CONGRESSIONAL RECORD, Vol. 134 (1988):

June 20, considered and passed House.

July 6, considered and passed Senate.