

**Side-by-Side Comparison of
Skelton/McHugh Legislation and Levin/McCain Legislation**

Skelton/McHugh Legislation

Levin/McCain Legislation

TITLE I -- ACQUISITION ORGANIZATION

<p><u>Section 101 — Independent Performance of Acquisition Oversight Functions</u> Requires designation of an official to serve as the principal advisor throughout the acquisition process for each of the following acquisition oversight functions: cost estimation, systems engineering, and performance assessment. The same official may serve as advisor for more than one function. Later sections specify duties for each function.</p>	<p>No corresponding section but Sections 101, 102, & 104 set corresponding requirements and qualifications for cost estimation and systems engineering and developmental test.</p>
<p><u>Section 102 — Oversight of Cost Estimation</u> The official responsible for cost estimation will establish policies to govern the cost estimation and cost analysis process. He/she will retain sole authority to select confidence levels for cost estimates, and cost estimates used at critical points in the acquisition process require his/her concurrence. Authorizes the official to receive and comment on cost estimates provided by military departments, and to participate in formulating study guidance to analyze alternatives for a Major Defense Acquisition Program (MDAP) and in deciding whether to request multiyear procurement authority for an MDAP. The official would issue an annual report. Finally, the official would be responsible for the Department's Cost Analysis Improvement Group.</p>	<p><u>Section 104 — Director of Independent Cost Assessment</u> Establishes a Director of Independent Cost Assessment to advise and set policies on cost estimation and analyses for DOD acquisition programs. The Director will set guidance relating to and disclose confidence levels for cost estimates. Requires the Secretary of each military department to report promptly to the Director the results of all MDAP cost estimates, analyses, and studies conducted by that department. The Director will report annually to the Secretary and to Congress summarizing DOD cost estimation and analysis activities. Finally, the Director will review existing DOD systems and methods for tracking and assessing operating and support costs on MDAPs. Transfers the Cost Analysis Improvement Group to the Director.</p>
<p><u>Section 103 — Oversight of Systems Engineering</u> This official responsible for systems engineering will issue policies, procedures and guidance on the use of systems engineering and developmental test and evaluation to enhance the reliability of MDAPs, and will be authorized to review and approve the systems engineering and developmental test and evaluation plans for all MDAPs. The official will also oversee elements of the acquisitions workforce responsible for these areas, and have authority to access necessary departmental records. He/she will periodically assess the capabilities of the military departments in these areas and provide recommendations for improvement.</p>	<p><u>Section 101 — Reports on Systems Engineering Capabilities of the Department of Defense & Section 102 — Director of Developmental Test and Evaluation</u> Section 101 requires a report from the service acquisition executive of each military department to the Under Secretary of Defense for Acquisition, Technology, and Logistics describing their system engineering capabilities and from the Under Secretary to the congressional defense committees on the system engineering capabilities of DOD. Section 102 establishes a Director of Developmental Test and Evaluation, similar to the Director of Operational Test and Evaluation. Requires the Director to report annually to Congress on the developmental test and evaluation activities of major defense acquisition programs (MDAPs) and requires the military departments to report to the Director on the extent to which they have adequate numbers of development test and evaluation personnel with</p>

<p><u>Section 104 — Oversight of Performance Assessment</u></p> <p>The official responsible for performance assessment will issue policies, procedures, and guidance for assessing DOD acquisition programs, and will periodically assess the suitability of the MDAPs' baseline descriptions as the basis for performance recommendations. He/she is also authorized to participate in reviews of MDAPs at the point of a Nunn-McCurdy breach, entry into full rate production, or any decision to request multiyear procurement authority.</p>	
<p><u>Section 105 — Assessment of Technological Maturity of Critical Technologies of Major Defense Acquisition Programs by the Director of Defense Research and Engineering</u></p> <p>The Director of Defense Research and Engineering will periodically review and assess the technological maturity and integration risk of critical MDAP technologies and report annually on this, as well as any additional resources required to implement this section, the milestone B certification requirements, or the DOD Instruction 5000 requirements.</p>	<p><u>Section 103 — Assessment of Technological Maturity of Critical Technologies of Major Defense Acquisition Programs by the Director of Defense Research and Engineering</u></p> <p>The Director of Defense Research and Engineering will periodically review and assess the technological maturity and integration risk of critical MDAP technologies and report annually on this, as well as any additional resources required to implement this section, the milestone B certification requirements, or the DOD Instruction 5000 requirements.</p>
<p><u>Section 106 — Role of the Commanders of the Combatant Commands in Identifying Joint Military Requirements</u></p> <p>The Joint Requirements Oversight Council will seek and consider input from the commanders of the unified combatant commands in formulating and reviewing joint military requirements.</p>	<p><u>Section 105 — Role of the Commanders of the Combatant Commands in Identifying Joint Military Requirements</u></p> <p>The Joint Requirements Oversight Council will seek and consider input from the commanders of the unified combatant commands in formulating and reviewing joint military requirements.</p>

TITLE II — ACQUISITION POLICY

<p><u>Section 201 — Acquisition Strategies Ensuring Competition Throughout the Lifecycle of Major Defense Acquisition Programs</u></p> <p>The Secretary of Defense will ensure that the acquisition strategy for each MDAP includes measures to ensure competition, or the option of competition, at both the prime contract and subcontract level throughout the program's lifecycle.</p>	<p><u>Section 203 — Ensuring competition throughout the life cycle of major defense acquisition programs</u></p> <p>The Secretary of Defense will ensure that each MDAP acquisition plan includes measures to ensure competition, or the option of competition, at both the prime contract and subcontract level throughout the program's life cycle; and requires the Secretary to modify current DOD acquisition regulations to ensure competitive prototyping for MDAPs.</p>
<p><u>Section 202 — Additional Requirements for Certain Major Defense Acquisition Programs</u></p> <p>The milestone decision authority will annually review any MDAP that received milestone B approval due to a waiver of at least one of the milestone B requirements, until the program satisfies all requirements.</p> <p>There will be a one-time review of all MDAPs that received milestone B approval prior to adoption of the current certification requirements, but have not yet received milestone C approval, in order to determine whether they comply with the new certification requirements. MDAPs which are determined not to satisfy the new requirements will be subject to annual review until they do so. Any budget or acquisition related material submitted to Congress regarding a program that does not yet fully satisfy the milestone B certification requirements will clearly indicate the program's certification status.</p> <p>MDAPs which have been restructured after a critical Nunn-McCurdy breach will be reviewed annually to determine the extent to which they are achieving improved cost and schedule performance.</p> <p>MDAPs are also required to successfully complete a preliminary design review prior to receiving milestone B approval.</p>	<p><u>Section 202 — Preliminary Design Review and Critical Design Review for Major Defense Acquisition Programs</u></p> <p>MDAPs are required to successfully complete a preliminary design review prior to receiving milestone B approval.</p> <p>Requires the Under Secretary to ensure that DOD guidance on MDAPs requires a critical design review and a formal post-critical design review assessment for each MDAP.</p>

Section 203 — Reporting of Acquisition Performance Metrics for Major Defense Acquisition Programs Prior to Milestone B

Those programs of record that have not received a milestone B certification that are also not previously subject to a review under section 2366a of title 10, United States Code, relating to the requirements for milestone A, will be reviewed against criteria similar to those of 2366a.

Requires a report if any MDAP experiences cost growth of 25 percent or schedule delay of more than 25 percent prior to milestone B approval. That report will identify the roots causes of the cost or schedule growth and appropriate metrics for assessing the program until milestone C review. It will also certify that the program is essential to national security, there are no lower cost alternatives, new cost and schedule estimates are reasonable, and the program management structure is adequate. Authorizes the milestone decision authority to terminate a program or rescind milestone A approval if it determines that such action is in the interest of national defense.

Section 204 — Critical Cost Growth in Major Defense Acquisition Programs

Modifies the requirements for review of MDAPs which experience critical cost growth breaches under Nunn-McCurdy. It requires the Secretary of Defense to determine the root cause of the critical cost growth and determine whether to terminate or restructure the program and to submit such a determination to Congress. If the program is restructured, it requires certification that the restructured program is essential to national security, there are no lower cost alternatives, new cost estimates are reasonable, and the program management structure is adequate.

Requires the restructured program to return to the last milestone decision point for review.

Requires unit cost reports to include all planned increments or spirals of the program in the calculation of its total procurement expenditure.

Section 204 — Critical Cost Growth in Major Defense Acquisition Programs

Modifies the requirements for review of MDAPs which experience critical cost growth breaches under Nunn-McCurdy. It requires the Secretary of Defense to terminate an MDAP that meets or exceeds its critical cost growth threshold, unless the Secretary certifies that the program's continuation is essential to national security, there are no lower cost alternatives, new cost estimates are reasonable, and the program management structure is adequate.

Requires the Secretary to rescind the most recent milestone approval and suspend all contract actions relating to the program until completion of a new milestone review.

Requires unit cost reports to include all planned increments or spirals of the program in the calculation of its total procurement expenditure.

Section 205 — Organizational Conflicts of Interest in the Acquisition of Major Weapons Systems

DOD's Panel on Contracting Integrity will present recommendations on measures to eliminate or mitigate organizational conflicts of interest in the acquisition of major weapons systems. The Secretary of Defense will then revise the Defense Supplement to the Federal Acquisition Regulations to address organizational conflicts of interest by contractors.

The Panel on Contracting Integrity is extended until the later of December 30, 2011 or a date 18 months after the Secretary of Defense notifies the congressional defense committees of an intention to terminate the Panel.

Section 205 — Organizational Conflicts of Interest in the Acquisition of Major Weapons Systems

Directs the Under Secretary to revise the Defense Supplement to the Federal Acquisition Regulation to address organizational conflicts of interests by contractors. Such regulations shall ensure that DOD receives advice on systems architecture and systems engineering for major weapons system from sources independent of the prime contractor or any subcontractor for such system. The regulations will allow for an exception to this requirement in limited circumstances where conflicts of interest are mitigated and the waiver of the requirement in other limited circumstances.

The regulations will require prime contractors to consider sources other than itself for development or construction of major subsystems and components and authorize government involvement in the "make-buy" decisions and subcontracting processes of the prime contractor

The Secretary will establish within DOD the Organizational Conflict of Interest Review Board to advise the Under Secretary on policies relating to such conflicts of interest.

<p><u>Section 206 — Awards for Department of Defense Personnel for Excellence in the Acquisition of Products and Services</u></p> <p>The Secretary of Defense will carry out a program to recognize excellent performance by individuals and teams in the acquisition of products and services. It allows the award of cash bonuses, if such bonus is authorized under any other provision of law.</p>	<p><u>Section 206 — Awards for Department of Defense Personnel for Excellence in the Acquisition of Products and Services</u></p> <p>The Secretary of Defense will carry out a program to recognize excellent performance by individuals and teams in the acquisition of products and services. It allows the award of cash bonuses, if such bonus is authorized under any other provision of law.</p>
<p><u>Section 207 — Consideration of Trade-offs Among Cost, Schedule, and Performance in the Acquisition of Major Weapon Systems</u></p> <p>The Comptroller General will review the use of DOD mechanisms for considering trade-offs among cost, schedule, and performance in the acquisition of major weapon systems in order to assess their effectiveness and make recommendations for improvement.</p>	<p><u>Section 201 — Consideration of Trade-offs Among Cost, Schedule, and Performance in the Acquisition of Major Weapon Systems</u></p> <p>Requires the Secretary to develop and implement mechanisms to ensure the consideration of trade-offs between major weapon system cost, schedule, and performance and requires the Under Secretary to ensure that DOD guidance on MDAPs requires the milestone decision authority to conduct an analysis of alternatives during the material solution analysis phase of each MDAP.</p>