

**BUSINESS MEETING TO MARK UP S. 454, THE  
WEAPON SYSTEMS ACQUISITION REFORM  
ACT OF 2009**

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**THURSDAY, APRIL 2, 2009**

U.S. SENATE,  
COMMITTEE ON ARMED SERVICES,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:19 a.m. in room SD-106, Dirksen Senate Office Building, Senator Carl Levin (chairman) presiding.

Committee members present: Senators Levin, Lieberman, Reed, Akaka, E. Benjamin Nelson, Webb, Udall, Hagan, Begich, Burris, McCain, Sessions, Thune, Martinez, and Collins.

Committee staff members present: Richard D. DeBobes, staff director; Christine E. Cowart, chief clerk; and Leah C. Brewer, nominations and hearings clerk.

Majority staff members present: Joseph M. Bryan, professional staff member; Creighton Greene, professional staff member; Peter K. Levine, general counsel; and William K. Sutey, professional staff member.

Minority staff members present: Pablo E. Carrillo, minority investigative counsel; Daniel A. Lerner, professional staff member; David M. Morriss, minority counsel; Lucian L. Niemeyer, professional staff member; and Christopher J. Paul, professional staff member.

Staff assistants present: Kevin A. Cronin, Christine G. Lang, Ali Z. Pasha, Brian F. Sebold, and Breon N. Wells.

Committee members' assistants present: Jay Maroney, assistant to Senator Kennedy; James Tuite, assistant to Senator Byrd; Todd M. Stein, assistant to Senator Lieberman; Elizabeth King, assistant to Senator Reed; Bonni Berge, assistant to Senator Akaka; Ann Premer, assistant to Senator Ben Nelson; Jon Davey, assistant to Senator Bayh; Gordon I. Peterson, assistant to Senator Webb; Jennifer Barrett, assistant to Senator Udall; Michael Harney, assistant to Senator Hagan; Lenwood Landrum, assistant to Senator Sessions; Clyde A. Taylor IV, assistant to Senator Chambliss; Jason Van Beek, assistant to Senator Thune; Brian W. Walsh, assistant to Senator Martinez; Erskine W. Wells III, assistant to Senator Wicker; Kevin Kane, assistant to Senator Burr; Michael T. Wong, assistant to Senator Vitter; and Chip Kenneth, assistant to Senator Collins.

**OPENING STATEMENT OF SENATOR CARL LEVIN, CHAIRMAN**

Chairman LEVIN. Good morning, everybody. We're going to start. I know Senator McCain is on his way, but we're—because since we're all in a time crunch, we will begin, and know that he'll be here in a few moments.

The Armed Services Committee meets today to mark up S. 454, the Weapon Systems Acquisition Reform Act of 2009, which was introduced on February 23. It addresses problems in the performance with the Department of Defense's major defense acquisition programs at a time when cost growth on these programs has reached levels that we simply cannot afford.

The Government Accountability Office recently released its annual report on the Department's acquisition of major weapon systems. The GAO reports that the cumulative cost overruns are still staggering, almost 296 billion in fiscal year 2009 dollars, and the problems are "pervasive," in their word. They conclude that the time for change is now, and, as we know, they—when they were here at our hearing a month ago or so, they supported the approach that we take in this bill.

In January, Secretary Gates told our committee that we must work together to address the, quote, "repeated and unacceptable" problems with requirements, schedule, cost, and performance from which too many of our defense acquisition programs suffer. And on March 4, the President told—the President said that, quote, "It's time to end the extra costs and long delays that are too common on our defense contracting," and he endorsed the goals of Senate bill 454.

As a general rule, when the Department acquisition programs fail, it's because the Department continues to rely on unreasonable cost and schedule estimates, continues to establish unrealistic performance expectations, continues to insist on the use of immature technologies, and continues to adopt costly changes to program requirements, production quantities, and funding levels in the middle of ongoing programs.

Just one example, which we're familiar with, and that's with regard to the JSF, Joint Strike Fighter. The GAO reports that initial estimates assume that commonality between the three variants of the aircraft could cut development costs by about 40 percent. However, this level of commonality has proven impossible to achieve, 12 years after the program started. Three of JSF's eight critical technologies are still not mature. Its production processes are not mature, and its designs are still not fully proven and tested.

The bill that we're marking up today is designed to help put major defense acquisition programs on a sound footing, from the outset, by addressing program shortcomings in the early phases of the acquisition process. By introducing sound practices to reduce risk on defense acquisition programs, the bill will reduce the Department's reliance on cost-plus contracts.

Some of the key provisions of the bill would require the Department to rebuild its systems engineering capabilities. We re-established the position of director of developmental testing. We establish an independent cost-estimating office headed by a Senate-confirmed director who reports directly to the Secretary, just like the director of operational test and evaluation does.

In an effort to ensure that the budget assumptions underlying acquisition programs are sound, we require the increased use of competitive prototyping by mandating it, subject to a waiver. We put teeth in the Nunn-McCurdy statute by establishing the presumption that any program that exceeds its original baseline by more than 50 percent will be terminated unless it can be justified from the ground up.

The committee held a hearing on S. 454 on March 2 in which four witnesses, including two former Under Secretaries of Defense for Acquisition, Technology, and Logistics, endorsed the committee's acquisition reform effort. Ashton Carter, the President's nominee to serve as the next Under Secretary for AT&L, added his support at his March 26 hearing. In addition, we've since received extensive comments on the bill from the Department of Defense, from the defense industry, and from independent experts on the acquisition system.

Senator McCain and I have taken these comments into consideration, and we're offering, this morning, a substitute amendment for the markup. The key changes that would be made by the substitute are as follows:

Section 102, on developmental testing, has been modified to address the Department's concerns by ensuring that test and evaluation activities are fully integrated into the Department's system engineering activities.

Section 104, on independent cost estimates, has been modified to address the Department's concerns by allowing the new director of independent cost assessment to rely on estimates prepared by the military departments for the smaller programs, if he determines them to be independent and reliable. In other words, they can, if they wish, repeat those estimates, even though the departments have done them on smaller programs, if they decide that it's appropriate to make their own independent cost estimate.

Section 203, on life-cycle competition, has been modified to address the Department's concerns by providing additional flexibility in the requirement for competitive prototyping. We had a waiver for national security. We needed a waiver for costs which exceed the expected life-cycle benefits of the program, and we have included that now.

Section 205 has been modified. This is the one that addresses organizational conflicts of interest, and we've modified it to provide greater flexibility. We've added a phase-in period. We allow the option for the creation of a separate corporate entity to do systems engineering. As of now, unless we adopt this provision—unless we adopt this bill, the same persons can do both systems engineering on a weapon system for the developer—for the contractor that is producing the system and give—that same person can give the advice to the government. The same person should not be put in that position. We've got to have a separation there. We do that in our bill, but we allow, in this substitute, for the creation of separate corporate entities to do the systems engineering work. We've—in other words, we have walls that truly separate, and do not leave this to ad hoc decisions, so that the same people who are on the payroll of a contractor who's developing or producing a system can-

not be providing advice, both to the government and to the contractor, on how the system should be built.

We've not made all the changes requested by the Department or the contractor community or others. For example, the Department would like to eliminate the director of independent cost assessment. Most contractors would prefer that we not tighten the rules for organizational conflicts of interest. And both the Department and industry would like us to drop our Nunn-McCurdy amendments, which place tough new requirements on failing programs. We have not accepted all those suggestions. These provisions, indeed, are tough medicine, but the acquisition system needs tough medicine. We will, of course, continue to work with the Department and others during the legislative process, in an effort to address concerns about the bill without undermining any of its central provisions.

Now, before I call on Senator McCain, I'm wondering whether he would agree, and whether we could all agree, that we could—because we now have exactly the number needed for a quorum—whether we could vote this out and report it to the floor. We need 14 for that. We could adopt an amendment with nine, and adopt a substitute with nine, but I'm wondering, Senator McCain, whether we could vote on reporting the bill.

Senator MCCAIN. I'd be glad to, Mr. Chairman. I had a long and eloquent and most impressive statement to make —

[Laughter.]

—and I'll dispense with it at this time and thank you for your summary of the bill. And I'm ready to move forward.

Chairman LEVIN. All right. Well, we'd be happy to receive that after we vote the bill out.

[Laughter.]

Senator MCCAIN. It will be available for anyone to read.

[Laughter.]

Chairman LEVIN. Is there any objection to doing it that way and then—okay.

Senator SESSIONS. Mr. Chairman, I'd just congratulate you and Senator McCain for working hard to do better on our acquisition program. It's something that I think is the right direction. I'm glad that you have consulted with the Department of Defense and made some changes there. My impression is that this is good legislation. I intend to support it, will continue to study it, but I like it and appreciate your leadership.

Chairman LEVIN. Well, we thank you, and we thank all the members of the committee for your cooperation, your inputs on this bill. This is a—truly a committee effort, and it'll, I hope, have a very powerful position the floor, when we get it there, because it's been such a bipartisan committee effort.

Senator BEN NELSON. Mr. Chairman?

Chairman LEVIN. Senator Nelson?

Senator BEN NELSON. I'd like to have my name added as a cosponsor.

Chairman LEVIN. We will do that. And any other members who wish to have their names added as cosponsors, if they could just tell our staff, we will do that immediately afterward.

All right, let us now call the role. I think we have to call the roll—

Excuse me.

Mr. Levine: You want to adopt the substitute first?

Chairman LEVIN. Yeah. Can we first adopt the substitute?

Senator MCCAIN. So moved.

Chairman LEVIN. Is there a second?

Senator LIEBERMAN. Second.

Chairman LEVIN. Moved and seconded.

All those in favor of adopting the substitute, say aye.

[A chorus of ayes.]

Chairman LEVIN. Opposed, no.

[No response.]

Chairman LEVIN. The ayes have it, the substitute is now before us, and that is what the roll will be called on.

And, Rick, I—the Clerk will call the roll.

The Clerk: Mr. Kennedy?

Chairman LEVIN. Aye, by proxy.

The Clerk: Mr. Byrd?

Chairman LEVIN. Aye, by proxy.

The Clerk: Mr. Lieberman?

Senator LIEBERMAN. Aye.

The Clerk: Mr. Reed?

Senator REED. Aye.

The Clerk: Mr. Akaka?

Senator AKAKA. Aye.

The Clerk: Mr. Nelson of Florida?

Chairman LEVIN. No instructions.

The Clerk: Mr. Nelson of Nebraska?

Senator BEN NELSON. Aye.

The Clerk: Mr. Bayh?

Chairman LEVIN. Aye, by proxy.

And Senator Bill Nelson was also aye, by proxy.

The Clerk: Mr. Webb?

Senator Web: Aye.

The Clerk: Mrs. McCaskill?

Chairman LEVIN. Aye, by proxy.

The Clerk: Mr. Udall?

Senator UDALL. Aye.

The Clerk: Mrs. Hagan?

Senator HAGAN. Aye.

The Clerk: Mr. Begich?

Senator BEGICH. Aye.

The Clerk: Mr. Burris?

Chairman LEVIN. No instruction.

The Clerk: Mr. McCain?

Senator MCCAIN. Aye.

The Clerk: Mr. Inhofe?

Senator MCCAIN. Aye, by proxy.

The Clerk: Mr. Sessions?

Senator SESSIONS. Aye.

The Clerk: Mr. Chambliss?

Senator MCCAIN. Aye, by proxy.

The Clerk: Mr. Graham?

Senator MCCAIN. Aye, by proxy.

The Clerk: Mr. Thune?

Senator THUNE. Aye.

The Clerk: Mr. Martinez?

Senator MARTINEZ. Aye.

The Clerk: Mr. Wicker?

Senator MCCAIN. Aye, by proxy.

The Clerk: Mr. Burr?

Senator MCCAIN. Aye, by proxy.

The Clerk: Mr. Vitter?

Senator MCCAIN. Aye, by proxy.

The Clerk: Ms. Collins?

Senator COLLINS. Aye.

The Clerk: Mr. Chairman?

Chairman LEVIN. Aye.

The Clerk: Twenty-five, and one not voting.

Chairman LEVIN. All right, the bill will be reported out to the floor.

And let me, again, thank Senator McCain for his stalwart leadership on this subject for so long. This is not just an effort of the last few months, this is a product of years and years of experience in the acquisition system, and no one has been more firm on this and reforming the system than Senator McCain.

Senator?

Senator MCCAIN. Senator Levin, thank you. And it's always been a pleasure, for all these years, to have the opportunity of working with you. And thank you.

Chairman LEVIN. Thank you.

Senator Burris?

Senator BURRIS. Yes.

Chairman LEVIN. Do you want to vote on this?

Senator BURRIS. The answer is yes.

Chairman LEVIN. Yes. Aye. Senator Burris votes aye. Thank you.

And the—it'll be amended, the summary of the vote.

Is there anyone else who wishes to speak, at this time?

[No response.]

Chairman LEVIN. Well, we thank you all.

[Whereupon, at 9:31 a.m., the committee adjourned.]