

Calendar No. 178104TH CONGRESS }
1st Session }

SENATE

{ REPORT
104-134 }EXTENSION OF THE DEFENSE PRODUCTION
ACT

R E P O R T

OF THE

COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1147



AUGUST 10 (legislative day, JULY 10), 1995.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

99-010

WASHINGTON : 1995

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

ALFONSE M. D'AMATO, New York, *Chairman*

PHIL GRAMM, Texas	PAUL S. SARBANES, Maryland
RICHARD C. SHELBY, Alabama	CHRISTOPHER J. DODD, Connecticut
CHRISTOPHER S. BOND, Missouri	JOHN F. KERRY, Massachusetts
CONNIE MACK, Florida	RICHARD H. BRYAN, Nevada
LAUCH FAIRCLOTH, North Carolina	BARBARA BOXER, California
ROBERT F. BENNETT, Utah	CAROL MOSELEY-BRAUN, Illinois
ROD GRAMS, Minnesota	PATTY MURRAY, Washington
BILL FRIST, Tennessee	

HOWARD A. MENELL, *Staff Director*

ROBERT J. GIUFFRA, JR., *Chief Counsel*

PHILIP E. BECHTEL, *Deputy Staff Director*

STEVEN B. HARRIS, *Democratic Staff Director and Chief Counsel*

BRENT S. FRANZEL, *Staff Director, Subcommittee on International Finance*

JONATHAN M. HARRIS, *Professional Staff*

BRUCE E. KUTZ, *Professional Staff*

PATRICK A. MULLOY, *Democratic Chief International Counsel*

CONTENTS

Introduction	Page 1
Background	1
History of the legislation	2
Committee action	2
Section-by-section analysis	3
Regulatory impact statement	3
Cost of legislation	3
Changes in existing law	5

Calendar No. 178

104TH CONGRESS }
1st Session }

SENATE

{ REPORT
104-134

EXTENSION OF THE DEFENSE PRODUCTION ACT

AUGUST 10 (legislative day, JULY 10), 1995.—Ordered to be printed

Mr. D'AMATO, from the Committee on Banking, Housing, and
Urban Affairs, submitted the following

REPORT

[To accompany S. 1147]

INTRODUCTION

On June 28, 1995, the Senate Banking Committee marked up and ordered to be reported a bill to extend the expiration date of the Defense Production Act (DPA) from September 30, 1995, to September 30, 1998 and to authorize to be appropriated such sums as may be necessary to carry out existing DPA programs for fiscal years 1996, 1997, and 1998. The vote was 15 yeas and 1 nay.

BACKGROUND

The Defense Production Act, 50 U.S.C. App. 2061 et seq., was first enacted in 1950 to mobilize the Nation's productive capacity after the outbreak of the Korean War. The Act has been reauthorized and amended a number of times, most recently in 1992. The original 1950 Act contained seven titles, four of which were permitted to expire in 1953. Currently, three titles of the DPA are in effect, and they are due to expire on September 30, 1995, unless renewed.

Title I grants to the President the power to prioritize performance of specific contracts to meet urgent defense requirements, and to allocate resources to industries to optimize the production of defense materials.

Title III authorizes the President to use loans, loan guarantees, purchase commitments, and grants to encourage contractors to establish or expand activities to provide increased industrial capacity for defense needs. Title III programs are currently managed by the Department of Defense.

Title VII authorizes the President to provide antitrust defenses to private entities conducting joint activities under voluntary agreements aimed at solving production and distribution problems impairing national defense preparedness. The creation of such voluntary agreements must be initiated by the President, and must be approved by the Attorney General and the Chairman of the Federal Trade Commission before any antitrust protections are accorded to the participants. Section 721 of Title VII, a provision popularly known as the Exon-Florio provision, authorizes the President to suspend or prohibit the acquisition, merger, or takeover of a domestic firm by a foreign firm if such action would threaten to impair national security. This provision was added to the DPA by the Omnibus Trade and Competitiveness Act of 1988.

HISTORY OF THE LEGISLATION

In October 1990, the Defense Production Act expired during the House-Senate conference on a reauthorization and amendments bill. At the time, Operation Desert Shield was under way, and the Defense Department was using DPA authorities to ensure that orders for military items were filled in advance of commercial orders. On at least two occasions, top Defense Department officials wrote to Congress asking for an extension of DPA authorities, which they viewed as important in the conduct of Operation Desert Shield and, subsequently, Desert Storm.

During 1991, Congress passed two short-term extensions of the DPA, while it considered multiyear reauthorization bills. A bill to expand and extend DPA authorities through September 30, 1995 was passed by Congress and signed into law in 1992 (S. 347, P.L. 102-558).

The Federal Emergency Management Agency, as the lead agency on DPA matters and on behalf of the Administration, wrote to the Committee requesting an extension of DPA authorities because these authorities are essential to U.S. industrial readiness to support the national defense (copy included). Responding to this request, the Committee met on June 28, 1995, and marked up and ordered reported a bill to extend the expiration date of the DPA to September 30, 1998.

COMMITTEE ACTION

Paragraph 7(b) of Rule XXVI of the Standing Rules of the Senate requires the committee report accompanying a measure reported from the committee to include the results of each roll call vote taken on the measure and any amendments thereto. In addition, paragraph 7(c) requires the report to include a tabulation of the vote cast by each member of the committee on the question of reporting the measure.

In accordance with the Standing Rules of the Senate, the following is the tabulation of the vote on the question of reporting the measure, a bill to extend and reauthorize the Defense Production Act of 1950, held on Wednesday, June 28, 1995.

Measure adopted by: Yeas 15 Nays 1.

YEAS
 D'Amato
 Shelby
 Bond
 Mack
 Faircloth
 Bennett ¹
 Grams
 Frist ¹
 Sarbanes
 Dodd
 Kerry ¹
 Bryan ¹
 Boxer
 Moseley-Braun
 Murray

NAYS
 Gramm

¹ Indicates vote by proxy.

SECTION-BY-SECTION ANALYSIS

Section 1 cites the Act as the "Defense Production Act Amendments of 1995."

Section 2 provides for an extension of the Defense Production Act for a period of three years from September 30, 1995 to September 30, 1998. Sections 714 and 719, included in the previous authorization, are not permanently reauthorized in this bill. Public Law 89-554 repealed section 714 in 1966, and Public Law 100-679 repealed section 719 in 1988.

Section 3 authorizes to be appropriated such sums as may be necessary to carry out existing DPA programs for fiscal years 1996, 1997, and 1998.

REGULATORY IMPACT STATEMENT

Pursuant to rule XXVI, paragraph 11(b), of the Standing Rules of the Senate, the Committee has evaluated the regulatory impact of the bill and concludes it would result in no net increase in the regulatory burden imposed by the Government.

COST OF LEGISLATION

The cost estimate of the Congressional Budget Office appears below:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, August 2, 1995.

Hon. ALFONSE M. D'AMATO,
 Chairman, Committee on Banking, Housing, and Urban Affairs,
 U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office (CBO) has reviewed the Defense Production Act Amendments of 1995, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on June 28, 1995. We estimate that the bill would result in additional outlays of \$80 million to \$85 million over the 1996-2000 period, but all costs would be subject to discretionary appropriations. Because it would not affect direct spending

or receipts, the bill would not be subject to pay-as-you-go procedures. Also, enactment of the bill would not affect the budgets of State and local governments.

The Defense Production Act of 1950 (DPA) authorizes a system for placing priorities on defense contracts (Title I), increasing domestic capabilities to produce goods necessary to the national defense (Title III), mobilizing a reserve of production managers during wartime (Title VII), and maintaining information on the defense industrial base (Title VII). These authorities are set to expire on September 30, 1995; this bill would extend them to September 30, 1998.

The bill would have a budgetary impact for two reasons. First, the bill would authorize the appropriation of such sums as may be necessary for direct loans, loan guarantees, or purchase guarantees under Title III to correct for shortfalls in domestic industrial capacity. In recent years, the Department of Defense (DoD) has used the authority for purchase guarantees—that is, the authority to commit to buying a specific quantity of a defense good if a manufacturer cannot sell it elsewhere. Appropriations for purchase guarantees have averaged about \$30 million a year over the 1986–1995 period, ranging from \$29 million in 1986 to \$100 million in 1994. No money was appropriated in 1992, 1993, or 1995, and the Administration did not seek any funds in its budget request for 1996. Because of these sharp variations in annual funding levels, specific yearly amounts for the open-ended authorization are difficult to project. Based on the historical average over the past decade, we estimate that the increase in authorizations would total about \$90 million for the three-year period covered by the bill. Also based on historical spending patterns, we estimate that outlays would rise by less than \$80 million over the 1996–2000 period.

Other costs of the bill would stem from the salaries and expenses devoted to maintaining the priority, executive reserve, and information systems. These expenses—about \$2 million a year—would be covered by annual appropriations for various agencies, including the Federal Emergency Management Agency, DoD, and the Department of Commerce.

If you would like further details on this estimate, we will be pleased to provide them. The CBO staff contact is Amy Plapp who can be reached at (202) 226–2840.

Sincerely,

JUNE E. O'NEILL, *Director*.

Hon. ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing, and Urban Affairs,
U.S. Senate, Washington, DC.

DEAR SENATOR D'AMATO: The nonpermanent provisions of the Defense Production Act of 1950, as amended (DPA), will expire on September 30, 1995. The DPA is the key legislation that provides the President with authorities to obtain, in a timely manner, the products, materials, and services needed by our Armed Forces to meet national security requirements. Failure to reauthorize the DPA could jeopardize our ability to prepare for and respond to a national security emergency or a truly catastrophic disaster.

Title I of the DPA authorizes the President to require priority performance on contracts and orders, as necessary, to meet ap-

proved national defense and emergency preparedness program requirements and to allocate materials, services, and facilities, as necessary, to promote these programs. This authority, as implemented, assures domestic sources of supply and timely delivery at minimal cost and with minimal interference to normal commercial activities. This authority has proven extremely valuable over the last 45 years and has been used by the military departments during every conflict, including Desert Storm. Title I authorities are also now available for the effective management and focusing of the Nation's resources in response to a catastrophic domestic natural, accidental, or man-caused disaster.

Title III of the Act provides the President the authority to establish, expand, or maintain industrial capacity essential for national defense. This authority facilitates the transition of manufacturing technology from the laboratory to production. Items produced and manufacturing processes under DPA Title III authorities enhance the industrial capacity and operational capabilities of defense systems such as the Army's Apache helicopter and the Air Force's F-22 and Navy's F-18 fighter aircraft.

In addition to providing administrative and implementation provisions, the DPA's Title VII authorizes a National Defense Executive Reserve (NDER) program which is comprised of civilian executives which are used by Federal civil departments and agencies during national defense emergencies.

Continuation of these DPA authorities is essential to our domestic industrial readiness to support our national defense. Historically, Congress has recognized the important role these authorities play in our overall preparedness posture. We urge Congress to continue its support and consider acting favorably on the legislative recommendations of the Administration. We hope that you will provide your support to this proposed reauthorization of the DPA.

The Office of Management and Budget advises, that from the standpoint of the Administration's program, there is no objection to the submission of this letter.

Sincerely,

JAMES LEE WITT, *Director.*

CHANGES IN EXISTING LAW

The Committee has determined that it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of rule XXVI, paragraph 12, of the Standing Rules of the Senate, with respect to this legislation.