

118TH CONGRESS  
2D SESSION

# S. 4092

To amend title 10, United States Code, to implement a limitation on contracting for supplies needed for the Department of the Army for certain workload activities at arsenals of the Department of the Army, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 9, 2024

Mr. DURBIN (for himself, Mr. GRASSLEY, and Ms. DUCKWORTH) introduced the following bill; which was read twice and referred to the Committee on Armed Services

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## A BILL

To amend title 10, United States Code, to implement a limitation on contracting for supplies needed for the Department of the Army for certain workload activities at arsenals of the Department of the Army, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Arsenal Workload  
5 Sustainment Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) The United States has a long and proud  
2 history of manufacturing defense products.

3           (2) Factories and arsenals of the Department  
4 of the Army that are owned and operated by the  
5 United States Government are a critical component  
6 of the organic industrial base.

7           (3) The 2023 National Defense Industrial  
8 Strategy recognizes the need of the Department of  
9 Defense to more strategically utilize the organic in-  
10 dustrial base in order to maintain a competitive mili-  
11 tary advantage.

12           (4) Sufficient workload at arsenals of the De-  
13 partment of the Army that are owned and operated  
14 by the United States Government ensure cost effi-  
15 ciency and technical competence in peacetime, while  
16 preserving the ability to provide an effective and  
17 timely response to mobilizations, national defense  
18 contingency situations, and other emergency require-  
19 ments.

20 **SEC. 3. LIMITATION ON CONTRACTING FOR SUPPLIES**  
21 **NEEDED FOR THE DEPARTMENT OF THE**  
22 **ARMY FOR CERTAIN WORKLOAD ACTIVITIES.**

23           (a) IN GENERAL.—Section 7532 of title 10, United  
24 States Code, is amended—

1           (1) by striking “The Secretary of the Army”  
2           and inserting “(a) IN GENERAL.—The Secretary of  
3           the Army”; and

4           (2) by adding at the end the following new sub-  
5           section:

6           “(b) TREATMENT OF WORKLOAD ACTIVITIES.—

7           “(1) PERCENTAGE LIMITATION.—Not more  
8           than 50 percent of the funds made available in a fis-  
9           cal year for a military department or a Defense  
10          Agency for workload activities pursuant to sub-  
11          section (a) may be used to contract for the perform-  
12          ance by non-United States Government personnel of  
13          such workload for that military department or De-  
14          fense Agency.

15          “(2) AMOUNTS FOR ACTIVITIES BY EMPLOYEES  
16          OF DEPARTMENT OF DEFENSE.—

17                 “(A) IN GENERAL.—Any funds made avail-  
18                 able in a fiscal year to a military department or  
19                 a Defense Agency for workload activities pursu-  
20                 ant to subsection (a) that are not used for a  
21                 contract described in paragraph (1) shall be  
22                 used for the performance of those activities by  
23                 employees of the Department of Defense.

24                 “(B) TREATMENT OF PUBLIC-PRIVATE  
25                 PARTNERSHIPS.—Workload activities conducted

1           pursuant to subsection (a) under a public-pri-  
2           vate partnership shall be deemed to be activities  
3           performed by employees of the Department of  
4           Defense for purposes of subparagraph (A).

5           “(3) WAIVER OF LIMITATION.—

6                   “(A) IN GENERAL.—The Secretary of De-  
7           fense may waive the limitation under paragraph  
8           (1) for a fiscal year if the Secretary determines  
9           that the waiver is necessary for reasons of na-  
10          tional security.

11                   “(B) EFFECT.—A waiver under subpara-  
12          graph (A) shall not take effect until the date  
13          that is 30 days after the Secretary submits to  
14          the congressional defense committees a notifica-  
15          tion of the determination under such subpara-  
16          graph, together with a justification for the de-  
17          termination.

18           “(4) PREFERENCES FOR PUBLIC-PRIVATE  
19          PARTNERSHIPS IN SOURCE SELECTION PROCESS.—

20                   “(A) IN GENERAL.—The Secretary shall  
21          give preference to a non-public partner who has  
22          entered into a public-private partnership under  
23          section 2474 of this title in the source selection  
24          process if such partner uses an arsenal of the  
25          Department of the Army that is owned and op-

1 erated by the United States Government as a  
2 partner in any type of contractual agreement  
3 with the United States Government to conduct  
4 workload activities pursuant to subsection (a),  
5 by adding 20 percent to the price of any offer  
6 that does not use an arsenal of the Department  
7 of the Army that is owned and operated by the  
8 United States Government as a partner in its  
9 bid.

10 “(B) NON-PUBLIC PARTNER DEFINED.—In  
11 this subparagraph, the term ‘non-public part-  
12 ner’ means a corporation, individual, university,  
13 or nonprofit organization.

14 “(5) CONFORMANCE.—The establishment of  
15 sustained workload conducted under subsection (a)  
16 shall be consistent with the requirement under para-  
17 graph (1) and shall be performed consistent with fol-  
18 lowing:

19 “(A) The technical proficiencies set forth  
20 under section 2474(a) or 4841 of this title.

21 “(B) Fragility and criticality assessments  
22 of the Army.”.

23 (b) CONFORMING AMENDMENT.—Section 7544(c) of  
24 title 10, United States Code, is amended, in the matter  
25 preceding paragraph (1), by striking “may be carried out

1 at an Army industrial facility under a cooperative arrange-  
2 ment entered into under subsection (a) only under the fol-  
3 lowing conditions” and inserting “is presumptively and  
4 conditionally approved to be carried out at an Army indus-  
5 trial facility under a cooperative arrangement entered into  
6 under subsection (a) unless it is demonstrated that the  
7 following conditions are not met”.

8 (c) ANNUAL REPORT.—

9 (1) IN GENERAL.—On and after the date of the  
10 enactment of this Act, the Secretary of Defense shall  
11 submit to the appropriate congressional committees,  
12 with the budget of the President submitted under  
13 section 1105(a) of title 31, United States Code, for  
14 a fiscal year a report that details the following:

15 (A) An outlook of expected workload at  
16 each arsenal of the Department of the Army  
17 that is owned and operated by the United  
18 States Government during the period covered  
19 by the future-years defense program submitted  
20 to Congress under section 221 of title 10,  
21 United States Code.

22 (B) A breakout, by relevant budget ac-  
23 counts, of workload that was achieved in the  
24 prior fiscal year, whether directly or through  
25 public-private partnerships.

1           (C) The capital investments required to be  
2           made at each arsenal of the Department of the  
3           Army that is owned and operated by the United  
4           States Government in order to ensure compli-  
5           ance and operational capacity.

6           (2) APPROPRIATE CONGRESSIONAL COMMIT-  
7           TEES DEFINED.—In this subsection, the term “ap-  
8           propriate congressional committees” means—

9                   (A) the Committee on Armed Services and  
10                  the Subcommittee on Defense of the Committee  
11                  on Appropriations of the Senate; and

12                   (B) the Committee on Armed Services and  
13                  the Subcommittee on Defense of the Committee  
14                  on Appropriations of the House of Representa-  
15                  tives.

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