

CQ TODAY ONLINE NEWS

Jan. 17, 2012 – 10:57 p.m.

Defense Law's Depot Language Draws Scrutiny

By John M. Donnelly, CQ Staff

In the scramble to complete the fiscal 2012 defense authorization bill late last year, lawmakers agreed to some little-noted provisions they now realize could result in significant changes at military maintenance depots.

The Armed Services committees are working behind the scenes to understand the new law — and likely to undo some of it.

At issue is language that could affect how the public and private sectors share the Pentagon's more than \$30 billion in annual spending on major maintenance of military equipment. Lawmakers, contractors and the Pentagon are trying to gauge the effects on military depots and tens of thousands of workers.

The chairman and top Republican on the Senate Armed Services Committee publicly committed last month to a full review of the provisions, and their aides are holding at least a half-dozen meetings this month with stakeholders.

Industry representatives are making the rounds, including a meeting Thursday with House Armed Services aides.

Among the provisions under review is language that could lead to "insourcing" of the nuclear refueling of aircraft carriers — work now done by a commercial shipyard.

The backlash against that change has been so fierce that House aides who wrote the language now acknowledge it was a mistake — the product of a rushed and truncated conference process. So, less than a month after the law ([PL 112-81](#)) was enacted, the House Armed Services Committee staff has committed to undoing the carrier provision when they write a fiscal 2013 defense authorization bill a few months from now.

A number of other provisions could also affect thousands of jobs and potentially hundreds of millions of dollars in spending. And any such changes in how the maintenance budget is allocated loom even larger than usual in the context of an election year, a sluggish economy and tighter defense budget.

"The sensitivity associated with maintenance workload is at an all-time high," Senate Armed Services member [Kay Hagan](#), D-N.C., said last month during a floor debate. Her state is home to the Navy's Fleet Readiness Center-East, one of 17 major Defense Department depots.

Since the mid-1980s, Congress has required the Pentagon to preserve a "core logistics" capability to maintain the weapons needed to execute the national military strategy — which is to say, most weapons. The services cannot outsource more than 50 percent of their major maintenance work, known as "depot-level maintenance."

The definitions of "depot" maintenance and "core" capabilities affect a lot of spending and jobs.

Experts have multiple viewpoints on what the impact of the new law could be, with much depending on how the Pentagon interprets the provisions. Some of the changes could benefit private firms, while others could be a boon to the Defense Department's depots.

Cord Sterling, vice president of the Aerospace Industries Association, which represents many potentially affected contractors, said he is worried that the new law greatly expands what is considered work that should be done by public facilities.

"There are as many interpretations of this new language as there are people who have read it, which is causing substantial uncertainty among depot policy experts," said Sterling, who previously worked on depot issues as a Senate Armed Services Committee aide. "We could see a massive insourcing of workloads, costing the taxpayers hundreds of millions of dollars, if not more, to facilitate the yards, costing thousands of jobs and putting at risk many small businesses. Or, we could see a large number of waivers issued and a downsizing of the public facilities in an effort to save money during a period of declining budgets."

The Pentagon, like other stakeholders, is studying the new law. "The Department of Defense is currently assessing the potential impact of the legislative changes," said spokeswoman Cheryl Irwin, and is working with the congressional committees "to establish implementation guidance that satisfies the law, maintains sound practice and strengthens the national industrial base."

Key Adjustments

The law's changes include designating, for the first time, weapons upgrades and modifications as major depot maintenance that needs to be done at a public yard. Many companies are concerned they could lose work to one of the public depots.

On the other hand, the law would rewrite the Defense secretary's authority to waive the "core" requirement. That could shift work to contractors, [John McCain](#), R-Ariz., said last month on the Senate floor.

Carrier Refueling

Aircraft carrier refueling is now an exception to the requirement that a capability to conduct major depot maintenance for core systems be kept in public yards. Northrop Grumman Corp.'s Newport News Shipbuilding in Virginia builds Navy carriers and does refueling and overhauls. The new law would allow the Navy to bring that work in house, if it wished, possibly to the Norfolk Naval Shipyard.

Aides say that with public shipyards working to capacity, it is doubtful that the Navy would avail itself of the public option for carriers.

Some industry observers believe that, even if the Navy did not take over the work, the language would require that the cost of refueling at the private yard be counted against the 50 percent outsourcing limit. That could require the movement of other work from private firms to public yards, taking work from small businesses and requiring substantial additional investment in public facilities.

House aides say the provision was written in an attempt to codify existing practices and clear up ambiguities, not to create confusion. They now acknowledge that the carrier provision "should not have happened."

"The House Armed Services Committee is committed to using the FY 13 defense bill to correct current language with respect to how carriers are treated under the depot provisions," said Claude Chafin, a spokesman for the House panel.

Senate aides declined to predict the future of the carrier provision. But since the Senate did not write it, and a bipartisan chorus of Senate committee members howled in protest against the House provision, senators seem likely to agree to the modification.

Aides said other provisions of the bill may need to be better explained, rather than altered. And they note that how the law is implemented will be determined largely by the services and the Defense secretary's office.

"Every law change is a campaign, not an event," one senior House staffer said.

A version of this article appeared in the [Jan. 18, 2012 print issue of CO Today](#)