SEC. __. MODIFICATION OF AVAILABILITY OF APPROPRIATIONS FOR SHIP OVERHAUL, MODERNIZATION, MAINTENANCE AND REPAIR.

(a) IN GENERAL.—Section 8683 of title 10, United States Code, is amended—

(1) in the heading, by striking "**overhaul**" and inserting "**overhaul, modernization, maintenance, and repair**";

(2) in subsection (a)(1)—

(A) by striking "Appropriations" and inserting "Notwithstanding section 1502 of title 31, appropriations"; and

(B) by inserting "modernization," after "overhaul,"; and

(3) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking "An appropriation" and inserting "Notwithstanding sections 1502 and 1553(c) of title 31, an appropriation"; and

(B) in paragraph (1), by inserting "modernization," after "overhaul,".

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of chapter 863 of title 10, United States Code, is amended by striking the item relating to section 8683 and inserting the following new item:

"8683. Ship overhaul, modernization, maintenance, and repair work: availability of appropriations for unusual cost overruns and for changes in scope of work.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would clarify that funds may be used as authorized by the language of the statute regardless of the restrictions that would otherwise be applicable under section 1502 of title 31, United States Code (U.S.C.).

The proposal would also clarify the applicability of the statute to the range of ship work efforts consistent with the range of efforts identified in the body of the statute, which are

overhaul, maintenance, and repair, and to ensure that ship modernization is included for the fiscal flexibilities provided by the statute.

The proposal would explicitly exclude the use under this statute of otherwise-expired appropriations, or appropriations after their period of availability, from the approval and notification requirements associated with use of expired appropriations under section 1553(c) of title 31, U.S.C.

Background

A provision similar to section 8683 of title 10, U.S.C. was first enacted in the Department of Defense Appropriations Act, 1982 and was provided as a recurring provision in subsequent appropriation acts until codified in 1988 by Public Law 100–370 as 10 U.S.C. 7313, recently renumbered as 10 U.S.C. 8683 in the John S. McCain National Defense Authorization Act for Fiscal Year 2019. The FY 2019 revision also reinstated the statute's congressional notification requirement that was previously inadvertently terminated by section 602 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99-433). Note that the notification requirement was never facially removed from the statutory language, but yet had been inadvertently terminated by the Goldwater-Nichols provision.

The statute as originally enacted was intended to alleviate unique fiscal issues arising from ship repair and overhaul by providing flexibility necessary to accommodate the fact that most ship overhauls cannot be completed within the one-year availability of the Operation and Maintenance, Navy appropriation used to fund them due to the uncovering of needed work after the start of the availability once removal of equipment and other inspections of the ship have begun. The limitations associated with access to operational vessels makes it difficult to estimate the costs of ship overhaul, modernization, maintenance, or repair, efforts for advance planning and budgeting purposes, as it is always uncertain exactly what work will need to be done until the ship is in dock, inspected and equipment removal has begun. Congress previously acknowledged the need for fiscal flexibility in H.R. Report No. 97-333 for the Fiscal Year 1982 Defense Appropriations Bill as follows:

> **Financing Change Orders**
> **Scope of Effort Changes on Ship Overhauls**
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> As Naval ships became more complex and the average age of those ships retained in the fleet increased, so did the effort of estimating a definitive overhaul work package. Frequently, post induction open and inspection procedures disclose repair requirements not previously allowed for. This results in either a reduction in the original work package for a given ship or a program reduction elsewhere to accommodate for the increased scope of effort. Consequently, some years ago the Navy commenced budgeting for a funding wedge in the subsequent year for scope of effort changes relative to the initial ship overhaul repair package.
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> The Committee also attempted to address this problem through the use of a two year appropriation since multiyear funding of ship overhauls from an annual appropriation is not proper. Navy indicated that a two year availability which

> "fenced" ship overhaul would be unnecessarily restrictive, and the proposal was dropped in conference.
>
> The Committee is now recommending new language in the fiscal year 1982 Bill, Section 708 (n) and (o), which will allow Navy to budget for scope of effort changes in the same fiscal year in which the ship is inducted. The Committee believes this procedure will alleviate the problem Navy has encountered in maintaining accountability of fiscal year funds used to finance increased scope of effort changes. These funds will remain unobligated at the end of the fiscal year and remain available to finance scope of effort changes. It should be noted that the language is restricted to depot level maintenance related work on ships. The Office of the Secretary of Defense and the Military Departments should take whatever action deemed necessary to assure availability of resources at end year. The Committee proposes an increase of $58 million in fiscal year 1982 to cover change order costs related to ship overhauls based on an average of such costs identified for the last three fiscal years.
>
> Such costs for other depot maintenance programs should be covered from unobligated balances available at end year from within the appropriation which funded the initial repair effort.
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> Language has also been included which would allow the use of current year appropriations to cover unusual cost overruns, with prior congressional approval, associated with depot repair work inducted in the previous fiscal year.

Additionally, the associated Senate Report, No. 97-273, provided:

> *Ship overhaul change orders and advanced funding*.-Beginning in fiscal year 1983, the Committee directs that the Navy budget for ship change orders in the same fiscal year in which the ship is inducted. Further, the Navy should finance the procurement of all long-lead materials through the stock fund to be provided in the same fiscal year in which a ship enters an industrial facility. The effect of this recommendation will be to improve the accountability of fiscal year funding provided for ship maintenance. Unlike prior year programs, as of fiscal year 1983 all costs associated with ship overhauls and repair will be charged to the same fiscal year funding as the year that the ship enters overhaul. The recommendation to defer implementation of this financing procedure has been made in recognition of the adjustments necessary to accommodate this effort in the fiscal year 1983 budget submission.

However, in retrospect, the statute as currently written has not provided the level of flexibility needed to efficiently and cost effectively carry out ship overhaul, modernization, maintenance, or repair as we believe Congress intended. Additionally, an issue has arisen as to whether the subsequently enacted notification and approval requirements for use of expired funds at 31 U.S.C. 1553(c)(1) and (2), first established in the FY 1990 National Defense Authorization Act (P.L. 101-189), apply to use of funds after their “otherwise-applicable expiration” under 10 U.S.C. 8683. The 31 U.S.C. 1553(c)(1) and (2) approval and notification procedures include a requirement to obtain approval from the head of the agency (or delegee within the office of the head) in order to obligate expired funds in excess of $4 million during a fiscal year for contract changes for a program, project or activity. For contract changes involving use of expired funds for a program, project or activity in excess of $25 million during a

fiscal year, the head of the agency is required to notify the appropriate authorizing and appropriations committees of Congress and wait 30 days before use of such funds. But where 10 U.S.C. 8683 contains congressional authorization to use expired funds, it is redundant and a major cause of delays to availability execution which the statute sought to eliminate to also require the additional approvals under 31 U.S.C. 1553(c). Therefore, this proposed 10 U.S.C. 8683 amendment would explicitly exclude the use of funds under 10 U.S.C. 8683 after their period of availability from the approval and notification requirements of 31 U.S.C. 1553(c).

The Department of Defense and Department of the Navy have interpreted the notification and approval requirements under 31 U.S.C. 1553(c) to be applicable to the use of "otherwise" expired funds under 10 U.S.C. 8683. As a result, the Navy has been unable to use 10 U.S.C. 8683 to exercise the fiscal flexibility needed for prompt resolution of emergent requirements resulting from changes in the scope of work for ship overhauls, modernization, maintenance, and repair. Many approval requests occur while the ship is undergoing time sensitive availabilities, and the delay caused by the funding approval process increases the risk of unacceptable delay to that ship availability. Whenever overhaul, modernization, maintenance, and repair work on ships cannot be immediately funded and performed as intended by 10 U.S.C. 8683, the Navy is at risk for decreased mission readiness. Application of the 31 U.S.C. §1553(c) approval requirements in order to use expired funding for changes identified during ship availabilities has resulted in exercise of a time-consuming process that takes anywhere between six (6) and twelve (12) weeks before funds are approved, creating significant potential for delay and work stoppages, extension of the ship availability and modernization milestones, and incurrence of additional contract costs.

Another issue associated with the statute, and that this proposal seeks to resolve, is that its history creates some ambiguity regarding the applicability of the statute to solely depot level ship overhauls, or whether it may also be applied to other ship modernization, maintenance, and repair efforts. As currently written, the language in the body of the statute, specifically paragraphs (a)(1), (b)(1) and (b)(2), indicates that the authorities provided therein may be broadly applied to all "ship overhaul, maintenance, and repair." However, the current title of 10 U.S.C. 8683 and legislative history of the statute leave room for a more restrictive application of the statute to only certain major ship repair efforts. Specifically, the title of the statute refers only to "ship overhaul." The legislative history of the statute, particularly H. Rpt. 97-333 for the FY 1982 Appropriations Act, states that "[i]t should be noted that the language is restricted to depot level maintenance related work on ships." Although the rules of statutory construction may generally allow the broader application of the authority to include ship repair and maintenance based on the language in the body of the statute, the current interpretation, informed by the title and legislative history, limits the authority to only depot level overhauls. This proposed amendment would provide certainty that the authority provided in the statute may be broadly applied to all ship overhauls, ship modernization, ship maintenance, and ship repair efforts. Broader application of the authority would provide needed funding flexibility for smaller ship availabilities and would facilitate timely work execution at the performing shipyard.

Budget Implications: This proposal has no budget impact.

Changes to Existing Law: This proposal would amend section 8683 of title 10, United States Code as follows:

§ 8683. Ship overhaul, modernization, maintenance, and repair work: availability of appropriations for unusual cost overruns and for changes in scope of work

(a) UNUSUAL COST OVERRUNS.—(1) Notwithstanding section 1502 of title 31, appropriations ~~Appropriations~~ available to the Department of Defense for a fiscal year may be used for payment of unusual cost overruns incident to ship overhaul, modernization, maintenance, and repair for a vessel inducted into an industrial-fund activity or contracted for during a prior fiscal year.

(2) The Secretary of Defense shall notify Congress promptly before an obligation is incurred for any payment under paragraph (1).

(b) CHANGES IN SCOPE OF WORK.—Notwithstanding sections 1502 and 1553(c) of title 31, an ~~An~~ appropriation available to the Department of Defense for a fiscal year may be used after the otherwise-applicable expiration of the availability for obligation of that appropriation—

(1) for payments to an industrial-fund activity for amounts required because of changes in the scope of work for ship overhaul, modernization, maintenance, and repair, in the case of work inducted into the industrial-fund activity during the fiscal year; and

(2) for payments under a contract for amounts required because of changes in the scope of work, in the case of a contract entered into during the fiscal year for ship overhaul, maintenance, and repair.