SEC. 203. REQUIREMENT FOR CONTRACTOR COST-SHARING IN PILOT PROGRAM TO INCLUDE TECHNOLOGY PROTECTION FEATURES DURING RESEARCH AND DEVELOPMENT OF CERTAIN DEFENSE SYSTEMS.

Section 243 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 124 Stat. 4178; 10 U.S.C. 2358 note) is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

‘‘(b) COST-SHARING.—Any contract for the design or development of a system resulting from activities specified under subsection (a) for the purpose of enhancing or enabling the exportability of the system either (1) for the development of program protection strategies for the system, or (2) for the design and incorporation of exportability features into the system shall include a cost-sharing provision that requires the contractor to bear at least one half of the cost of such activities.”.

Section-by-Section Analysis

This proposal will enhance the provisions of section 243 of Public Law 111-383 (Ike Skelton National Defense Authorization Act for Fiscal Year 2011) to incorporate a requirement consistent with section 814 of S. 3454 (National Defense Authorization Act for Fiscal Year 2011) to require industry cost-sharing of the development of exportability features.

The legislative proposal provides unambiguous authority for the U.S. to invest in exportability features and to require a contract for the development of exportability features to include provisions that require, as a minimum, the contractor to match U.S. government expenditures. .

The United States often requires exportability features including, but not limited to anti-tamper measures, to be incorporated in export versions of major defense equipment (MDE), including Unmanned Aircraft Systems. The cost of the exportability features prior to sale is normally chargeable to the purchaser when a foreign military or direct commercial sales

agreement is established. However, such agreements do not provide a source of up-front funding to pay for integrated research and development of exportability features for systems. The price tag for the first purchaser for exportability modifications for such systems can make the purchase unaffordable. In addition, as the U.S. would not receive the funds until a signed Foreign Military Sales case is executed, incorporating exportability features would not be timely to support a sale, and more important, partner contributions in the implementation of coalition operations by the U.S and allied/friendly nations.

Changes to Existing Law: This proposal would make the following changes to section 243 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011:

SEC. 243. PILOT PROGRAM TO INCLUDE TECHNOLOGY PROTECTION FEATURES DURING RESEARCH AND DEVELOPMENT OF DEFENSE SYSTEMS.

(a) PILOT PROGRAM.—The Secretary of Defense shall carry out a pilot program to develop and incorporate technology protection features in a designated system during the research and development phase of such system.

(b) COST-SHARING.—Any contract for the design or development of a system resulting from activities specified under subsection (a) for the purpose of enhancing or enabling the exportability of the system either (1) for the development of program protection strategies for the system, or (2) for the design and incorporation of exportability features into the system shall include a cost-sharing provision that requires the contractor to bear at least one half of the cost of such activities.

(~~b~~c) ANNUAL REPORTS.—Not later than December 31 of each year in which the Secretary carries out the pilot program established under this section, the Secretary shall submit to the congressional defense committees a report on the pilot program, including a list of each designated system included in the program.

(~~c~~d) TERMINATION.—The pilot program established under this section shall terminate on October 1, 2015.

(~~d~~e) DEFINITIONS.—In this section:

(1) The term "designated system" means any system (including a major system, as defined in section 2302(5) of title 10, United States Code) that the Under Secretary of Defense for Acquisition, Technology, and Logistics designates as being included in the pilot program established under this section.

(2) The term "technology protection features" means the technical modifications necessary to protect critical program information, including anti-tamper technologies and other systems engineering activities intended to prevent or delay exploitation of critical technologies in a designated system.