

To the office of U.S. Representative Tim Burchett

Re: HR 9215 (119th Congress), Prioritizing Warfighters in Defense Contracting Act • Latest action (2026-06-09): Referred to the House Committee on Armed Services.

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Defense Contractor Performance Incentive and Oversight Act of 2025

The measure, as described from the official record: Prevent defense contractors who perform poorly on federal contracts from enriching executives and shareholders at taxpayer expense, thereby improving contract performance and return on defense spending.

THE PROPOSAL

Section 1. Short Title. This Act may be cited as the 'Defense Contractor Performance Incentive and Oversight Act of 2025.'

Section 2. Definitions. (a) 'Covered contractor' means any entity awarded a defense contract valued at \$10 million or more by the Department of Defense in the preceding fiscal year. (b) 'Material breach' means a failure to perform a contract milestone or deliverable as specified in the contract terms, certified by the contracting officer and subject to review by the Armed Services Board of Contract Appeals.

Section 3. Performance-Based Contract Conditions. Beginning 180 days after enactment, each new defense contract valued at \$10 million or more shall include a clause requiring that, in the event the contractor is found to have committed a material breach that results in a cost overrun exceeding 10% of the contract value or a delay of more than 90 days, the contractor shall: (1) refrain from engaging in stock buybacks or paying shareholder dividends for a period of 12 months following the final determination of breach; (2) limit the total compensation of the contractor's five highest-paid executives to no more than 50 times the median compensation of all contract-dedicated employees for that 12-month period. Existing contracts may be amended by mutual agreement to include these provisions.

Section 4. Determination and Due Process. Upon a contracting officer's preliminary finding of material breach, the contractor shall have 30 days to cure or contest the finding. A final determination shall be made by the contracting officer following an informal hearing, and may be appealed to the Armed Services Board of Contract Appeals within 60 days. The penalties described in Section 3 shall apply only after the appeal process is exhausted or the time for appeal has lapsed.

Section 5. Oversight. The Inspector General of the Department of Defense shall audit the enforcement of this Act biennially, reporting to Congress on whether penalties are being applied consistently and whether they have improved contractor performance.

Section 6. Sunset. This Act shall expire seven years after the effective date, unless reauthorized by Congress.

Section 7. Effective Date. This Act takes effect 180 days after enactment.

OPERATIVE PROVISIONS (VFA PROPOSAL)

Funding Source	Existing appropriations for Department of Defense oversight accounts; no new appropriation required.
Funding Amount	\$5 million per fiscal year from DoD procurement administrative accounts for IG oversight and ASBCA appeals processing.
Sunset Years	7 years
Oversight Body	Inspector General of the Department of Defense, with annual reports to the Committees on Armed Services of the House and Senate.
Enforcement Mechanism	Contracting officer makes material breach determination after due process; penalties (no buybacks/dividends for 12 months; executive compensation cap of 50:1 ratio) are incorporated as contractual terms consistent with the Government's procurement authority under Article I, Section 8, Clause 12. Violations subject the contractor to liquidated damages and potential debarment under the Federal Acquisition Regulation.
Effective Date	180 days after enactment

CONSTITUTIONAL BASIS

- Article I, Section 8, Clause 12 (power to raise and support Armies)
- Article I, Section 8, Clause 13 (power to provide and maintain a Navy)
- Fifth Amendment Due Process Clause (clear standards and appeal rights included to satisfy this)
- Tenth Amendment (powers not delegated to the United States reserved to the States; this solution applies only to federal contractors via the spending and contract power, avoiding general corporate governance regulation)

Concerns with the measure as written:

- The bill delegates open-ended discretion to the Secretary of Defense to define 'underperforming,' raising Fifth Amendment due process concerns for contractors facing deprivations of property without clear standards.
- Restrictions on stock buybacks and dividends may exceed Congress's power under Article I, Section 8, Clause 12 (Armies) and Clause 13 (Navy) if not directly tied to contract performance; they could be seen as general corporate governance regulation reserved to the states under the Tenth Amendment.
- Executive compensation caps may run afoul of the Fifth Amendment's Takings Clause if applied retroactively or without a direct nexus to contract nonperformance.

WHY BOTH SIDES CAN BACK IT (VFA'S ASSESSMENT)

Democratic priorities honored: curbing excessive executive pay and shareholder enrichment at taxpayer expense; tying corporate behavior to public contract performance. Republican priorities honored: preserving free-market contracting principles by using contract-specific remedies rather than general corporate mandates; respecting due process with clear breach standards and appeal rights; limiting government overreach with a sunset provision; funding from existing accounts without new taxes.

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