

AMENDMENT TO H.R. 4435
OFFERED BY MS. SHEA-PORTER OF NEW
HAMPSHIRE

At the appropriate place in title IX, insert the following new section:

1 **SEC. 9 ____ . ASSIGNMENT OF CERTAIN NEW REQUIREMENTS**
2 **BASED ON DETERMINATIONS OF COST-EFFI-**
3 **CIENCY.**

4 (a) AMENDMENT.—Chapter 146 of title 10, United
5 States Code, is amended by inserting after section 2463
6 the following new section:

7 **“§ 2463a. Assignment of certain new requirements**
8 **based on determinations of cost-effi-**
9 **ciency**

10 “(a) ASSIGNMENTS BASED ON DETERMINATIONS OF
11 COST-EFFICIENCY.—(1) Except as provided in paragraph
12 (2) and subject to subsection (b), the assignment of per-
13 formance of a new requirement by the Department of De-
14 fense to military personnel, civilian personnel, or con-
15 tractor personnel shall be based on a determination of
16 which sector of the Department’s workforce can perform
17 the services in the most cost-efficient manner, based on
18 an analysis of the costs to the Federal Government in ac-

1 cordance with Department of Defense Instruction 7041.04
2 ('Estimating and Comparing the Full Costs of Civilian
3 and Active Duty Military Manpower and Contract Sup-
4 port') or successor guidance.

5 “(2) Paragraph (1) shall not apply in the case of a
6 new requirement that is inherently governmental, closely
7 associated with inherently governmental functions, crit-
8 ical, or required by law to be performed by military per-
9 sonnel or civilian personnel.

10 “(3) Nothing in this section may be construed as af-
11 fecting the requirements of the Department of Defense
12 under policies and procedures established by the Secretary
13 of Defense under section 129a of this title for determining
14 the most appropriate and cost-efficient mix of military, ci-
15 vilian, and contractor personnel to perform the mission of
16 the Department of Defense.

17 “(b) WAIVER AUTHORITY.—(1) Notwithstanding
18 subsection (a), the Secretary of a military department, the
19 commander of a combatant command, or the head of a
20 Defense Agency or activity may waive such subsection and
21 assign performance of a new requirement without a deter-
22 mination of cost-efficiency as required by such subsection
23 if—

24 “(A) the Secretary, commander, or head cer-
25 tifies in writing to the congressional defense commit-

1 tees that the time required to conduct the deter-
2 mination of cost-efficiency would result in a gap in
3 service that would significantly undermine perform-
4 ance of the mission of the Department of Defense or
5 pose an unacceptable risk; and

6 “(B) a period of 30 days has expired after such
7 certification is so submitted to the committees.

8 “(2) A waiver of subsection (a) may be in effect for
9 a period of not greater than 180 days.

10 “(3) The waiver authority under this subsection may
11 not be exercised after September 30, 2015.

12 “(c) PROVISIONS RELATING TO ASSIGNMENT OF CI-
13 VILIAN PERSONNEL.—If a new requirement is assigned to
14 civilian personnel consistent with the requirements of this
15 section—

16 “(1) the Secretary of Defense may not—

17 “(A) impose any constraint or limitation
18 on the size of the civilian workforce in terms of
19 man years, end strength, full-time equivalent
20 positions, or maximum number of employees; or

21 “(B) require offsetting funding for civilian
22 pay or benefits or require a reduction in civilian
23 full-time equivalents or civilian end-strengths;
24 and

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1 “(2) the Secretary may assign performance of
2 such requirement without regard to whether the em-
3 ployee is a temporary, term, or permanent employee.

4 “(d) NEW REQUIREMENT DESCRIBED.—For pur-
5 poses of this section, a new requirement is an activity or
6 function that is not being performed, as of the date of
7 consideration for assignment of performance under this
8 section, by military personnel, civilian personnel, or con-
9 tractor personnel at a Department of Defense component,
10 organization, installation, or other entity. For purposes of
11 the preceding sentence, an activity or function that is per-
12 formed at such an entity and that is re-engineered, reorga-
13 nized, modernized, upgraded, expanded, or changed to be-
14 come more efficient but is still essentially providing the
15 same service shall not be considered a new requirement.”.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 at the beginning of such chapter is amended by inserting
18 after the item relating to section 2463 the following new
19 item:

“2463a. Assignment of certain new requirements based on determinations of
cost-efficiency.”.

