

AMENDMENT TO H.R. 8070
OFFERED BY MR. MOULTON OF MASSACHUSETTS

At the appropriate place in title I, insert the following:

1 **SEC. 1 ____ . SEIZURE OF INTELLECTUAL PROPERTY UNDER**
2 **THE JOINT STRIKE FIGHTER PROGRAM.**

3 (a) IN GENERAL.—To the extent provided under sub-
4 section (d), the Secretary of Defense may take ownership
5 of the covered intellectual property for the Joint Strike
6 Fighter program to the extent the Secretary determines
7 necessary for the purposes of national security.

8 (b) ASSESSMENT AND REPORT REQUIRED.—

9 (1) IN GENERAL.—Prior to taking ownership of
10 covered intellectual property under subsection (a),
11 the Secretary shall conduct an assessment of the
12 Joint Strike Fighter program and submit to the con-
13 gressional defense committees a report containing
14 the findings of such assessment.

15 (2) ASSESSMENT CONSIDERATIONS.—In car-
16 rying out an assessment under paragraph (1), the
17 Secretary shall—

1 (A) assess the terms of each major con-
2 tract under the Joint Strike Fighter program
3 with which the contractor has not complied;

4 (B) assess whether the acquisition strategy
5 for the Joint Strike Fighter program, including
6 the contract vehicles used under such program,
7 is the best acquisition strategy to support na-
8 tional security; and

9 (C) for each major contract under the
10 Joint Strike Fighter program, assess the bene-
11 fits and risks of cancelling such contract to
12 enter into a new contract, or renegotiation such
13 contract to amend the terms of such contract,
14 to address issues with the acquisition strategy
15 for the Joint Strike Fighter program and en-
16 sure that covered intellectual property may be
17 used to the extent necessary for the purposes of
18 national security, as determined by the Sec-
19 retary.

20 (3) REPORT CONTENTS.—The report required
21 under paragraph (1) shall include the following:

22 (A) The current program acquisition unit
23 cost for the Joint Strike Fighter program (and
24 for each designated major subprogram under

1 such program) in constant base-year dollars
2 and in current dollars.

3 (B) The current change and the total
4 change, in dollars and expressed as a percent-
5 age, in the program acquisition unit cost for the
6 Joint Strike Fighter program (or for each des-
7 ignated major subprogram under such pro-
8 gram), stated both in constant base-year dollars
9 and in current dollars.

10 (C) The following contract performance as-
11 sessment information with respect to each
12 major contract under the Joint Strike Fighter
13 program:

14 (i) The name of the contractor.

15 (ii) The phase that the contract is in
16 at the time of the preparation of the re-
17 port.

18 (iii) The percentage of work under the
19 contract that has been completed.

20 (iv) Any current change and the total
21 change, in dollars and expressed as a per-
22 centage, in the contract cost.

23 (v) The percentage by which the con-
24 tract is currently ahead of or behind sched-
25 ule.

1 (D) In any case in which one or more
2 problems with a software component of the
3 Joint Strike Fighter program or any designated
4 major subprogram under the program signifi-
5 cantly contributed to the increase in program
6 unit costs or delays in program schedule, a de-
7 scription of the software component and an as-
8 sessment of delays or performance issues attrib-
9 utable to the software component of such pro-
10 gram.

11 (E) An assessment of whether the Federal
12 Government taking ownership of any part or all
13 of the covered intellectual property for the Joint
14 Strike Fighter program will support meeting
15 the national security objectives of such pro-
16 gram.

17 (F) An identification and description of
18 each piece of covered intellectual property for
19 the Joint Strike Fighter program for which the
20 Federal Government taking ownership of such
21 covered intellectual property would support
22 meeting the national security objectives of such
23 program, as determined by the Secretary of De-
24 fense pursuant to the assessment required
25 under subparagraph (E).

1 (c) REIMBURSEMENT.—

2 (1) IN GENERAL.—The remedy of an individual
3 or entity whose intellectual property rights are taken
4 by the Secretary under this section shall be by ac-
5 tion against the United States in the United States
6 Court of Federal Claims for the recovery of the rea-
7 sonable and entire compensation for such taking.

8 (2) PAYMENT OF CLAIMS.—Amounts awarded
9 in an action described in paragraph (1) for intellec-
10 tual property rights taken under this section shall be
11 paid only from amounts appropriated for the pay-
12 ment of such awards.

13 (d) SEIZURE LIMITS.—The Secretary of Defense may
14 take ownership of covered intellectual property under sub-
15 section (a) only to the extent that the value of such cov-
16 ered intellectual property does not exceed the amount ap-
17 propriated for the payment of amounts awarded in an ac-
18 tion described in paragraph (1).

19 (e) INITIAL ASSESSMENT.—

20 (1) IN GENERAL.—Except as provided by para-
21 graph (2), not later than one year after the date of
22 the enactment of this Act, the Secretary of Defense
23 shall exercise the authority under subsection (a).

24 (2) CERTIFICATION EXCEPTION.—Paragraph
25 (1) shall not apply if the Secretary of Defense sub-

1 mits to the congressional defense committees a cer-
2 tification that the exercise of the authority under
3 subsection (a) is not necessary for the purposes of
4 national security.

5 (f) DEFINITIONS.—In this section—

6 (1) the terms “procurement unit cost” and
7 “program acquisition unit cost” have the meanings
8 given such terms, respectively, in section 4371(a) of
9 title 10, United States Code;

10 (2) the term “covered intellectual property”,
11 with respect to the Joint Strike Fighter program,
12 means intellectual property, including the rights to
13 intellectual property, of a contractor of the Depart-
14 ment awarded a major contract under such program
15 or a subcontract for such a contractor under such a
16 contract which is necessary for the development, im-
17 plementation, use, operation, sustainment, or main-
18 tenance of any good or service acquired or to be ac-
19 quired under such program;

20 (3) the term “Joint Strike Fighter program”
21 means the major defense acquisition program for the
22 acquisition of the F-35 Joint Strike Fighter;

23 (4) the term “major defense acquisition pro-
24 gram” has the meaning given such term in section
25 4201 of title 10, United States Code; and

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1 (5) the term “Secretary” means the Secretary
2 of Defense.

