

AMENDMENT TO H.R. 3838
OFFERED BY MS. GOODLANDER OF NEW
HAMPSHIRE

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

1 **SEC. 8 ____.** **REQUIREMENT FOR CONTRACTORS TO PROVIDE**
2 **REASONABLE ACCESS TO REPAIR MATE-**
3 **RIALS.**

4 (a) **IN GENERAL.**—Chapter 363 of title 10, United
5 States Code, is amended by adding at the end the fol-
6 lowing new section:

7 **“§ 4664. Requirement for contractors to provide rea-**
8 **sonable access to repair materials**

9 “(a) **REQUIREMENT.**—An agency may not enter into
10 a contract for the procurement of reparable goods or re-
11 pair services in support of major weapon systems unless
12 the contractor agrees in writing to provide the Department
13 of Defense fair and reasonable access to all the repair ma-
14 terials, including parts, tools, and information, used by the
15 manufacturer or provider or their authorized repair pro-
16 viders to diagnose, analyze, maintain, or repair the good
17 or service.

1 “(b) WAIVER.—The Secretary of Defense, or the
2 head of the procuring agency in the case of a delegated
3 authority, may waive the requirements of this section with
4 respect to a particular contract or class of contracts upon
5 a written determination that application of those require-
6 ments would have a negative impact on cost, schedule, or
7 technical performance.

8 “(c) PROTECTION FOR INTELLECTUAL PROPERTY,
9 PROPRIETARY, AND TRADE SECRET INFORMATION.—
10 Nothing in this section shall be construed to permit the
11 unauthorized disclosure or release of intellectual property,
12 commercially confidential information, or trade secrets.
13 The Secretary of Defense shall take all necessary steps
14 to protect such information from disclosure to the extent
15 otherwise protected by law.

16 “(d) FAIR AND REASONABLE ACCESS DEFINED.—In
17 this section, the term ‘fair and reasonable access’ means,
18 as applicable—

19 “(1) prices, terms, and conditions that allow the
20 Department of Defense the rights to provide the re-
21 pair materials to an authorized contractor consistent
22 with section 3771 of title 10, United States Code,
23 and the Government’s product support strategy;

24 “(2) provision at prices, terms, and conditions
25 that are equivalent to the most favorable prices,

1 terms, and conditions under which the manufacturer
2 or an authorized reseller or distributor offers the re-
3 pair material to an authorized repair provider, ac-
4 counting for any discount, rebate, convenient and
5 timely means of delivery, means of enabling fully re-
6 stored and updated functionality, rights of use, or
7 other incentive or preference the manufacturer or an
8 authorized reseller or distributor offers to an author-
9 ized repair provider;

10 “(3) if a manufacturer does not offer, directly
11 or through an authorized reseller or distributor, the
12 repair material to any authorized repair provider,
13 then provision of such repair material at prices,
14 terms, and conditions that are otherwise determined
15 by the United States Government to be fair and rea-
16 sonable in accordance with this title and subject to
17 the dispute resolution process outlined in chapter 71
18 of title 41, United States Code; and

19 “(4) if the United States Government did not
20 previously fund the development of the intellectual
21 property of the manufacturer or an authorized re-
22 seller or distributor, the Government would pay a
23 fair and reasonable licensing fee to obtain access.”.

24 (b) REPORT.—Not later than one year after the date
25 of the enactment of this Act, the Comptroller General of

1 the United States shall submit to the congressional de-
2 fense committees a report on the implementation of this
3 section.

4 (c) LIMITATIONS.—Nothing in this section shall be
5 construed as altering the requirements in section 2464
6 and 2466 of title 10, United States Code.

