86TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 619

EXTENSION OF THE RENEGOTIATION ACT OF 1951

JUNE 30, 1959.—Ordered to be printed

Mr. MILLS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 7086]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7086) to extend the Renegotiation Act of 1951, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment as follows:

On the first page of the Senate engrossed amendment, beginning with line 7, strike out all through line 6, page 2, and in lieu thereof insert the following:

SEC. 2. FIVE-YEAR LOSS CARRYFORWARD.

Subsection (m) of section 103 of the Renegotiation Act of 1951, as amended (50 U.S.C. App., sec. 1213 (m)), is amended—

(1) By striking out the heading and inserting in lieu thereof the following:

"(m) RENEGOTIATION LOSS CARRYFORWARDS.—".

(2) By striking out subparagraph (A) of paragraph (2) and inserting in lieu thereof the following:

"(A) The term 'renegotiation loss deduction' means—

"(i) for any fiscal year ending on or after December 31, 1956, and before January 1, 1959, the sum of the renegotiation loss carryforward to such fiscal year from the preceding two fiscal years; and

"(ii) for any fiscal year ending after December 31, 1958, the sum of the renegotiation loss carryforwards to such fiscal year from the preceding five fiscal years (excluding any fiscal year ending before December 31, 1956)."

(3) By striking out "CARRYFORWARDS.—A" in paragraph (3) and inserting in lieu thereof the following: "CARRYFORWARDS TO 1956, 1957, AND 1958.—For the purposes of paragraph (2)(A)(i), a".

(4) By adding at the end of such subsection the following new paragraph:

"(4) AMOUNT OF CARRYFORWARDS TO FISCAL YEARS ENDING AFTER 1958.—For the purposes of paragraph (2)(A)(ii), a renegotiation loss for any fiscal year (hereinafter in this paragraph referred to as the 'loss year') ending on or after December 31, 1956, shall be a renegotiation loss carryforward to each of the five fiscal years following the loss year. The entire amount of such loss shall be carried to the first fiscal year succeeding the loss year. The portion of such loss which shall bec arried to each of the other four fiscal years shall be the excess, if any, of the amount of such loss over the sum of the profits derived from contracts with the Departments and subcontracts in each of the prior fiscal years to which such loss may be carried. For the purposes of the preceding sentence, the profits derived from contracts with the Departments and subcontracts in any such prior fiscal year shall be computed by determining the amount of the renegotiation loss deduction without regard to the renegotiation loss for the loss year or for any fiscal year thereafter, and the profits so computed shall not be considered to be less than zero."

And the Senate agree to the same.

W. D. MILLS,
AIME J. FORAND,
CECIL R. KING,
RICHARD M. SIMPSON,
N. M. MASON,
Managers on the Part of the House.

HARRY F. BYRD,
ROBT. S. KERR,
J. ALLEN FREAR, Jr.
JOHN J. WILLIAMS,
FRANK CARLSON,
Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7086) to extend the Renegotiation Act of 1951, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

THE HOUSE BILL

The bill as passed the House contained six sections.

Section 1 of the bill provided for a 4-year extension of the Renegotiation Act of 1951. This section amended section 102(c)(1) of the act to provide that the termination date would be June 30, 1963 (in lieu of the present termination date, June 30, 1959).

Section 2 of the bill as passed the House related to factors to be considered in determining excessive profits. Section 2(a) of the bill amended the second sentence of section 103(e) of the act to provide that, in giving favorable recognition to the efficiency of the contractor or subcontractor for purposes of determining excessive profits, particular regard is to be accorded not only to the matters now set forth in such second sentence but also to contractual pricing provisions and the objectives sought to be achieved thereby, and economies achieved by subcontracting with small-business concerns.

Section 2(b) of the bill amended paragraph (2) of the second sentence of section 103(e) of the act. Paragraph (2) of existing law lists as one of the enumerated factors required to be taken into account in determining excessive profits the following: "The net worth, with particular regard to the amount and source of public and private capital employed." Under section 2(b) of the bill as passed the House, this paragraph (2) would be amended so that this enumerated factor would be "The net worth, and the amount and source of public and private capital employed."

Section 2(c) of the bill as passed the House amended section 103(e) of the act to provide that in any statement furnished by the Renegotiation Board to a contractor or subcontractor pursuant to section 105(a) of the act, the Board is to indicate separately, but without evaluating separately in dollars or percentages, its consideration of, and the recognition given to, the efficiency of the contractor or subcontractor and each of the other factors required by section 103(e) of the act to be taken into account in determining excessive profits.

Section 3 of the bill as passed the House amended subsection (m) of section 103 of the act. At present, subsection (m) provides a 2-year carryforward of losses on renegotiable business to any fiscal year ending on or after December 31, 1956. Section 3 of the bill as passed the House provided a 5-year carryforward (in lieu of the present 2-year carryforward) of losses to any fiscal year ending after

December 31, 1958. The 5-year carryforward would apply only if the loss arose in a fiscal year which ended on or after December 31, 1956.

Section 4 of the bill as passed the House amended section 105(a) of the act with respect to statements furnished by the Renegotiation Board and the availability of documents for inspection. Under existing law, the Renegotiation Board is required, if the contractor or subcontractor so requests, to furnish the contractor or subcontractor a statement of its reasons and of the facts used by it as a basis for arriving at a determination of excessive profits; but the Board is not required to furnish such a statement unless its determination is made by order, and then only after the order has been entered. Section 4(a) of the bill amended this provision to require by statute that the Board furnish a statement (of the kind described in the previous sentence) before the making of an agreement or the issuance of an order, if the contractor or subcontractor so requests.

Section 4(b) of the bill provided that the Renegotiation Board, at or before the time it furnishes the statement of facts and reasons required by section 105(a) of the act, is to make available for inspection by the contractor or subcontractor, as the case may be, all reports and other written matter furnished to the Renegotiation Board by a department named in the act, provided such material relates to the renegotiation proceeding in which the contractor or subcontractor is involved and the disclosure thereof is not forbidden by law.

Section 5 of the bill as passed the House related to proceedings before the Tax Court in renegotiation cases. Section 5(a) struck out the fourth sentence of section 108 of the act and replaced it by two new sentences. The first of these new sentences provided that a proceeding before the Tax Court to determine the amount, if any, of excessive profits is not to be treated as a proceeding to review the determination of the Renegotiation Board, but is to be treated as a proceeding de novo. The second of these new sentences provided that the petitioner in such proceeding is to have the burden of going forward with the case; only evidence presented to the Tax Court is to be considered; and no presumption of correctness is to attach to the determination of the Board.

Section 5(b) provided that determinations in renegotiation cases by any division of the Tax Court are to be reviewed by a special division of the Tax Court consisting of not less than three judges.

Section 6 of the bill as passed the House related to review of Tax Court decisions in renegotiation cases. Under section 6 Tax Court decisions in renegotiation cases would be reviewable by the Court of Appeals for the District of Columbia, and by the Supreme Court upon certiorari. Although this section would generally permit review of Tax Court decisions in renegotiation cases in a manner and to an extent similar to that provided for Tax Court decisions in tax cases under section 7482 of the Internal Revenue Code of 1954, it does not permit the reviewing court to modify the decision of the Tax Court, and does not permit the reviewing court to reverse the decision of the Tax Court without remanding the case.

THE SENATE AMENDMENT

The Senate amendment struck out the text of the House bill and substituted therefor a new text consisting of four sections.

Section 1 under the Senate amendment provided for a 3-year extension of the Renegotiation Act of 1951. Under this section, the termination date is June 30, 1962.

Section 2 under the Senate amendment adds two new sentences at the end of section 104 of the act. The first of these new sentences provides that no provision limiting the amount of profits is to be inserted by the secretary of any department in any contract or subcontract the receipts or accruals from which are subject to the act, or would be subject to the act except for the provisons of section 106 thereof, other than the provision required by the first sentence of section 104 thereof; and any such other provision in any such contract or subcontract (whether entered into before, on, or after the date of the enactment of the bill) is to have no force or effect. The second of the new sentences provides that the preceding sentence is not to apply to any incentive provision, to any provision for redetermination of similar revision of the contract price, or to any provision for price escalation which operates without regard to the amount of profits under the contract or subcontract.

Section 3 under the Senate amendment amends section 107(c) of the act to provide that there is to be a General Counsel of the Renegotiation Board who is to be appointed by the Board without regard to civil service laws and regulations and is to receive compensation at the rate of $19,000 per annum.

Section 4 under the Senate amendment relates to studies of procurement policies and practices and the Renegotiation Act of 1951. Subsection (a) of section 4 directs the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives (or any duly authorized subcommittees thereof) to make full and complete studies of the procurement policies and practices of the Department of Defense, the Department of the Air Force, the Department of the Army, and the Department of the Navy. Such studies are to include an examination of the experience of such Departments in the use of various methods of procurement and types of contractual instruments, with particular regard to the effectiveness thereof in achieving reasonable costs, prices, and profits.

Subsection (a) further directs that the results of such studies, together with such recommendations as may be deemed necessary or desirable, are to be reported by the named committees to their respective Houses not later than September 30, 1960. It is also provided that the material and data collected in the course of such studies be made available to the Joint Committee on Internal Revenue Taxation to assist it in making the study of renegotiation required by subsection (b) of section 4.

Subsection (b) directs the Joint Committee on Internal Revenue Taxation to make a full and complete study of the Renegotiation Act of 1951 and of the policies and practices of the Renegotiation Board. The results of this study, together with such recommendations as may be deemed necessary or desirable, are to be reported by the joint committee to both the House and the Senate not later than March 31, 1961.

The Conference Agreement

The House recedes with an amendment which strikes out section 2 of the Senate amendment (relating to nonstatutory profit limitation provisions) and inserts the text of section 3 of the House bill (relating to a 5-year carry-forward of renegotiation losses).

Under the conference agreement, section 1 provides for a 3-year extension of the Renegotiation Act of 1951.

Section 2 of the conference agreement provides a 5-year carry-forward (in lieu of the present 2-year carry-forward) of a renegotiation loss to any fiscal year ending after December 31, 1958. The 5-year carry-forward will apply only if the loss arose in a fiscal year which ended on or after December 31, 1956.

Section 3 of the conference agreement provides that the General Counsel of the Renegotiation Board is to receive compensation at the rate of $19,000 per annum.

Section 4 of the conference agreement provides for the studies explained above in connection with the discussion of section 4 of the Senate amendment.

It is the understanding of all the conferees both on the part of the House and on the part of the Senate that all matters dealt with in the House bill and in the Senate amendment which are not included under the bill as agreed to in conference are specifically referred to the Joint Committee on Internal Revenue Taxation to be included in the study required under section 4(b) of the bill as agreed to in conference. The results of that portion of the study which relates to these matters are to be reported at the earliest date practicable, without regard to the fact that the overall report required by section 4(b) of the conference agreement is to be made not later than March 31, 1961.

It is also the intent of all the conferees that no inference is to be drawn, with respect to the rights of contractors and subcontractors (whether in pending cases or otherwise), from the fact that provisions which were included either in the House bill or in the Senate amendment are not included in the conference agreement. For example, section 4 of the House bill provides that a contractor may inspect certain documents in the possession of the Renegotiation Board. The fact that section 4 of the House bill is not included in the bill as agreed to in conference should not be construed as affecting in any way any right which a contractor may have under existing law or legal processes to obtain such documents or any other data.

W. D. Mills,
Aime J. Forand,
Cecil R. King,
Richard M. Simpson,
N. M. Mason,
Managers on the Part of the House.

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