Calendar No. 1048

88TH CONGRESS, 2d Session — SENATE — REPORT No. 1105

EXTENSION OF RENEGOTIATION ACT

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Mr. BYRD of Virginia, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 10669]

The Committee on Finance, to whom was referred the bill (H.R. 10669), to extend the Renegotiation Act of 1951, and for other purposes, having considered the same, report favorably thereon without amendment, and recommend that the bill do pass.

I. GENERAL STATEMENT

The Renegotiation Act of 1951, which authorizes the Government to recapture excessive profits on certain Government contracts and related subcontracts, is scheduled to expire as of June 30, 1964. H.R. 10669 would extend the act for 2 years, that is, until June 30, 1966. The bill would also make the provisions of the act applicable to contracts with the Federal Aviation Agency, and related subcontracts, to the extent of amounts received or accrued by a contractor or subcontractor after June 30, 1964.

II. REASONS FOR EXTENDING THE ACT

Your committee believes that under existing world conditions, and those reasonably foreseeable, the continuation of statutory renegotiation is essential in the national interest. Modern aircraft, missiles, space vehicles, and other specialized items associated with defense and space exploration are characterized by changing technology and increasing complexity. In the procurement of such items, prior production and cost experience is not generally available for accurately forecasting cost. As a result, the vast governmental expenditures made in the defense and space areas are often made under circumstances that cannot, regardless of the diligence of procurement

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officials, guarantee against excessive profits. Renegotiation is needed to eliminate such excesses wherever they occur.

This bill, as passed by the House and approved by the committee, would extend the act for 2 years, rather than for the 4 years originally recommended by the Renegotiation Board on behalf of the administration. A 2-year extension is consistent with the extension periods covering this act which have been approved by Congress in the past and will permit your committee to review the renegotiation process at an earlier date than would be permitted if a 4-year extension were adopted at this time.

III. FEDERAL AVIATION AGENCY

The Renegotiation Act presently applies with respect to contracts entered into by the following departments and agencies:

Department of Defense,
Department of the Army,
Department of the Navy,
Department of the Air Force,
The Maritime Administration,
The Federal Maritime Board,
The General Services Administration,
The National Aeronautics and Space Administration, and
The Atomic Energy Commission.

The bill extends the application of the Renegotiation Act to contracts entered into by the Federal Aviation Agency, and related subcontracts, for the purpose of recovering excessive profits where they are found.

Under the bill, the Renegotiation Act would apply with respect to amounts received or accrued after June 30, 1964, under contracts with the Federal Aviation Agency, and related subcontracts. Total prime contracts entered into by the Federal Aviation Agency are currently at a rate of about $165 million a year.

Your committee is of the opinion that substantial amounts of materials purchased by the Federal Aviation Agency are sufficiently similar to items purchased by other departments whose contracts are already subject to renegotiation that a distinction based on the department involved is not justified. For example, the electronic information aids, computers, and radar purchased by the Federal Aviation Agency are identical to some of the complex items purchased for national defense or space exploration by departments already named in the act. Moreover, the Federal Aviation Agency generally contracts for such items with many of the same contractors.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTIONS 102 AND 103 OF THE RENEGOTIATION ACT OF 1951

TITLE I—RENEGOTIATION OF CONTRACTS

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SEC. 102. CONTRACTS SUBJECT TO RENEGOTIATION.

(a) IN GENERAL.—The provisions of this title shall be applicable (1) to all contracts with the Departments specifically named in section 103(a), and related subcontracts, to the extent of the amounts received or accrued by a contractor or subcontractor on or after the first day of January 1951, whether such contracts or subcontracts were made on, before, or after such first day, and (2) to all contracts with the Departments designated by the President under section 103(a), and related subcontracts, to the extent of the amounts received or accrued by a contractor or subcontractor on or after the first day of the first month beginning after the date of such designation, whether such contracts or subcontracts were made on, before, or after such first day.

(b) PERFORMANCE PRIOR TO JULY 1, 1950.—Notwithstanding the provisions of subsection (a), the provisions of this title shall not apply to contracts with the Departments, or related subcontracts, to the extent of the amounts received or accrued by a contractor or subcontractor on or after the 1st day of January 1951, which are attributable to performance, under such contracts or subcontracts, prior to July 1, 1950. This subsection shall have no application in the case of contracts, or related subcontracts, which, but for subsection (c), would be subject to the Renegotiation Act of 1948.

(c) TERMINATION.—

(1) IN GENERAL.—The provisions of this title shall apply only with respect to receipts and accruals, under contracts with the Departments and related subcontracts, which are determined under regulations prescribed by the Board to be reasonably attributable to performance prior to the close of the termination date. Notwithstanding the method of accounting employed by the contractor or subcontractor in keeping his records, receipts or accruals determined to be so attributable, even if received or accrued after the termination date, shall be considered as having been received or accrued not later than the termination date. For the purposes of this title, the term "termination date" means June 30, **[1964]** *1966*.

(2) TERMINATION OF STATUS AS DEPARTMENT.—When the status of any agency of the Government as a Department within the meaning of section 103(a) is terminated, the provisions of this title shall apply only with respect to receipts and accruals, under contracts with such agency and related subcontracts, which are determined under regulations prescribed by the Board ot be reasonably attributable to performance prior to the close of the status termination date. Notwithstanding the method of accounting employed by the contractor or subcontractor in keeping his records, receipts or accruals determined to be so attributable, even if received or accrued after the status termination date, shall be considered as having been received or accrured not later than the status termination date. For the purposes of this paragraph, the term "status termination date" means, with respect to any agency, the date on which the status of such agency as a Department within the meaning of section 103(a) is terminated.

(d) RENEGOTIATION ACT OF 1948.—The Renegotiation Act of 1948 shall not be applicable to any contract or subcontract to the extent of the amounts received or accrued by a contractor or subcontractor on or after the 1st day of January 1951, whether such contract or subcontract was made on, before, or after such first day. In the case of a fiscal year beginning in 1950 and ending in 1951, if a contractor or subcontractor has receipts or accruals prior to January 1, 1951, from contracts or subcontracts subject to the Renegotiation Act of 1948, and also has receipts or accruals after December 31, 1950, to which the provisions of this title are applicable, the provisions of this title shall, notwithstanding subsection (a), apply to such receipts and accruals prior to January 1, 1951, if the Board and such contractor or subcontractor agree to such application of this title; and in the case of such an agreement the provisions of the Renegotiation Act of 1948 shall not apply to any of the receipts or accruals for such fiscal year.

(e) SUSPENSION OF CERTAIN PROFIT LIMITATIONS.—Notwithstanding any agreement to the contrary, the profit-limitation provisions of the Act of March 27, 1934 (48 Stat. 503, 505), as amended and supplemented, and of section 505(b) of the Merchant Marine Act, 1936, as amended and supplemented (46 U.S.C. 1155(b)), shall not apply, in the case of such Act of March 27, 1934, to any contract or subcontract if any of the receipts or accruals therefrom are subject to this title or would be subject to this title except for the provisions of section 106(e), and, in the case of the Merchant Marine Act, 1936, to any contract or subcontract entered into after December 31, 1950, if any of the receipts or accruals therefrom are subject to this title or would be subject to this title except for the provisions of section 106(e).

SEC. 103. DEFINITIONS.

For the purposes of this title—

(a) DEPARTMENT.—The term "Department" means the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Maritime Administration, the Federal Maritime Board, the General Services Administration, the National Aeronautics and Space Administration, *the Federal Aviation Agency*, and the Atomic Energy Commission. Such terms also includes any other agency of the Government exercising functions having a direct and immediate connection with the national defense which is designated by the President during a national emergency proclaimed by the President, or declared by the Congress, after the date of the enactment of the Renegotiation Amendments Act of 1956; but such designation shall cease to be in effect on the last day of the month during which such national emergency is terminated.

(b) SECRETARY.—The term "Secretary" means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Commerce (with respect to the Maritime Administration), the Federal Maritime Board, the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, *the Administrator of the Federal Aviation Agency*, the Atomic Energy Commission, and the head of any other agency of the Government which the President shall designate as a Department pursuant to subsection (a) of this section.

(c) BOARD.—The term "Board" means the Renegotiation Board created by section 107(a) of this Act.

(d) RENEGOTIATE AND RENEGOTIATION.—The terms "renegotiate" and "renegotiation" include a determination by agreement or order under this title of the amount of any excessive profits.

(e) EXCESSIVE PROFITS.—The term "excessive profits" means the portion of the profits derived from contracts with the Departments and subcontracts which is determined in accordance with this title to be excessive. In determining excessive profits favorable recognition must be given to the efficiency of the contractor or subcontractor, with particular regard to attainment of quantity and quality production, reduction of costs, and economy in the use of materials, facilities, and manpower; and in addition, there shall be taken into consideration the following factors:

(1) Reasonableness of costs and profits, with particular regard to volume of production, normal earnings, and comparison of war and peacetime products;

(2) The net worth, with particular regard to the amount and source of public and private capital employed;

(3) Extent of risk assumed, including the risk incident to reasonable pricing policies;

(4) Nature and extent of contribution to the defense effort, including inventive and developmental contribution and cooperation with the Government and other contractors in supplying technical assistance;

(5) Character of business, including source and nature of materials, complexity of manufacturing technique, character and extent of subcontracting, and rate of turn-over;

(6) Such other factors the consideration of which the public interest and fair and equitable dealing may require, which factors shall be published in the regulations of the Board from time to time as adopted.

(f) PROFITS DERIVED FROM CONTRACTS WITH THE DEPARTMENTS AND SUBCONTRACTS.—The term "profits derived from contracts with the Departments and subcontracts" means the excess of the amount received or accrued under such contracts ad subcontracts over the costs paid or incurred with respect thereto and determined to be allocable thereto. All items estimated to be allowed as deductions and exclusions under chapter 1 of the Internal Revenue Code (excluding taxes measured by income) shall, to the extent allocable to such contracts and subcontracts, be allowed as items of cost, except that no amount shall be allowed as an item of cost by reason of the application of a carry-over or carry-back. Notwithstanding any other provision of this section, there shall be allowed as an item of cost in any fiscal year ending before December 31, 1956, subject to regulations of the Board, an amount equal to the excess, if any, of costs (computed without the application of this sentence) paid or incurred in the preceding fiscal year with resect to receipts or accruals subject to the provisions of this title over the amount of receipts or accruals subject to the provisions of this title which were received or accrued in such preceding fiscal year, but only to the extent that such excess did not result from gross inefficiency of the contractor or subcontractor. For the purposes of the preceding sentence, the term "preceding fiscal year" does not include any fiscal year ending prior to January 1, 1951. Costs shall be determined in accordance with the method of accounting regularly employed by the contractor or subcontractor in keeping his

records, but, if no such method of accounting has been employed, or if the method so employed does not, in the opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United States, properly reflect such costs, such costs shall be determined in accordance with such method as in the opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United States, does properly reflect such costs. In determining the amount of excessive profits to be eliminated, proper adjustment shall be made on account of the taxes measured by income, other than Federal taxes, which are attributable the portion of the profits which are not excessive.

(g) SUBCONTRACT.—The term "subcontract" means—

(1) any purchase order or agreement (including purchase orders or agreements antedating the relating prime contract or higher tier subcontract) to perform all or any part of the work, or to make or furnish any materials, required for the performance of any other contract or subcontract, but such term does not include any purchase order or agreement to furnish office supplies;

(2) any contract or arrangement covering the right to use any patented or secret method, formula, or device for the performance of a contract or subcontract; and

(3) any contract or arrangement (other than a contract or arrangement between two contracting parties, one of whom is found by the Board to be a bona fide executive officer, partner, or full-time employee of the other contracting party) under which—

(A) any amount payable is contingent upon the procurement of a contract or contracts with a Department or of a subcontract or subcontracts; or

(B) any amount payable is determined with reference to the amount of a contract or contracts with a Department or of a subcontract or subcontracts; or

(C) any part of the services performed or to be performed consists of the soliciting, attempting to procure, or procuring a contract or contracts with a Department or a subcontract or subcontracts.

Nothing in this subsection shall be construed (i) to affect in any way the validity or construction of provisions in any contract with a Department or any subcontract, heretofore at any time or hereafter made, prohibiting the payment of contingent fees or commissions; or (ii) to restrict in any way the authority of the Board to determine the nature or amount of selling expense under subcontracts as defined in this subsection, as a proper element of the contract price or as a reimbursable item of cost, under a contract with a Department or a subcontract.

(h) FISCAL YEAR.—The term "fiscal year" means the taxable year of the contractor or subcontractor under chapter 1 of the Internal Revenue Code, except that where any readjustment of interests occurs in a partnership as defined in section 3797(a)(2) of such code, the fiscal year of the partnership or partnerships involved in such readjustment shall be determined in accordance with regulations prescribed by the Board.

(i) RECEIVED OR ACCRUED AND PAID OR INCURRED.—The terms "received or accrued" and "paid or incurred" shall be contrued

according to the method of accounting employed by the contractor or subcontractor in keeping his records, but if no such method of accounting has been employed, or if the method so employed does not, in the opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United States, properly reflect his receipts or accruals or payments or obligations, such receipts or accruals or such payments or obligations shall be determined in accordance with such method as in the opinion of the Board, or, upon redetermination, in the opinion of The Tax Court of the United States, does properly reflect such receipts or accruals or such payments or obligations.

(j) PERSON.—The term "person" shall include an individual, firm, corporation, association, partnership, and any organized group of persons whether or not incorporated.

(k) MATERIALS.—The term "materials" shall include raw materials, articles, commodities, parts, assemblies, products, machinery, equipment, supplies, components, technical data, processes, and other personal property.

(l) AGENCY OF THE GOVERNMENT.—The term "agency of the Government" means any part of the executive branch of the Government or any independent establishment of the Government or part thereof including any department (whether or not a Department as defined in subsection (a) of this section), any corporation wholly or partly owned by the United States which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, employee, authority, administration, or other establishment of the Government which is not part of the legislative or judicial branches.

(m) RENEGOTIATION LOSS CARRYFORWARDS.—

(1) ALLOWANCE.—Notwithstanding any other provision of this section, the renegotiation loss deduction for any fiscal year ending on or after December 31, 1956, shall be allowed as an item of cost in such fiscal year, under regulations of the Board.

(2) DEFINITIONS.—For the purposes of this subsection—

(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 carryforwards 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).

(B) The term "renegotiation loss" means, for any fiscal year, the excess, if any, of costs (computed without the application of this subsection and the third sentence of subsection (f)) paid or incurred in such fiscal year with respect to receipts or accruals subject to the provisions of this title over the amount of receipts or accruals subject to the provisions of this title which were received or accrued in such fiscal year, but only to the extent that such excess did not result from gross inefficiency of the contractor or subcontractor.

(3) AMOUNT OF CARRYFORWARDS TO 1956, 1957, AND 1958.—For the purposes of paragraph (2)(A)(i), a renegotiation loss for any fiscal year (hereinafter in this paragraph referred to as the "loss year") shall be a renegotiation loss carryforward to the first fiscal year succeeding the loss year. Such renegotiation loss, after being reduced (but not below zero) by the profits derived from contracts with the Departments and subcontracts in the first fiscal year succeeding the loss year, shall be a renegotiation loss carryforward to the second fiscal year succeeding the loss year. For the purposes of the preceding sentence, the profits derived from contracts with the Departments and subcontracts in the first fiscal year succeeding loss year shall be computed as follows:

(A) If such first fiscal year ends on or after December 31, 1956, such profits shall be computed by determining the amount of the renegotiation loss deduction for such first fiscal year without regard to the renegotation loss for the loss year.

(B) If such first fiscal year ends before December 31, 1956, such profits shall be computed without regard to any renegotiations loss for the loss year or any fiscal year preceding the loss year.

(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 be carried 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.

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