
Item 1

SUMMARY OF H.R. 7086

A BILL TO EXTEND AND AMEND THE RENEGOTIATION ACT OF 1951 AS PASSED BY THE HOUSE OF REPRESENTATIVES

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

FOR THE USE OF THE

SENATE FINANCE COMMITTEE

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SUMMARY OF H.R. 7086, A BILL TO EXTEND AND AMEND THE RENEGOTIATION ACT OF 1951 AS PASSED BY THE HOUSE OF REPRESENTATIVES

This bill was passed by the House of Representatives on May 27, 1959, by a vote of 379 to 7. The Department of Defense and the Renegotiation Board approved of the provisions contained in the bill.

A. FOUR-YEAR EXTENSION OF THE ACT (SEC. 1)

The President requested that renegotiation be continued beyond the scheduled expiration date of June 30 and the Department of Defense recommended an extension for 2 years and 3 months. In this respect the Department of Defense stated that present pricing policies and contracting techniques are not adequate to protect against excessive profits in all cases. Furthermore, in the procurement of specialized items, such as articles in the missile and space fields, in which past production and cost experience is inadequate to permit accurate forecasting of costs, renegotiation is necessary. In addition, the Department of Defense pointed out that under current world conditions and those in the foreseeable future expenditures will continue at unprecedented levels for peacetime conditions. Approximately one-half of the $41 billion Department of Defense expenditures for the fiscal year 1960 will represent expenditures which will be subject to the provisions of the Renegotiation Act.

It was therefore the opinion of the House that the act should be extended for 4 years and the bill so provides.

B. FACTORS TO BE CONSIDERED IN DETERMINING EXCESSIVE PROFITS (SEC. 2)

Under present law favorable recognition must be given to the efficiency of the contractor in determining excessive profits with particular regard to attainment of quantity and quality production, reduction of costs, and other matters. The opinion has been expressed, however, that favorable recognition is not being given to the efficiency for cost reductions achieved under incentive-type contracts or from economies effected through subcontracting with small-business concerns. An incentive to reduce costs is furnished to the contractor in an incentive contract by providing a method whereby he shares in the savings. To the extent that such cost reductions are brought about by efficiency, favorable recognition under the efficiency factor should be given to the contractor. Also cost reductions resulting from efficient performance under other types of contracts should be similarly treated. The bill provides that in giving favorable recognition to the efficiency of the contractor particular regard shall be accorded not only to the matters now in the law but also to "con-

tractual pricing provisions and the objectives sought to be achieved thereby."

The bill also requires that particular regard be given under the efficiency factor to economies effected through subcontracting with small-business concerns. This is designed to stimulate subcontracting to small-business concerns and is confined to those defined in section 3 of the Small Business Act of 1958.

One of the enumerated factors under present law to be taken into account in determining excessive profits is "net worth, with particular regard to the amount and source of public and private capital employed." The bill clarifies the distinction between the concept of "net worth" on the one hand and that of "amount and source of public and private capital employed" on the other hand, without intending to deemphasize in any way the importance of the source of capital employed.

Present law requires the Renegotiation Board, upon issuance of an order, to furnish to a contractor who so requests a statement of its determination and the facts and reasons used as a basis therefor. Concern has been expressed that such statements have not always adequately indicated the consideration of and the recognition given to efficiency and the other factors required to be considered in determining excessive profits. The bill provides that in any statement the Board must indicate separately (but without evaluating separately in dollars or percentages) its consideration of and the recognition given to the efficiency of the contractor and each of the other factors to be taken into account in determining excessive profits. A similar provision is now in the Board's regulations.

C. FIVE-YEAR LOSS CARRYFORWARD (SEC. 3)

Under present law a loss on renegotiable business may be carried forward 2 years. The opinion has been expressed that this is too limited and in some cases produces hardship because a contractor in the development stage may go 4 or 5 years before realizing a profit. Under the present Federal income tax law losses may be carried forward for a 5-year period and the bill would provide a 5-year loss carryforward on renegotiable business.

D. STATEMENTS FURNISHED BY THE RENEGOTIATION BOARD (SEC. 4)

Under existing law the Board is required if the contractor so requests to furnish the contractor a statement of its reasons and of the facts used by it as a basis for arriving at a determination of excessive profits if such determination is made by order then only after the order has been issued. In order to help the contractor decide whether to enter into an agreement, the present regulations provide for the furnishing of a statement prior to the making of an agreement or the issuance of an order. The bill would incorporate into the statute, in lieu of the present provision, the requirement that the statement shall be furnished prior to the making of an agreement or the issuance of an order if the contractor so requests.

Complaints have been made that contractors do not have any opportunity in proceedings before the Board to inspect and rebut information contained in performance reports and other matter used by the Board in its determination of excessive profits. The bill will

require the Board at or before the time it furnishes the statement to make available for inspection all reports and other written matter furnished to the Board by a department named in the act provided such material relates directly to the contractor involved and the disclosure thereof is not forbidden by law.

E. PROCEEDINGS BEFORE THE TAX COURT (SEC. 5)

Present law provides that a proceeding before the Tax Court in a renegotiation case shall not be treated as a proceeding to review the determination of the Renegotiation Board, but shall be treated as a proceeding de novo.

Despite present law complaints have been made that proceedings before the Tax Court are not truly de novo, but tend to have the character of a review of the determination of the Renegotiation Board.

In order to make clear that these proceedings will be de novo, the bill provides that while the petitioner shall have the burden of going forward with the case, only evidence presented shall be considered and no presumption of correctness shall attach to a determination of the Board. This change is not intended to shift the burden of proof under existing law.

The bill further provides that a determination by any division of the Tax Court shall be reviewed by a special division consisting of not less than three judges. It is expected that these will include the trial judge.

These changes will apply in cases where the decisions of the Tax Court have not been rendered on or before the date of enactment regardless of whether the petition was filed before, on, or after the date of enactment.

F. REVIEW OF TAX COURT DECISIONS (SEC. 6)

Present law gives the Tax Court exclusive jurisdiction to finally determine the amount of excessive profits and it is provided that such determination may not be reviewed or redetermined by any court or agency, although it does appear from decided cases that such decisions may be reviewed on "jurisdictional" or constitutional questions.

The bill would permit review of Tax Court decisions by the Court of Appeals for the District of Columbia, and in addition, permits review by the Supreme Court upon certiorari. This limitation to a single court of appeals is designed to achieve uniformity of decisions. Although this section would generally permit review in a manner and to an extent similar to that provided in tax cases, 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. If the reviewing court determines that the decision of the Tax Court is not in accordance with law, the redetermination of the amount of excessive profits is to be made by the Tax Court and not by the reviewing court.

The above provisions will apply with respect to decisions rendered by the Tax Court after June 30, 1958. In the case of any decision rendered after such date and before the date of enactment, the time for filing the petition begins to run as if such decision had been rendered on the date of enactment.

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