

## EXTENSION OF THE RENEGOTIATION ACT OF 1951

---

JUNE 20, 1955.—Ordered to be printed

---

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

## R E P O R T

[To accompany H. R. 4904]

The Committee on Finance, to whom was referred H. R. 4904, a bill to extend the Renegotiation Act of 1951 for 2 years, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 1, beginning with line 7, strike out all through line 4 on page 2 (sec. 2 of the bill as passed by the House).

On page 2, after line 4, insert:

SEC. 2. (a) Section 106 (a) (8) of such Act (50 U. S. C., App. 1216 (a) (8)) is hereby amended as follows:

(1) By inserting after "a standard commercial article" in the first sentence thereof "or a standard commercial service";

(2) By inserting after "such article" each place it appears in the first and second sentences thereof "or such service";

(3) By striking out "and" at the end of subparagraph (C);

(4) By redesignating subparagraph (D) to be subparagraph (G); and

(5) By inserting after subparagraph (C) the following:

"(D) the term 'service' means any processing or other operation performed by chemical, electrical, physical, or mechanical methods directly on materials owned by another person;

"(E) the term 'standard commercial service' means a service which is customarily performed by more than two persons for civilian industrial or commercial requirements, or is reasonably comparable with a service so performed;

"(F) the term 'reasonably comparable' means of the same or a similar kind, performed with the same or similar materials, and having the same or a similar result, without necessarily involving identical operations; and"

(b) The amendments made by subsection (a) shall apply to contracts with the Departments and subcontracts only to the extent of the amounts received or accrued by a contractor or subcontractor after December 31, 1953.

SEC. 3. (a) Section 106 (a) of such Act (50 U. S. C., App. sec. 1216 (a)) is hereby amended—

(1) by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; or"; and

(2) by adding at the end thereof a new paragraph as follows:

"(9) any contract, awarded as a result of competitive bidding, for the construction of any building, structure, improvement, or facility, other than a

contract for the construction of housing financed with a mortgage or mortgages insured under the provisions of title VIII of the National Housing Act, as now or hereafter amended."

(b) The amendments made by subsection (a) shall apply to contracts with the Departments and subcontracts only to the extent of the amounts received or accrued by a contractor or subcontractor after December 31, 1954.

SEC. 4. (a) Section 106 (c) (2) of such Act (50 U. S. C., App. 1216 (c) (2)) is hereby amended to read as follows:

"(2) DEFINITION.—For the purpose of this subsection the term 'durable productive equipment' means machinery, tools, or other productive equipment, which has an average useful life of more than five years."

(b) The amendment made by subsection (a) shall apply only with respect to fiscal years (as defined in section 103 (h) of the Renegotiation Act of 1951) ending on or after June 30, 1953.

SEC. 5. (a) The Joint Committee on Internal Revenue Taxation, or any duly authorized subcommittee thereof, is hereby authorized and directed to make a complete study in order to determine—

(1) whether there is any necessity of extending the Renegotiation Act of 1951 beyond December 31, 1956; and

(2) if any such further extension is found necessary, the extent to which renegotiation of Government contracts should apply after such date.

(b) The Joint Committee shall, not later than May 31, 1956, report to the Senate and the House of Representatives the results of the study conducted pursuant to this section, together with such recommendations as it deems necessary or desirable.

(c) For the purpose of making the study and report required by this section, the Joint Committee, and the Chief of Staff of the Joint Committee, may exercise any of the powers conferred upon the Joint Committee and the Chief of Staff of the Joint Committee by sections 8021 and 8023 of the Internal Revenue Code of 1954. The provisions of section 8023 (b) of such Code shall apply to requests made under the authority of this subsection to the same extent as in the case of other requests made under the authority of section 8023 (a) of such Code.

#### DESCRIPTION OF BILL

Section 1 of the bill is the same as the House provision and extends the Renegotiation Act of 1951 for 2 years, through December 31, 1956. The present Renegotiation Act is not applicable to receipts or accruals attributable to performance, under contracts or subcontracts, after December 31, 1954. Unless the act is extended, the considerable amounts which will be received or accrued by defense contractors or subcontractors during the next 2 years will not be subject to renegotiation.

SEC. 2. Your committee has eliminated section 2 of the House bill. This section added an amendment to section 102 (d) of the Renegotiation Act of 1951 to provide that the profit limitations under the Vinson-Trammell Act and the Merchant Marine Act shall not apply to any contract or subcontract if any of the receipts or accruals therefrom are subject to the Renegotiation Act of 1951, or would be subject thereto except for the provisions of section 106 of such act.

Your committee received protests against adoption of section 2 from both the Comptroller General and the Bureau of the Budget. The letter from the Comptroller General is as follows:

COMPTROLLER GENERAL OF THE UNITED STATES,

Washington, June 8, 1955.

Hon. HARRY FLOOD BYRD,  
Chairman, Committee on Finance,

United States Senate.

DEAR MR. CHAIRMAN: It has come to our attention that H. R. 4904, 84th Congress, 1st session, entitled "An act to extend the Renegotiation Act of 1951 for 2 years" was passed by the House of Representatives on April 28, 1955, and is now before your committee for consideration.

The primary purpose of the bill is to extend the Government's renegotiation authority for 2 years to December 31, 1956, and it is our view that the proposed extension is necessary and desirable to protect the Government against the payment of excessive prices in the continued need for execution of the national defense program. However, section 2 of the bill, by addition of the words "or would be subject to this title except for the provisions of section 106" may be construed as authorizing, in some instances, the exemption from all statutory profit-limitation provisions of those contracts and subcontracts which normally would be subject to such provisions under the Vinson-Trammell Act, as amended (34 U. S. C. 496) or section 505 (b) of the Merchant Marine Act, 1936, as amended (46 U. S. C. 1155 (b)). For example, if the Renegotiation Board makes a determination, pursuant to section 106 (a) (6) of the Renegotiation Act, that contracts with shipyards for the construction of naval or merchant vessels do not have "a direct and immediate connection with the national defense," any excess profits under those contracts would not be recoverable under the provisions of that act. However, since those contracts would have been subject to renegotiation under that act except for the Board's determination under section 106, neither the profit-limitation provisions of the Vinson-Trammell Act nor section 505 (b) of the Merchant Marine Act would be applicable to them. It should be noted that the Board's determinations under section 106 (a) (6) are not subject to review.

While the House committee report does not clearly indicate the intent of the amendment made to H. R. 4904, we think that the effect of the amendment could be more far-reaching than may have been anticipated in that it could allow an exemption of a class of contracts and subcontracts which the Congress has heretofore considered should be subject to profit-limitations. Considering that Navy is an arm of our national defense and that the merchant marine is frequently referred to as the "fourth arm of defense," it may be that the Renegotiation Board would consider that contracts subject to the profit-limitation provisions of the Vinson-Trammell Act or section 505 (b) of the Merchant Marine Act of 1936 have a direct and immediate connection with the national defense. On the other hand, it is difficult to perceive any purpose to be served by the added language other than to provide the means by which such contracts may be exempted from all statutory limitations on profits.

Accordingly, we recommend that the words "or would be subject to this title except for the provisions of section 106" be deleted in order that the Government may continue to have positive, statutory protection against the payment of excessive profits under either the provisions of the Renegotiation Act, the Vinson-Trammell Act, or section 505 (b) of the Merchant Marine Act.

Sincerely yours,

JOSEPH CAMPBELL,  
Comptroller General of the United States.

In view of these protests, the committee deemed it advisable to strike out section 2.

Your committee has added a new section 2 to the bill which would give a standard commercial service the same treatment as is now accorded a standard commercial article. It was brought to the attention of the committee that the standard commercial article exemption was limited to the sale of goods and thus excluded contractors or subcontractors who performed processing services of a standard commercial character upon goods belonging to other persons. Examples of this are textile finishing, heat treating, and plating. This amendment is given the same effective date as the standard commercial article exemption.

Section 3 of the bill, as amended by your committee, provides for a mandatory exemption of competitive-bid construction contracts. A similar exemption was contained in subsection (i) (1) (E) of the Renegotiation Act of 1943. As under the Renegotiation Act of 1943, the exemption is to be limited to contracts awarded in conformity with the requirements for procurement by formal advertising now set forth in the Armed Services Procurement Act of 1947. The exemption provided in this section is made not applicable to military housing construction financed with a mortgage or mortgages insured under

the provisions of title VIII of the National Housing Act, as now or hereafter amended. The committee was advised by the chairman of the Senate Banking and Currency Committee that that committee in framing legislation providing for military housing had relied upon the fact that such contracts would be subject to the Renegotiation Act. The Renegotiation Board has no objection to the exemption contained in this section.

SEC. 4. Your committee has added a clarifying amendment to the definition of durable productive equipment contained in section 106 (c) (2) of the Renegotiation Act of 1951, as amended. This amendment is necessary to cure an inconsistency created by the recent amendment which extended the partial mandatory exemption for new durable productive equipment to prime contracts. As the law is presently worded, a manufacturer who sells an item of new durable productive equipment directly to the Government receives the exemption whereas he is not allowed the exemption if he sells the same item to another manufacturer who incorporates it in equipment which is sold to the Government. Your committee believes that the exemption should be granted in both cases. This amendment is made effective to coincide with the effective date of the amendment extending the new durable productive equipment provision to prime contracts.

Your committee has added section 5 to the bill which directs the Joint Committee on Internal Revenue Taxation to make a complete study of the Renegotiation Act of 1951. The purpose of this study is to determine whether there is any necessity for extending the Renegotiation Act beyond December 31, 1956, and if so, whether it should be limited to specific areas of procurement. It is intended that the study should include, among other things, the effectiveness of renegotiation in protecting the Government against excessive prices as well as excessive profits. The report of the Joint Committee on Internal Revenue Taxation is required to be made to the Senate and the House not later than May 31, 1956.

#### 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 italics; existing law in which no change is proposed is shown in roman):

#### RENEGOTIATION ACT OF 1951

##### 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; but the provisions of this title shall not be applicable to receipts or accruals attributable to performance, under contracts or subcontracts, after December 31, [1954] 1956.

**SEC. 106. EXEMPTIONS.**

(a) **MANDATORY EXEMPTIONS.**—The provisions of this title shall not apply to—

(1) any contract by a Department with any Territory, possession, or State, or any agency or political subdivision thereof, or with any foreign government or any agency thereof; or

(2) any contract or subcontract for an agricultural commodity in its raw or natural state, or if the commodity is not customarily sold or has not an established market in its raw or natural state, in the first form or state, beyond the raw or natural state, in which it is customarily sold or in which it has an established market. The term "agricultural commodity" as used herein shall include but shall not be limited to—

(A) commodities resulting from the cultivation of the soil such as grains of all kinds, fruits, nuts, vegetables, hay, straw, cotton, tobacco, sugarcane, and sugar beets;

(B) natural resins, saps, and gums of trees;

(C) animals, such as cattle, hogs, poultry, and sheep, fish and other marine life, and the produce of live animals, such as wool, eggs, milk and cream; or

(3) any contract or subcontract for the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use; or

(4) any contract or subcontract with a common carrier for transportation, or with a public utility for gas, electric energy, water, communications, or transportation, when made in either case at rates not in excess of published rates or charges filed with, fixed, approved, or regulated by a public regulatory body, State, Federal, or local, or at rates not in excess of unregulated rates of such a public utility which are substantially as favorable to users and consumers as are regulated rates. In the case of the furnishing or sale of transportation by common carrier by water, this paragraph shall apply only to such furnishing or sale which is subject to the jurisdiction of the Interstate Commerce Commission under Part III of the Interstate Commerce Act or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933, and to such furnishing or sale in any case in which the Board finds that the regulatory aspects of rates for such furnishing or sale, or the type and nature of the contract for such furnishing or sale, are such as to indicate, in the opinion of the Board, that excessive profits are improbable; or

(5) any contract or subcontract with an organization exempt from taxation under section 101 (6) of the Internal Revenue Code, but only if the income from such contract or subcontract is not includible under section 422 of such code in computing the unrelated business net income of such organization; or

(6) any contract which the Board determines does not have a direct and immediate connection with the national defense. The Board shall prescribe regulations designating those classes and types of contracts which shall be exempt under this paragraph; and the Board shall, in accordance with regulations prescribed by it, exempt any individual contract not falling within any such class or type if it determines that such contract does not have a direct and immediate connection with the national defense. In designating those classes and types of contracts which shall be exempt and in exempting any individual contract under this paragraph, the Board shall consider as not having a direct or immediate connection with national defense any contract for the furnishing of materials or services to be used by the United States, a Department or agency thereof, in the manufacture and sale of synthetic rubbers to a private person or to private persons which are to be used for nondefense purposes. If the use by such private person or persons shall be partly for defense and partly for nondefense purposes, the Board shall consider as not having a direct or immediate connection with national defense that portion of the contract which is determined not to have been used for national defense purposes. The method used in making such determination shall be subject to approval by the Board. Notwithstanding section 108 of this title, regulations prescribed by the Board under this paragraph, and any determination of the Board that a contract is or is not exempt under this paragraph, shall not be reviewed or redetermined by the Tax Court or by any other court or agency; or

(7) any subcontract directly or indirectly under a contract or subcontract to which this title does not apply by reason of any paragraph, other than paragraph (8), of this subsection; or

(8) any contract or subcontract for the making or furnishing of a standard commercial article or a standard commercial service, unless the Board makes a specific finding that competitive conditions affecting the sale of such article or such service are such as will not reasonably prevent excessive profits. This paragraph shall apply to any such contract or subcontract only if (1) the contractor or subcontractor files, at such time and in such form and detail as the Board shall by regulations prescribe, such information and data as may be required by the Board under its regulations for the purpose of enabling it to reach a decision with respect to the making of a specific finding under this paragraph, and (2) within a period of six months after the date of filing of such information and data, the Board fails to make a specific finding that competitive conditions affecting the sale of such article or such service are such as will not reasonably prevent excessive profits, or (3) within such six-month period, the Board makes a specific finding that competitive conditions affecting the sale of such article or such service are such as will reasonably prevent excessive profits. Any contractor or subcontractor may waive the exemption provided in this paragraph with respect to receipts or accruals in any fiscal year by including a statement to such effect in the financial statement filed by such contractor or subcontractor for such fiscal year pursuant to section 105 (e) (1). Any specific finding of the Board under this paragraph shall not be reviewed or redetermined by any court or agency other than by the Tax Court of the United States in a proceeding for a redetermination of the amount of excessive profits determined by an order of the Board. For the purpose of this paragraph—

(A) the term "article" includes any material, part, component, assembly, machinery, equipment, or other personal property;

(B) the term "standard commercial article" means an article—

(1) which, in the normal course of business, is customarily manufactured for stock, and is customarily maintained in stock by the manufacturer or any dealer, distributor, or other commercial agency for the marketing of such article; or

(2) which is manufactured and sold by more than two persons for general civilian industrial or commercial use, or which is identical in every material respect with an article so manufactured and sold;

(C) the term "identical in every material respect" means of the same kind, manufactured of the same or substitute materials, and having the same industrial or commercial use or uses, without necessarily being of identical specifications; [and]

(D) the term "service" means any processing or other operation performed by chemical, electrical, physical, or mechanical methods directly on materials owned by another person;

(E) the term "standard commercial service" means a service which is customarily performed by more than two persons for civilian industrial or commercial requirements, or is reasonably comparable with a service so performed;

(F) the term "reasonably comparable" means of the same or a similar kind, performed with the same or similar materials, and having the same or a similar result, without necessarily involving identical operations; and

[(D)] (G) the term "persons" does not include any person under control of, or controlling, or under common control with any other person considered for the purposes of subparagraph (B) (2) of this [paragraph.] paragraph; or

(9) any contract, awarded as a result of competitive bidding, for the construction of any building, structure, improvement, or facility, other than a contract for the construction of housing financed with a mortgage or mortgages insured under the provisions of title VIII of the National Housing Act, as now or hereafter amended.

(b) COST ALLOWANCE.—In the case of a contractor or subcontractor who produces or acquires the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, and processes, refines, or treats such a product to and beyond the first form or state suitable for industrial use, or who produces or acquires an agricultural product and processes, refines, or treats such a product to and beyond the first form or state in which it is customarily sold or in which it has an established market, the Board shall prescribe such regulations as may be necessary to give such contractor or subcontractor a cost allowance substantially equivalent to the amount which would have been realized by such contractor or subcontractor if he had sold such product at such first form or state. Notwithstanding any other provisions of this title, there shall be excluded from considera-

tion in determining whether or not a contractor or subcontractor has received or accrued excessive profits that portion of the profits, derived from receipts and accruals subject to the provisions of this title, attributable to the increment in value of the excess inventory. For the purposes of this subsection the term "excess inventory" means inventory of products, heretofore described in this subsection, acquired by the contractor or subcontractor in the form or at the state in which contracts for such products on hand or on contract would be exempted from this title by subsection (a) (2) or (3) of this section, which is in excess of the inventory reasonably necessary to fulfill existing contracts or orders. That portion of the profits, derived from receipts and accruals subject to the provisions of this title, attributable to the increment in value of the excess inventory, and the method of excluding such portion of profits from consideration in determining whether or not the contractor or subcontractor has received or accrued excessive profits, shall be determined in accordance with regulations prescribed by the Board.

(c) PARTIAL MANDATORY EXEMPTION FOR DURABLE PRODUCTIVE EQUIPMENT.—

(1) IN GENERAL.—The provisions of this title shall not apply to receipts or accruals (other than rents) from contracts or subcontracts for new durable productive equipment, except (A) to that part of such receipts or accruals which bears the same ratio to the total of such receipts or accruals as five years bears to the average useful life of such equipment as set forth in Bulletin F of the Bureau of Internal Revenue (1942 edition) or, if an average useful life is not so set forth, then as estimated by the Board and (B) to receipts and accruals from contracts for new durable productive equipment in cases in which the Board finds that the new durable productive equipment covered by such contracts cannot be adapted, converted, or retooled for commercial use.

[(2) DEFINITION.—For the purpose of this subsection, the term "durable productive equipment" means machinery, tools, or other equipment which does not become a part of an end product, or of an article incorporated therein, and which has an average useful life of more than five years.]

(2) DEFINITION.—For the purpose of this subsection, the term "durable productive equipment" means machinery, tools, or other productive equipment which has an average useful life of more than five years.

(d) PERMISSIVE EXEMPTIONS.—The Board is authorized, in its discretion, to exempt from some or all of the provisions of this title—

(1) any contract or subcontract to be performed outside of the territorial limits of the continental United States or in Alaska;

(2) Any contracts or subcontracts under which, in the opinion of the Board, the profits can be determined with reasonable certainty when the contract price is established, such as certain classes of (A) agreements for personal services or for the purchase of real property, perishable goods, or commodities the minimum price for the sale of which has been fixed by a public regulatory body, (B) leases and license agreements, and (C) agreements where the period of performance under such contract or subcontract will not be in excess of thirty days.

(3) any contract or subcontract or performance thereunder during a specified period or periods if, in the opinion of the Board, the provisions of the contract are otherwise adequate to prevent excessive profits;

(4) any contract or subcontract the renegotiation of which would jeopardize secrecy required in the public interest;

(5) any subcontract or group of subcontracts not otherwise exempt from the provisions of this section, if, in the opinion of the Board, it is not administratively feasible in the case of such subcontract or in the case of such group of subcontracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation.

The Board may so exempt contracts and subcontracts both individually and by general classes or types.

\* \* \* \* \*