

PROVIDING PENSIONS AT WARTIME RATES FOR DISABILITY OR DEATH INCURRED IN LINE OF DUTY AS A DIRECT RESULT OF THE CONFLICT IN THE FAR EAST

JULY 28 (legislative day, JULY 25), 1939.—Ordered to be printed

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

REPORT

[To accompany S. 1643]

The Committee on Finance, to whom was referred the bill (S. 1643) to provide pensions at wartime rates for disability or death incurred in line of duty as a direct result of the conflict in the Far East, having considered the same, report favorably thereon, with an amendment, and, as amended, recommend that the bill do pass.

Amend the bill as follows:

On page 1, line 10, change the word "the" immediately preceding the word "regulation" to the word "this".

The purpose of the bill is to provide pensions at wartime rates for disabilities or death incurred in line of duty as a direct result of the conflict in the Far East.

During the recent Sino-Japanese conflict in the Far East three persons in the naval service have been killed and numerous others injured as a result of the bombing of the U. S. S. *Panay* or the striking of the U. S. S. *Augusta* by fragments of shell.

Since the death or disability of these persons occurred in time of peace and since they were not engaged in actual combat in a military expedition or military occupation, they are not entitled to the payment of pension benefits for themselves or their dependents at wartime rates.

The bill also provides for the application of the doctrine of subrogation in all cases of injury or death arising thereunder for which pensions or other benefits are payable, where such injury or death occurred under circumstances creating a legal liability on a foreign government to pay damages therefor.

The Department of State has submitted to the Japanese Government, and it is understood that the Japanese Government has agreed to pay claims aggregating approximately \$2,000,000, of which sum

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\$268,000 related to indemnities for death and personal injuries of members of the crew of the U. S. S. *Panay*.

No estimate can be made of the cost of this bill since the degree of disability and the rates of compensation are determined by the United States Veterans' Administration and are the bases for all payment. However, the pension payment to be made under the provisions of the bill will be offset by indemnity payments made by Japan on account of the death or injury for which the bill would provide pensions.

The committee is of the opinion that it would be equitable to pay pensions at wartime rates in cases where disability or death was incurred in line of duty as a direct result of the conflict in the Far East, and therefore, recommends enactment of the bill.

The bill meets with the approval of the Navy Department and the Veterans' Administration.

The following letters are hereby made a part of this report:

NAVY DEPARTMENT,
Washington, July 19, 1939.

The CHAIRMAN, COMMITTEE ON FINANCE,
United States Senate.

MY DEAR MR. CHAIRMAN: The bill (S. 1643) to provide pensions at wartime rates for disability or death incurred in line of duty as a direct result of the conflict in the Far East, was referred to the Navy Department by your committee with a request for a report thereon.

During the recent Sino-Japanese conflict in the Far East three persons in the naval service have been killed and numerous others injured as a result of the bombing of the U. S. S. *Panay* or the striking of the U. S. S. *Augusta* by fragments of shell.

Since the death or disability of these persons occurred in time of peace and since they were not engaged in actual combat in a military expedition or military occupation, they are not entitled to the payment of pension benefits for themselves or their dependents at wartime rates.

It is the opinion of the Navy Department that wartime rates of compensation for disability or death should apply to these persons and their dependents. The proposed legislation would bring about such a result.

The proposed measure also provides for the application of the doctrine of subrogation in all cases of injury or death arising thereunder for which pensions or other benefits are payable, where such injury or death occurs under circumstances creating a legal liability on a foreign government to pay damages therefor.

No estimate can be made of the cost of this proposed legislation since the degree of disability and the rates of compensation are determined by the United States Veterans' Administration, and are the bases for all payments.

The Navy Department recommends that the bill S. 1643 be enacted.

Sincerely yours,

CHARLES EDISON, *Acting Secretary.*

VETERANS' ADMINISTRATION,
Washington, July 17, 1939.

HON. PAT HARRISON,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

MY DEAR SENATOR HARRISON: This is in further response to your request of July 6, 1939, for a report on S. 1643, Seventy-sixth Congress, a bill to provide pensions at wartime rates for disability or death incurred in line of duty as a direct result of the conflict in the Far East.

The bill provides as follows:

"That paragraph I of part II, Veterans Regulation Numbered 1 (a), as amended (U. S. C., title 38, ch. 12, appendix; Executive Order Numbered 6156, dated June 6, 1933), is hereby amended by adding a new subparagraph (d) to read as follows:

"(d) Any veteran or the dependents of any deceased veteran otherwise entitled to pension under the provisions of part II of the regulation shall be entitled to receive the rate of pension provided in part I of this regulation, if it is deter-

mined by the Administrator of Veterans' Affairs that the injury or disease resulting in disability or death, was incurred in line of duty as a direct result of the conflict in the Far East: *Provided*, That if an injury or death for which pension is payable under this subparagraph is caused under circumstances creating a legal liability upon some foreign government to pay damages therefor, the Administrator of Veterans' Affairs shall require the beneficiary to assign to the United States all his right, title, or interest in the indemnity payments made by such foreign government before any payments shall be made under this subparagraph."

It is suggested that the word "this" should be substituted for the word "the" immediately preceding the word "regulation" in line 10, page 1, of the bill. If that change is accomplished, the bill would be identical with the draft submitted by the Veterans' Administration to the chairman, Committee on Pensions, House of Representatives, under date of April 28, 1938, as a part of a supplemental report on H. R. 8763, Seventy-fifth Congress.

Paragraph I (c) of part II, Veterans Regulation No. 1 (a), as amended, provides: "Any veteran or the dependents of any deceased veteran otherwise entitled to pension under the provisions of part II of this regulation shall be entitled to receive the rate of pension provided in part I of this regulation if the disability or death resulted from an injury received in line of duty in actual combat in a military expedition or military occupation." The Navy Department has reported to the Veterans' Administration that neither the U. S. S. *Augusta* nor the U. S. S. *Panay* can be said to have been engaged in either a military expedition or military occupation at the time those vessels were struck by projectiles during their service in Chinese waters in August and December 1937, respectively.

The Veterans' Administration is of the opinion that it would be equitable to pay pensions at wartime rates in cases where disability or death was incurred in line of duty as a direct result of the conflict in the Far East.

As to the cost of paying pension at war time rates under the provisions of the bill, the only cases to which the proposed legislation would apply, of which the Veterans' Administration has any knowledge, are those resulting from the bombing of the U. S. S. *Panay* and those aboard the U. S. S. *Augusta*, resulting from fragments of high explosive antiaircraft projectile. The Acting Secretary of the Navy, in his letter of February 24, 1939, addressed to the Speaker of the House of Representatives (copy enclosed), stated: "During the recent Sino-Japanese conflict in the Far East three persons in the naval service have been killed and numerous others injured as a result of the bombing of the U. S. S. *Panay* or the striking of the U. S. S. *Augusta* by fragments of shell."

In order to make an accurate estimate of the cost, it will be necessary to evaluate the disability of each case and this is not feasible since it is impossible to foretell the final outcome in each case, bearing in mind that the jurisdiction of the Veterans' Administration would extend to cases where death occurred or where the veteran is honorably discharged and claim for pension is filed. The officers who were seriously injured may be retired for disability and paid retirement pay under the laws administered by the Navy Department, and consequently no pension would be payable to them. However, in the event of their death, pensions would be payable to their dependents in accordance with the provisions of part I, Veterans Regulation No. 1 (a), as amended.

When this proposed legislation was under consideration during the Seventy-fifth Congress, the Bureau of the Budget called the attention of the Veterans' Administration to the fact that the Department of State had submitted to the Japanese Government, and it was understood that the Japanese Government had agreed to pay claims aggregating approximately \$2,000,000, of which \$268,000 related to indemnities for death and personal injuries of members of the crew of the U. S. S. *Panay*. The Bureau of the Budget took the position that the doctrine of subrogation should apply and that the pension payments to be made under the provisions of the proposed legislation should be offset by indemnity payments made by Japan on account of the death or injury for which the proposed legislation would provide pensions.

This bill is identical in purpose with H. R. 4548, Seventy-sixth Congress, on which a report was furnished the Committee on Invalid Pensions, House of Representatives, under date of June 13, 1939.

Very truly yours,

FRANK T. HINES,
Administrator.

