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# LLANEIOUS BILLS

## HEARING

BEFORE THE

## COMMITTEE ON ARMED SERVICES

## UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

### H.R. 1805

PROVIDING PERMANENT AUTHORITY UNDER WHICH NAVAL RESERVE OFFICERS IN THE GRADE OF CAPTAIN SHALL BE ELIGIBLE FOR CONSIDERATION FOR PROMOTION WHEN THEIR RUNNING MATES ARE ELIGIBLE FOR CONSIDERATION FOR PROMOTION

### H.R. 3039

AUTHORIZING THE SECRETARY CONCERNED, UNDER CERTAIN CONDITIONS, TO MAKE PAYMENT OF PAY AND ALLOWANCES TO MEMBERS OF AN ARMED FORCE UNDER HIS JURISDICTION BEFORE THE END OF THE PAY PERIOD FOR WHICH SUCH PAYMENT IS DUE

### H.R. 3041

TO EXEMPT CERTAIN CONTRACTS WITH FOREIGN CONTRACTORS FROM THE REQUIREMENT FOR AN EXAMINATION-OF-RECORDS CLAUSE

### H.R. 8333

PROVIDING FOR THE ESTABLISHMENT OF A PROGRAM OF CASH AWARDS FOR SUGGESTIONS, INVENTIONS, OR SCIENTIFIC ACHIEVEMENTS BY MEMBERS OF THE ARMED FORCES WHICH CONTRIBUTE TO THE EFFICIENCY, ECONOMY, OR OTHER IMPROVEMENT OF GOVERNMENT OPERATIONS

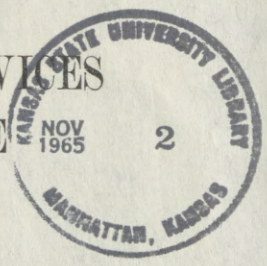
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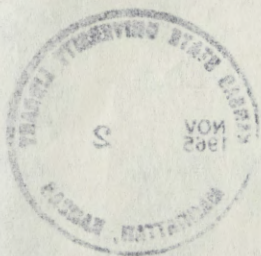
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## MISCELLANEOUS BILLS

THURSDAY, SEPTEMBER 2, 1965

U.S. SENATE,  
COMMITTEE ON ARMED SERVICES,  
Washington, D.C.

The committee met, pursuant to notice, at 10:30 a.m., in room 212, Old Senate Office Building.

Present: Senators Russell of Georgia (chairman), Stennis, Ervin, Cannon, Young of Ohio, Inouye, Smith, and Miller.

William H. Darden, chief of staff; T. Edward Braswell, Jr., Gordon A. Nease, professional staff members; Charles B. Kirbow, chief clerk; and Herbert S. Atkinson, assistant chief clerk.

### H.R. 8333

Chairman RUSSELL. The first bill we have on the agenda this morning would provide for the establishment of a program of cash awards for suggestions, inventions or scientific achievements by members of the Armed Forces.

(H.R. 8333 is as follows:)

[H.R. 8333, 89th Cong., 1st sess.]

AN ACT To amend title 10, United States Code, to provide for the establishment of a program of cash awards for suggestions, inventions, or scientific achievements by members of the armed forces which contribute to the efficiency, economy, or other improvement of Government operations

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That chapter 57 of title 10, United States Code, as amended—

(1) by adding the following new section at the end thereof:

**“§ 1124. Cash awards for suggestions, inventions, or scientific achievements**

“(a) The Secretary of Defense, or the Secretary of the Treasury with respect to the Coast Guard when it is not operating as a service in the Navy, may authorize the payment of a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces under his jurisdiction who by his suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations or programs relating to the armed forces.

“(b) Whenever the President considers it desirable, the Secretary of Defense, and the Secretary of the Treasury with respect to the Coast Guard when it is not operating as a service in the Navy, are authorized to pay a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces who by his suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations of the Government of the United States. Such award is in addition to any other award made to that member under subsection (a).

“(c) An award under this section may be paid notwithstanding the member's death or separation from the armed force concerned, but only if the suggestion, invention, or scientific achievement forming the basis for the award was made while he was on active duty.

"(d) A cash award under this section is in addition to the pay and allowances of the recipient. The acceptance of such an award shall constitute—

"(1) an agreement by the member that the use by the United States of any idea, method, or device for which the award is made may not be the basis of a claim against the United States by the member, his heirs, or assigns, or by any person whose claim is alleged to be derived through the member; and

"(2) a warranty by the member that he has not at the time of acceptance transferred, assigned, or otherwise divested himself of legal or equitable title in any property right residing in the idea, method, or device for which the award is made.

"(e) Awards to, and expenses for the honorary recognition of, members of the armed forces under this section may be paid from (1) the funds or appropriations available to the activity primarily benefiting; or (2) the several funds or appropriations of the various activities benefiting, as may be determined by the President for awards under subsection (b), and by the Secretary concerned for awards under subsection (a).

"(f) The total amount of the award, or awards, made under this section for a suggestion, invention, or scientific achievement may not exceed \$25,000, regardless of the number of persons who may be entitled to share therein.

"(g) Awards under this section shall be made under regulations to be prescribed by the Secretary of Defense, or by the Secretary of the Treasury with respect to the Coast Guard when it is not operating as a service in the Navy. The Secretary of Defense and the Secretary of the Treasury shall send to the President annually for transmittal to Congress a program report, with appropriate recommendations, on the awards program.

"(h) For the purposes of this section, a member of the Commissioned Corps of the Environmental Science Services Administration or of the Public Health Service who is serving with an armed force shall be treated as if he were a member of that armed force."; and

(2) by adding the following new item at the end of the analysis:

"1124. Cash awards for suggestions, inventions, or scientific achievements."

Passed the House of Representatives August 30, 1965.

Attest:

RALPH R. ROBERTS,  
*Clerk.*

Chairman RUSSELL. You will recall that last year the committee considered a similar bill. At that time, some of the members of the committee were of the opinion that the words of entitlement were too broad, specifically, the language that would have permitted awards for superior accomplishment or other personal effort. The committee seemed basically sympathetic to the principal objective of the bill. The language that was the subject of concern last year has been eliminated in this year's bill and it now limits awards to a member "who by his suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations or programs."

The witness on this bill is Maj. Gen. G. P. Greene, Jr., Assistant Deputy Chief of Staff, Personnel, Department of the Air Force. General Greene, we will be glad to hear from you to briefly outline this bill.

**STATEMENT OF MAJ. GEN. G. B. GREENE, JR., ASSISTANT DEPUTY CHIEF OF STAFF, PERSONNEL, FOR MILITARY PERSONNEL, HEADQUARTERS U.S. AIR FORCE; ACCOMPANIED BY MRS. MARGERY SCHOEN, INCENTIVE AWARDS OFFICER, DEPARTMENT OF AIR FORCE, CIVILIAN; AND JERRY H. MASON, CHIEF, INCENTIVE AWARDS BRANCH, DEPARTMENT OF THE ARMY**

General GREENE. Mr. Chairman, I have a complete statement which I could furnish for the record if you so desire or I can read it, and I also have a brief of the bill.

Chairman RUSSELL. The item we have here designated "Sectional analysis of the bill"?

General GREENE. No, sir; that was not the one I was referring to. I think, sir, that has been previously furnished the committee.

Chairman RUSSELL. You mean you have a briefer statement on the bill?

General GREENE. Yes, sir.

Chairman RUSSELL. Very well, we will have your printed statement and the sectional analysis of the bill appear in the record, and then you may proceed to make such statement as you see fit.

General GREENE. All right, sir.

Mr. Chairman, the purpose of H.R. 8333 is to establish a program of cash awards for suggestions, inventions, or scientific achievements by members of the Armed Forces which contribute to the efficiency, economy, or other improvement of Government operations. No award of more than \$25,000 may be made under the bill, the same limitation as appears in the existing civilian program.

Now specifically, the bill will, one, authorize awards by the Secretary of Defense for members of the Army, Navy, Air Force and Marine Corps, and awards by the Secretary of the Treasury for Coast Guard members when that branch is not operating as a service in the Navy.

Two, authorize Presidential cash awards when the contribution to efficiency, economy, or other improvement in the operation of the Government is applicable outside the operations or programs relating to the armed services.

Three, permit payment of the award after a member's death or separation from active duty, but the suggestion or invention for which the award is made must have been made while the recipient was on active duty.

Four, specify that the acceptance of an award shall constitute an agreement that no claim will be made by the recipient against the United States for the use of any idea, method, or device for which the award was given, as well as the warranty that the member has not divested himself of legal or equitable title in any property right residing in the idea.

Five, require the Secretary of Defense and the Secretary of the Treasury to prescribe the regulations governing the awards, and to submit annual reports to the President for transmittal to the Congress.

And, six, include the commissioned corps of the Environmental Science Services Administration and the Public Health Service within the scope of the legislation's provisions when they are serving with an Armed Force.

Sir, I have members of the respective services here and myself to answer any questions.

(The prepared statement of General Greene follows:)

Mr. Chairman and members of the committee, I am Maj. Gen. G. B. Greene, Jr., Assistant Deputy Chief of Staff, Personnel, for military personnel. The Department of the Air Force has been designated as the representative of the Department of Defense for this legislation. I represent the Department of the Air Force for that purpose. I have with me today representatives of the Army, Navy, Marine Corps, and the Coast Guard to answer any questions you may have with particular reference to their services.

I have a brief prepared statement which I would like to present to the committee. The main purpose of the proposed legislation is (1) to authorize the Secretary of Defense, with respect to members of the Army, Navy, Air Force, and Marine Corps, and the Secretary of the Treasury, with respect to members of the Coast Guard when it is not operating as a service in the Navy, to pay cash awards to members of the Armed Forces whose suggestions, inventions, or scientific achievements contribute to the efficiency, economy, or improvement of operations or programs relating to the Armed Forces; and (2) to authorize Presidential cash awards under such circumstances where the contribution promotes efficiency, economy, or other improvement in the operation of the Government.

Other provisions of the legislation provide that (1) the maximum total amount of any award, or awards, for a suggestion, invention, or scientific achievement would be \$25,000; (2) the personal effort forming the basis of an award must be made while the member is on active duty, but payment may be made after his separation or death; (3) acceptance of a cash award shall constitute an agreement that no claim will be made by the recipient against the United States for the use of any idea, method, or device for which the award was given, and a warranty that the member has not transferred or otherwise divested himself of legal or equitable title in any property right residing in the idea; (4) the Secretary of Defense and the Secretary of the Treasury shall prescribe regulations to govern the making of awards, and submit annual progress reports to the President for transmittal to Congress; and (5) members of the commissioned corps of the Environmental Science Services Administration and the Public Health Service are included within the scope of this legislation when they are serving with an Armed Force.

The Department of Defense strongly recommends the enactment of this legislation. We are convinced that this action would be a major step in encouraging initiative and fully tapping the resources of knowledge and creative ability of our military personnel.

The main objective of the Department of Defense is to provide incentives which will result in the best effectiveness at the least cost to the Government. Military personnel and Federal civil service employees often work side by side on similar jobs entailing similar responsibility. By law, the Federal civilian employee may receive a cash award from public funds for a sound idea or invention. It is only reasonable that similar incentives should be made available to stimulate the best contributions of our military personnel. Our Nation's strength and security depend largely upon our technical achievements. Therefore, we must encourage creative suggestions and inventions among all personnel.

The President and the Secretary of Defense have reiterated the need for money-saving ideas and costs consciousness among all personnel. Our Government is larger and more costly than ever before in peacetime. With America looking to the Department of Defense for leadership in the quality and economy of its operation, never has there been a more vital need for encouraging new ideas in all fields of endeavor. The man that does the job is the one most likely to come up with ways to do it cheaper and better. We believe that the incentive aspect of this legislation will provide the special recognition and encouragement to those persons who go beyond the requirements of their jobs to help improve Government operations.

Leaders in the most successful business enterprises support the premise that cash awards for suggestions or inventions not only save money, but of equal importance, improve the morale of employees. Industry accepts as much as 30 percent of the suggestions received and saves an estimated \$200 million a year for the ideas they take out of the suggestion boxes. For example, at General Motors, \$7.5 million was distributed to more than 220,000 employees for suggestions in 1964. The Ford Motor Co. is so eager for ideas that an employee who wins the maximum \$6,000 award also receives a new car.

In 1964, civilian employees of the Department of Defense submitted 233,552 suggestions of which 63,581 were adopted. This resulted in first year benefits of \$66,171,148 as against a cost of \$2,315,930 for cash awards. Since the Armed Forces is one of the largest groups of employees, this means of further tapping the idea potential of military personnel should be adopted.

The Department of Defense has little experience on which to base estimates of the cost of the awards program, or the possible savings resulting from such a program for military personnel. However, based upon the rate of civilian personnel participation in the program and the money paid out for cash awards, it would appear that by including approximately 3 million military members, it could result in additional annual savings of approximately \$186,091,000 versus an estimated expenditure of \$6,680,000. This estimate was arrived at by (1) taking the actual rate of civilian participation in each service program, the amount of cash awards paid out for adopted suggestions, the savings effected; and (2) projecting this experience to the number of military personnel that would be affected by the proposed program.

In conclusion, the Department of Defense is convinced that the potential gain from stimulating idea activity on the part of our military personnel through cash awards will outweigh many times the cost incurred in establishing the proposed program and, therefore, we strongly urge passage of this bill.

I appreciate this opportunity of appearing before the committee, and my colleagues and I shall be happy to answer any questions you may have on this bill.

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#### SECTIONAL ANALYSIS OF H.R. 8333

To amend title 10, United States Code, to provide for the establishment of a program of cash awards for suggestions, inventions, or scientific achievements by members of the Armed Forces which contribute to the efficiency, economy, or other improvement of Government operations

*Section 1(1)* of the bill would amend chapter 57 of title 10, United States Code, by adding a new section 1124 to authorize a cash awards program for military personnel which is generally similar in purpose to the Government Employees' Incentive Awards Act (5 U.S.C. 2121-2123), as follows:

*New section 1124(a)* would authorize the Secretary of Defense to pay cash awards to, and incur necessary expenses for the honorary recognition of, members of the Army, Navy, Air Force, and Marine Corps whose suggestions, inventions, or scientific achievements contribute to more efficient, economical, or otherwise improved operations or programs relating to the Armed Forces. Similar authority would be given to the Secretary of the Treasury with respect to members of the Coast Guard when it is not operating as a service in the Navy. The purpose of this subsection is similar to that in 5 U.S.C. 2123(a) for civilian awards. However, the language in that subsection pertaining to awards for "special acts or services in the public interest in connection with or related to their official employment" would, as applicable to the military, result in overlap and confusion with the large number of special pays authorized in military compensation, and consequently has not been included. For the same general reason the language in the civilian award program relating to "superior accomplishments or other personal efforts" has been limited to "scientific achievement."

*New section 1124(b)* would authorize Presidential cash awards to, or expenses for the honorary recognition of, members of the Armed Forces whose suggestions, inventions, or scientific achievements contribute to more efficient, economical, or otherwise improved Government operations. These awards, which would be paid by the Secretary of Defense and the Secretary of the Treasury, respectively, in instances determined by the President to warrant such action, would be in addition to the departmental awards under subsection (a). This authority is similar in purpose to that for Presidential awards to civilian officers and employees of the Government under 5 U.S.C. 2123(b).

*New section 1124(c)* provides that suggestions, inventions, or scientific achievements forming the basis for awards authorized under subsections (a) and (b) must have been made while the member was on active duty, but payment of the award may be made even though the member has left the service or is deceased.

*New section 1124(d)* provides that cash awards authorized under subsections (a) and (b) shall be in addition to the pay and allowances for which the member is eligible. It also specifies that acceptance of a cash award shall constitute (1) an agreement by the member that no claim will be made by him, his heirs, or assigns against the United States for the use of any idea, method, or device for

which the award is given; and (2) a warranty that the member has not divested himself of title in any property right in the idea, method, or device in question. Clause (1) would make it clear that any cash payment made is in the nature of an ex gratia award and not a "claim" by a member of the Armed Forces against the Government; and clause (2) would cover the situation, however remote it might be, where a member receiving an award had, at a prior time, transferred title to another.

*New section 1124(e)* provides that cash awards and expenses for honorary recognition may be paid from the funds or appropriations for the primary activity benefiting from the suggestion, invention, or scientific achievement. In appropriate cases, the award may be paid from more than one fund or appropriation as determined by (1) the President with respect to Presidential awards under subsection (b); and (2) the Secretary of Defense or the Secretary of the Treasury, as the case may be, for departmental awards under subsection (a).

*New section 1124(f)* places a maximum limit of \$25,000 for any or all awards made to members under the section for a suggestion, invention, or scientific achievement. There is no limit as to the number of persons who may share in an award subject to this maximum amount.

*New section 1124(g)* provides for the promulgation of regulations by the Secretary of Defense and the Secretary of the Treasury, respectively, to implement the awards program. These Secretaries are directed to send to the President an annual report for transmittal to Congress as to the results of the awards program, including recommendations.

*New section 1124(h)* provides that the benefits of the new awards program shall be extended to members of the commissioned corps of the Environmental Science Services Administration, and to members of the Public Health Service, who are serving with an armed force. The persons affected are commissioned officers of the Public Health Service and of the former Coast and Geodetic Survey who are on detail with or made a part of the military services by Executive order. The Environmental Science Services Administration was created by Reorganization Plan No. 2 of 1965 and consolidated the Coast and Geodetic Survey and the Weather Bureau into a single organization.

*Section 1(2)* of the bill is a technical amendment to the analysis of chapter 57 of title 10, United States Code, to reflect the addition of new section 1124.

Chairman RUSSELL. At the present time, there is a law almost identical to this, that applies to the civilian employees, as I understand it?

General GREENE. Yes, sir.

Chairman RUSSELL. And the purpose of this legislation is to give to the men in uniform the same incentive?

General GREENE. Yes, sir.

Chairman RUSSELL. To develop improved ideas of operation that are afforded civilian employees of the Government?

General GREENE. That is correct.

Chairman RUSSELL. Of course, we have a great many men in uniform now who are working in the field of research and development of some of our most complex problems.

Are the commissioned members of the Public Health Service not included in the existing law? I know in No. 5 that you read you said that the members of the commissioned corps of the Environmental Science Services Administration and the Public Health Service are included within the scope of this legislation, when they are serving with an armed force.

General GREENE. Yes, sir; they are included in the existing civilian law.

Chairman RUSSELL. They are included unless they are on duty with the Armed Forces?

General GREENE. That is correct, sir.

Chairman RUSSELL. And this would give them that benefit.

General GREENE. Yes, sir.

Chairman RUSSELL. Senator Smith?

Senator SMITH. Yes, Mr. Chairman.

General, when was this first made law for civilian employees, do you know?

Mrs. SCHOEN. Our civilian law was effective November 30, 1954.

Senator SMITH. Thank you very much. Is there any record of the amount of money that is used for this plan for the civilians annually?

General GREENE. Just a moment.

Chairman RUSSELL. General, do you have those figures?

General GREENE. The total expenditure of cash awards by the Department of Defense for fiscal year 1964 was \$2,315,980.

Chairman RUSSELL. That is the Defense Department?

General GREENE. Yes, sir. That is for the civilian suggestion awards program for fiscal year 1964.

Senator SMITH. Is there not any plan for any recognition of the military personnel at present?

General GREENE. Yes, Senator. We have a limited cash awards program. The Army and Air Force pay cash awards, and this money comes from nonappropriated funds. It is not on any magnitude as desired in the bill under consideration.

Senator SMITH. This proposal then would be unifying the three services?

General GREENE. Yes, it would, Senator.

Senator SMITH. Thank you, General.

Chairman RUSSELL. Senator Inouye?

Senator INOUE. No questions, Mr. Chairman.

Senator YOUNG. May I ask a question, Mr. Chairman?

Chairman RUSSELL. Senator Young. Pardon me, I did not see you come in.

Senator YOUNG. What is the limit of cash awards that are given to the civilian employees at the present time, each individual?

General GREENE. The maximum amount, sir, that can be given is \$25,000 under this bill.

Senator YOUNG. I know under this bill. I am not asking that.

General GREENE. It is also \$25,000 under the civilian law.

Senator YOUNG. The question I am asking is, what is the limit for civilian employees of the Army for each invention?

General GREENE. Well, it is graduated, sir, and the amount is based on the value of the suggestion or invention.

Senator YOUNG. That doesn't answer my question. What is the limit for that evaluation?

General GREENE. It could be up to \$25,000.

Senator YOUNG. At the present time?

General GREENE. Yes, sir.

Senator YOUNG. Has it been that high to any civilian?

General GREENE. Yes, sir. There have been four \$25,000 awards; two were awarded to Army scientists, and two to Navy scientists. Mr. Radkowsky, a nuclear expert, received a \$25,000 cash award in 1964.

Senator YOUNG. What is the present limit of cash awards that the Army pays to enlisted men and officers who make suggestions?

General GREENE. I will ask the Army representative to provide that information.

Senator YOUNG. Has anyone received as high as \$25,000?

General GREENE. No, sir.

Senator YOUNG. What is the highest anyone has received, to your knowledge, enlisted men or officers in round figures?

Mr. MASON. My name is Jerry H. Mason, Chief of the Awards Program of the Army. The highest award paid by the Army to a military person was \$1,000. That is the one and only one of that size. That was paid out of nonappropriated funds last year. The average is about \$25 paid out of nonappropriated funds.

Chairman RUSSELL. You say nonappropriated funds. Where do you get that, out of the post exchange?

Mr. MASON. These are welfare funds generated through post exchange and other activities, and those funds are very, very limited.

Senator YOUNG. Are you able to state the average paid to civilian employees of the Army or the approximate average?

Mr. MASON. Well, I would say about 40-some-odd dollars per award average over the year.

General GREENE. For fiscal year 1964, sir, it averaged \$47.

Senator YOUNG. And the only instance that you know of an award to a civilian of \$25,000 was to a nuclear physicist?

Mr. MASON. The Army has had two awards of \$25,000. They weren't individual awards, they were group awards. One was split between five employees in the area of electronics. The second one was split between three, and in the classified area.

Senator YOUNG. Is there a present limit of a thousand dollars to the serviceman and officers for invention, General?

General GREENE. No, sir, there is no limit, but it would be in that neighborhood because the cash awards given now to service personnel, sir, come from nonappropriated funds, and necessarily they have to be small.

Senator YOUNG. If we fix the limit at \$25,000, isn't that encouraging men in the Armed Forces to pay a lot of attention to try to invent something to aim at this \$25,000 for which they enlist and are inducted into the service?

General GREENE. I would not think so, sir. I think it is working very successfully in the civilian field at the present time, and what we are after is to get our military to come up with more suggestions and inventions. I don't think this bill will have any adverse effect on their primary military duties.

Senator YOUNG. Well, in the civilian field it is a very exceptional case when a group award of \$25,000 is received.

General GREENE. The ones I believe the Army representative referred to were group awards. The ones I referred to were individual awards to two Navy scientists. But totaling—there have only been four, including the two group awards, where the total maximum amount of \$25,000 has been awarded.

Senator YOUNG. I have no other questions, but I think this is a bad bill, Mr. Chairman.

Chairman RUSSELL. The civilian awards to which you referred that averaged \$48 or \$47, did that money come from appropriated funds or from what other source?

General GREENE. This was from appropriated funds under the civilian incentive awards law.

Chairman RUSSELL. Was there any estimate as to how much benefit the Government received from those in any given year?

General GREENE. Sir, during fiscal 1964 the Department of Defense realized measurable benefits of \$66,171,480 from the \$2,315,980 it paid out in cash awards.

Chairman RUSSELL. Do you think that this maximum of \$25,000 is rather high, General, unless it is made clear it isn't given to any one individual but could be awarded on a group basis? I believe that either you or Mr. Mason stated there have been two \$25,000 awards but no one person received it, there were several people involved?

General GREENE. Two \$25,000 awards were granted on an individual basis, and two were group awards where several shared in the \$25,000 awards.

Chairman RUSSELL. I understood that. But what I am trying to point out is, there is nothing in the bill that would prevent one individual from receiving \$25,000.

General GREENE. That is correct, sir.

Chairman RUSSELL. I think General Motors has employed such a program as this for a long time for their employees. Do you have any information as to the maximum amount that they awarded their employees? Ford, I think, gives them a certain amount of money and a new automobile.

General GREENE. Yes, sir.

Chairman RUSSELL. For their suggestions?

General GREENE. General Motors distributed \$7.5 million to more than 220,000 employees in 1964 for adopted suggestions and inventions.

Chairman RUSSELL. Do you know the maximum received by any one employee?

General GREENE. The highest award paid by General Motors to an individual in 1964 was \$6,000.

Senator YOUNG. I have one other question, Mr. Chairman.

Chairman RUSSELL. All right, you may proceed.

Senator YOUNG. I understood, General, that you stated it was a Navy officer who received \$25,000?

General GREENE. No, sir. Two Navy scientists. A total of four awards of \$25,000 were made under the civilian law. Two of the \$25,000 awards went to two Navy scientists. One was to a Dr. McLean and the other to Dr. Radkowsky.

Senator YOUNG. So in the Navy two scientists, both civilian employees, received \$25,000?

General GREENE. Each.

Senator YOUNG. The maximum?

General GREENE. Yes, sir.

Senator YOUNG. That is all.

Chairman RUSSELL. Senator Stennis?

Senator STENNIS. As I just noticed, in 1964 the civilian employees submitted suggestions and 63,000-plus were adopted. Now, how do you figure those benefits of \$66 million? It says this resulted in first-year benefits of \$66 million-plus as against a cost of \$2.3 million. General, how did you arrive at the figures?

General GREENE. Senator, I would like to call upon Mrs. Schoen of our civilian personnel office to provide this information.

Mrs. SCHOEN. Those are estimated first-year net benefits. They are computed by taking the manpower and materiel cost before the idea was put into effect, and using the cost after the idea was put into effect and then subtracting the cost of implementation and you come up with an estimated first-year net benefit.

Senator STENNIS. Thank you very much.

Is there any ceiling under this bill as to the amount you can pay out?

Mrs. SCHOEN. Sir, we have the ceiling only on the individual contribution, no ceiling on the overall.

Senator STENNIS. Who is going to determine what the total amount would be in any year, I mean not necessarily a certain amount, but the ceiling on it?

Mrs. SCHOEN. It is worked into our budget procedures. It is based on what we spent the year before.

Senator STENNIS. So it comes to the Appropriations Committee?

Mrs. SCHOEN. Yes, sir.

Senator STENNIS. Well, you are spending \$2 million-plus for your civilians, and you have many more people in the services than you do the civilians, and it seems like there ought to be some estimate, Mr. Chairman, of what they think are the costs per year, a ceiling at least.

General GREENE. We do not have a ceiling, sir. We do have an estimate of what it would cost with regard to the military part, which is \$6,680,000 per year.

Senator STENNIS. That is what I am talking about. You think it would not go over that?

General GREENE. We based our estimated cost figures upon the experience gained from the civilian awards program, sir. This figure could go up, or come down, depending on the degree of military participation in the program.

Senator STENNIS. That is all, Mr. Chairman.

Chairman RUSSELL. This is a one-shot payment. If you use the idea or the development or the invention for over a period of years, you don't continue to pay this year to year, do you?

General GREENE. No, sir. The award is paid based on the first year's measurable benefits.

Chairman RUSSELL. Of course, for any subsequent use the inventor has no claim whatever. I believe you said that in your statement.

General GREENE. Acceptance of a cash award under this bill would preclude the inventor from filing a claim against the Government.

Chairman RUSSELL. Senator Ervin?

Senator ERVIN. No questions.

Chairman RUSSELL. If there is nothing further, we will excuse the General.

General GREENE. Thank you, sir.

(Subsequently, in executive session, the committee voted to report H.R. 8333, without amendment, as covered by S. Rept. No. 678.)

### H. R. 1805

Chairman RUSSELL. The next bill is H.R. 1805, which would give the Navy authority to select Reserve captains from below the promotion zone for appointment to the grade of rear admiral in a manner similar to that which applies for selection of Regular Navy captains to the grade of rear admiral.

(H.R. 1805 is as follows:)

[H.R. 1805, 89th Cong., 1st sess.]

AN ACT To amend section 5899 of title 10, United States Code, to provide permanent authority under which Naval Reserve officers in the grade of captain shall be eligible for consideration for promotion when their running mates are eligible for consideration for promotion

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 5899 of title 10, United States Code, is amended as follows:

(1) Subsection (a) is amended by striking out "until July 1, 1961," and

(2) Subsection (b) is amended by adding the following:

"However, an officer in the grade of colonel is eligible for consideration for promotion when his running mate is eligible for consideration for promotion."

Passed the House of Representatives August 16, 1965.

Attest:

RALPH R. ROBERTS,  
Clerk.

Chairman RUSSELL. The witness on this bill is Rear Adm. W. C. Hughes, Assistant Chief of the Bureau of Naval Personnel for Naval Reserve and Naval District Affairs. Admiral, you may proceed.

**STATEMENT OF REAR ADM. WILLIAM C. HUGHES, U.S. NAVY,  
BUREAU OF NAVAL PERSONNEL FOR NAVAL RESERVE AND  
NAVAL DISTRICT AFFAIRS; ACCOMPANIED BY COL. OWEN M.  
HINES, DEPUTY DIRECTOR, MARINE CORPS RESERVE**

Admiral HUGHES. Good morning, Mr. Chairman. I have a short statement on this bill, sir, if I may proceed to read it.

Chairman RUSSELL. All right.

Admiral HUGHES. Mr. Chairman and members of the committee, I am Rear Adm. William C. Hughes of the Bureau of Naval Personnel. It is an honor to appear before this committee in behalf of the Department of Defense in support of H.R. 1805.

The proposed bill would provide authority for Naval Reserve officers promoted under the Reserve Officer Personnel Act to be considered from below the promotion zone for appointment to flag grade in a manner parallel with the selection of officers of the Regular Navy.

Officers on the lineal list of the Navy are eligible for consideration for flag rank after 3 years in the grade of captain. On the other hand, officers of the Naval Reserve not on active duty are not eligible for selection from below the zone, but only when their running mates are in the established promotion zone or about their 10th year in grade. This has resulted in selection fields of such limited size that the number promoted to flag rank is well below the mobilization requirements for this grade since the number of selections has not been sufficient to offset losses through normal attrition. Title 10 of the United States Code authorizes 48 Reserve flag officers in an active status to fill mobilization billets; currently we have only 30 of this authorized number and it will be some years before we will be able to correct this situation under the present provisions of law.

In addition to affording the means to build to authorized flag officer strength for mobilization, there are other distinct advantages which accrue from this proposal, advantages which will improve the selection and promotion system for the Naval Reserve and the officers concerned.

Of particular importance is the increased selectivity which will result by enlarging the area of consideration. This proposed bill will substantially broaden the field of eligibility thus offering a much larger number of officers from which to select Naval Reserve flag officers. This past year there was but 1 officer in the established promotion zone; whereas, authority to consider inactive officers whose active duty running mates were considered would have provided a field of over 150 officers from which to make flag selections.

The proposed legislation to consider captains at a point in time sooner than now permitted is also in keeping with the expressed desires of the Congress that nominees for flag rank have a reasonable period of time to serve prior to reaching retirement eligibility by reason of age—an objective with which the Navy is in full accord. This amendment will be of great benefit in this respect in that it allows the selection of younger officers who have a longer time to serve and become better qualified in their mobilization assignments as flag officers.

This early consideration of captains also enhances the fairness of promotion systems. In deference to the desires of Congress and the Navy's own objectives, recent selection boards have observed the practice of selecting officers who have at least 3 years to serve. In effect, this is prejudicial to those officers who, although outstanding in all respects, do not enjoy a truly fair consideration because they are over 57 by the time they reach the zone of eligibility.

Another highly desirable feature to be gained from the proposal before you is the equitable opportunity it will provide Reserve officers being considered for flag grade. Unlike last year when there was only one new line officer eligible, future years will see fields of fluctuating sizes. With the limited authorized strength only a few selections can be made annually. Grouping officers of succeeding variable sized year groups and considering them together provides a more equitable opportunity for all officers who become eligible and affords the election of the best fitted officers from a greater spread of year groups.

Finally, it should be noted that this is one of the few differences which remains between the Reserve Officer Personnel Act and the Officer Personnel Act with respect to promotions. Therefore, this legislation not only will improve the flag selection and promotion procedures, but will further align procedures for Regulars and Reserves.

The Navy interposes no objection to the House amendment which provides that Marine Corps Reserve Officers in the grade of colonel shall be eligible for consideration for promotion when their running mates are eligible.

I wish to thank you for allowing me to appear before the committee today and I will be happy to attempt to answer any questions you might have on this subject.

Chairman RUSSELL. Admiral, I am sure that this bill and the results you expect to achieve appear relatively simple to you but they are nevertheless somewhat complicated to those who don't deal with promotions and personnel policies.

Would it be fair to say that the Reserve captains eligible under the present running mate system for selection to admiral are now limited to those reservists commissioned prior to World War II, and one reason you want this bill is to bring a larger group into competition for selection?

Admiral HUGHES. Yes, sir, Mr. Chairman. Under the running mate requirement these officers would come up for consideration in their 29th year of service, so taking that back 29 years ago, the present fields are from pre-World War II appointments.

Chairman RUSSELL. Regulars come up for consideration or they can be considered prior to their having 29 years of service?

Admiral HUGHES. That is the objective of this bill, to give the Reserve the same right the Regular now enjoys, that is consideration below the zone.

Chairman RUSSELL. Under the present law you can go below the zone for the Regulars but can't go below for the Reserve, is that correct?

Admiral HUGHES. That is correct, sir. One of the objectives of this bill is to provide equity in this field and put the two laws into conformance.

Chairman RUSSELL. This provision affecting the Marine Corps, why is that necessary? Do you have the same argument in behalf of that that you have with respect to Reserve Naval officers?

Admiral HUGHES. There is a witness present to speak for the Marine Corps, sir. The House saw fit to provide this across-the-board opportunity for the entire Navy Establishment, and the Navy per se has no objection to the Marine Corps being included, although the Marine Corps stated at the present time they have no need for the use of this provision in the event it becomes law.

Chairman RUSSELL. Who is the Marine Corps officer present?

Colonel HINES. Col. Owen Hines, Mr. Chairman.

Chairman RUSSELL. Yes, Colonel.

Colonel HINES. I am the Deputy Director of the Marine Corps Reserve. As the admiral says, the Marine Corps does not have a requirement for this authority that the Navy is requesting. We see the Navy's requirement but we do not have it. We would welcome authority for below the zone selection for all grades. We do not have a requirement for it. It would be a nice-to-have thing. We would prefer not to have it for one grade if we cannot have it for all grades. We believe there is an equity involved here. We would feel we would have as many occasions to promote a major to lieutenant colonel as we would have a colonel to brigadier general; so without any incident at all to disparage the Navy's position and their actual requirement for this, I must say that the Marine Corps does not have a requirement for it.

Chairman RUSSELL. Isn't this bill limited to flag officers?

Colonel HINES. This bill is; yes, sir. So we do not require the authority that this bill would provide for the Marine Corps.

Chairman RUSSELL. It would seem to me if you applied it to everybody, generally speaking, that you would eliminate all of your present criteria for promotion.

Colonel HINES. No, sir, it would then parallel the promotion that the Regular officers have. It would give us complete parallel between Regular and Reserve promotion.

Chairman RUSSELL. This House amendment has that effect.

Colonel HINES. No, sir. This proposed bill would not. It would give to us only for one grade, from colonel to brigadier general. If we should have this authority for all grades we would then have a completely parallel Regular and Reserve promotion system.

Chairman RUSSELL. In other words, your Regulars you can promote, say, from major to lieutenant colonel without any regard to numbers?

Colonel HINES. No, sir, we can promote them from below their actual promotion zone in the Regular Establishment but we cannot for the Reserve officers, where they are concerned.

Chairman RUSSELL. Senator Smith?

Senator SMITH. I have not any questions, Mr. Chairman.

Chairman RUSSELL. Senator Ervin?

Senator ERVIN. Off the record.

(Discussion off the record.)

Chairman RUSSELL. Do you have any further comment?

Senator ERVIN. No further questions.

Chairman RUSSELL. Admiral Hughes?

Admiral HUGHES. Only in reply to the Marine Corps position there, we confine this proposed legislation only to the area where we have a definite problem, that is, in the selection to flag grade. The inclusion of the Marine Corps in here, since this is permissive legislation, will have no effect as far as their continuing their present promotion system.

Chairman RUSSELL. You can't always be too sure about that.

Admiral HUGHES. It would not be, I think, objectionable to them if we pass this legislation.

Chairman RUSSELL. I recall similar legislation to this enacted by the Congress to provide for one Reserve rear admiral. You might have said you had no requirement for it, but it was passed and the rear admiral was promoted from captain.

Admiral HUGHES. My only point was—

Chairman RUSSELL. You can't be sure that the Marine Corps would not use it.

Admiral HUGHES. They would have the opportunity to use it if they found a need for it at some subsequent time.

Chairman RUSSELL. What brought about this bill, what state of facts, what was the genesis of it? What brought it to the attention of the Navy?

Admiral HUGHES. Mr. Chairman, we used to have this in law. We had it in the promotion law that was in effect prior to the present Reserve Officer Personnel Act of 1955. It was left out at that time since at that time the Navy saw no particular need for including it, it is in the legislation. Subsequently the Congress did pass a law for a 1-year-below-the-zone selection which the Navy utilized. However, at that time the Navy's position was opposed to the legislation. Subsequent to that time the Navy has recognized this need to fill our mobilization requirements and to meet the Senate Preparedness Subcommittee's requirements for direction that has been given to us, to improve our flag situation, and the only way we can get to our numbers and also to achieve the length of service that is indicated and to have our flag officers agewise somewhere near comparable to our Regulars, is to have this provision to allow us to go below the zone in the same manner as it is now provided in law for the Regulars.

Chairman RUSSELL. Do you have any estimate as to the number of Reserve captains this would benefit over the next year if this bill were enacted?

Admiral HUGHES. We, at the present time, have only 19 line flag officers—we have a total of 30 line officers—19 line officers and the balance are staff corps, a total of 30 at the present time, and the reason we have only that number is because we have not had ample fields under the present law to select up to our total of 48. So that if this bill passes, we would propose in the next selection season to move very substantially toward the authorized number of 48. So that there would be some 18 people potentially who would benefit by this in the next year. And the Navy would benefit by having these 18 people in a training situation that would relate to their meeting our mobilization requirements in this area.

Chairman RUSSELL. In this little table that one of the members of the staff handed me I know that the majority of this 30 would be line officers.

Admiral HUGHES. Yes, sir, there is an authorized limit of 28 line officers at the present time; we have only 19.

Chairman RUSSELL. Any further questions or comments?

If not, we will excuse you, Admiral.

Admiral HUGHES. Thank you very much.

Chairman RUSSELL. There will be inserted in the record at this point a statement by Admiral Jackson on H.R. 1805.

#### STATEMENT OF REAR ADM. A. JACKSON, JR., ACTING EXECUTIVE DIRECTOR, RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES

Mr. Chairman and members of the committee, we appreciate the opportunity to make our views on H.R. 1805 known to you.

Our association has always supported comparable promotion systems for the Active Duty Forces and the Reserve Forces. Such comparability brings about the furtherance of the Forrestal principle of one service consisting of both regulars and reserves; it enhances smooth mobilization since both forces operate on the same system; and it creates mutual respect between reserves and regulars.

We believe this bill, which will authorize below the zone selection for Naval Reserve flag officers and Marine Corps Reserve general officers on the same basis as is authorized for flag and general officers on their respective lineal lists, is long overdue. The Navy now finds itself in an awkward situation wherein Reserve flag officers are urgently needed; billets have been established, vacancies exist but cannot be filled due to a lack of an adequate field in the official zones.

We enthusiastically endorse this bill. It will not only improve the quality of flag selectees, but will also permit the Navy to comply with recommendations of the Senate Preparedness Committee on flag selection and promotion policy. The Navy is in full accord with the recommendations of that committee, but is unable to comply without the legislation now requested.

We urge the committee to vote favorably for its passage.

(Following consideration by the committee in executive session on Sept. 30, H.R. 1805 was reported to the Senate with an amendment, as covered by S. Rept. 808.)

#### H.R. 3041

Chairman RUSSELL. The next bill is H.R. 3041. This bill is sponsored by the Department of Defense, and it would exempt certain contractor subcontracts with foreign contractors from the requirement for the inclusion of an examination-of-records clause.

(H.R. 3041 is as follows:)

[H. R. 3041, 89th Cong., 1st sess.]

AN ACT To amend title 10, United States Code, to exempt certain contracts with foreign contractors from the requirement for an examination-of-records clause

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That chapter 137 of title 10, United States Code, is amended as follows:

(1) Section 2310(b) is amended—

(A) by striking out the words “or section 2307(c)” and inserting the words “section 2307(c), or section 2313(c)” in place thereof; and

(B) by striking out the words “or (4)” and inserting the words “(4) clearly indicate why the application of section 2313(b) to a contract or subcontract with a foreign contractor or foreign subcontractor would not be in the public interest, or (5)”.

(2) Section 2313 is amended—

(A) by striking out the word “Each” in subsection (b) and inserting the words “Except as provided in subsection (c), each” in place thereof; and

(B) by adding the following new subsection at the end thereof:

“(c) Subsection (b) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the head of the agency determines, with the concurrence of the Comptroller General or his designee, that the application of that subsection to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required where the contractor or subcontractor (1) is a foreign government or agency thereof; or (2) is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination.”

SEC. 2. Section 304(c) of the Federal Property and Administrative Services Act of 1949, as added by the Act of October 31, 1951, chapter 652 (41 U.S.C. 254(c)), is amended by adding the following new sentences at the end thereof: “Under regulations to be prescribed by the Administrator, however, such clause may be omitted from contracts with foreign contractors or foreign subcontractors if the agency head determines, with the concurrence of the Comptroller General of the United States or his designee, that the omission will serve the best interests of the United States. However, the concurrence of the Comptroller General of the United States or his designee is not required for the omission of such clause where the contractor or subcontractor (1) is a foreign government or agency thereof; or (2) is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination. The power of the agency head to make the determination specified in the preceding sentences shall not be delegable.”

SEC. 3. Section 3(b) of the Act of August 28, 1958 (50 U.S.C. 1433(b)) is amended by adding the following new sentences at the end thereof: “Under regulations to be prescribed by the President, however, such clause may be omitted from contracts with foreign contractors or foreign subcontractors if the agency head determines, with the concurrence of the Comptroller General of the United States or his designee, that the omission will serve the best interests of the United States. However, the concurrence of the Comptroller General of the United States or his designee is not required for the omission of such clause where the contractor or subcontractor (1) is a foreign government or agency thereof; or (2) is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination.”

Passed the House of Representatives August 16, 1965.

Attest:

RALPH R. ROBERTS,

*Clerk.*

Chairman RUSSELL. The witness on this bill is Mr. William Munves, Assistant General Counsel of the Air Force for Procurement. Mr. Munves, we hope that you can make this bill clear to the committee.

STATEMENT OF WILLIAM MUNVES, ASSISTANT GENERAL COUNSEL  
OF THE DEPARTMENT OF THE AIR FORCE FOR PROCUREMENT,  
ACCOMPANIED BY JOHN MILBOURNE, DEPARTMENT OF THE  
NAVY, AND EMANUEL KINTISCH, DEPARTMENT OF THE ARMY

Mr. MUNVES. I will try, sir.

Chairman RUSSELL. All right.

Mr. MUNVES. I am the Assistant General Counsel of the Department of the Air Force for Procurement. I am appearing on behalf of the Department of Defense in support of H.R. 3041, an act to amend title 10, United States Code, and other pertinent statutes to exempt certain negotiated contracts with foreign contractors from the requirements of an examination-of-records clause.

I am accompanied today by Mr. John Milbourne of the Navy Department and Mr. Emanuel Kintisch of the Department of the Army.

Public Law 245, 82d Congress, as codified in 10 U.S.C. 2313(b), requires the inclusion of an examination-of-records clause in all negotiated contracts. The purpose of our proposing this amendment is to give the military services the flexibility to omit the clause as to contracts with foreign contractors when its inclusion is not in the best interests of the United States. Since a prior Department of Defense representative appeared before Subcommittee No. 3 of the Committee on Armed Services, House of Representatives on an identical bill in 1962 and the testimony taken at that hearing was later printed, I will limit my comments to some of the problems which have arisen in military procurement since that time which, in our opinion, justify your consideration of this proposed amendment.

The cases can be conveniently divided into two groups: (1) those in which the foreign contractor refused to accept the examination-of-records clause on the basis of foreign law prohibiting any group such as GAO from making an examination; and (2) those in which the foreign contractor refused to take the clause on the basis of his own business policy.

In the first group, the Air Force continually has had a difficult time procuring bus services and dairy products in the Azores. Potential contractors claimed—and were supported by an official of the Portuguese Government—that Portuguese law precluded examination by the General Accounting Office of the records of any legally established concern in Portugal, including the Azores. After extended unsuccessful negotiations, each procurement was made without the clause. Finally, in 1964, a further deviation excluding the clause from all such contracts was granted, since it was recognized that efforts to have the clause included were futile. The Army had similar troubles procuring one Swiss personnel carrier in Switzerland. The potential contractor claimed enforcement of the clause would violate the Swiss Penal Code. The clause was formally accepted but the contractor made it clear that he considered it unenforceable, a position which the GAO has not yet tested.

In the second group, the Air Force was unable to persuade 12 quasi-government companies and one private electric power company in West Germany to accept the clause. Contracts were made with these companies without the clause. By procuring the power under

these contracts, the Government realized \$1,366,793 in rate reductions. The clause also was omitted in a Navy contract for jet aircraft seats. Martin-Baker, Ltd., of London accepted the clause for 4 consecutive years but refused to do so in 1964, because the GAO sought to exercise the contractual right to examine the contractor's records. Since there was an urgent requirement for the product, the Navy contracted for the seats, omitting the clause, with the British Government, which in turn, subcontracted with Martin-Baker. This entailed additional expense. Moreover, even this method could be considered a technical deviation from legal requirements. On recent Japanese stevedoring contracts, the clause was included but seems to be of no more value than if it were omitted; the stevedores limit the contracts to a duration of 1 month and claim they will not renew the agreement if the GAO attempts to exercise its right to examine the records. And, finally, a group of universities in the United Kingdom which contract with the Army and the Air Force for basic research could only be persuaded to accept a modified clause providing that any audit will be performed by the contractor's auditor. The GAO will receive a "certified and audited extract supported by photostatic copies of all documents relating thereto \* \* \*." This clause dilutes the statutory requirement to the extent it substitutes the judgment of the contractor's auditors for that of the GAO.

Both these types of cases present the same general problem to the contracting officer. A potential contractor, for reasons of law or policy, refuses to accept an enforceable examination-of-records clause. The contracting officer will then try to change the contractor's mind or to make the procurement elsewhere. But if the former alternative is impossible and the latter is not realistically available—for reasons of exclusive source, financial unfeasibility of going elsewhere, or whatever—the choice is narrowed to either failing to make any procurement or deviating from the strict language of Public Law 82-245. The previously discussed cases indicate that the military services often were obliged to give overriding consideration to the essentiality of the military procurement. The fact that there are no case examples of complete failure to make any buy due to the clause requirement, except for the case testified to by the earlier witness, probably does not reflect so much a lack of need for a revision of the clause as it does recognition by procuring activities that procurement of a necessity must be made somehow to support the troops in the field. In almost all, if not all, of these instances, the matter was informally discussed with the GAO. The GAO seems to have recognized these procurement essentialities, since it has not interposed objection, although it has indicated it could not formally authorize a deviation from the technical legal requirement.

We urge the enactment of the proposed bill to meet these exigencies of national defense. Such waiver authority to meet the needs of Government procurement in overseas areas has precedent in Congress. The clause was exempted in overseas procurement under the Atomic Energy Act of 1954. Each Congress since the 85th has granted a right to delete the clause in contracts for the construction of facilities overseas. The most significant recognitions by Congress of the necessity to grant authority to omit the examination-of-records clause in appropriate cases are in section 532 of the Mutual Security Act of 1951, as added by section 7(M) of the Mutual Security Act

of 1952, and in section 633 of the Foreign Assistance Act of 1961, both presently codified in title 22, United States Code, section 2393(a). In both acts Congress authorized the President, when he determined that the purposes of the acts would be advanced, to waive provisions of law regulating the making or performance of contracts. President Truman, by Executive Order 10837, waived the requirement of the examination-of-records clause under the Mutual Security Act of 1951, as amended. President Eisenhower continued this policy in Executive Order 10784, as amended by Executive Order 10845, which waived the clause requirement under the Mutual Security Act of 1954. This waiver continues to be effective under the present law, the Foreign Assistance Act of 1961, under the savings provisions, title 22, United States Code, section 2404 (a) and (b). The Department of Defense has implemented this provision for waiving the clause in paragraph 6-704.1 of the Armed Services Procurement Regulation, but specifically requires inclusion of the clause wherever practicable. We think that the diverse case examples of difficulties in military procurement discussed above are persuasive in showing that a similar privilege of omission is necessary without any such restrictive subject matter limitations, as in the revision we are proposing to you today.

In conclusion, I would like to emphasize, lest I leave you with the wrong overall impression, that what we are requesting is a privilege to deviate, not a change in the general rule. This privilege would be exercised only when in the best interests of the United States, as determined only by the agency head of the service involved and, in cases of refusal by a nongovernmental contractor based on contractor policy rather than law, with the concurrence of the Comptroller General. What is in the best interests of the United States will depend on the careful consideration of the facts of each particular case. Since the military services have found the clause to be useful, its inclusion would be obtained whenever possible; the privilege would not be equated in practice to capitulation to any stubborn contractor. But we maintain that there are some cases where the value of this clause is outweighed by essentiality of national defense or the practical necessities of efficient procurement operations. We ask you to give us the legal flexibility to meet these exceptional cases by enacting the proposed legislation allowing omission of the examination-of-records clause; a sectional analysis of this proposed legislation is attached.

I will be pleased to answer any questions that the committee may have.

(The sectional analysis follows.)

#### SECTIONAL ANALYSIS

*Section 1.*—This section amends chapter 137 of title 10, United States Code, so as to permit the omission of an examination-of-records clause from a negotiated contract with a foreign contractor or subcontractor if the agency head determines that the omission will serve the best interest of the Government. This determination requires the concurrence of the Comptroller General or his designee except in cases where the clause is to be omitted from a contract or subcontract with a contractor or subcontractor who is (1) a foreign government or its agency, or (2) precluded by the laws of the foreign country involved from making its records available.

*Section 2.*—This section amends section 304(c) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 395) as amended by the act of

October 31, 1951 (41 U.S.C. 254(c)), in substantially the same manner that section 1 amends chapter 137 of title 10, United States Code.

*Section 3.*—This section amends section 3(b) of the act of August 28, 1958, the Contract Authorization Act (50 U.S.C. 1433(b)), in substantially the same manner that section 1 amends chapter 137 of title 10, United States Code. This section is to be exercised only under regulations issued by the President.

Chairman RUSSELL. As I understand it, the examination-of-records provision only applies in the case of negotiated contracts?

Mr. MUNVES. Yes, sir.

Chairman RUSSELL. If a contract were made to the lowest and best bidder, pursuant to formal advertising, that law does not apply?

Mr. MUNVES. That is correct, sir.

Chairman RUSSELL. Well now, my own desire has been to extend the lowest and best bidder provisions. They were in effect almost across the board until World War II. From anything to a battleship on down, you had to let it to bid. Then you got into a hurry and you got to selecting people in awarding contracts. We have been in trouble with it one way or another ever since and I have endeavored to contract rather than expand the negotiated contracts. The Congress has been talked out of having the lowest and best bid on the theory that only the wisdom of those in the Department of Defense enables them to tell what was the best airplane and things of that kind, that you could not have a specific description of a torpedo boat that you could let to bid, but that the Department in its wisdom could figure out around amongst the contractors about who made the best one and go at it that way and not have the bid. Is it impossible to get bus services and dairy products in the Azores on a bid basis?

Mr. MUNVES. In the Azores, sir, we were acting more or less in conjunction with the judgment and advice and requirements of the local government there. The bus company, and I think even the dairy company in this case had some kind of a quasi-governmental status, and we did not have the freedom to exercise the kind of procurement authority that we do in this country. I am not suggesting that either the bus company or the dairy company were not giving us proper service or proper prices.

Chairman RUSSELL. I understand that.

Mr. MUNVES. But we were acting in a foreign environment and not under conditions completely under our control so we were more or less obliged to negotiate with these particular companies, and may I point out, Mr. Chairman, that in connection with procurement generally one of the exceptions to the requirement for formal advertising, to which you made reference obtains in foreign areas. We normally don't—

Chairman RUSSELL. I am well aware of that but it is not compulsory. You don't have to waive it, it is permissive.

Mr. MUNVES. That is right, it is permissive, not compulsory.

Chairman RUSSELL. Yes, that is right.

Mr. MUNVES. So in the case of the Azores we tried to obtain the inclusion of the examination-of-records clause. At first the contractor resisted, as I recall, and later the contractor showed an inclination to go along with it in order to eliminate prolonged difficulties of negotiation, but the local authorities were quite insistent that this was not an appropriate provision to be included there. I don't think it was a matter of their trying to avoid the proprieties of a proper pricing for bus service or for dairy products, but it had some

relationship to what they regard as their legal status or their sovereignty. And we went as far as contacting the Embassy in order to have the Embassy make overtures to the foreign office there in order to obtain the acquiescence of the local authorities but we were advised it was best for the United States not to make an issue of it. So finally, after about a year of correspondence back and forth we advocated recognizing the necessities of it.

Chairman RUSSELL. I realize we have had considerable difficulties in the Azores that did not grow out of the Azores, but other parts of the world. It did seem to me, however, when buying dairy products we could advertise for bids and set a standard of purity and quality and let them come in and offer it.

Mr. MUNVES. I don't know the details, Mr. Chairman, but I am sure that if there was an opportunity to obtain competition our representatives would have obtained it, or did obtain it.

Chairman RUSSELL. Do you know anything about the contract for the stevedoring in Japan? They say they won't give us but a 1-month contract at a time. Do we contract with the union or with some stevedoring firm?

Mr. MUNVES. We must be contracting with stevedoring firms in the Azores. I believe the Army—in Japan.

Chairman RUSSELL. In Japan.

Mr. MUNVES. I believe that the Army is conducting that procurement, am I right? Mr. Emanuel Kintisch, of the Army, says that is correct.

Chairman RUSSELL. Is that a Government function, stevedoring over there?

Mr. MUNVES. I don't believe so, sir. I have a brief statement in my file on that matter which I could read to you.

Chairman RUSSELL. All right, sir. If it is not too long. I am just curious about it because it would seem to me from your statement here we were dealing directly with the union, and we are nearly as much under control of the unions in Japan as we are here.

Mr. MUNVES. This statement will perhaps shed a little more light and detail on this particular situation. Contract sources for stevedoring services in Japan continue to object to the inclusion of the examination-of-record clause. The clauses are opposed on the premise that stevedoring rates in Japan are based on port tariffs established under regulatory controls of the ministry of transportation of the Government of Japan. To obtain essential services, monthly contracts are being executed which include the examination-of-records clause. However, informal advice from contractors—which indicates they are private contractors—indicates that if any audits are requested pursuant to the clause then any further extension of the contracts would be declined by the contractors. These services are being performed in the Yokohama area in Japan.

Chairman RUSSELL. I can see it will give you a great deal of trouble in little matters but we are expanding a field of contractual relations in the Department of Defense so widely, including with foreign governments, and we are negotiating every one of the contracts, and this would just give the foreign contractor another advantage over the domestic contractor in a number of instances. Of course it wasn't, I suppose in the dairy products and in the bus operation, or in parachute seats or what was it you mentioned—

Mr. MUNVES. That is a Navy procurement, yes, sir.

Chairman RUSSELL. And personnel carrier in Switzerland. We have nobody in this country that is able to make these jet aircraft seats? Is there anything complicated about a jet aircraft seat?

Mr. MUNVES. I think that in the case of jet aircraft seats, and again I have a statement I can read on that particular procurement, if you wish, but in substance, I would say that the Navy procured those seats because they were the best seats for their particular purposes at that time.

Chairman RUSSELL. They could make a better seat than our contractors could make?

Mr. MUNVES. I am told, too, that those seats were sole source for the particular planes in which they were installed.

Mr. MILBOURNE. When you change the seat you have to refigure the aircraft at a cost of a couple of million dollars. We selected the Martin-Baker seat in 1958 because it proved to be technically superior and was the only one which put a man in the seat and ejected, the other sources gave us primarily paper proposals.

Chairman RUSSELL. Do you know whether any inquiry was made as to whether any American company—

Mr. MILBOURNE. Yes, sir, we had five or six proposals from American companies but they did not have the hardware or a completely operational model in existence in 1958.

Chairman RUSSELL. They had this in stock, you could buy this?

Mr. MILBOURNE. No, Martin-Baker did not have this in stock per se at that time. We selected the seat in 1958 and we adapted that seat for all other models of Navy jet aircraft based in part on the reasoning that when a pilot is in need of his ejection seat he generally is not in complete command of his faculties, I mean he is under stress, and so we felt that if we retained one seat and have the ejection sequence such that it would be sort of automatic for all models of jet aircraft we would save more lives that way also.

Now the Air Force, by the way, I don't believe adopts this concept completely because they have a couple of different ejection seats, but they also use the Martin-Baker ejection seat.

Chairman RUSSELL. I certainly would not want to endanger or hazard the life of even one man operating an airplane by having him use an improperly constructed or ineffective jet propulsion system. But it does rather stagger me to contemplate that we don't have American contractors that could make just as good a seat and just as rapidly as any English contracting company.

Mr. MUNVES. Mr. Chairman, may I inject one thought that I reiterated earlier but it is an important one. These cases I am citing are exceptions, they are not the rule.

Chairman RUSSELL. Yes, but this bill will apply to all of them.

Mr. MUNVES. Yes.

Chairman RUSSELL. It will apply not only to these exceptions and if these exceptions have weaknesses in them, the rule that would lie outside these exceptions would open the gap even wider.

Mr. MUNVES. The bill would be very carefully implemented. In the first place, in any instances where the contractor merely refuses to accept the clause as a matter of policy we would have to get the concurrence of the GAO. In other instances the facts would have to be brought to the attention of officials at a high level and carefully reviewed before an exception is granted.

May I point out even in the case of MAP procurement where a similar authority exists today that the regulations require the inclusion of the clause as a general rule. In other words, we are only trying to accommodate those exceptional cases where we really have no choice, and we feel we should live within the law, we must live within the law, and we are bringing to the attention of the Congress the fact that there are some situations over which, for one reason or another, we have no control.

Chairman RUSSELL. In other words, there are political considerations involved as well as economic?

Mr. MUNVES. Political or sole-source considerations or something unique which requires us to buy despite the fact that the contractor says, "I will not accept your examination-of-records clause."

Chairman RUSSELL. I had assumed that was so. But, of course, we have a big surplus of dairy products in this country and we have to pay out a whole lot of money to give it away, and you have big tanks on airplanes now, you can fly an awful lot of it out to the Azores in a few hours if you wanted to. I had assumed there were some political considerations in that aspect of it.

Mr. MUNVES. Sir, may I say we took into consideration the cost factors and in the case of the bus services procuring similar bus services from an American contractor would have entailed \$288,646 a year on our estimate, as against \$126,750 that we would have paid the local company. So in all of these cases, we pretty exhaustively screen the information we get, the cost considerations and the requests for the exemption before we grant it. We are very reluctant, knowing the desires of the Congress and our own interests to grant exemptions in these areas.

Chairman RUSSELL. Well, I can see difficulties. When we pass this bill, we are only indicating the intent of the Congress. We can't see all the things that are going on, even the GAO can't find out, so it is removed completely from any supervision other than the conscience, intelligence, and integrity of the contracting official in the field overseas. That is the one standard we have left.

Mr. MUNVES. But we go to the GAO where the contractor is acting merely on his own policy, we do go to them and present the whole case before we even proceed and we ask them to concur by reason of essentiality. This is one of the protective devices in this particular statute.

Chairman RUSSELL. Senator Smith?

Senator SMITH. Thank you, Mr. Chairman.

Does the U.S. Government seek these foreign contractors, or do they seek the business?

Mr. MUNVES. I would say as in this country, in some cases we seek out the contractors, and in most cases, I should think they seek us out. I believe the problems that we encounter here are in those areas where we have to seek out the contractors, like in the stevedoring case. We have very little choice but to employ stevedores on the docks in Japan where they are loading or unloading vessels. If the stevedoring companies there insist that they will not subject themselves to the examination of their records because they are a regulated industry or their rates are regulated, and if they act in concert we have very little choice except to use our troops, so to speak, which would create other problems.

Chairman RUSSELL. I can understand that when it comes to some local need, but I am thinking more especially of something like the jet aircraft seats. Do we issue bids generally throughout the world, invitations to bid?

Mr. MUNVES. I can't speak on the basis of personal knowledge of the Navy procurement in this case, but I know from my own experiences in the Air Force and in the Navy that the Navy solicited all sources to obtain the best ejection seat at that time. They would hardly have gone abroad if in their estimation and judgment they could have done as well in this country at that time. I don't know what the situation is today.

Mr. MILBOURNE. Martin-Baker did have good seats, he did seek us out. He sells to tens of other countries, currently he sells ejection seats to approximately 40 other countries.

Senator SMITH. Of course, Mr. Chairman, we can't possibly compete as to economy with these foreign contractors, I don't know about the security that you brought up. That is all.

Chairman RUSSELL. Senator Ervin?

Senator ERVIN. Under the bill or the amendment, the Comptroller General would have nothing to do with the matter if the contractor was in fact the foreign government or an agency of the foreign government or the law of the foreign state prohibited such contract?

Mr. MUNVES. That is correct, sir.

Senator ERVIN. It is true, is it not, that a lot of the things we have to obtain, at least some of them, in foreign countries, are the subject of state monopolies?

Mr. MUNVES. I can't speak again on the basis of any information I have now, but I do believe that there are substantial purchases at times from quasi-governmental agencies.

Senator ERVIN. That is all.

Mr. MUNVES. Mr. Chairman, we are required in addition to make semiannual reports of waivers that are granted.

Chairman RUSSELL. This provision of law that was used by President Truman and by President Eisenhower, is that still in existence?

Mr. MUNVES. The most recent one is the one issued by President Eisenhower, because his Executive order implemented the most recent act.

Senator ERVIN. The law, the Foreign Aid and the Atomic Energy Act, are still in existence, are they not?

Mr. MUNVES. They are still in existence, yes.

Senator ERVIN. And these Executive orders issued by President Truman, and subsequently by President Eisenhower, were issued under authority of existing law and are confined to foreign aid programs and confined to the atomic energy?

Mr. MUNVES. That is correct. I was merely in my statement citing those as example where this relaxation existed.

Chairman RUSSELL. Does the Department of Defense have any estimate of the total amount of procurement that would likely be effected by this?

Mr. MUNVES. I would like to consult.

Chairman RUSSELL. Dollar value?

Mr. MUNVES. I would like to consult some of my people, sir.

Mr. MILBOURNE. I think possibly the question needs some clarification in that we would not apply this to all foreign procurement.

We would not exempt all. We would still make a vigorous effort to get the clause in foreign contracts. Offshore procurement in the Navy for 1965 was approximately \$179 million.

Chairman RUSSELL. \$179 million, and practically all of that was under negotiated agreements?

Mr. MILBOURNE. That was all under negotiated agreements, yes, sir. It does not mean that we would exclude the clause in that many dollars worth of foreign contracts.

Chairman RUSSELL. How about the Army and the Air Force, does anybody have those figures?

Mr. MUNVES. I believe I have them here, sir.

Chairman RUSSELL. All right.

Mr. MUNVES. This deals with the Navy offshore procurement. In 1961 the total was \$432 million. In 1962, \$402 million. In 1963, \$152 million. In 1964, \$206 million, and in 1965, \$179 million. Now that deals with the Navy Department. We have the Department of the Army figures, and also the Department of the Air Force figures which are incidentally listed in the Print of the Subcommittee No. 3 of the House Armed Services Committee which bears the date of July 26, 1965. They appear on page 3106. Does the chairman desire to have me read them?

Chairman RUSSELL. I will be glad to pass it around among my colleagues. I was just curious to know how much money would be affected. I would assume it would be a billion dollars a year at least.

Mr. MUNVES. That, sir, represents of course the total offshore procurement. It does not represent the amount involved in contracts in which an exemption may be granted in the course of a fiscal year.

Chairman RUSSELL. If there is nothing further, we thank you very much for your testimony.

Mr. MUNVES. Thank you.

### H.R. 3039

Chairman RUSSELL. The last bill we have on the agenda for today is H.R. 3039, a legislative proposal of the Department of Defense and managed by the Department of the Army.

(H.R. 3039 is as follows:)

[H.R. 3039, 89th Cong., 1st sess.]

AN ACT To amend section 1006 of title 37, United States Code, to authorize the Secretary concerned, under certain conditions, to make payment of pay and allowances to members of an armed force under his jurisdiction before the end of the pay period for which such payment is due

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 1006 of title 37, United States Code, is amended by adding the following new subsection after subsection (f):

“(g) Notwithstanding section 529 of title 31, Secretary concerned may, when the last day of the pay period falls on a Saturday, Sunday, or legal holiday, authorize the payment of pay and allowances to members of an armed force under his jurisdiction on the preceding workday but not more than three days before the last day of that pay period. If a member dies after he has received an advance payment under this subsection, but before the last day of the pay period for which the payment is made, no part of the amount so advanced is recoverable by the United States.”

Passed the House of Representatives August 2, 1965.

Attest:

RALPH R. ROBERTS,  
Clerk.

Chairman RUSSELL. This bill would permit early paydays for military personnel when the last day of the pay period falls on a Saturday, Sunday, or holiday. Under current law military paydays cannot occur before the last day of the period of entitlement, even though no service is required on the last day of this period. Under this bill the early payday could not come more than 3 days before the last day of the entitlement period.

Maj. Errol D. Clark will give to the committee the benefits to be derived from this measure.

Have a seat, Major.

**STATEMENT OF MAJ. ERROL D. CLARK, OFFICE, CHIEF OF  
FINANCE, DEPARTMENT OF THE ARMY**

Major CLARK. Thank you, sir.

Chairman RUSSELL. I will invite you to read your statement as a whole, seeing that it is just one page and a half.

Major CLARK. All right, sir.

Mr. Chairman and members of the committee, I am Maj. Errol D. Clark, Office, Chief of Finance, U.S. Army. It is a pleasure to appear before you in support of this bill.

The purpose of this legislation is to allow payment to military personnel up to 3 days in advance of the last day of a pay period when the last day of the pay period falls on a Saturday, Sunday, or a legal holiday.

Section 3648 of the Revised Statutes (sec. 529 of title 31, United States Code) prohibits payment in advance of service performed. The Comptroller General of the United States held in 8 Comp. Gen. 383 (Jan. 21, 1929) that payment for the last day of a month on the day before the last day of the month is a payment in advance of the time at which the right to pay accrues and is in violation of section 3648, Revised Statutes, even though no service is required of the individual on the last day of the month.

An amendment adopted by the House provides that if a member dies before the last day of the pay period after receiving an advance payment under this bill, the amount he did not earn will not be recoverable by the United States. However, the incident rate of such cases is so negligible and the amount of the loss so small that this factor should not be a deterrent to enactment of the proposed legislation. It is considered to be justifiable to accept the small element of risk involved in order that the welfare and morale of members of the Armed Forces may be promoted.

Authority to designate an early payday will contribute most favorably in increased morale, enable the commander to exercise greater flexibility in scheduling command activities, and could create a savings in the use of resources.

This concludes my statement. I shall be happy to answer any questions you may have on this bill.

Chairman RUSSELL. No person who is exercising any authority for the payment of personnel could allow more than 3 days in advance, as I understand it?

Major CLARK. That is correct, sir.

Chairman RUSSELL. To take care of holidays and Sundays.

Major CLARK. That is right.

Chairman RUSSELL. When the payday falls on them.  
Senator Smith?

Senator SMITH. I have no questions.

Chairman RUSSELL. Senator Ervin?

Senator ERVIN. No questions.

Chairman RUSSELL. Thank you very much, Major Clark.

Major CLARK. Thank you, sir.

Chairman RUSSELL. The committee will now resolve itself into executive session and we will ask our guests to retire.

(Whereupon, at 11:50 a.m., the committee recessed, to reconvene in executive session.)

(Subsequently, in executive session, the committee voted to report H.R. 3039, without amendment, as covered by S. Rept. 685.)

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