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APPROVED
DEC 26 1974

THE WHITE HOUSE

WASHINGTON

ACTION

Last Day: December 27

December 23, 1974

MEMORANDUM FOR: **THE PRESIDENT**

FROM: **KEN DOLE**

SUBJECT: **Enrolled Bill H.R. 5056 - Crediting Aviation Midshipman Service**

Attached for your consideration is H.R. 5056, sponsored by Representative McFall, which provides that time spent as an aviation midshipman in the Navy may be credited, as in the case of commissioned officers, for regular and reserve pay and retirement purposes.

OMB recommends approval and provides you with additional background information in its enrolled bill report (Tab A).

NSC, Max Friedersdorf and Phil Areeda recommend approval.

RECOMMENDATION

That you sign H.R. 5056 (Tab B).

*Posted in
Colorado
12/26
To Archive
12/30*



APPROVED
DEC 26 1974



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 20 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5056 - Crediting Aviation
Midshipman Service
Sponsor - Rep. McFall (D) California

Last Day for Action

December 27, 1974 - Friday

Purpose

Provides that time spent as an aviation midshipman in the Navy may be credited for certain military pay and retirement purposes.

Agency Recommendations

Office of Management and Budget	Approval
Department of Defense	Approval

Discussion

During the period 1946 to 1951 naval aviators were trained, and served their first two years on active duty, as aviation midshipmen. In the other services and in the Navy since 1951, such training and duty were and are performed in the status of commissioned officer, the status which aviation midshipmen were given at the successful completion of two years of active service.

H.R. 5056 provides that time spent in the status of aviation midshipman may be credited, as in the case of commissioned officers, for regular and reserve pay and retirement purposes.

W. Fred H. Russell

Assistant Director for
Legislative Reference

Enclosures





EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 20 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5056 - Crediting Aviation
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Sponsor - Rep. McFall (D) California

Last Day for Action

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Purpose

Provides that time spent as an aviation midshipman in the Navy may be credited for certain military pay and retirement purposes.

Agency Recommendations

Office of Management and Budget	Approval
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Discussion

During the period 1946 to 1951 naval aviators were trained, and served their first two years on active duty, as aviation midshipmen. In the other services and in the Navy since 1951, such training and duty were and are performed in the status of commissioned officer, the status which aviation midshipmen were given at the successful completion of two years of active service.

H.R. 5056 provides that time spent in the status of aviation midshipman may be credited, as in the case of commissioned officers, for regular and reserve pay and retirement purposes.

W. Fred H. Russell

Assistant Director for
Legislative Reference

Enclosures

To -
Hansen
12-20-74
1:00 p.m.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 810

Date: December 20, 1974

Time: 9:30 p.m.

FOR ACTION: NSC/S

Bhil Areeda

Max Friedersdorf

cc (for information): Warren Hendriks

Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Monday, December 23

Time: noon

SUBJECT:

Enrolled Bill H.R. 5056 - Crediting Aviation
Midshipman Service

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President





DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20350

December 18, 1974

Dear Mr. Ash:

Your transmittal sheet dated December 16, 1974, enclosing a facsimile of an enrolled bill of Congress, H.R. 5056, "To provide for crediting service as an aviation midshipman for purposes of retirement for nonregular service under chapter 67 of title 10, United States Code, and for pay purposes under title 37, United States Code," and requesting the comments of the Department of Defense, has been received. The Department of the Navy has been assigned the responsibility for the preparation of a report expressing the views of the Department of Defense.

Section 1 of H.R. 5056 would authorize service as an aviation midshipman to be counted in determining eligibility for receipt of retired pay and in determining years of service for the purpose of computing retired pay under chapter 67 of title 10, United States Code.

Section 2 of H.R. 5056 would authorize service as an aviation midshipman to be counted in determining years of service under section 205 of title 37, United States Code, for the purpose of computing the pay, allowances, and other benefits to which members of the uniformed services or their dependents will become entitled under title 37 for service performed on and after the date of enactment of the legislation. Section 2 would also authorize service as an aviation midshipman to be credited in determining the rate of basic pay used in computing retired pay for persons who become entitled to retired pay under section 1331 of title 10 on and after the date of enactment of the legislation.

As used in H.R. 5056, the term "aviation midshipman" refers to a person who was enrolled as a naval aviation officer candidate in accordance with section 3(b) of the Act of August 13, 1946, chapter 962 (60 Stat. 1057), as amended; was appointed a midshipman in the Navy and ordered to active duty for flight training in accordance with section 3(b) of the Act; upon satisfactory completion of flight training, was designated a naval aviator and assigned to duty involving flying in accordance with section 5 of the Act; and, following satisfactory completion of two years of flight training and flight duty as a midshipman, was commissioned in accordance with section 6(a)(2) of the Act. The Navy's aviation midshipman program authorized by the Act was discontinued after a brief trial; authority for the program has been repealed.

The Comptroller General has ruled that aviation midshipman service may be counted for the purpose of determining eligibility for retirement under section 6323 of title 10, United States Code (42 Comp. Gen. 669). H.R. 5056

would provide the same benefit for purposes of determining eligibility to receive retired pay for nonregular service.

The approval of this legislation would result in no increase in the budgetary requirements of the Department of Defense.

The Department of the Navy, on behalf of the Department of Defense, recommends approval of H.R. 5056.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. S. Potter". The signature is written in a cursive style with a long horizontal flourish extending to the right.

D. S. Potter
Under Secretary of the Navy

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D.C. 20503

724

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 810

Date: December 20, 1974

Time: 9:30 p.m.

FOR ACTION: NSC/S
Phil Areeda ✓
Max Friedersdorf

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Monday, December 23

Time: noon

SUBJECT:

Enrolled Bill H.R. 5056 - Crediting Aviation
Midshipman Service

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*Judy Johnston
Phil Areeda
12/23*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE
WASHINGTON
December 23, 1974

MEMORANDUM FOR: WARREN HENDRIKS
FROM: MAX L. FRIEDERSDORF *MLF*
SUBJECT: Action Memorandum - Log No. 810
Enrolled Bill H. R. 5056 - Crediting Aviation
Midshipman Service

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment



CREDITING OF CERTAIN SERVICE FOR PURPOSES OF
RESERVE RETIREMENT

SEPTEMBER 30, 1974.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. STRATTON, from the Committee on Armed Services,
submitted the following

REPORT

[To accompany H.R. 5056]

The Committee on Armed Services, to whom was referred the bill (H.R. 5056) to provide for crediting service as an aviation midshipman for purposes of retirement for nonregular service under chapter 67 of title 10, United States Code, and for pay purposes under title 37, United States Code, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 5056 is to allow service as an "aviation midshipman" to be counted for the purposes of retirement for nonregular service under chapter 67, title 10, United States Code, and for pay purposes under title 37, United States Code.

EXPLANATION OF THE BILL

The Navy conducted a so-called "aviation midshipman program" for a brief period after World War II. The program was authorized by the Act of August 13, 1946, but it was discontinued after several years. Those in the program served in flight training and on flight duty. A number of them saw active duty in combat during the Korean War while in the status of aviation midshipmen and at least one was killed in combat.

"AVIATION MIDSHIPMAN" A MISNOMER

The term "aviation midshipman" which was used for this program is a misnomer since the word "midshipman" is normally used for one in a student status, but these individuals were in the status of junior

officers. A naval officer normally goes through aviation training, for example, after he has completed his schooling and been commissioned an officer. These Reserve aviation midshipmen were in a situation of performing aviation training or active services analogous to duty normally performed by an officer who has already been commissioned. It should be very clearly understood that this legislation simply provides credit for this kind of active officer service under a program called "the aviation midshipman program" and is in no way a precedent for giving pay or retirement credit for academy time or other kinds of precommissioning schooling.

The Comptroller General has ruled that an officer's "aviation mid-shipment service" is active-duty service for the purpose of determining eligibility for 20-year active-duty retirement (42 Com. Gen. 669). H.R. 5056 would provide consistency in interpretation by permitting credit for Reserve retirement at age 60 for such service. The records of the Department of the Navy indicate that fewer than 100 persons are in a position to have their Reserve-retirement entitlement affected by this legislation.

CREDIT FOR ACTIVE-DUTY OFFICER PAY PURPOSES

The bill would also amend section 205(a)(1) of title 37, United States Code, to allow "aviation midshipman" time to be credited for pay purposes by active-duty officers. Since the time is credited for active-duty retirement, it is consistent with equity to also provide credit for pay purposes. The impact of this change would be minor and would result in a few officers receiving additional pay because the added service credit would provide enough service to earn an additional longevity step.

COMMITTEE POSITION

The Committee on Armed Services, on September 24, 1974, a quorum being present, without objection approved H.R. 5056, without amendment, and recommends its enactment.

FISCAL DATA

The enactment of this legislation will not result in any increased budgetary requirements for the Department of Defense.

DEPARTMENTAL POSITION

The Department of Defense supports the bill and OMB interposes no objection as is indicated in the following correspondence, which is hereby made a part of this report.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., June 8, 1973.

HON F. EDWARD HÉBERT,
Chairman, Committee on Armed Services, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: YOUR request for comment on H.R. 5056, a bill "To provide for crediting service as an aviation midshipman for

purposes of retirement for nonregular service under chapter 67 of title 10, United States Code, and for pay purposes under title 37, United States Code," has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

The purpose of section 1 of this bill is to authorize aviation midshipman service to be counted in determining eligibility for receipt of retired pay under chapter 67 of title 10, United States Code. That chapter provides for the payment of retired pay at age 60 to members and former members of the armed forces who have completed 20 years of satisfactory reserve or other non-regular service, active and inactive. Section 1332(b)(7) of title 10, United States Code, lists the type of service that may be credited. H.R. 5056 would add service as an aviation midshipman to this list. Section 2 of the bill would amend section 205(a)(1) of title 37, United States Code, so as to make aviation midshipman service creditable in determining an officer's rate of basic pay.

The Navy's aviation midshipman program was authorized by the Act of August 13, 1946, chapter 962 (60 Stat. 1057). It was discontinued after a brief trial, and authority for it has been repealed. Officer candidates in the program served two years in flight training and on flight duty in the status of aviation midshipmen. The Comptroller General has ruled that an officer's aviation midshipman service is service on active duty for the purpose of determining his eligibility for 20 year active duty retirement under section 6323 of title 10, United States Code (42 Comp. Gen. 669). It is therefore anomalous that reserve officers cannot count this service in determining their eligibility for retired pay at age 60. The subject bill would correct this discrepancy. It would also authorize service as an aviation midshipman to be creditable toward determining an officer's rate of basic pay by amending section 205(a)(1) of title 37, United States Code.

The records of this Department disclose that fewer than 100 persons are in a position to have their reserve entitlements affected by this legislation. Accordingly, the bill's enactment would not result in increased budgetary requirements for the Department of Defense.

The Department of the Navy, on behalf of the Department of Defense, supports the enactment of H.R. 5056.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on H.R. 5056 for the consideration of the Committee.

For the Secretary of the Navy.

Sincerely yours,

E. H. WILLETT,
Captain, U.S. Navy, Deputy Chief.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, there is printed below in parallel columns the text of provisions of existing law which would be repealed or amended by the various provisions of the bill as reported.

EXISTING LAW

THE BILL AS REPORTED

SECTION 1332 OF TITLE 10, UNITED STATES CODE

§ 1332. Computation of years of service in determining entitlement to retired pay

(a) Except as provided in subsection (b), for the purpose of determining whether a person is entitled to retired pay under section 1331 of this title, his years of service are computed by adding—

(1) his years of service, before July 1, 1949, in—

(A) the armed forces;

(B) the federally recognized National Guard before June 15, 1933;

(C) a federally recognized status in the National Guard before June 15, 1933;

(D) the National Guard after June 14, 1933, if his service therein was continuous from the date of his enlistment in the National Guard, or his Federal recognition as an officer therein, to the date of his enlistment or appointment, as the case may be, in the National Guard of the United States, the Army National Guard of the United States, or the Air National Guard of the United States;

(E) the Naval Reserve Force;

(F) the Naval Militia that conformed to the standards prescribed by the Secretary of the Navy;

(G) the National Naval Volunteers;

(H) the Army Nurse Corps, the Navy Nurse Corps, the Nurse Corps Reserve of the Army, or the Nurse Corps Reserve of the Navy, as it existed at any time after February 2, 1901;

(I) the Army under an appointment under the Act of December 22, 1942 (ch. 805, 56 Stat. 1072); and

(J) an active full-time status, except as a student or apprentice, with the Medical Department of the Army as a civilian employee—

(i) in the dietetic or physical therapy categories, if the service was performed after April 6, 1917, and before April 1, 1943; or

(ii) if the service was performed before appointment in the Army Nurse Corps or the Women's Medical Specialist Corps and before January 1, 1949, or before appointment in the Air Force before January 1, 1949, with a view to designation as an Air Force nurse or medical specialist;

(2) each one-year period, after July 1, 1949, in which he has been credited with at least 50 points on the following basis—

(A) one point for each day of—

(i) active service; or

(ii) full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a pre-

scribed course of instruction at a school designated as a service school by law or by the Secretary concerned;

if that service conformed to required standards and qualifications;

(B) one point for each attendance at a drill or period of equivalent instruction that was prescribed for that year by the Secretary concerned and conformed to the requirements prescribed by law, including attendance under section 502 of title 32; and

(C) points at the rate of 15 a year for membership in a reserve component of an armed force, in the Army or the Air Force without component, or in any other category covered by subsection (a) (1) except a regular component.

For the purpose of clauses (A), (B), and (C), service in the National Guard shall be treated as if it were service in a reserve component, if the person concerned was later appointed in the National Guard of the United States, the Air National Guard of the United States, or as a Reserve of the Army or the Air Force, and served continuously in the National Guard from the date of his Federal recognition to the date of that appointment;

(3) his years of active service in the Commissioned Corps of the Public Health Service during such time as the Commissioned Corps was a military service pursuant to declaration made by the President under section 216 of the Public Health Service Act (42 U.S.C. 217); and

(4) his years of active commissioned service in the Coast and Geodetic Survey during such time as he was transferred to the service and jurisdiction of a military department pursuant to section 16 of the Act of May 22, 1917, (33 U.S.C. 855).

(b) The following service may not be counted under subsection (a);

(1) Service (other than active service) in an inactive section of the Organized Reserve Corps or of the Army Reserve, or in an inactive section of the officers' section of the Air Force Reserve.

(2) Service (other than active service) after June 30, 1949, while on the Honorary Retired List of the Naval Reserve or of the Marine Corps Reserve.

(3) Service in the inactive National Guard.

(4) Service in a non-federally recognized status in the National Guard,

(5) Service in the Fleet Reserve or the Fleet Marine Corps Reserve.

(6) Service as an inactive Reserve nurse of the Army Nurse Corps established by the Act of February 2, 1901 (ch. 192, 31 Stat. 753), as amended, and service before July 1, 1938, as an inactive Reserve nurse of the Navy Nurse Corps established by the Act of May 13, 1908 (ch. 166, 35 Stat. 146).

(7) Service in any status other than that as commissioned officer, warrant officer, nurse, flight officer appointed aviation cadet, or enlisted member, and that described in clauses (I) and (J) of subsection (a) (1). Aug. 10, 1956, c. 1041, 70A Stat. 102; Sept. 2,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1332(b) (7) of title 10, United States Code, is amended by inserting "aviation midshipman," immediately after "flight officer,".

1958, Pub. L. 85-861, § 33(a)(9), 72 Stat. 1565; Aug. 25, 1959, Pub. L. 86-197, § 1(1)-(3), 73 Stat. 425; Oct. 8, 1964, Pub. L. 88-636, § 1, 78 Stat. 1034.

SECTION 205 OF TITLE 37, UNITED STATES CODE

§ 205. Computation: service creditable

(a) Subject to subsections (b)-(d) of this section, for the purpose of computing the basic pay of a member of a uniformed service, his years of service are computed by adding—

(1) all periods of active service as an officer, Army field clerk, flight officer, or enlisted member of a uniformed service;

(2) all periods during which he was enlisted or held an appointment as an officer, Army field clerk, or flight officer of—

(A) a regular component of a uniformed service;

(B) the Regular Army Reserve;

(C) the Organized Militia before July 1, 1916;

(D) the National Guard;

(E) the National Guard Reserve;

(F) a reserve component of a uniformed service;

(G) the Naval Militia;

(H) the National Naval Volunteers;

(I) the Naval Reserve Force;

(J) the Army without specification of component;

(K) the Air Force without specification of component;

(L) the Marine Corps Reserve Force;

(M) the Philippine Scouts; or

(N) the Philippine Constabulary;

(3) for a commissioned officer in service on June 30, 1922, all service that was then counted in computing longevity pay and all service as a contract surgeon serving full time;

(4) all periods during which he held an appointment as a nurse, reserve nurse, or commissioned officer in the Army Nurse Corps as it existed at any time before April 16, 1947, the Navy Nurse Corps as it existed at any time before April 16, 1947, or the Public Health Service, or a reserve component of any of them;

(5) all periods during which he was a deck officer or junior engineer in the Environmental Science Services Administration;

(6) all periods that, under law in effect on January 10, 1962, were authorized to be credited in computing basic pay;

(7) for an officer of the Medical Corps or Dental Corps of the Army or Navy, an officer of the Air Force designated as a medical or dental officer, or an officer of the Public Health Service commissioned as a medical or dental officer—four years;

(8) for a medical officer named in clause (7) who has completed one year of medical internship or the equivalent thereof—one year in addition to the four years prescribed by clause (7); and

SEC. 2. Section 205(a)(1) of title 37, United States Code, is amended by inserting "aviation midshipman," immediately after "flight officer."

(9) all periods while—

(A) on a temporary disability retired list, honorary retired list, or a retired list of a uniformed service;

(B) entitled to retired pay, retirement pay, or retainer pay, from a uniformed service or the Veterans' Administration, as a member of the Fleet Reserve or the Fleet Marine Corps Reserve; or

(C) a member of the Honorary Reserve of the Officers' Reserve Corps or the Organized Reserve Corps.

Except for any period of active service described in clause (1) of this subsection and except as provided by section 1402(b)-(d) of title 10, a period of service described in classes (2)-(9) of this subsection that is performed while on a retired list, in a retired status, or in the Fleet Reserve or Marine Corps Reserve, may not be included to increase retired pay, retirement pay, or retainer pay. For the purpose of clause (5) of this subsection, periods during which a member was a deck officer or junior engineer in the Environmental Science Services Administration includes periods during which a member was a deck officer or junior engineer in the Coast and Geodetic Survey.

(b) A period of time may not be counted more than once under subsection (a) of this section. In addition, the amount of service authorized to be credited under clause (7) or (8) of subsection (a) of this section to an officer shall be reduced by the amount of any service otherwise

H. R. 1386

10

creditable under that subsection that covers any part of his professional education or internship.

(c) Notwithstanding any other law, service credited under clause (7) or (8) of subsection (a) of this section may not—

(1) be included in establishing eligibility for voluntary or involuntary retirement or separation from a uniformed service;

(2) increase the retired or retirement pay of a person who became entitled to that pay before May 1, 1956; or

(3) increase the retired pay of a person who is entitled to that pay under chapter 67 of title 10, after April 30, 1956 and who does not perform active duty after May 1, 1956.

(d) The periods of service authorized to be counted under subsection (a) of this section shall, under regulations prescribed by the Secretary concerned, include service performed by a member of a uniformed service before he became 18 years of age.

(e) Notwithstanding subsection (a), a commissioned officer may not count in computing his basic pay any period of service after October 13, 1964, that he performed concurrently as a member of a uniformed service and as a member of the Senior Reserve Officers' Training Corps. Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 458; Pub. L. 88-647, Title II, § 202(1), Oct. 13, 1964, 78 Stat. 1070; Pub. L. 89-718, § 49(a) (1), (b), Nov. 2, 1966, 80 Stat. 1121; Pub. L. 90-623, § 3(3), Oct. 22, 1968, 82 Stat. 1314.

H. R. 1386

11

SUMMARY

PURPOSE

The purpose of the bill is to authorize credit of service in the "aviation midshipman program" for Reserve retirement.

COMMITTEE POSITION

The Committee on Armed Services, on September 24, 1974, a quorum being present, approved H.R. 5056, without objection, and recommends its enactment.

FISCAL DATA

There will be no increase in the budgetary requirements of the Department of Defense as a result of enactment of this legislation.

DEPARTMENTAL POSITION

The Department of Defense supports the bill.

○

Calendar No. 1268

93^d CONGRESS }
2^d Session }

SENATE

{ REPORT
{ No. 93-1341

CREDITING OF CERTAIN SERVICE FOR PURPOSES OF RESERVE RETIREMENT

DECEMBER 12, 1974.—Ordered to be printed

Mr. NUNN, from the Committee on Armed Services,
submitted the following

REPORT

[To accompany H.R. 5056]

The Committee on Armed Services, to which was referred the bill (H.R. 5056) to provide for crediting service as an aviation midshipman for purposes of retirement for nonregular service under chapter 67 of title 10, United States Code, and for pay purposes under title 37, United States Code, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

This legislation would allow service as an "aviation midshipman" to be counted for purposes of retirement for nonregular service under chapter 67 of title 10, United States Code, and for pay purposes under title 37, United States Code.

BACKGROUND OF THE BILL

The Navy conducted a so-called "aviation midshipman program" for a brief period after World War II. The program was authorized by the act of August 13, 1946, but it was discontinued after several years. Those in the program served in flight training and on flight duty. A number of them saw active duty in combat during the Korean War while in the status of aviation midshipmen and at least one was killed in combat.

THE AVIATION MIDSHIPMAN PROGRAM

As used in H.R. 5056, the term "aviation midshipman" refers to a person who was enrolled as a naval aviation officer candidate in accordance with section 3(b) of the Act of August 13, 1946, chapter 962

(60 Stat. 1057), as amended; was appointed a midshipman in the Navy and ordered to active duty for flight training in accordance with section 3(b) of the Act; upon satisfactory completion of flight training, was designated a naval aviator and assigned to duty involving flying in accordance with section 5 of the Act; and, following satisfactory completion of two years of flight training and flight duty as a midshipman, was commissioned in accordance with section 6(a)(2) of the Act. It is the two years of flight training and flight duty as a midshipman which would be credited as active duty service for nonregular retirement and for active duty service for pay purposes under H.R. 5056. Authority for the aviation midshipman program was subsequently repealed, and the last input into the program was in 1951.

A naval officer normally goes through aviation training after he has completed his academic education and been commissioned an officer. These Reserve "aviation midshipmen" were in a situation of performing aviation training and active service analogous to duty normally performed by an officer who has already been commissioned. It should be very clearly understood that this legislation simply provides credit for this kind of active service under the aviation midshipman program and is in no way a precedent for giving pay or retirement credit for time spent at an academy or at other kinds of precommissioning schooling.

CREDIT FOR NONREGULAR RETIREMENT

Section 1 of H.R. 5056 would authorize service as an aviation midshipman to be counted as active service for determining eligibility for receipt of nonregular retired pay and for determining years of service for the purpose of computing retired pay under chapter 67 of title 10, United States Code. The Comptroller General has ruled that an officer's "aviation midshipman service" is active-duty service for the purpose of determining eligibility for 20-year active-duty retirement (42 Com. Gen. 669). H.R. 5056 would provide consistency in interpretation by permitting credit for reserve retirement at age 60 for such service.

There are fewer than 100 inactive reservists who would benefit from H.R. 5056. Many who participated in the aviation midshipman program did not continue their reserve affiliation. Since no former aviation midshipman has yet reached the age of 60 (retirement age for inactive reservists), no inactive reservists are yet eligible to receive retirement pay.

CREDIT FOR PAY PURPOSES

Section 2 of H.R. 5056 would authorize service as an aviation midshipman to be counted in determining years of service under section 205 of title 37, United States Code, for the purpose of computing the pay, allowances and other benefits to which members of the uniformed services or their dependents will become entitled under title 37 for service performed on and after the date of enactment of the legislation. Section 2 would also authorize service as an aviation midshipman to be credited in determining the rate of basic pay used in computing retired pay for persons who become entitled to retired pay under section 1331 of title 10 on and after the date of enactment of the legislation.

PAY RECIPIENTS AFFECTED BY THE BILL

There were 255 former aviation midshipmen on active duty as of June 30, 1974. Of these, approximately 75 are captains who could possibly receive an immediate increased pay rate under H.R. 5056. These are members who have more than 24 years of service but fewer than 26. This legislation would place them in the higher bracket of over 26 years of service, and for a year or so, they would get an increased pay rate of about \$2,000 per year. This increased pay rate would only apply to service performed after the date of enactment of the legislation. There would be no immediate increase in pay for any of the remaining former aviation midshipmen on active duty, although some may become eligible at a later date.

FISCAL DATA

The enactment of this legislation will not result in any increased budgetary requirements for the Department of Defense.

DEPARTMENTAL POSITION

The Department of Defense supports the bill and the Office of Management and Budget has no objection as indicated in the following letter which is hereby set out and made a part of this report.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., November 7, 1974.

HON. JOHN C. STENNIS,
*Chairman, Committee on Armed Services,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to a request from a member of the Senate Armed Services Committee staff for comment on H.R. 5056, an act "To provide for crediting service as an aviation midshipman for purposes of retirement for nonregular service under chapter 67 of title 10, United States Code, and for pay purposes under title 37, United States Code." The Department of the Navy has been designated as the representative of the Department of Defense for this legislation.

The purpose of section 1 of H.R. 5056 is to authorize aviation midshipman service to be counted in determining eligibility for receipt of retired pay under chapter 67 of title 10, United States Code. That chapter provides for the payment of retired pay at age 60 to members and former members of the armed forces who have completed 20 years of satisfactory reserve or other non-regular service, active and inactive. Section 1322(b)(7) of title 10, United States Code, lists the type of service that may be credited. H.R. 5056 would add service as an aviation midshipman to this list. Section 2 of the legislation would amend section 205(a)(1) of title 37, United States Code, so as to make aviation midshipman service creditable in determining an officer's rate of basic pay.

The Navy's aviation midshipman program was authorized by the Act of August 13, 1946, chapter 962 (60 Stat. 1057). It was discontinued

after a brief trial, and authority for it has been repealed. Officer candidates in the program served two years in flight training and on flight duty in the status of aviation midshipmen. The Comptroller General has ruled that an officer's aviation midshipman service is service on active duty for the purpose of determining his eligibility for 20 year active duty retirement under section 6323 of title 10, United States Code (42 Comp. Gen. 669). It is therefore anomalous that reserve officers cannot count this service in determining their eligibility for retired pay at age 60. H.R. 5056 would correct this discrepancy. It would also authorize service as an aviation midshipman to be creditable toward determining an officer's rate of basic pay by amending section 205(a)(1) of title 37, United States Code.

The records of this Department disclose that fewer than 100 persons are in a position to have their reserve entitlements affected by this legislation. Accordingly, the enactment of H.R. 5056 would not result in increased budgetary requirements for the Department of Defense.

The Department of the Navy, on behalf of the Department of Defense, supports the enactment of H.R. 5056,

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on H.R. 5056 for the consideration of the Committee.

For the Secretary of the Navy.
Sincerely yours,

E. H. WILLETT,
Captain, U.S. Navy,
Deputy Chief.

CHANGES IN EXISTING LAW

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

TITLE 10, UNITED STATES CODE—ARMED FORCES

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CHAPTER 67.—RETIRED PAY FOR NON-REGULAR SERVICE

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§ 1332. Computation of years of service in determining entitlement to retired pay

(a) Except as provided in subsection (b), for the purpose of determining whether a person is entitled to retired pay under section 1331 of this title, his years of service are computed by adding—

- (1) his years of service, before July 1, 1949, in—
 - (A) the armed forces;
 - (B) the federally recognized National Guard before June 15, 1933;

(C) a federally recognized status in the National Guard before June 15, 1933;

(D) the National Guard after June 14, 1933, if his service therein was continuous from the date of his enlistment in the National Guard, or his Federal recognition as an officer therein, to the date of his enlistment or appointment, as the case may be, in the National Guard of the United States, the Army National Guard of the United States, or the Air National Guard of the United States;

(E) the Naval Reserve Force;

(F) the Naval Militia that conformed to the standards prescribed by the Secretary of the Navy;

(G) the National Naval Volunteers;

(H) the Army Nurse Corps, the Navy Nurse Corps, the Nurse Corps Reserve of the Army, or the Nurse Corps Reserve of the Navy, as it existed at any time after February 2, 1901;

(I) the Army under an appointment under the Act of December 22, 1942 (ch. 805, 56 Stat. 1072); and

(J) an active full-time status, except as a student or apprentice, with the Medical Department of the Army as a civilian employee—

(i) in the dietetic or physical therapy categories, if the service was performed after April 6, 1917, and before April 1, 1943; or

(ii) in the occupational therapy category, if the service was performed before appointment in the Army Nurse Corps or the Women's Medical Specialist Corps and before January 1, 1949, or before appointment in the Air Force before January 1, 1949, with a view to designation as an Air Force nurse or medical specialist;

(2) each one-year period, after July 1, 1949, in which he has been credited with at least 50 points on the following basis—

(A) one point for each day of—

(i) active service; or

(ii) full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned;

if that service conformed to required standards and qualifications;

(B) one point for each attendance at a drill or period of equivalent instruction that was prescribed for that year by the Secretary concerned and conformed to the requirements prescribed by law, including attendance under section 502 of title 32; and

(C) points at the rate of 15 a year for membership in a reserve component of an armed force, in the Army or the Air Force without component, or in any other category covered by subsection (a)(1) except a regular component.

For the purpose of clauses (A), (B), and (C), service in the National Guard shall be treated as if it were service in a reserve

component, if the person concerned was later appointed in the National Guard of the United States, the Army National Guard of the United States, the Air National Guard of the United States, or as a Reserve of the Army or the Air Force, and served continuously in the National Guard from the date of his Federal recognition to the date of that appointment;

(3) his years of active service in the Commissioned Corps of the Public Health Service during such time as the Commissioned Corps was a military service pursuant to declaration made by the President under section 216 of the Public Health Service Act (42 U.S.C. 217); and

(4) his years of active commissioned service in the Coast and Geodetic Survey during such time as he was transferred to the service and jurisdiction of a military department pursuant to section 16 of the Act of May 22, 1917 (33 U.S.C. 855).

(b) The following service may not be counted under subsection (a):

(1) Service (other than active service) in an inactive section of the Organized Reserve Corps or of the Army Reserve, or in an inactive section of the officers' section of the Air Force Reserve.

(2) Service (other than active service) after June 30, 1949, while on the Honorary Retired List of the Naval Reserve or of the Marine Corps Reserve.

(3) Service in the inactive National Guard.

(4) Service in a non-federally recognized status in the National Guard.

(5) Service in the Fleet Reserve or the Fleet Marine Corps Reserve.

(6) Service as an inactive Reserve nurse of the Army Nurse Corps established by the Act of February 2, 1901 (ch. 192, 31 Stat. 753), as amended, and service before July 1, 1938, as an inactive Reserve nurse of the Navy Nurse Corps established by the Act of May 13, 1908 (ch. 166, 35 Stat. 146).

(7) Service in any status other than that as commissioned officer, warrant officer, nurse, flight officer, *aviation midshipman*, appointed aviation cadet, or enlisted member, and that described in clauses (I) and (J) of subsection (a)(1)

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TITLE 37, UNITED STATES CODE—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

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CHAPTER 3—BASIC PAY

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§ 205. Computation: service creditable

(a) Subject to subsections (b)–(d) of this section, for the purpose of computing the basic pay of a member of a uniformed services his years of service are computed by adding—

(1) all periods of active service as an officer, Army field clerk, flight officer, *aviation midshipman*, or enlisted member of a uniformed service;

(2) all periods during which he was enlisted or held an appointment as an officer, Army field clerk, or flight officer of—

(A) a regular component of a uniformed service;

(B) the Regular Army Reserve;

(C) the Organized Militia before July 1, 1916;

(D) the National Guard;

(E) the National Guard Reserve;

(F) a reserve component of a uniformed service;

(G) the Naval Militia;

(H) the National Naval Volunteers;

(I) the Naval Reserve Force;

(J) the Army without specification of component;

(K) the Air Force without specification of component;

(L) the Marine Corps Reserve Force;

(M) the Philippine Scouts; or

(N) the Philippine Constabulary.

(3) for a commissioned officer in service on June 30, 1922, all service that was then counted in computing longevity pay and all service as a contract surgeon serving full time;

(4) all periods during which he held an appointment as a nurse, reserve nurse, or commissioned officer in the Army Nurse Corps as it existed at any time before April 16, 1947, the Navy Nurse Corps as it existed at anytime before April 16, 1947, or the Public Health Service, or a reserve component or any of them;

(5) all periods during which he was a deck officer or junior engineer in the Environmental Science Services Administration;

(6) all periods that, under law in effect on January 10, 1962, were authorized to be credited in computing basic pay;

(7) for an officer of the Medical Corps or Dental Corps of the Army or Navy, an officer of the Air Force designated as a medical or dental officer, or an officer of the Public Health Service commissioned as a medical or dental officer—four years;

(8) for a medical officer named in clause (7) who has completed one year of medical internship or the equivalent thereof—one year in addition to the four years prescribed by clause (7); and

(9) all periods while—

(A) on a temporary disability retired list, honorary retired list, or a retired list of a uniformed service;

(B) entitled to retired pay, retirement pay, or retainer pay, from a uniformed service or the Veterans' Administration, as a member of the Fleet Reserve or the Fleet Marine Corps Reserve; or

(C) a member of the Honorary Reserve of the Officers' Reserve Corps or the Organized Reserve Corps.

Except for any period of active service described in clause (1) of this subsection and except as provided by section 1402(b)–(d) of title 10, a period of service described in clauses (2)–(9) of this subsection that is performed while on a retired list, in a retired status, or in the Fleet Reserve of Fleet Marine Corps Reserve, may not be included to increase retired pay, retirement pay, or retainer pay. For the purpose of clause (5) of this subsection, periods during which a member was a deck officer or junior engineer in the Environmental Science Services Administration includes periods during which a member was a deck officer or junior engineer in the Coast and Geodetic Survey.

(b) A period of time may not be counted more than once under subsection (a) of this section. In addition, the amount of service authorized to be credited under clause (7) or (8) of subsection (a) of this

section to an officer shall be reduced by the amount of any service otherwise creditable under that subsection that covers any part of his professional education or internship.

(c) Notwithstanding any other law, service credited under clause (7) or (8) of subsection (a) of this section may not—

(1) be included in establishing eligibility for voluntary or involuntary retirement or separation from a uniformed service;

(2) increase the retired or retirement pay of a person who became entitled to that pay before May 1, 1956; or

(3) increase the retired pay of a person who is entitled to that pay under chapter 67 of title 10, after April 30, 1956, and who does not perform active duty after May 1, 1956.

(d) The periods of service authorized to be counted under subsection (a) of this section shall, under regulations prescribed by the Secretary concerned, include service performed by a member of a uniformed service before he became 18 years of age.

(e) Notwithstanding subsection (a), a commissioned officer may not count in computing his basic pay any period of service after October 13, 1964, that he performed concurrently as a member of a uniformed service and as a member of the Senior Reserve Officers' Training Corps.

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Ninety-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,
one thousand nine hundred and seventy-four*

An Act

To provide for crediting service as an aviation midshipman for purposes of retirement for nonregular service under chapter 67 of title 10, United States Code, and for pay purposes under title 37, United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1332 (b) (7) of title 10, United States Code, is amended by inserting "aviation midshipman," immediately after "flight officer,"

SEC. 2. Section 205 (a) (1) of title 37, United States Code, is amended by inserting "aviation midshipman," immediately after "flight officer,"

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

December 16, 1974

Dear Mr. Director:

The following bills were received at the White House on December 16th:

✓ S.J. Res. 263	✓ H.R. 1439
✓ H.R. 1355	✓ H.R. 1506
✓ H.R. 5096	✓ H.R. 15818
✓ H.R. 7072	✓ H.R. 16006
✓ H.R. 7077	✓ H.R. 16424
✓ H.R. 11013	

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.