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APPROVED

FEB 13 1976

*Signed
2/13/76*

THE WHITE HOUSE
WASHINGTON
February 10, 1976

ACTION

Last Day: February 13

Posted

2/13

To Archives

2/13

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON *[Signature]*
SUBJECT: H.R. 508 - Authority for certain
Defense employees to administer oaths

Attached for your consideration is H.R. 508, sponsored by Representative Henderson, which would permit civilian personnel of the Department of Defense to administer oaths to witnesses in connection with official investigations.

Additional information is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus), NSC and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 508 at Tab B.





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

FEB 6 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 508 - Authority for
certain Defense employees to administer
oaths
Sponsor - Rep. Henderson (D) North Carolina

Last Day for Action

February 13, 1976 - Friday

Purpose

Authorizes civilians employed by the Department of
Defense to administer oaths while conducting official
investigations.

Agency Recommendations

Office of Management and Budget	Approval
Department of Defense	Approval
Civil Service Commission	Approval
Department of Justice	No objection

Discussion

The enrolled bill is substantially identical, except
for technical changes, to draft legislation proposed
by the Department of Defense.

Under existing law, active duty military personnel
detailed to conduct investigations are authorized to
administer oaths in the performance of their duties.
This authority, however, does not apply to civilian
employees of the Department of Defense conducting
similar investigations. Although other provisions
of law permit employees of an Executive department to
administer oaths when investigating frauds against

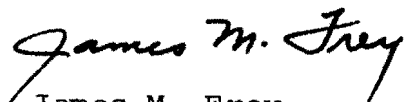


the United States or misconduct by Federal employees or agents, many investigations conducted by Defense Department employees do not fall within the scope of this authority.

H.R. 508 would permit civilian personnel of the Department of Defense assigned to investigative duties to administer oaths to witnesses in connection with official investigations. The need for such authority has become increasingly apparent in recent years. For example, while military members formerly conducted nearly all personnel security background investigations for Defense, civilian employees now conduct more than half of these investigations. When such investigations require administration of an oath, the inability of civilian employees to perform this task often results in unnecessary delays while military investigators are called in for the sole purpose of administering an oath.

In its enrolled bill letter, the Civil Service Commission states:

"The Civil Service Commission has authority to administer oaths in the course of its personnel investigations (5 U.S.C. 1306) and consequently recognizes the value of oath-taking in investigations. Accordingly, we support this bill authorizing Department of Defense civilian employees to administer oaths in the course of their investigations."



James M. Frey
Assistant Director for
Legislative Reference

Enclosures



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

FEB 6 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 508 - Authority for
certain Defense employees to administer
oaths
Sponsor - Rep. Henderson (D) North Carolina

Last Day for Action

February 13, 1976 - Friday

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Authorizes civilians employed by the Department of
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investigations.

Agency Recommendations

Office of Management and Budget	Approval
Department of Defense	Approval
Civil Service Commission	Approval
Department of Justice	No objection

Discussion

The enrolled bill is substantially identical, except
for technical changes, to draft legislation proposed
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Under existing law, active duty military personnel
detailed to conduct investigations are authorized to
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This authority, however, does not apply to civilian
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similar investigations. Although other provisions
of law permit employees of an Executive department to
administer oaths when investigating frauds against

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 9

Time: 800am

FOR ACTION: NSC/S
Dick Parsons
Ken Lazarus
Max Friedersdorf

cc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, February 10

Time: 500pm

SUBJECT:

H.R. 508 - Authority for certain Defense employees to administer oaths

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

No objection -- Ken Lazarus 2/9/76

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.

JAMES H. ...
FOR THE STAFF

MEMORANDUM

NATIONAL SECURITY COUNCIL

780

976 FEB 9 PM 7 09
February 9, 1976

MEMORANDUM FOR: JIM CAVANAUGH

FROM: *for* Jeanne W. Davis *MH*

SUBJECT: H. R. 508

The NSC Staff has no objection to the proposed Enrolled Bill
H. R. 508 - Authority for certain Defense employees to administer
oaths.

THE WHITE HOUSE

WASHINGTON

February 10, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M. L.*
SUBJECT: H. R. 508 - Authority for certain Defense
employees to administer oaths

The Office of Legislative Affairs concurs with the agencies
that the subject bill be signed.

Attachments

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 9

Time: 800am

FOR ACTION: NSC/S
Dick Parsons
Ken Lazarus
Max Friedersdorf

cc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, February 10

Time: 500pm

SUBJECT:

H.R. 508 - Authority for certain Defense employees to
administer oaths

ACTION REQUESTED:

For Necessary Action

For Your Recommendations


Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

APPROVAL - 

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.

JAMES H. ...
Staff Secretary

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 9

Time: 800am

FOR ACTION: NSX/S *oh*
Dick Parsons *oh*
Ken Lazarus *oh*
Max Friedersdorf *m*

cc (for information): Jack ~~M~~Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: **Tuesday, February 10**

Time: 500pm

SUBJECT:

H.R. 508 - Authority for certain Defense employees to administer oaths

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



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

February 2, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in reply to your request for the views and recommendations of the Department of Defense on the enrolled enactment of H. R. 508, 94th Congress, an Act "To amend title 5, United States Code, to authorize civilians employed by the Department of Defense to administer oaths while conducting official investigations."

H. R. 508 is identical to legislation proposed by the Department of Defense as part of its legislative program for the 94th Congress (DOD 94-33). Accordingly, the Department of Defense recommends that the President sign H. R. 508 into law.

Sincerely,

A handwritten signature in cursive script that reads "Richard A. Wiley".

Richard A. Wiley



CHAIRMAN

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D. C. 20415

February 3, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in reply to your request for the views of the Civil Service Commission on enrolled bill H.R. 508 "To amend title 5, United States Code, to authorize civilians employed by the Department of Defense to administer oaths while conducting official investigations."

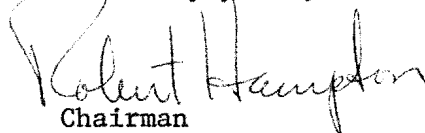
The Commission recognizes that, while members of the military services have authority to administer oaths during investigations under 10 U.S.C. 936 and employees of Executive departments can administer oaths for some investigative purposes under 5 U.S.C. 303, there is no clear authority for civilian employees of the military services to administer oaths in the course of their investigative work.

The Civil Service Commission has authority to administer oaths in the course of its personnel investigations (5 U.S.C. 1306) and consequently recognizes the value of oath-taking in investigations. Accordingly, we support this bill authorizing Department of Defense civilian employees to administer oaths in the course of their investigations.

Accordingly, the Commission recommends that the President sign this enrolled bill.

By direction of the Commission:

Sincerely yours,


Chairman

Department of Justice
Washington, D.C. 20530

February 4, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn: .

In compliance with your request, I have examined a facsimile of the enrolled bill (H.R. 508), "To amend title 5, United States Code, to authorize civilians employed by the Department of Defense to administer oaths while conducting official investigations."

The Department of Justice has no objection to Executive approval of this bill.

Sincerely,



Michael M. Uhlmann
Assistant Attorney General



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 9

Time: 800am

FOR ACTION: NEC/S
Dick Parsons
Ken Lazarus
Max Friedersdorf

cc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, February 10

Time: 500pm

SUBJECT:

H.R. 508 - Authority for certain Defense employees to administer oaths

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.

James R. ...
For the Staff Secretary



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

FEB 6 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 508 - Authority for
certain Defense employees to administer
oaths
Sponsor - Rep. Henderson (D) North Carolina

Last Day for Action

February 13, 1976 - Friday

Purpose

Authorizes civilians employed by the Department of
Defense to administer oaths while conducting official
investigations.

Agency Recommendations

Office of Management and Budget	Approval
Department of Defense	Approval
Civil Service Commission	Approval
Department of Justice	No objection

Discussion

The enrolled bill is substantially identical, except
for technical changes, to draft legislation proposed
by the Department of Defense.

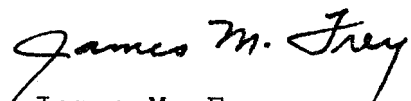
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This authority, however, does not apply to civilian
employees of the Department of Defense conducting
similar investigations. Although other provisions
of law permit employees of an Executive department to
administer oaths when investigating frauds against

the United States or misconduct by Federal employees or agents, many investigations conducted by Defense Department employees do not fall within the scope of this authority.

H.R. 508 would permit civilian personnel of the Department of Defense assigned to investigative duties to administer oaths to witnesses in connection with official investigations. The need for such authority has become increasingly apparent in recent years. For example, while military members formerly conducted nearly all personnel security background investigations for Defense, civilian employees now conduct more than half of these investigations. When such investigations require administration of an oath, the inability of civilian employees to perform this task often results in unnecessary delays while military investigators are called in for the sole purpose of administering an oath.

In its enrolled bill letter, the Civil Service Commission states:

"The Civil Service Commission has authority to administer oaths in the course of its personnel investigations (5 U.S.C. 1306) and consequently recognizes the value of oath-taking in investigations. Accordingly, we support this bill authorizing Department of Defense civilian employees to administer oaths in the course of their investigations."



James M. Frey
Assistant Director for
Legislative Reference

Enclosures



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

February 2, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in reply to your request for the views and recommendations of the Department of Defense on the enrolled enactment of H. R. 508, 94th Congress, an Act "To amend title 5, United States Code, to authorize civilians employed by the Department of Defense to administer oaths while conducting official investigations. "

H. R. 508 is identical to legislation proposed by the Department of Defense as part of its legislative program for the 94th Congress (DOD 94-33). Accordingly, the Department of Defense recommends that the President sign H. R. 508 into law.

Sincerely,

A handwritten signature in cursive script that reads "Richard A. Wiley".
Richard A. Wiley



CHAIRMAN

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D. C. 20415

February 3, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in reply to your request for the views of the Civil Service Commission on enrolled bill H.R. 508 "To amend title 5, United States Code, to authorize civilians employed by the Department of Defense to administer oaths while conducting official investigations."

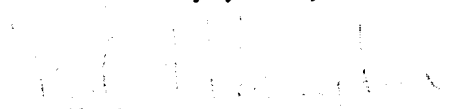
The Commission recognizes that, while members of the military services have authority to administer oaths during investigations under 10 U.S.C. 936 and employees of Executive departments can administer oaths for some investigative purposes under 5 U.S.C. 303, there is no clear authority for civilian employees of the military services to administer oaths in the course of their investigative work.

The Civil Service Commission has authority to administer oaths in the course of its personnel investigations (5 U.S.C. 1306) and consequently recognizes the value of oath-taking in investigations. Accordingly, we support this bill authorizing Department of Defense civilian employees to administer oaths in the course of their investigations.

Accordingly, the Commission recommends that the President sign this enrolled bill.

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Chairman

Department of Justice
Washington, D.C. 20530

February 4, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn: .

In compliance with your request, I have examined a facsimile of the enrolled bill (H.R. 508), "To amend title 5, United States Code, to authorize civilians employed by the Department of Defense to administer oaths while conducting official investigations."

The Department of Justice has no objection to Executive approval of this bill.

Sincerely,



Michael M. Uhlmann

Assistant Attorney General



AUTHORITY FOR CERTAIN EMPLOYEES OF DEPARTMENT OF DEFENSE TO ADMINISTER OATHS

MAY 22, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENDERSON, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany H.R. 508]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 508) to amend title 5, United States Code, to authorize civilians employed by the Department of Defense to administer oaths while conducting official investigations, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of H.R. 508 is to authorize civilian employees of the Department of Defense to administer oaths to witnesses while conducting official investigations.

COMMITTEE ACTION

H.R. 508 is based on an official recommendation to the 93d Congress by the General Counsel of the Department of Defense. Hearings were not held on this legislation. By a unanimous consent agreement of the Subcommittee on Manpower and Civil Service on February 4, 1975, the subcommittee agreed that the chairman would bring the bill before the full committee without further subcommittee action.

On May 15, 1975, the full committee ordered the bill reported by a unanimous voice vote.

STATEMENT

Section 936 of title 10, United States Code, gives members of the military services on active duty who have been detailed to conduct investigations or who have been so designated by regulations of the Armed Forces or by statute, the authority to administer oaths in the performance of their duties. This provision, however, does not apply

to civilian employees conducting similar investigations. Section 303 of title 5, United States Code, gives employees of an Executive department assigned to investigate frauds against the United States or misconduct by employees or agents of the United States the authority to administer oaths. Many investigations conducted by employees of the Department of Defense would not come clearly within the scope of fraud against the United States or employee misconduct.

There are approximately 1500 civilian agents employed by the Department of Defense who perform personnel security background investigations for the Department. The background investigations are necessary for the granting of security clearances. The administration of an oath is often necessary in conducting these investigations particularly when there is derogatory information and the informant is required to sign a sworn statement as to the information provided. Until recently, nearly all such investigations were conducted by military personnel who have statutory authority to administer oaths. Now, however, more than half of the investigations are conducted by civilians. Investigations requiring the administration of an oath are delayed when military investigators must be called into an investigation for the sole purpose of administering an oath.

ANALYSIS OF H.R. 508

This bill amends section 303 of title 5, United States Code, by redesignating the existing section 303 as section 303(a) and adding a new subsection (b). The new subsection (b) authorizes civilian employees of the Department of Defense who are lawfully assigned to investigative duties to administer oaths to witnesses when conducting official investigations.

Under the existing provisions of section 303, employees of Executive departments have the authority to administer oaths to witnesses only when such employees are lawfully assigned to investigate frauds against the United States or misconduct of employees or agents of the United States. The new subsection (b) of section 303 will authorize civilian employees of the Department of Defense to administer oaths to witnesses in connection with any official investigation for which the existing law provides no oath administering authority.

COSTS

The enactment of this legislation will result in no increase in costs to the Government.

COMPLIANCE WITH CLAUSE 2(1)(3) OF HOUSE XI

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives—

(a) The Subcommittee on Manpower and Civil Service is vested under the Committee Rules with legislative and oversight jurisdiction and responsibility over the subject matter of H.R. 508 and made no specific findings or recommendations in connection with its oversight responsibilities during consideration of this bill;

(b) Since section 308(a) of the Congressional Budget Act of 1974 is not yet in effect, no statement under this paragraph is furnished;

(c) No estimate or comparison of cost has been received by the Committee from the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974; and

(d) The Committee has received no report from the Committee on Government Operations of oversight findings or recommendations arrived at pursuant to clause (2)(b)(2) of House Rule X.

INFLATIONARY IMPACT STATEMENT

Under clause (2)(1)(4) of House Rule XI, the Committee has determined that the enactment of H.R. 508 will have no inflationary impact on prices and costs in the operation of the national economy, since the bill will cause no apparent increase in budgetary requirements of the Department of Defense.

ADMINISTRATIVE VIEWS

There is set forth below a letter from the General Counsel of the Department of Defense recommending the enactment of this legislation.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., August 5, 1974.

HON. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Enclosed is a draft of legislation "To amend title 5, United States Code, to authorize civilians employed by the Department of Defense to administer oaths while conducting official investigations."

This proposal is part of the Department of Defense Legislative Program for the 93d Congress, and the Office of Management and Budget advised that, from the standpoint of the Administration's program there is no objection to the presentation of this proposal for the consideration of the Congress. It is recommended that the proposal be enacted by the Congress.

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to authorize civilians employed by the Department of Defense to administer oaths. Article 136 of the Uniform Code of Military Justice (10 U.S.C. 936) gives members of the military services on active duty who have been detailed to conduct investigations the authority to administer oaths in the performance of their duties. This provision, however, does not apply to civilian employees conducting similar investigations. Section 303 of title 5, United States Code, gives employees of an Executive department assigned to investigate frauds against the United States or misconduct by employees or agents of the United States the authority to administer

oaths. There is considerable uncertainty, however, about the scope of this authority, which, of course, requires determination of whether a particular investigation involves anything that can reasonably be defined as fraud against the United States or employee misconduct. Many investigations conducted by employees of the Department of Defense would not come clearly within this scope. In addition, section 2903 of title 5, United States Code, authorizes the administration of oaths of office, but not oaths in connection with investigations.

The need to authorize civilians to administer oaths in connection with investigations for which existing law provides no oath—administering authority has steadily grown more pressing. For example, until recently nearly all counterintelligence investigators working in the United States for the Department of Defense were military personnel who, as noted earlier, have statutory authority to administer oaths. The substantial numbers of civilians recently employed to perform counterintelligence functions formerly performed by military personnel, however, have no authority to administer oaths to witnesses. This incapacity often results in delayed investigations when military investigators must be called into an investigation for the sole purpose of administering an oath. Thus, the timeliness of investigations would frequently be increased and manpower utilization made more efficient if civilian employees of the Department of Defense engaged in investigations were empowered to administer oaths.

The enclosed draft bill accomplishes this result by adding a new subsection to section 303 of title 5, United States Code, that authorizes an employee of the Department of Defense lawfully assigned to investigative duties to administer oaths to witnesses in connection with an official investigation.

COST AND BUDGET DATA

The enactment of the proposal will cause no apparent increase in budgetary requirements for the Department of Defense.

Sincerely,

MARTIN R. HOFFMANN.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows: new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * *

PART I—THE AGENCIES GENERALLY

* * * * *

CHAPTER 3—POWERS

* * * * *

§ 303. Oaths to witnesses

(a) An employee of an Executive department lawfully assigned to investigate frauds on or attempts to defraud the United States, or irregularity or misconduct of an employee or agent of the United States, may administer an oath to a witness attending to testify or depose in the course of the investigation.

(b) *An employee of the Department of Defense lawfully assigned to investigative duties may administer oaths to witnesses in connection with an official investigation.*

* * * * *

○

AUTHORITY FOR CERTAIN EMPLOYEES OF DEPARTMENT OF DEFENSE TO ADMINISTER OATHS

DECEMBER 11, 1975.—Ordered to be printed

Mr. McGEE, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany H.R. 508]

The Committee on Post Office and Civil Service, to which was referred the bill (H.R. 508) to amend title 5, United States Code, to authorize civilians employed by the Department of Defense to administer oaths while conducting official investigations having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

AMENDMENT

On page 1, line 7, strike out "investigate" and insert in lieu thereof "investigative".

EXPLANATION OF AMENDMENT

The word "investigate" as it appears in H.R. 508 is a typographical error. Therefore, the proper word "investigative" has been substituted.

PURPOSE

H.R. 508 has as its purpose the authorization of civilian employees of the Department of Defense to administer oaths to witnesses while conducting official investigations.

SUMMARY

Article 136 of the Uniform Code of Military Justice (10 U.S.C. 936) gives members of the military services on active duty who have been detailed to conduct investigations the authority to administer

oaths in the performance of their duties. This provision, however, does not apply to civilian employees conducting similar investigations. Section 303 of title 5, United States Code, gives employees of an Executive department assigned to investigate frauds against the United States or misconduct by employees or agents of the United States the authority to administer oaths. There is considerable uncertainty, however, about the scope of this authority, which, of course, requires determination of whether a particular investigation involves anything that can reasonably be defined as fraud against the United States or employee misconduct. Many investigations conducted by employees of the Department of Defense would not come clearly within this scope. In addition, section 2903 of title 5, United States Code, authorizes the administration of oaths of office, but no oaths in connection with investigations.

The need to authorize civilians to administer oaths in connection with investigations for which existing law provides no oath—administering authority has steadily grown more pressing. For example, until recently nearly all counterintelligence investigators working in the United States for the Department of Defense were military personnel who, as noted earlier, have statutory authority to administer oaths. The substantial numbers of civilians recently employed to perform counterintelligence functions formerly performed by military personnel, however, have no authority to administer oaths to witnesses. This incapacity often results in delayed investigations when military investigators must be called into an investigation for the sole purpose of administering an oath. Thus, the timeliness of investigations would frequently be increased and manpower utilization made more efficient if civilian employees of the Department of Defense engaged in investigations were empowered to administer oaths.

H.R. 508 accomplishes this result by adding a new subsection to section 303 of title 5, United States Code, that authorizes an employee of the Department of Defense lawfully assigned to investigate duties to administer oaths to witnesses in connection with an official investigation.

ACTION BY THE COMMITTEE

The full committee ordered H.R. 508 reported as amended on December 11, 1975 by a unanimous vote.

STATEMENT

Section 936 of title 10, United States Code, gives members of the military services on active duty who have been detailed to conduct investigations or who have been so designated by regulations of the Armed Forces or by statute, the authority to administer oaths in the performance of their duties. This provision, however, does not apply to civilian employees conducting similar investigations. Section 303 of title 5, United States Code, gives employees of an Executive department assigned to investigate frauds against the United States or misconduct by employees or agents of the United States the authority to

administer oaths. Many investigations conducted by employees of the Department of Defense would not come clearly within the scope of fraud against the United States or employee misconduct.

There are approximately 1,500 civilian agents employed by the Department of Defense who perform personnel security background investigations for the Department. The background investigations are necessary for the granting of security clearances. The administration of an oath is often necessary in conducting these investigations particularly when there is derogatory information and the informant is required to sign a sworn statement as to the information provided. Until recently, nearly all such investigations were conducted by military personnel who have statutory authority to administer oaths. Now, however, more than half of the investigations are conducted by civilians. Investigations requiring the administration of an oath are delayed when military investigators must be called into an investigation for the sole purpose of administering an oath.

ANALYSIS

This bill amends section 303 of title 5, United States Code, by redesignating the existing section 303 as section 303 (a) and adding a new subsection (b). The new subsection (b) authorizes civilian employees of the Department of Defense who are lawfully assigned to investigative duties to administer oaths to witnesses when conducting official investigations.

Under the existing provisions of section 303, employees of executive departments have the authority to administer oaths to witnesses only when such employees are lawfully assigned to investigate frauds against the United States or misconduct of employees or agents of the United States. The new subsection (b) of section 303 will authorize civilian employees of the Department of Defense to administer oaths to witnesses in connection with any official investigation for which the existing law provides no oath administering authority.

ESTIMATED COST

The enactment of this legislation will result in no increase in costs to the Government.

AGENCY REPORTS

The views of the Department of Defense, the Civil Service Commission, and the Office of Management and Budget are set forth below:

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., December 9, 1975.

HON. GALE MCGEE,
Chairman, Committee on Post Office and Civil Service,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of the Civil Service Commission on H.R. 508 a bill "To amend title 5, United States Code, to authorize civilians employed by

the Department of Defense to administer oaths while conducting official investigations", passed by the House on July 21, 1975.

The Commission recognizes that, while members of the military services have authority to administer oaths during investigations under 10 U.S.C. 936 and employees of Executive departments can administer oaths for some investigative purposes under 5 U.S.C. 303, there is no clear authority for civilian employees of the military services to administer oaths in the course of their investigative work.

The Civil Service Commission has authority to administer oaths in the course of its personnel investigations (5 U.S.C. 1306) and consequently recognizes the value of oath-taking in investigations. Accordingly, we support this bill authorizing Department of Defense civilian employees to administer oaths in the course of their investigations.

The Office of Management and Budget advises that, from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON, *Chairman.*

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., October 29, 1975.

HON. GALE MCGEE,
*Chairman, Committee on Post Office and Civil Service, U.S. Senate,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your letter of July 24, 1975, requesting the views of the Office of Management and Budget on H.R. 508, a bill, "To amend Title 5, United States Code, to authorize civilians employed by the Department of Defense to administer oaths while conducting official investigations."

For the reasons set forth in the Defense Department's report to your Committee on this legislation, the Office of Management and Budget has no objection to enactment of H.R. 508.

Sincerely yours,

JAMES M. FREY,
Assistant Director for Legislative Reference.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., October 29, 1975.

HON. GALE W. MCGEE,
*Chairman, Post Office and Civil Service Committee, U.S. Senate,
Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request of July 24, 1975 for comments on H.R. 508, 94th Congress, a bill "To amend Title 5, United States Code, to authorize civilians employed by the Department of Defense to administer oaths while conducting official investigations."

This bill would authorize civilians employed by the Department of Defense to administer oaths. Article 136 of the Uniform Code of Military Justice (10 U.S.C. 936) gives members of the military services on active duty who have been detailed to conduct investigations the authority to administer oaths in the performance of their duties. This provision, however, does not apply to civilian employees conducting similar investigations. Section 303 of title 5, United States Code, gives employees of an Executive department assigned to investigative frauds against the United States or misconduct by employees or agents of the United States the authority to administer oaths. There is considerable uncertainty, however, about the scope of this authority, which, of course, requires determination of whether a particular investigation involves anything that can reasonably be defined as fraud against the United States or employee misconduct. Many investigations conducted by employees of the Department of Defense would not come clearly within this scope.

In addition, section 2903 of title 5, United States Code, authorizes the administration of oaths of office, but not oaths in connection with investigations.

The need to authorize civilians to administer oaths in connection with investigations for which existing law provides no oath-administering authority has steadily grown more pressing. For example, until recently nearly all personnel security investigators working in the United States for the Department of Defense were military personnel, who as noted earlier, have statutory authority to administer oaths. The substantial numbers of civilians recently employed to perform personnel security background investigations formerly conducted by military personnel, however, have no authority to administer oaths to witnesses. This incapacity often results in delayed investigations when military investigators must be called into an investigation for the sole purpose of administering an oath. Thus, the timeliness of investigations would frequently be increased and manpower utilization made more efficient if civilian employees of the Department of Defense engaged in investigations were empowered to administer oaths.

H.R. 508 will accomplish this result by adding a new subsection to section 303 of title 5, United States Code, that authorizes an employee of the Department of Defense lawfully assigned to investigative duties to administer oaths to witnesses in connection with an official investigation.

The enactment of this legislation will cause no apparent increase in budgetary requirements for the Department of Defense.

The Department of Defense supports enactment of this legislation. It is noted that in the proposed bill the word "investigate" on line 7 should be changed to read "investigative".

Sincerely,

L. NIEDERLEHNER,
Acting General Counsel.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in black brackets; new matter is shown in italic) :

Section 303 of Title 5, United States Code

§ 303. Oaths to Witnesses

* * * * *

(a) An employee of an Executive department lawfully assigned to investigate frauds on or attempts to defraud the United States, or irregularity or misconduct of an employee or agent of the United States, may administer an oath to a witness attending to testify or depose in the course of the investigation.

(b) *An employee of the Department of Defense lawfully assigned to investigative duties may administer oaths to witnesses in connection with an official investigation.*

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Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

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

An Act

To amend title 5, United States Code, to authorize civilians employed by the Department of Defense to administer oaths while conducting official investigations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 303 of title 5, United States Code, is amended by inserting "(a)" immediately before "An employee" and by adding at the end thereof the following new subsection:

"(b) An employee of the Department of Defense lawfully assigned to investigative duties may administer oaths to witnesses in connection with an official investigation."

Speaker of the House of Representatives.

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

February 2, 1976

Dear Mr. Director:

The following bills were received at the White House on February 2nd:

✓ H.R. 508
H.R. 5247

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 James T. Lynn
Director
Office of Management and Budget
Washington, D. C.