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APPROVED

MAR 4 - 1976

83/4/76

THE WHITE HOUSE

ACTION

WASHINGTON

Last Day: March 6

March 3, 1976

*Posted
3/5/76
to archive
3/5/76*

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: S. 2117 - Grade of the Assistant
Commandant of the Marine Corps and
certain disability retirement
determinations

Attached for your consideration is S. 2117, sponsored by Senators Stennis and Thurmond, which provides permanent authority for the Assistant Commandant of the Marine Corps, while so serving, to hold the rank of general and requires the Secretary of Defense to approve certain disability retirement determinations made by the Secretary of a military department.

A discussion of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

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

RECOMMENDATION

That you sign S. 2117 at Tab B.





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

MAR 1 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2117 - Grade of the
Assistant Commandant of the Marine
Corps and certain disability retire-
ment determinations
Sponsors - Sen. Stennis (D) Mississippi
and Sen. Thurmond (R) South Carolina

Last Day for Action

March 6, 1976 - Saturday

Purpose

Provides permanent authority for the Assistant Commandant of the Marine Corps, while so serving, to hold the rank of general; requires the Secretary of Defense to approve certain disability retirement determinations made by the Secretary of a military department.

Agency Recommendations

Office of Management and Budget	Approval
Department of Defense	Approval
Department of Transportation	No objection
Department of Health, Education and Welfare	Defers to Defense (Informally)

Discussion

Existing law authorizes the Assistant Commandant of the Marine Corps, while so serving, to hold the grade of general, provided the total active duty strength of the Marine Corps exceeds 200,000 at the time of his appointment. Section 1 of the enrolled bill would provide permanent authority for the

Assistant Commandant of the Marine Corps to hold the grade of general by deleting the current statutory provision which links the Assistant Commandant's grade to the total active duty strength level of the Marine Corps.

According to the report of the House Armed Services Committee on S. 2117, the average total active duty strength of the Marine Corps has declined to slightly below 200,000. Thus, the enrolled bill would ensure that the Marine Corps continues to have two officers -- the Commandant and the Assistant Commandant -- in the grade of general. Such grade is appropriate for the Assistant Commandant because he performs the duties and responsibilities of the Commandant in the Commandant's absence and exercises responsibilities in his own right commensurate with the rank of general.


Section 2 of the enrolled bill would limit the authority of the Secretary of a military department to make certain disability retirement determinations. Under existing law, the Secretary of each military department is responsible for determining disability retirement eligibility for members of an armed force under his jurisdiction. S. 2117 would provide, however, that in the case of any flag rank officer (pay grade O-7 or higher) or medical officer who is being retired by reason of age or length of service, the Secretary of a military department may not determine such officer to be eligible for disability retirement unless the determination is first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health and Environment.

The above amendment is a Congressional initiative resulting from oversight investigations conducted by the House Armed Services Committee. Those investigations revealed a disproportionate percentage of disability retirements among flag rank and medical officers who, in most cases, would otherwise have been retired for length of service. While the amount of disability retired pay for such officers

normally does not differ from the amount of retired pay based on length of service, the percentage of disability retired pay equivalent to the percentage of disability is tax exempt.

To reduce the possibility of abuses in the administration of physical disability retirement procedures, especially with respect to medical and high ranking officers, the Defense Department, in 1973, issued new guidelines governing physical disability separation. Due to certain problems which arose in implementing the guidelines, however, the House Committee developed the amendment incorporated in Section 2 of S. 2117 to provide a clear statutory base for carrying out Defense Department policy directives.

The Department of Health, Education and Welfare has advised us informally that, due to the specific wording in one section of the Public Health Service Act, Section 2 of S. 2117 could literally be read to require review by the Secretary of Defense of certain disability retirement determinations by the Secretary of Health, Education and Welfare in relation to commissioned officers in the Public Health Service. Similarly, the Department of Transportation's enrolled bill letter indicates that the bill could be interpreted as requiring Secretary of Defense approval of disability retirement determinations by the Secretary of Transportation with respect to certain Coast Guard officers. Both agencies have advised us, however, that they do not intend to interpret the bill in this literal manner. In order to avoid any possible misunderstanding, however, HEW has indicated informally that it intends to propose a technical amendment that will clarify the bill's nonapplicability to the Public Health Service. We will discuss with Transportation whether it believes any technical changes would be desirable to make clear that the bill does not apply to the Coast Guard as well.



James M. Frey

James M. Frey
Assistant Director for
Legislative Reference

Enclosure



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

26 February 1976

Dear Mr. Lynn:

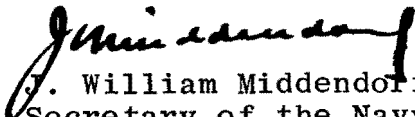
Your transmittal sheet dated 24 February 1976 including a facsimile of an enrolled bill of Congress, S. 2117, "To amend section 5202 of title 10, United States Code, relating to the detail, pay, and succession to duties of the Assistant Commandant of the Marine Corps," and requesting the comments of the Department of Defense has been received. The Department of the Navy has been assigned the responsibility for preparation of a report expressing the views of the Department of Defense.

Section 1 of S. 2117 would eliminate that portion of existing law requiring that the total active duty strength of the Marine Corps exceed 200,000 before the Assistant Commandant of the Marine Corps may serve as such in the grade of General, thus authorizing the Assistant Commandant to serve in the grade of General regardless of Marine Corps personnel strength. Section 2 of S. 2117 would modify existing law to require that disability retirements of members in pay grades O-7 or higher, or medical officers, be approved by the Secretary of Defense rather than at the Service Secretary level.

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 the approval of S. 2117.

Sincerely yours,


J. William Middendorf II
Secretary of the Navy

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20350





OFFICE OF THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

FEB 26 1976

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

Dear Mr. Lynn:

Reference is made to your request for the views of the Department of Transportation concerning S. 2117, an enrolled bill

"To amend section 5202 of title 10, United States Code, relating to the detail, pay, and succession to duties of the Assistant Commandant of the Marine Corps and to amend title 10 of the United States Code in order to make certain disability retirement determinations by the Secretaries of the military departments subject to review by the Secretary of Defense."

Section 1 of the enrolled bill relates to the detail, pay, and succession to duties of the Assistant Commandant of the Marine Corps and has no Coast Guard impact. Therefore, we have no comment on that portion of the bill.

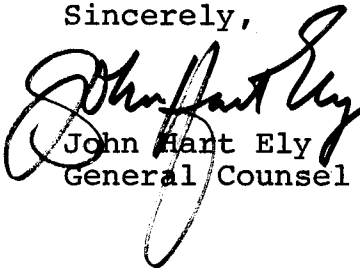
Section 2 of the enrolled bill provides that in the case of a determination of unfitness for duty involving an officer in pay grade 0-7 or higher or a Medical Corps officer or medical officer of the Air Force, who is being processed for retirement on length of service or because of age, where the determination would make the officer eligible for disability retirement, the Secretary of the military department concerned may not make the determination of unfitness unless it is approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health and Environment.

In our view, it would be inappropriate to subject the determinations of the Secretary of Transportation, with respect to Coast Guard officers, to the approval of the Secretary of Defense. We interpret the enrolled bill as not applying to

the Coast Guard, however, since section 2(b) of the bill expressly makes section 2 applicable to the "Secretaries of the military departments concerned," and the Coast Guard is not a military department as defined in section 101 of title 10, United States Code. Although the words "Secretary concerned", which are used in the bill, are defined in section 101 of title 10 to include the Secretary of Transportation, with respect to matters affecting the Coast Guard when it is not operating as a service of the Navy, the House report on H.R. 9691 (the House version of this bill) supports our interpretation.

Based on this interpretation, we have no objection to the President signing the enrolled bill.

Sincerely,



John Hart Ely
General Counsel

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

MAR 1 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2117 - Grade of the
Assistant Commandant of the Marine
Corps and certain disability retire-
ment determinations
Sponsors - Sen. Stennis (D) Mississippi
and Sen. Thurmond (R) South Carolina

Last Day for Action

March 6, 1976 - Saturday

Purpose

Provides permanent authority for the Assistant
Commandant of the Marine Corps, while so serving,
to hold the rank of general; requires the Secretary
of Defense to approve certain disability retirement
determinations made by the Secretary of a military
department.

Agency Recommendations

Office of Management and Budget	Approval
Department of Defense	Approval
Department of Transportation	No objection
Department of Health, Education and Welfare	Defers to Defense (Informally)

Discussion

Existing law authorizes the Assistant Commandant
of the Marine Corps, while so serving, to hold the
grade of general, provided the total active duty
strength of the Marine Corps exceeds 200,000 at the
time of his appointment. Section 1 of the enrolled
bill would provide permanent authority for the

THE WHITE HOUSE
WASHINGTON

Date 3/3/76

MEMORANDUM FOR

Jessy Johnston

FROM

:

JUDITH RICHARDS HOPE

no objection.

JRH.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: 3-4-76

TO: Bob Linder

FROM: Jim Frey

Attached is the HEW views
letter on S. 2117. Please have
it included in the enrolled
bill file. Thanks.



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

MAR 1 1976

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

Dear Mr. Lynn:

This is in response to your request for a report on S. 2117, an enrolled bill "To amend section 5202 of title 10, United States Code, relating to the detail, pay, and succession to duties of the Assistant Commandant of the Marine Corps and to amend title 10 of the United States Code in order to make certain disability retirement determinations by the Secretaries of the military departments subject to review by the Secretary of Defense."

Because the bill does not affect the programmatic interests of this Department, we defer to the Department of Defense as to the merits of the bill.

Due to the specific wording in one section of the Public Health Service Act, section 2 of the enrolled bill could literally be read to require review by the Secretary of Defense of certain disability retirement or separation determinations by the Secretary of Health, Education, and Welfare in relation to commissioned officers in the Public Health Service. On the advice of our Office of the General Counsel, we do not intend to interpret the enrolled bill in this literal manner. However, to avoid possible misunderstanding, we intend to submit to the Congress in the near future the enclosed proposed technical amendment to the Public Health Service Act.

Sincerely,

Marjorie Lynch
Under Secretary

Enclosure

PROPOSED TECHNICAL AMENDMENT TO CLARIFY THE NONAPPLICABILITY
OF SECTION 1216(d) OF TITLE 10, UNITED STATES CODE, TO THE
PUBLIC HEALTH SERVICE

Section 221 of the Public Health Service Act is amended--

(1) in subsection (a)(2), by inserting "except
for section 1216(d), and" after "Disability," and

(2) in subsection (b), by inserting immediately
before the period the following: ", but section 1216(d)
of that title shall not apply to the Secretary of
Health, Education, and Welfare or his designee".

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: March 1

Time: 630pm

FOR ACTION: Max Friedersdorf *MF*
Ken Lazarus *KL*
NSC/S *SK*
Sarah Massengale *SM*
Judy Hope *JH*

cc (for information):

Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: March 2

Time: 500pm

SUBJECT:

S. 2117 - Grade of the Assistant Commandant of the Marine Corps and certain disability retirement determinations

ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> 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

THE WHITE HOUSE

WASHINGTON

March 2, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M.L.F.*
SUBJECT: S. 2117 - Grade of the Assistant Commandant of the
Marine Corps and certain disability retirement
determination s

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

Attachments



Date: March 1

Time: 630pm

FOR ACTION: Max Friedersdorf
Ken Lazarus
NSC/S
Sarah Massengale
Judy Hope

cc (for information):

Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: March 2

Time: 500pm

SUBJECT:

S. 2117 - Grade of the Assistant Commandant of
the Marine Corps and certain disability
retirement determinations

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 3/2/76

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.

MEMORANDUM

NATIONAL SECURITY COUNCIL

March 2, 1976

MEMORANDUM FOR: Jim Cavanaugh
FROM: Jeanne W. Davis 
SUBJECT: Enrolled Bill S. 2117

The NSC Staff has no objection to the President's signing the enrolled bill S. 2117 regarding the grade of the Assistant Commandant of the Marine Corps and certain disability retirement determinations.

94TH CONGRESS
1ST SESSION

S. 2117

IN THE SENATE OF THE UNITED STATES

JULY 15 (legislative day, JULY 10), 1975

Mr. STENNIS (for himself and Mr. THURMOND) (by request) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend sections 5202 and 5232 of title 10, United States Code, relating to the appointment to the grades of general and lieutenant general of Marine Corps officers designated for appropriate higher commands or for performance of duties of great importance and responsibility.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That title 10, United States Code, is amended as follows:
4 (1) Chapter 515 is amended by amending section 5202
5 to read as follows and by amending the analysis item for
6 that section to correspond with the revised catchline:

1 **“§ 5202. Assistant Commandant: appointment; powers;**
2 **duties**

3 “(a) There is an Assistant Commandant of the Marine
4 Corps, appointed by the President, by and with the advice
5 and consent of the Senate, from officers on the active list
6 of the Marine Corps.

7 “(b) The Assistant Commandant of the Marine Corps
8 has such authority and duties with respect to the Marine
9 Corps as the Commandant of the Marine Corps, with the
10 approval of the Secretary of the Navy, may delegate to or
11 prescribe for him. Orders issued by the Assistant Comman-
12 dant of the Marine Corps in performing such duties have the
13 same effect as those issued by the Commandant of the Marine
14 Corps.

15 “(c) When there is a vacancy in the office of the Com-
16 mandant of the Marine Corps, or during the absence or
17 disability of the Commandant of the Marine Corps, the As-
18 sistant Commandant of the Marine Corps and then the offi-
19 cers of the Marine Corps on duty at Headquarters, Marine
20 Corps, in order of seniority, unless otherwise directed by the
21 President, shall perform the duties of the Commandant until
22 a successor is appointed or the absence or disability ceases.

23 “(d) The President may designate the Assistant Com-
24 mandant of the Marine Corps as an officer who performs

1 duty of great importance and responsibility under section
2 5232 of this title.”.

3 (2) Chapter 517 is amended by amending section 5232
4 to read as follows, and by amending the analysis item for
5 that section to correspond with the revised catchline:

6 **“§ 5232. Marine Corps positions: generals and lieutenant**
7 **generals**

8 “(a) The President may designate officers on the active
9 list of the Marine Corps above the grade of colonel and, in
10 time of war or national emergency, above the grade of lieu-
11 tenant colonel for—

12 “(1) appropriate higher commands; or

13 “(2) performance of duty of great importance and
14 responsibility.

15 An officer so designated may be appointed by the President,
16 by and with the advice and consent of the Senate, to the
17 grade of general or lieutenant general. Such an appointment
18 is effective on the date an officer reports for the designated
19 duty and terminates on the date he is detached. The Secre-
20 tary of the Navy shall determine the rank of officers in the
21 grade in which they are serving under this section.

22 “(b) The number of officers serving in the grades of
23 general and lieutenant general under subsection (a) and sec-
24 tion 5201 of this title may not, at any time, exceed 15 per-

1 cent of the number of officers prescribed for the grades of
2 brigadier general and major general in—

3 “(1) section 5443 of this title, if that section is
4 operative; or

5 “(2) section 5448 of this title, if section 5443 is
6 inoperative.

7 Of the number of officers that may serve in the grades of
8 general and lieutenant general, as determined under this
9 subsection, not more than two may have the grade of general.

10 “(c) An officer of the Marine Corps assigned as Chief
11 of Staff to the President shall be appointed by the President,
12 by and with the advice and consent of the Senate, to the
13 grade of general. Such an appointment is effective while the
14 officer is so serving.

15 “(d) An officer of the Marine Corps while serving as
16 Chairman of the Joint Chiefs of Staff, if serving in the grade
17 of general, is in addition to the numbers authorized under
18 subsection (b) of this section.

19 “(e) An appointment under this section does not create
20 a vacancy in the grade held by the officer at the time he
21 is appointed and does not increase the authorized strength
22 of the Marine Corps in officers on the active list.”.

94TH CONGRESS
1ST SESSION

S. 2117

A BILL

To amend sections 5202 and 5232 of title 10, United States Code, relating to the appointment to the grades of general and lieutenant general of Marine Corps officers designated for appropriate higher commands or for performance of duties of great importance and responsibility.

By Mr. STENNIS and Mr. THURMOND

JULY 15 (legislative day, JULY 10), 1975
Read twice and referred to the Committee on Armed
Services

PROVIDING PERMANENT AUTHORITY FOR THE ASSISTANT COMMANDANT OF THE MARINE CORPS TO SERVE IN THE GRADE OF GENERAL, AND AMENDING TITLE 10, UNITED STATES CODE, TO MAKE DISABILITY DETERMINATIONS BY THE SECRETARIES OF THE MILITARY DEPARTMENTS INVOLVING GENERAL AND FLAG OFFICERS AND MEDICAL OFFICERS RETIRING FOR AGE OR LENGTH OF SERVICE SUBJECT TO REVIEW BY THE SECRETARY OF DEFENSE

FEBRUARY 10, 1976.—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 S. 2117]

The Committee on Armed Services, to whom was referred the bill (S. 2117) to amend section 5202 of title 10, United States Code, relating to the detail, pay, and succession to duties of the Assistant Commandant of the Marine Corps, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 2, line 8, immediately following the word "officer", insert the phrase "or medical officer of the Air Force".

On page 2, line 9, strike the words "chapter 63 or 65 of this title" and insert therefor the words "any provisions of this title by reason of age or length of service".

Amend the title to read as follows:

To amend section 5202 of title 10, United States Code, relating to the detail, pay, and succession to duties of the Assistant Commandant of the Marine Corps and to amend title 10 of the United States Code in order to make certain disability retirement determinations by the Secretaries of the military departments subject to review by the Secretary of Defense.

EXPLANATION OF THE AMENDMENTS

The amendments are technical in nature and do not substantively change the bill. The amendments are designed to clarify the reference

to medical officers to assure that medical officers of all of the services are included and to correct an inaccurate statutory citation.

The title is amended so as to reflect the matter in section 2 of the bill.

PURPOSE

Section 1 of the bill is intended to provide permanent authority for the individual occupying the position of Assistant Commandant of the Marine Corps to serve in the grade of general.

Section 2 of the bill will provide that where general and medical officers are being processed for retirement on length of service or because of age, a determination of unfitness for duty, which would make such officer eligible for disability retirement, may not be made by the Secretary of the military department concerned unless first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health and Environment.

The bill would apply with respect to unfitness determinations made on or after the date of enactment of the bill.

ORIGIN OF S. 2117

This bill contains two distinct legislative actions, each of which has received favorable consideration from the House of Representatives at separate times in the past.

Section 1 of the bill dealing with the grade for the Assistant Commandant resulted from Senate consideration of a broader Department of Defense proposal intended to alter current law controlling the number of lieutenant generals in the Marine Corps, as well as the grade of the Assistant Commandant. The legislation passed by the Senate only addresses the latter. Legislation allowing the Marine Corps up to four 4-star general officers was passed by the House on July 7, 1971, in the form of H.R. 6483, but was never considered by the Senate. (H. Rept. 92-225).

Section 2 of the bill, which was an amendment added during consideration of the bill by the Senate, incorporates without alteration the provisions of H.R. 9691 (H. Rept. 94-643) passed by the House on November 17, 1975.

DISCUSSION

SECTION 1—GRADE OF THE ASSISTANT COMMANDANT

Public Law 91-11 enacted on May 2, 1969 authorized the Assistant Commandant of the Marine Corps to serve in the grade of general provided that the total strength of the Marine Corps exceeds 200,000 at the time of his appointment. This legislation would simply delete the proviso which links the Assistant Commandant's grade to the total active duty strength level of the Marine Corps.

Since the passage of the legislation authorizing the Assistant Commandant to serve in the grade of general, all succeeding individuals occupying that position have been promoted to the grade of general and the Marines have continually had two officers in the grade of general—the Commandant and the Assistant Commandant.

The average total active duty strength of the Marine Corps has declined to slightly below 200,000. On July 1, 1975, at the time the

current Assistant Commandant assumed his duties, Marine Corps strength did in fact exceed the 200,000, and he could have been appointed to the grade of general. Once appointed to the grade of general, the Assistant Commandant would have remained in that grade regardless of Marine Corps strength. However, the Commandant chose not to exercise the authority of P.L. 91-11 only coincidentally available due to strength fluctuations, and instead chose to seek permanent legislation.

NECESSITY FOR 4-STAR RANK

The position of Assistant Commandant merits a grade equivalent to that of the Commandant since his primary function is to act in the Commandant's absence in the exercise of the duties and responsibilities accruing to the senior officer in the Marine Corps. These duties include sitting with the Joint Chiefs of Staff, each of whom is in a 4-star grade as are their principal alternates. The Assistant Commandant also exercises responsibilities in his own right which warrant 4-star rank in the Committee's view. Finally, the current proviso can provide an incentive for the Commandant to manipulate the strength of the Marine Corps, as it fluctuates during the course of the year, so as to allow the Assistant Commandant to achieve the necessary grade.

PRESENT MARINE CORPS GENERAL OFFICER STRUCTURE

The total number of general officers in the Marine Corps will remain unchanged by this bill—a total of 69. At present only one of these officers is in the grade of general, and 8 are lieutenant generals. If the Assistant Commandant is also authorized this grade, minimal costs will accrue—the personal money allowance of \$2200 annually authorized a general, as opposed to the \$500 annual allowance for a lieutenant general (37 U.S.C. 414(a)).

The Marine Corps appears favorably in comparing its general officer to total strength ratios with those of the other services.

COMPARATIVE RATIO OF GENERAL OFFICERS TO TOTAL MILITARY STRENGTH (END OF FISCAL YEAR 1975)

	General officers	Total strength	Ratio
Marine Corps.....	69	196,398	1:2,846
Army.....	440	785,000	1:1,784
Navy.....	295	540,380	1:1,832
Air Force.....	381	627,535	1:1,647

COMPARATIVE RATIO OF 4-STAR GENERAL OFFICERS TO TOTAL MILITARY STRENGTH (1975)

	4-Star general officers	Total strength	Ratio
Marine Corps.....	2	196,398	1:98,199
Army.....	12	785,000	1:65,417
Navy.....	10	540,380	1:54,038
Air Force.....	13	627,535	1:48,272

SECTION 2—REVIEW PROCESS FOR CERTAIN DISABILITY RETIREMENTS

Section 2 of the bill incorporates H.R. 9691, which passed the House on November 17, 1975, by a vote of 398 to 4. The Senate adopted the

language of H.R. 9691 without change as a floor amendment to S. 2117. Section 2 is designed as an additional safeguard in the attempt to reduce the possibility of abuses in the administering of physical-disability retirement procedures.

The legislation grew out of the continuing effort of the House Armed Services Committee to perform its oversight function in the area of retirement entitlements. The review undertaken by the committee is examined in detail in the report on H.R. 9691 (H. Rept. 94-643). The hearings are contained in House Armed Services Committee document 94-23.

Those who have completed the 20 or more years necessary for length-of-service retirement have the opportunity to take the full-percentage retirement that their length of service would provide (2½ percent times years of service). Disability retirement for such an individual does not normally change total retired pay. However, it has the advantage that the amount of retired pay equivalent to the percentage of disability is tax exempt.

As a result of the concern expressed by this committee and others, the Defense Department issued new policy guidelines in 1973 designed to clear up abuses in the disability-retirement procedures. There was particular concern because of the considerably higher percentage of disability retirements among senior officers, especially general and flag officers and medical officers who had completed their careers and were retiring on length of service or because of age.

The overall effect of the guidelines initially was as intended, and there was a substantial reduction in the percentage of disability retirements among senior officers.

In its review this year, however, the Armed Services Committee found that, while the Assistant Secretary of Defense for Health and Environment was responsible for monitoring the use of the guidelines, the service secretaries had final authority in approving disability determinations and could overrule the recommendation of the Assistant Secretary of Defense for Health and Environment. In one specific case examined in depth by the committee, the Secretary of the Navy rejected the recommendation of the Assistant Secretary of Defense for Health and Environment against physical-disability retirement and, on the advice of his subordinates and the Navy review procedure, approved a 40-percent physical-disability retirement for a general officer.

Because of the conflicting opinions of senior officials of the Department of Defense and the Department of the Navy based on the same policy guidelines and because of the committee's continuing oversight interest and concern for past abuses in this area, the committee determined that examination of the policy decisions involved was advisable. The committee, therefore, conducted a hearing into the matter and extensively reviewed the documentation involved.

As a result of its review, the committee determined that there was an inconsistency between the legal authority for final determination which continued to reside in the service secretaries and the intent of the Department's policy guidelines for such cases, which were clearly intended to give the Assistant Secretary for Health and Environment, the top medical official, the final determination with regard to the medical questions set forth in those guidelines.

The committee, therefore, decided that legislation was necessary to resolve this inconsistency by giving the Assistant Secretary for Health and Environment the final determination, through the superior authority of the Secretary of Defense. This would be accomplished by the language of H.R. 9691, now incorporated as section 2 of the present bill.

FISCAL DATA

Neither provision of this bill will result in an increase in the budgetary requirements of the Department of Defense. Section 2 of the bill is designed to prevent abuses of the disability-retirement system and to the extent that it does so will prevent unwarranted tax exemptions for retired personnel. It does not change the amount of retired pay to which retired officers are entitled.

EXECUTIVE BRANCH ESTIMATE

The Department of the Navy has indicated that the provisions dealing with the appropriate grade of the Commandant will not result in an increase in the budgetary requirements of the Department of Defense.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., February 5, 1976.

HON. MELVIN PRICE,
Chairman, Armed Services Committee, U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to a request from the Committee staff for a cost estimate for S2117, as amended, in accordance with our responsibilities under Section 403 of the Congressional Budget Act of 1974. S2117 is related to the appointment to the grades of general and lieutenant general of the Marine Corps. As amended in the Senate, the bill would also include the provisions of H.R. 9691. The latter bill would amend Title 10 of the United States Code in order to make certain disability retirement determinations by the Secretaries of the military departments subject to review by the Secretary of Defense.

We have examined S2117, as amended, and have determined that it will have no direct effect on budget authority or outlays over the next five years. This determination is based on the fact that within foreseeable force levels over the next five years the number of generals and lieutenant generals of the Marine Corps on active duty would not be increased by the legislation. The provisions of H.R. 9691 would not directly affect either budget authority or outlays.

Sincerely,

ALICE M. RIVLIN, *Director.*

INFLATION-IMPACT STATEMENT

Because, as indicated above, there will be no impact on the budgetary requirements of the Department of Defense, the bill does not con-

tain an inflation factor and will not have an effect on the national economy.

OVERSIGHT FINDINGS

With reference to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

Section 2 of the bill is an evolutionary step in the continuing effort of the Committee on Armed Services to prevent abuse in personnel administration and specifically in the instant case to eliminate the potential for abuse in disability-retirement procedures as they apply to high-ranking officers and medical officers in the military departments. The legislation was developed by the committee following a hearing into a case involving a dispute among senior officials of the Department of Defense and the Department of the Navy regarding disability-retirement procedures. The legislation, therefore, is a direct result of the committee carrying out its oversight function.

The committee has also, as indicated above, directed a study by the Department of Defense on the impact of more fundamental changes in the disability-retirement procedures for individuals who have completed sufficient service to qualify for length-of-service retirement.

DEPARTMENTAL DATA

Section 1 of the bill, to which the Office of Management and Budget interposes no objection, is a portion of the legislative program of the Department of Defense as indicated in the departmental correspondence included below.

Section 2 of the bill was developed by the committee following a hearing which resulted from a fundamental disagreement between senior officials of the Department of Defense and the Department of the Navy over the implementation of Defense Department policy guidelines regarding disability retirement. The bill, therefore, is a product of the committee's exercising its oversight function rather than legislation which initiated with an executive department.

The bill amends the law so as to require, as a matter of statute, determinations at the Defense Department level in regard to physical-disability retirements for senior officers as was intended by the policy guidelines initially issued by the Department of Defense.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, D.C., June 25, 1975.

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

DEAR MR. SPEAKER: There is forwarded herewith a draft of proposed legislation "To amend sections 5202 and 5232 of title 10, United States Code relating to the appointment to the grades of general and lieutenant general of Marine Corps officers designated for appropriate higher commands or for performance of duties of great importance and responsibility."

This proposal is a part of the Department of Defense legislative program for the 94th Congress. 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 proposal for the consideration of the Congress. The Department of the Navy has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by the Congress.

PURPOSE OF THE PROPOSED LEGISLATION

The purpose of the proposed legislation is to make statutory provision for the senior leadership needed by the Marine Corps in time of war or national emergency and also when the status of war or national emergency has been terminated. The proposed legislation relates to the appointment of Marine Corps officers to the grades of general and lieutenant general, including the officer appointed as Assistant Commandant of the Marine Corps.

EXISTING LAW

Under present law Marine Corps officers may serve in the grades of general and lieutenant general as follows:

GENERAL¹

(Commandant of the Marine Corps (10 U.S.C. 5201))

Assistant Commandant—At the discretion of the President and provided the Marine Corps active duty strength exceeds 200,000 at the time of appointment (10 U.S.C. 5202).

LIEUTENANT GENERAL

(Not to exceed 2 (10 U.S.C. 5232))

In time of war or national emergency: 10% of the general officers. (This provision presently suspended under the authority of 10 U.S.C. 5234 and E.O. 11270.)

When the National Emergency Proclamation of 1950 is terminated, senior leadership of the Marine Corps could be limited to:

- 1 General—Commandant (On the premise the Marine Corps active duty strength may then be less than 200,000 at the time an Assistant Commandant is appointed.)
- 2 Lieutenant Generals

MARINE CORPS REQUIREMENTS

The proposed legislation will not bring about any changes in the current command structure of the Marine Corps; nor is it designed to make the Marine Corps leadership more senior in grade or more numerous.

¹ An officer of the armed services assigned as Chief of Staff to the President may have four star grade. This post has not been filled since World War II.

At present the Marine Corps senior leadership is as follows:

2 Generals—Commandant and Assistant Commandant

7 Lieutenant Generals:

6 in posts internal to the Marine Corps.

1 in Department of Defense assignment chargeable to the Marine Corps.

The Marine Corps anticipates, under foreseeable force levels, a continuing requirement for not more than 10 officers in the grades of general and lieutenant general. However, the draft bill does not employ this finite number but rather makes use of a percentage figure: the number of generals and lieutenant generals may not exceed 15% of the Marine Corps general officer prescribed strength.

This formula would, if computed on the basis of present strengths, authorize now a total of 10 3 and 4 star generals. If there should be future strength variations, the adjusted total would be established according to the percentage formula.

With the wind-down of Southeast Asia operations, the Marine Corps has practiced coordinate personnel economy in its general officer grades. The following figures set out the Marine Corps ceilings established by the Officer Grade Limitation Act of 1954 (OGLA) (10 U.S.C. 5443) and by the Senate Armed Services Committee (SASC):

MARINE CORPS GENERAL OFFICER STRENGTHS

End fiscal year—	OGLA ceiling	SASC ceiling	USMC chargeable
1969.....	81	75	75
1970.....	80	75	75
1971.....	75	75	74
1972.....	73	75	73
1973.....	72	75	70
1974.....	71	75	70
1975.....	71	75	69

The draft bill's purpose is to provide for the senior leadership of the Marine Corps both in time of war or national emergency and also in a time of peace and when the status of national emergency has been terminated. The peacetime law affecting this leadership (10 U.S.C. 5232) has not been operable since the beginning of the Korean War. The basic command structure of the Marine Corps has not changed substantially in 20 years except for certain general officer billets directly associated with the Vietnam effort, and they have now been deleted from the command structure of the Marine Corps. The actual total number of general officers on board is below the Senate Armed Services Committee ceiling and statutory (OGLA) authorizations. Short of a massive reduction in the strength of the Marine Corps, no significant changes to the basic present command structure of the Marine Corps can now be foreseen.

Existing Law for Army, Air Force, and Navy 0/10-0/9 Appointments

Existing law relating to Army and Air Force appointments to general and lieutenant general is neither complex nor related to a national status of war or peace. For these services the authority is expressed in terms of a percentage formula. This formula provides that of the

total number of generals on active duty, not more than 15% may be 3 and 4 star generals, and of that number, nor more than 25% may be 4 star, including the Chiefs of Staff of the Army and Air Force. (10 U.S.C. 3066, 8066).

In the case of the Navy, not more than 15% of the number of line rear admirals may serve in 3 and 4 star grades; and of that 15% not more than 8 may be admirals. Except in war or national emergency, the number of 3 and 4 star admirals may not exceed 26, and of this number only 4 may be admirals. (10 U.S.C. 5231).

The office of Vice Chief of Naval Operations is established by statute which authorizes the President to designate the Vice Chief as an officer who performs special or unusual duty or duty of great importance and responsibility. (10 U.S.C. 5085).

CHANGES TO BE ACCOMPLISHED BY THE PROPOSED LEGISLATION

The draft bill enclosed herewith would define the appointment to the office of Assistant Commandant of the Marine Corps in language comparable to the office of the Vice Chief of Naval Operations:

The Assistant Commandant would be appointed from officers on the active list of the Marine Corps.

The President would be authorized to designate the Assistant Commandant as an officer who performs duty of great importance and responsibility under section 5232 of title 10, U.S.C.

Appointment to this office by the President, with Senate Confirmation, could be either in the grade of general or lieutenant general. The statutory tie to the 200,000 strength figure of the Marine Corps would be deleted.

Appointment to the grades of general and lieutenant general would be made on the basis of foreseeable needs of the Marine Corps and would be in language and percentage generally comparable to the other services:

Not more than 15% of the Marine Corps general officers would be authorized to serve in the grades of general and lieutenant general. And of this number, not more than two, including the Commandant of the Marine Corps, could have the grade of general. However, an officer of the Marine Corps while serving as Chairman of the Joint Chiefs of Staff, if serving in the grade of general, would be in addition to such number. The language of the draft legislation in this particular would be similar to that of the Navy statute. (10 USC 5231 (d)).

COST AND BUDGET DATA

The present total number of general officers of the Marine Corps on active duty would not be increased by this legislation. Further, the present total of generals and lieutenant generals of the Marine Corps on active duty would not be increased by this legislation. Its enactment would result in no increase in budgetary requirements of the Department of Defense.

Sincerely yours,

J. WILLIAM MIDDENDORF II,
Secretary of the Navy.

A BILL To amend sections 5202 and 5232 of title 10, United States Code, relating to the appointment to the grades of general and lieutenant general of Marine Corps officers designated for appropriate higher commands or for performance of duties of great importance and responsibility.

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

(1) Chapter 515 is amended by amending section 5202 to read as follows and by amending the analysis item for that section to correspond with the revised catchline:

“§ 5202. Assistant Commandant: appointment; powers; duties

“(a) There is an Assistant Commandant of the Marine Corps, appointed by the President, by and with the advice and consent of the Senate, from officers on the active list of the Marine Corps.

“(b) The Assistant Commandant of the Marine Corps has such authority and duties with respect to the Marine Corps as the Commandant of the Marine Corps, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the Assistant Commandant of the Marine Corps in performing such duties have the same effect as those issued by the Commandant of the Marine Corps.

“(c) When there is a vacancy in the office of the Commandant of the Marine Corps, or during the absence or disability of the Commandant of the Marine Corps, the Assistant Commandant of the Marine Corps and then the officers of the Marine Corps on duty at Headquarters, Marine Corps, in order of seniority, unless otherwise directed by the President, shall perform the duties of the Commandant until a successor is appointed or the absence or disability ceases.

“(d) The President may designate the Assistant Commandant of the Marine Corps as an officer who performs duty of great importance and responsibility under section 5232 of this title.”

(2) Chapter 517 is amended by amending section 5232 to read as follows, and by amending the analysis item for that section to correspond with the revised catchline:

“§ 5232. Marine Corps positions: general and lieutenant generals

“(a) The President may designate officers on the active list of the Marine Corps above the grade of colonel and, in time of war or national emergency, above the grade of lieutenant colonel for—

“(1) appropriate higher commands; or

“(2) performance of duty of great importance and responsibility.

An officer so designated may be appointed by the President, by and with the advice and consent of the Senate, to the grade of general or lieutenant general. Such an appointment is effective on the date an officer reports for the designated duty and terminates on the date he is detached. The Secretary of the Navy shall determine the rank of officers in the grade in which they are serving under this section.

“(b) The number of officers serving in the grades of general and lieutenant general under subsection (a) and section 5201 of this title may not, at any time, exceed 15 percent of the number of officers prescribed for the grades of brigadier general and major general in—

“(1) section 5443 of this title, if that section is operative; or

“(2) section 5448 of this title, if section 5443 is inoperative.

Of the number of officers that may serve in the grades of general and lieutenant general, as determined under this subsection, not more than two may have the grade of general.

“(c) An officer of the Marine Corps assigned as Chief of Staff to the President shall be appointed by the President, by and with the advice and consent of the Senate, to the grade of general. Such an appointment is effective while the officer is so serving.

“(d) An officer of the Marine Corps while serving as Chairman of the Joint Chiefs of Staff, if serving in the grade of general, is in addition to the numbers authorized under subsection (b) of this section.

“(e) An appointment under this section does not create a vacancy in the grade held by the officer at the time he is appointed and does not increase the authorized strength of the Marine Corps in officers on the active list.”

COMMITTEE POSITION

The Committee on Armed Services on February 9, 1976, a quorum being present, approved the bill without objection.

CHANGES IN EXISTING LAW

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

EXISTING LAW

(Section 5202 of title 10, United States Code)

(a) An officer on the active list of the Marine Corps not restricted in the performance of duty may be detailed as Assistant Commandant of the Marine Corps.

(b) When there is a vacancy in the office of Commandant of the Marine Corps, or during the absence or disability of the Commandant, the Assistant Commandant and then the officers of the Marine Corps not restricted in the performance of duty on duty at Headquarters, Marine Corps, in order of seniority, shall perform the duties of the Commandant, unless otherwise directed by the President.

(c) The Assistant Commandant has such authority and duties with respect to the Marine Corps as the Commandant, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the Assistant Commandant in performing such duties have the same effect as those issued by the Commandant.

(d) The Assistant Commandant of the Marine Corps, while so serving, has the grade of general, at the discretion of the President, by and with the advice and consent of the Senate: *Provided, however,* That the total active duty strength of the Marine Corps exceeds two hundred thousand, at the time of the appointment.

THE BILL AS REPORTED

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (d) of section 5202 of title 10, United States Code, is amended by striking out the colon after the word "Senate" and all that follows down through the word "appointment".

(b) Subsection (e) of section 5202 of such title is repealed.

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(e) Notwithstanding the strength proviso in subsection (d), an officer once appointed to the grade of general under this section shall retain that grade so long as his appointment as the Assistant Commandant remains in effect.

TITLE 10, UNITED STATES CODE

CHAPTER 61.—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

§ 1216. Secretaries: powers, functions, and duties

(a) The Secretary concerned shall prescribe regulations to carry out this chapter within his department.

(b) The Secretary concerned has all powers, functions, and duties incident to the determination under this chapter of—

(1) the fitness for active duty of any member of an armed force under his jurisdiction;

(2) the percentage of disability of any such member at the time of his separation from active duty;

(3) the suitability of any member for reappointment, reenlistment, or reentry upon active duty in an armed force under his jurisdiction; and

(4) the entitlement to, and payment of, disability severance pay to any member of an armed force under his jurisdiction.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1216 of title 10, United States Code, is amended—

(1) by striking out "The Secretary", in subsection (b) and inserting in lieu thereof "Except as provided

in subsection (d) of this section, the Secretary"; and
(2) by adding at the end thereof the following new subsection:

"(d) The Secretary concerned may not, with respect to any member who is in pay grade O-7 or higher or is a Medical Corps officer or medical officer of the Air Force being processed for retirement under any provisions of this title by reason of age or length of service—

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(c) The Secretary concerned or the Administrator of Veterans' Affairs, as prescribed by the President, has the powers, functions, and duties under this chapter incident to hospitalization, reexaminations, and the payment of disability retired pay within his department or agency.

* * * * *

§ 1201. Regulars and members on active duty for more than 30 days: retirement

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also determines that—

- (1) based upon accepted medical principles, the disability is of a permanent nature;
- (2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

“(1) retire such member under section 1201 of this title;

“(2) place such member on the temporary disability retired list pursuant to section 1202 of this title; or

“(3) separate such member from an armed force pursuant to section 1203 of this title.

by reason of unfitness to perform the duties of his office, grade, rank, or rating unless the determination of the Secretary concerned with respect to unfitness is first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health and Environment.”

SEC. 2. The amendments made by the first section of this Act shall apply with respect to unfitness determinations made on or after the date of enactment of this Act by the Secretaries of the military departments concerned for purposes of sections 1201, 1202, and 1203 of title 10, United States Code.

(3) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination; and either—

(i) the member has at least eight years of service computed under section 1208 of this title;

(ii) the disability is the proximate result of performing active duty; or

(iii) the disability was incurred in line of duty in time of war or national emergency.

§ 1202. Regulars and members on active duty for more than 30 days: temporary disability retired list

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, would be qualified for retirement under section 1201 of this title but for the fact that his disability is not determined to be of a permanent nature, the Secretary shall, if he also determines that accepted medical principles indi-

cate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

§ 1203. Regulars and members on active duty for more than 30 days: separation

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

- (1) the member has less than 20 years of service computed under section 1208 of this title;
- (2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;
- (3) based upon accepted medical principles, the disability is or may be of a permanent nature; and
- (4) either—
 - (A) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of

the determination, and the disability was (i) the proximate result of performing active duty, or (ii) incurred in line of duty in time of war or national emergency;

(B) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and the member has at least eight years of service computed under section 1208 of this title; or

(C) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, the disability was neither the proximate result of performing active duty nor incurred in line of duty in time of war or national emergency, and the member has less than eight years of service computed under section 1208 of this title on the date when he would otherwise be retired under section 1201 of this title or placed on the temporary disability retired list under section 1202 of this title.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

SUMMARY

PURPOSE OF THE BILL

To provide permanent authority for the Assistant Commandant of the Marine Corps to serve in the grade of general (4-star), and to require that any determination of unfitness for duty involving general or Medical Corps officers who are being processed for retirement for length of service or because of age, which would make such officers eligible for disability retirement, be approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health and Environment.

Each of the two sections of this bill have been passed by the House of Representatives at separate times in the past.

FISCAL DATA

This legislation will not result in an increase in the budgetary requirements of the Department of Defense.

DEPARTMENTAL POSITION

Section 1 of the bill is a portion of the Department of Defense legislative program to which the Office of Management and Budget interposes no objection.

Section 2 of the bill is a product of the Committee exercising its oversight function and results from a fundamental disagreement between senior officials of the Department of Defense and the Department of the Navy over implementation of policy guidelines regarding disability retirements from the military.

COMMITTEE POSITION

The Committee on Armed Services on February 9, 1976, a quorum being present, approved the bill without objection.



AMENDING TITLE 10, UNITED STATES CODE, TO MAKE DISABILITY DETERMINATIONS BY THE SECRETARIES OF THE MILITARY DEPARTMENTS INVOLVING GENERAL AND FLAG OFFICERS AND MEDICAL OFFICERS RETIRING FOR AGE OR LENGTH OF SERVICE SUBJECT TO REVIEW BY THE SECRETARY OF DEFENSE

NOVEMBER 7, 1975.—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. 9691]

The Committee on Armed Services, to whom was referred the bill (H.R. 9691) to amend title 10 of the United States Code in order to make certain disability retirement determinations by the Secretaries of the military departments subject to review by the Secretary of Defense, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the bill is to provide that where general and medical officers are being processed for retirement on length of service or because of age, a determination of unfitness for duty, which would make such officer eligible for disability retirement, may not be made by the Secretary of the military department concerned unless first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health and Environment.

The bill would apply with respect to unfitness determinations made on or after the date of enactment of the bill.

BACKGROUND

Effect of disability retirement

H.R. 9691 is designed to provide an additional safeguard in the committee's attempt to reduce the possibility of abuses in the administering of physical-disability retirement procedures.

Personnel retired for disability who have not completed the minimum required service for normal length-of-service retirement are provided retired pay equivalent to their percentage of disability. For example, a man with 50-percent disability would receive retired pay equal to 50 percent of his base pay.

In the case of those who have completed the twenty or more years necessary for length-of-service retirement, they have the opportunity to take the full-percentage retirement that their length of service would provide (2½ percent times years of service). Disability retirement for such an individual does not normally change total retired pay. However, it has the advantage that the amount of retired pay equivalent to the percentage of disability is tax exempt. For example, a general officer having completed thirty or more years of service is eligible for maximum retired pay of 75 percent of base pay. If he is rated 40-percent disabled, his maximum retired pay does not change. But an amount equivalent to 40 percent of his base pay is tax free under the disability provisions of the tax law.

(Example: General officer retired as of June 30, 1975, with base pay of \$36,000 a year. Retired pay, \$27,000 per year. Forty percent of base pay, \$14,400 per year. Amount of retired pay subject to tax, \$12,600.)

Genesis of committee concern

In hearings in October 1972, the Committee on Armed Services raised questions about the disability-retirement procedures as applied to high-ranking military officers. At that time, Gen. Daniel Lavelle, USAF, who retired following services as Deputy for Air Operations, Military Assistance Command, Vietnam, and Commander, 7th Air Force, Pacific Air Force, was found to be 70-percent disabled although he was on flying status up to the time of his retirement. The 70-percent disability rating allowed him to receive over \$35,000 of his retired pay tax free.

Investigation at that time by the committee revealed that the percentage of disability retirements awarded to general and medical officers was substantially higher than for other officers or for enlisted personnel.

As a result of the concern expressed by the committee and similar concern expressed by Senator Byrd of Virginia in the Senate, the Department of Defense issued new policy guidelines designed to clean up abuses in the disability-retirement procedures.

As evidence of the problem at which the guidelines were directed, following are the percentages of officers retiring for disability for the six top officer grades and for the senior warrant and enlisted grades during the three years prior to the time the committee conducted its initial inquiry. In other words, these were grades in which the personnel concerned would, in the great majority of cases, have completed sufficient years of service for length-of-service retirement.

PERCENTAGES OF OFFICERS RETIRING WITH DISABILITY BENEFITS

	1971	1970	1969
O-10 (general).....	47.6	44.0	42.7
O-9 (lieutenant general).....	42.0	41.3	39.7
O-8 (major general).....	33.2	32.0	32.3
O-7 (brigadier general).....	25.9	26.4	26.7
O-6 (colonel).....	16.4	16.4	16.6
O-5 (lieutenant colonel).....	11.9	10.2	12.7
W-4 (chief warrant officer).....	11.1	10.8	10.6
E-9 (sergeant major).....	9.2	9.2	8.9

Evidence at that time also indicated that among senior officers, disability retirements were running higher for medical officers than for nonmedical officers.

The new Defense Department guidelines were issued in January 1973. The new guidelines were forwarded to the Secretaries of the military departments by the Deputy Secretary of Defense on January 29, 1973; and the departmental Secretaries were instructed to have their implementing instructions forwarded to the Assistant Secretary of Defense for Health and Environment by February 23, 1973, evidence that the Assistant Secretary for Health and Environment was intended to monitor the implementation of the guidelines for the entire department.

In announcing the guidelines on February 1, 1973, the Department of Defense stressed the point that when a member performs his normal duties until time of separation, it will be presumed that he is fit for duty, and this presumption can be overridden only if there is an "acute, grave illness or injury" occurring "immediately prior to or coincidentally with" the application for retirement. The Department stated that evaluation boards "normally will be required to give greater weight to his continued performance than to clinical estimates by health personnel of his ability to perform his duties." The Department also voiced the expectation that the guidelines would result in a decrease of physical-disability retirements. Because of their importance to understanding the issues involved, the guidelines are presented in full below:

GUIDELINES FOR PHYSICAL DISABILITY SEPARATION

1. Physical disability separation laws are designed to provide for the retirement or separation of a member who is determined to be unfit to perform the duties of his office, grade, rank, or rating. Other laws provide for the separation of a member who, at the time of separation, is fit to continue to perform the duties of his office, grade, rank, or rating. A member separated under these other laws may have physical disabilities at the time of his separation and they could affect his potential for civilian employment. In some cases the effect on some civilian pursuits may be significant. Such a member may, if he desires, apply to the Veterans' Administration at the time of or after release from active duty for adjudication of any claim for benefits for these physical conditions.

2. A determination of unfitness is a factual finding that a member is unfit to perform the duties of his office, rank,

grade or rating. When such a finding is made, it would usually be inconsistent to expect the member to continue to perform satisfactorily in his office, rank, grade, or rating. Exceptions may be made when the Secretary of a Military Department determines that a particular member's experience or skill, or a combination thereof, is such that it would be in the best interests of the Department to retain the member on active duty in a limited assignment status. If a member is fit to perform the duties of his office, rank, grade, or rating, he may not be separated for physical disability; if he is unfit to perform such duties, he may not be retained on active duty, unless he is retained as an exception to policy in a limited assignment status.

3. The standard schedule of rating disabilities in use by the Veterans' Administration is irrelevant to determinations of fitness or unfitness for active duty. It is only used after a finding of unfitness has been made to determine disposition and compensation for a member.

4. To ensure that all members are physically qualified to perform their duties in a reasonably satisfactory manner, physical fitness standards, including guidelines for applying them to fitness determinations in individual cases, may be established for the purpose of referring members for physical evaluation determination. However, in all cases the physical condition of the individual must be evaluated against the physical requirements of his particular office, rank, grade, or rating, and the fact that he has one or more defects sufficient to require his referral for evaluation or that may be unfitting for members in a different office, grade, rank, or rating does not justify a determination of unfitness.

5. In evaluating the fitness of a member, the evaluation board must request and consider all relevant evidence. (For example, when a referral for physical evaluation immediately follows acute, grave illness or injury, the medical evaluation may have the greater weight, particularly if medical evidence establishes that continued service would be deleterious to the member's health. However, when a member is referred for physical evaluation under other circumstances, evaluations of his performance of duty by his supervisors [letters, efficiency reports, or personal testimony] may provide better evidence than a clinical estimate by a physician of the member's physical ability to perform the duties of his office, rank, grade, or rating. Thus, if the evidence establishes that the member adequately performed the normal duties of his office, rank, grade, or rating until the time he was referred for physical evaluation, he might be considered fit for duty, even though medical evidence indicates his physical ability to perform such duties may be questionable. On the other hand, regardless of the presence of physical deficiencies, inadequate performance, per se, could not be considered as evidence of physical unfitness for a member's office, rank, grade, or rating unless it appears that there is a cause-effect relationship between the two factors.)

6. When a member is being processed for separation for reasons other than physical disability, his continued per-

formance of duty until he is scheduled for separation for other purposes creates a presumption that the member is fit for duty. Except for a member who was previously retained in a limited assignment duty status, such a member should not be referred to a physical evaluation board unless his physical defects raise substantial doubt that he is fit to continue to perform the duties of his office, rank, trade, or rating.

7. When a member scheduled for separation for other purposes is referred to an evaluation board, the presumption of fitness may be overcome if the evidence establishes that:

a. The member, in fact, was physically unable to adequately perform the duties of his office, rank, grade, or rating even though he was improperly retained in that office, rank, grade, or rating for a period of time.

b. Acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability, rendered him unfit for further duty.

When the member's referral for physical evaluation is related to physical examinations given as a part of non-disability retirement processing, evidence must be clear and convincing to overcome the presumption of fitness. In other cases, the presumption of fitness may be overcome by a preponderance of the evidence.

8. Requirements for placement on the Temporary Disability Retired List (TDRL) are the same as for "permanent" retirement, except that a member is placed on the TDRL when his disability is not determined to be of a permanent nature. He must be unfit to perform the duties of his office, rank, grade, or rating at the time he is placed on the TDRL. Accordingly, a member who is fit for continued active duty at the time of his separation from active duty may not be placed on the TDRL, regardless of the severity of his physical defects or the fact that they might become unfitting were the member to remain on active duty for a period of time.

Initial favorable impact of the new guidelines

On July 27, 1973, the chairman of the committee received a communication from the Assistant Secretary of Defense for Health and Environment which indicated that the guidelines were having the desired effect. The letter included statistics indicating that the percentage of retiring officers retired for physical disability had fallen from 18.9 percent to 10.5 percent when comparing the first three months under the new guidelines with the same three months of a year before. Statistics for the same period for enlisted personnel showed that the percentage of disability retirements had dropped from 23 percent to 12.7 percent. For high-ranking officers, the percentage decrease was even greater. Disability retirements for general and flag officers had decreased from 52.3 percent to 12.1 percent and for colonels and captains from 22.4 percent to 11.7 percent. In addition, disability retirements had fallen off for medical officers—from 30.7 percent to 15 percent—although it was noted that disability retirements were still running higher for medical officers than for other officers of equal rank. The statistics are as follows:

COMPARING 1ST 3 FULL MONTHS UNDER NEW GUIDELINES WITH SAME MONTH 1 YR EARLIER

Grade	(*)	1972			1973			3-mo aggregates	
		March	April	May	March	April	May	March-May 1972	March-May 1973
O7-O10.....	1	15	15	14	23	12	23	44	58
	2	9	7	7	5	2	0	23	7
	3	60.0	46.7	50.0	21.7	16.7	0	52.3	12.1
O6.....	1	314	249	253	213	197	265	816	675
	2	78	53	52	34	24	21	183	79
	3	65.5	21.3	20.6	16.0	12.2	7.9	22.4	11.7
O4-O5.....	1	615	581	557	482	512	596	1,753	1,590
	2	83	69	55	34	34	43	207	111
	3	13.5	11.9	9.9	7.1	6.6	7.2	11.8	7.0
O1-O3.....	1	95	82	121	47	43	58	298	148
	2	46	41	63	23	22	27	150	72
	3	48.4	50.0	52.1	48.9	51.2	46.6	50.3	48.6
WO.....	1	109	93	107	85	146	149	309	380
	2	16	21	10	12	9	10	47	31
	3	14.7	22.6	9.3	14.1	6.2	6.7	15.2	8.2
Total officers.....	1	1,148	1,020	1,052	850	910	1,091	3,220	2,851
	2	232	191	187	108	91	101	610	300
	3	20.2	18.7	17.8	12.7	10.0	9.3	18.9	10.5
E7-E9.....	1	2,219	1,928	2,278	2,272	1,969	2,717	6,425	6,958
	2	291	278	337	161	142	134	906	437
	3	13.1	14.4	14.8	7.1	7.2	4.9	14.1	6.3
E4-E6.....	1	2,374	2,203	2,528	1,926	1,773	2,171	7,105	5,870
	2	627	639	618	312	250	273	1,884	835
	3	26.4	29.0	24.4	16.2	14.1	12.6	26.5	14.2
E1-E3.....	1	227	194	225	156	169	189	646	514
	2	167	146	157	129	151	137	470	417
	3	73.6	75.3	69.8	82.7	89.3	72.5	72.8	81.1
Total EM.....	1	4,820	4,325	5,031	4,354	3,911	5,077	14,176	13,342
	2	1,085	1,063	1,112	602	543	544	3,260	1,689
	3	22.5	24.6	22.1	13.8	13.9	10.7	23.0	12.7
All personnel.....	1	5,968	5,175	6,083	5,204	4,821	6,168	17,396	16,193
	2	1,317	1,171	1,299	710	634	645	3,870	1,989
	3	22.1	22.6	21.4	13.6	13.2	10.5	22.2	12.3

*1—Total retirements; 2—Disability retirements; 3—Percentage retiring with disability.

MEDICAL SERVICE OFFICERS VERSUS ALL OTHERS: ARMY, NAVY, AIR FORCE

Category	(*)	1972			1973			3-mo aggregates	
		March	April	May	March	April	May	March-May 1972	March-May 1973
Medical Corps.....	1	18	17	12	8	11	12	47	31
	2	3	8	1	0	2	2	12	4
	3	16.7	47.1	8.3	0	18.2	16.7	25.5	12.9
Dental Corps.....	1	12	14	12	1	3	9	38	13
	2	3	3	4	0	0	1	10	1
	3	25.0	21.4	33.3	0	0	11.1	26.3	7.7
Nurse Corps.....	1	27	26	20	22	21	27	73	70
	2	11	4	10	3	6	4	25	13
	3	40.7	15.4	50.0	13.6	28.6	14.8	34.2	18.6
Veterinary Corps.....	1	5	3	5	4	0	1	13	5
	2	2	0	1	1	0	0	3	1
	3	40.0	0	20.0	25.0	0	0	23.1	20.0
MSC.....	1	33	29	24	14	11	23	86	48
AMSC.....	2	12	10	7	2	1	3	29	6
BSC.....	3	36.4	34.5	29.2	14.3	9.1	13.0	33.7	12.5
Total, medical officers.....	1	95	89	73	49	46	72	257	167
	2	31	25	23	6	9	10	79	25
	3	32.6	28.1	31.5	12.2	19.6	13.9	30.7	15.0
Total, other officers.....	1	1,012	893	945	725	827	925	2,850	2,477
	2	183	157	150	82	74	68	490	224
	3	18.1	17.6	15.9	11.3	8.9	7.4	19.8	9.0

*1—Total retirements; 2—Disability retirements; 3—Percentage retiring with disability.

It should be understood that enlisted personnel in grades E-1 through E-4 and officers in grades O-1 through O-3 are those who could not normally finish a full length-of-service career in those grades and who, therefore, have had to be retired for disability early in their careers.

Policy disagreement on the retirement of General Anderson

In June of this year Gen. Earl E. Anderson, after completing a term as assistant commandant of the Marine Corps, applied for length-of-service retirement and in the process of his preretirement physical was discovered to have angina pectoris. A physical evaluation board found him unfit for duty and recommended a disability rating of 40 percent. A physical review council concurred in the findings. The Assistant Secretary of the Navy for Manpower and Reserve Affairs requested a review of the records by the Surgeon General of the Navy because of what he called "the sensitivity of the case."

Prior to making a determination on the recommendation of his subordinates, the Secretary of the Navy, in line with the policy guidelines of the Department of Defense quoted above, asked the Assistant Secretary of Defense for Health and Environment to review the case. The Assistant Secretary of Defense for Health and Environment conducted his review and disagreed with the finding of unfitness, recommending against disability retirement for General Anderson. The Secretary of the Navy, on June 30, 1975, rejected the finding of the Assistant Secretary of Defense for Health and Environment and approved the physical-disability retirement for General Anderson on the basis that he was unfit for duty. General Anderson was retired with a disability rating of 40 percent.

COMMITTEE REVIEW

Because of the conflicting opinions of senior officials of the Department of Defense and the Department of the Navy based on the same policy guidelines and because of the committee's continuing oversight interest and concern for past abuses in this area, the committee determined that examination of the policy decisions involved was advisable. The committee, therefore, conducted a hearing into the matter and extensively reviewed the documentation involved in the case (H.A.S.C. No. 94-23).

As a result of its review, the committee determined that there was an inconsistency between the legal authority for final determination in cases of this type which continues to reside in the service Secretaries who can still overrule any recommendation from the Assistant Secretary of Defense for Health and Environment, the Defense Department's top medical official; and the intent of the Department's new policy guidelines for such cases, which were clearly intended to give the Assistant Secretary for Health and Environment the final determination with regard to the medical questions set forth in those guidelines. The committee therefore decided that new legislation was necessary to resolve this inconsistency by giving the Assistant Secretary for Health and Environment, as H.R. 9691 does, the final determination, through the superior authority of the Secretary of Defense.

No personal criticism intended of General Anderson

It should be understood that the committee intends no personal criticism of General Anderson but is concerned here with the functioning of the system. The committee had no evidence in its hearing that General Anderson himself attempted to gain a certain level of disability retirement. The bill is prospective in nature and will apply to unfitness determinations made on or after the date of enactment. It will not, therefore, change General Anderson's retired status. The committee in this report reviews its findings in the case because they are symptomatic of problems that recur in retirement procedures of this kind.

Basis for conflicting opinions

Both the Assistant Secretary of Defense for Health and Environment and the Secretary of the Navy based their differing opinions in the Anderson case on Defense Department policy guidelines quoted above.

The Assistant Secretary of Defense for Health and Environment relied on item 6: That the continued performance of duty creates a presumption of fitness. The office of the Assistant Secretary of Defense for Health and Environment, in a memorandum dated June 23, 1975, stated "There is no medical evidence in this record that clearly demonstrates a deterioration in physical condition of sufficient magnitude that would overcome the presumption of continued fitness." In a followup memorandum dated June 26, 1975, the office of the Assistant Secretary of Defense for Health and Environment stated that it had again reviewed the case and again concluded that guideline 6 should govern and that General Anderson should not be awarded disability retirement.

The Secretary of the Navy, according to a memorandum dated July 8, 1975, from the Assistant Secretary of the Navy for Manpower and Reserve Affairs, based his decision on guideline 7(b); that is, that an "Acute, grave illness or injury or other deterioration of physical condition . . ." has been established and such would overcome the presumption of fitness. The memorandum stated that the decision was based on "the overwhelming medical evidence that General Anderson was, in fact, physically unfit for further duty."

Navy presumptions regarding illness

The Navy's testimony before the committee and the documentation available on the case show a consistent presumption on the part of the Navy that it was only necessary to prove that General Anderson had angina pectoris in order to award disability retirement. The Navy officials apparently presumed that angina pectoris is of itself an acute, grave illness and that its existence automatically renders one unfit for duty.

In support of the Navy, it should be stated that one Navy doctor testified that he wanted to remove General Anderson from the stress of command, and the medical opinion of physicians who actually examined General Anderson concurred in the finding of unfitness.

Political sensitivity

It is also clear from the evidence that the Navy considered a decision of disability retirement in the case of General Anderson politically sensitive even before the conflict in judgment with the Assistant Secretary of Defense for Health and Environment. Previous

reference has been made to the statement of the Assistant Secretary of the Navy for Manpower and Reserve Affairs as to the "sensitivity" of the case. In addition, in his prepared testimony before the committee the Assistant Secretary of the Navy stated:

The Secretary of the Navy and I fully recognized that because of General Anderson's position, the decision to approve his disability retirement could create considerable controversy.

Position of the Assistant Secretary of Defense for Health and Environment

The Assistant Secretary of Defense for Health and Environment rejected the automatic assumption of unfitness on which the Navy based its decision. The Office of the Assistant Secretary noted that one doctor who evaluated General Anderson as part of his retirement processing recommended the general "abstain from efforts which provoke angina and * * * when angina does occur that he take sublingual nitroglycerine." The doctor further advised that General Anderson be reevaluated after a period of time and that consideration be given to other therapy in the event of progression in the frequency or severity of the angina.

The Assistant Secretary of Defense for Health and Environment noted that General Anderson was released from the hospital on June 17 after three days of hospitalization for examination with the admonition of "no exercise" and that his records indicated his most recent chest pains were experienced in the spring "after a mile run." These conditions do not suggest "the occurrence of an acute, grave illness" said the Assistant Secretary. And it may be further noted that the difficulty did not occur "immediately prior to or coincident with" his retirement application.

The test of severity

In view of the differing assumptions among high-ranking officials, the committee examined into the degree of severity which might pertain in the case of an individual with angina pectoris. It was found that there can be considerable variation in the degree of severity and, therefore, the degree of limitation on the activities of the individual affected.

General Anderson was found by his doctors to have what is classified as New York Heart Association Type II-B angina pectoris. It was established that one who had angina pectoris rated New York Heart Association Type II-A would have no limitation on his activities, whereas an individual who had New York Heart Association Type II-D would be bedridden. Type II-B indicates the patient will be limited in certain activities which increase heart action or might precipitate an attack of angina pectoris. A Navy doctor who examined General Anderson and testified in the hearings concurred in that description as the following testimony indicates.:

Mr. FORD. So you are saying, he is in the two class, which means he can be active but limited in his activities?

Dr. BOHAN. That is exactly right.

Mr. FORD. You say limited to the amount of heart stress. Are you talking in terms of physical stress, running a mile?

Dr. BOHAN. Yes; this classification refers to physical stress. But anything which causes the heart action to increase.

The committee concluded, therefore, that it remained open to question whether an individual with General Anderson's level of angina would be unable to perform the duties of assistant commandant or, if he had to be removed from that assignment because of the tension of that office, the degree to which he would be prevented from working in other assignments or working in civilian life.

It should be remembered that the angina pectoris in General Anderson's case was discovered during his preretirement physical following his own application for length-of-service retirement on more than thirty years of service. On his previous annual physical examination in June 1974 no angina was discovered. In addition, no angina showed up in any previous electrocardiogram. The record also shows that the general first complained of chest pains earlier in the spring and that prior to six weeks before his final retirement physical he did not report to anyone about the pains under his heart. The angina was discovered by the doctors as a result of an exercise electrocardiogram which was performed at the time of the final preretirement physical. In part, the doctors were led to such examination by the fact that General Anderson had a family history of angina conditions.

Investigation by the committee also determined that the 40-percent disability rating for General Anderson was derived from the rather complex formula for disability rating maintained by the Veterans Administration. However, the rating included only 30 percent for the angina pectoris and an additional 10 percent for a variety of other minor medical problems, some of which had been showing improvement as a result of treatment and none of which of themselves would have been sufficient to allow a disability rating. The Navy witnesses testified repeatedly that the rating of disability rested upon the finding of angina pectoris. A 30-percent disability is the minimum percentage required in order to be eligible for disability retirement. That is the percentage awarded on the basis of General Anderson's angina condition.

The committee believes there is a basic inconsistency in the procedures of the Navy which found that the angina condition was only a 30-percent disability but was nevertheless an "acute, grave illness." If an individual has, in fact, an acute, grave illness, it seems to the committee that the individual would, in fact, be prevented from working and could be expected to have a higher disability rating than 30 percent. The 30 percent was apparently arrived at because that is the percentage which the Veterans Administration rating formula gives under New York Heart Association Type II-B angina.

LENGTH-OF-SERVICE RETIREMENT AND PHYSICAL-DISABILITY DETERMINATIONS

The hearings raised the larger question of the rationale for awarding physical-disability retirement in the case where an individual has already qualified for length-of-service retirement, particularly one who has completed a full thirty-year career.

An officer who serves thirty years already qualifies for the maximum retirement pay of his grade and continues to be eligible for medical care. Physical-disability retirement, therefore, only confers on that individual entitlement to special treatment under the income tax laws. It is not at all clear that this result carries out the intent of Congress

at the time the applicable income tax and disability-retirement laws were enacted.

Insofar as the disability exemption was designed to protect the income of those who are unable to work following retirement, the present procedure would appear to be ineffective since the tax exemption is most beneficial to those with higher retirement income and of least benefit to those with low retirement income.

The greatest advantage accrues to those whose retired pay is high enough as to constitute sufficient income without special tax exemptions, even without outside employment.

The committee believes, therefore, that the whole question of physical-disability retirement for those who are otherwise qualified for length-of-service retirement should receive further attention. This is a complex area which involves individuals at all ranks and at various age groups and also has a relationship to veterans' benefits laws.

There have been suggestions that disability retirement be eliminated for those who have qualified for length-of-service retirement; that is, all those with more than twenty years of service. However, before taking such a sweeping action, the ramifications of such a change, the effect on individuals, must be carefully analyzed.

Department of Defense directed to conduct study

The committee directs, therefore, that the Department of Defense conduct a study of the effect of eliminating disability retirements for those with more than twenty years of service and that the Department report the results of the study to the Committee on Armed Services no later than August 1, 1976. The committee will await the result of the study before considering more definitive legislation concerning disability retirement.

DEPARTMENTAL DATA

The bill was developed by the committee following a hearing which resulted from a fundamental disagreement between senior officials of the Department of Defense and the Department of the Navy over the implementation of Defense Department policy guidelines regarding disability retirement. The bill, therefore, is a product of the committee's exercising its oversight function rather than legislation which initiated with an executive department.

The bill amends the law so as to require, as a matter of statute, determinations at the Defense Department level in regard to physical-disability retirements for senior officers as was intended by the policy guidelines initially issued by the Department of Defense.

COMMITTEE POSITION

The Committee on Armed Services, on November 4, 1975, a quorum being present, approved H.R. 9691, without amendment, by voice vote.

FISCAL DATA

Enactment of this legislation will result in no increase in the budgetary requirements of the Department of Defense. The bill is designed to prevent abuses of the disability-retirement system and to the extent that it does so, will prevent unwarranted tax exemptions for retired personnel. It does not change the amount of retired pay to which retired officers are entitled.

Compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives

With reference to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee on Armed Services has not received an estimate and comparison by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act.

INFLATION-IMPACT STATEMENT

Because, as indicated above, there will be no impact on the budgetary requirements of the Department of Defense as a result of enactment of this legislation, and because the number of senior officers and medical officers affected would be relatively few, the bill does not contain an inflation factor. The legislation will not have an effect on the national economy.

OVERSIGHT FINDINGS

The bill is an evolutionary step in the continuing effort of the Committee on Armed Services to prevent abuse in personnel administration and specifically in the instant case to eliminate the potential for abuse in disability-retirement procedures as they apply to high-ranking officers and medical officers in the military departments. The legislation was developed by the committee following a hearing into a case involving a dispute among senior officials of the Department of Defense and the Department of the Navy regarding disability-retirement procedures. The legislation, therefore, is a direct result of the committee carrying out its oversight function.

The committee has also, as indicated above, directed a study by the Department of Defense on the impact of more fundamental changes in the disability-retirement procedures for individuals who have completed sufficient service to qualify for length-of-service retirement. With reference to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

CHANGES IN EXISTING LAW

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

EXISTING LAW

THE BILL AS REPORTED

TITLE 10, UNITED STATES CODE

Chapter 61.—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

§ 1216. Secretaries: powers, functions, and duties

(a) The Secretary concerned shall prescribe regulations to carry out this chapter within his department.

(b) The Secretary concerned has all powers, functions, and duties incident to the determination under this chapter of—

(1) the fitness for active duty of any member of an armed force under his jurisdiction;

(2) the percentage of disability of any such member at the time of his separation from active duty;

(3) the suitability of any member for reappointment, reenlistment, or reentry upon active duty in an armed force under his jurisdiction; and

(4) the entitlement to, and payment of, disability severance pay to any member of an armed force under his jurisdiction.

(c) The Secretary concerned or the Administrator of Veterans' Affairs, as prescribed by the President, has the powers, functions, and duties under this chapter incident to hospitalization, reexaminations, and the payment of disability retired pay within his department or agency.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1216 of title 10, United States Code, is amended—

(1) by striking out "The Secretary", in subsection

(b) and inserting in lieu thereof "Except as provided in subsection (d) of this section, the Secretary"; and

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

"(d) The Secretary concerned may not, with respect to any member who is in pay grade O-7 or higher or is a Medical Corps officer being processed for retirement under chapter 63 or 65 of this title—

* * * * *

§ 1201. Regulars and members on active duty for more than 30 days: retirement

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(3) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination; and either—

(i) the member has at least eight years of service computed under section 1208 of this title;

(ii) the disability is the proximate result of performing active duty; or

(iii) the disability was incurred in line of duty in time of war or national emergency.

“(1) retire such member under section 1201 of this title;

“(2) place such member on the temporary disability retired list pursuant to section 1202 of this title; or

“(3) separate such member from an armed force pursuant to section 1203 of this title

by reason of unfitness to perform the duties of his office, grade, rank, or rating unless the determination of the Secretary concerned with respect to unfitness is first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health and Environment.”

SEC. 2. The amendments made by the first section of this Act shall apply with respect to unfitness determinations made on or after the date of the enactment of this Act by the Secretaries of the military departments concerned for purposes of sections 1201, 1202, and 1203 of title 10, United States Code.

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§ 1202. Regulars and members on active duty for more than 30 days: temporary disability retired list

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, would be qualified for retirement under section 1201 of this title but for the fact that his disability is not determined to be of a permanent nature, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

§ 1203. Regulars and members on active duty for more than 30 days: separation

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is

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unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(3) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(4) either—

(A) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and the disability was (i) the proximate result of performing active duty, or (ii) incurred in line of duty in time of war or national emergency;

(B) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and the member has at least eight years of service computed under section 1208 of this title; or

(C) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, the disability was neither the proximate result of performing active duty nor incurred in line of duty in time of war or national emergency, and the member has less than eight years of service computed under section 1208 of this title on the date when he would otherwise be retired under section 1201 of this title or placed on the temporary disability retired list under section 1202 of this title.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

SUMMARY

PURPOSE

The purpose of the bill is to provide that in the case of determination of unfitness for duty involving general or flag officers and medical officers who are being processed for retirement on length of service or because of age, where the determination would make such officers eligible for disability retirement, the Secretary of the military department concerned may not make such a determination unless it is approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health and Environment.

FISCAL DATA

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

DEPARTMENTAL DATA

The bill provides a statutory base for carrying out policy directives of the Department of Defense regarding disability retirement of senior and medical officers. The legislation was developed by the committee as part of its oversight function following a case wherein senior officials of the Department of Defense and the Department of the Navy disagreed as to the proper implementation of policy.

COMMITTEE POSITION

The Committee on Armed Services, on November 4, 1975, a quorum being present, approved H.R. 9691, without amendment, by a voice vote.



AUTHORIZING THE APPOINTMENT OF MARINE CORPS OFFICERS TO BE ASSISTANT COMMANDANT OF THE MARINE CORPS IN THE GRADE OF GENERAL

DECEMBER 15, 1975.—Ordered to be printed

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

REPORT

[To accompany S. 2117]

The Committee on Armed Services, to which was referred the bill (S. 2117) to amend sections 5202 and 5232 of title 10, United States Code, relating to the appointment to the grades of general and lieutenant general of Marine Corps officers designated for appropriate higher commands or for performance of duties of great importance and responsibility, having considered the same, reports favorably thereon with an amendment in the form of a substitute and an amendment to the title and recommends that the bill as amended do pass.

COMMITTEE AMENDMENT IN THE FORM OF A SUBSTITUTE

The committee amended the bill by striking all after the enacting clause, substituting new language reflecting changes in this bill and changing the title of the bill.

NATURE OF THE COMMITTEE AMENDMENT

The bill as originally submitted would have amended the current law establishing the position of Assistant Commandant of the Marine Corps by providing that the President may designate the Assistant Commandant as serving in a position of great importance and responsibility. It would have further provided that officers so designated could be appointed to the rank of general or lieutenant general by and with the advice and consent of the Senate. It would have further provided that not more than fifteen percent of the number of officers prescribed for the grades of brigadier general and major general could serve in the grades of general and lieutenant general, except that if a

Marine Corps officer was serving as Chairman of the Joint Chiefs of Staff it would have been in addition to the number authorized.

The committee amendment simply would remove the current provision of law which requires the strength of the Marine Corps to exceed 200,000 before the Assistant Commandant is authorized to hold the grade of general. This has the effect of retaining all other current provisions of law relating to the grades of general and lieutenant general in the Marine Corps.

PURPOSE OF THE BILL

The legislation would authorize the Assistant Commandant of the Marine Corps to have the grade of general, at the discretion of the President, by and with the advice and consent of the Senate, without regard to the overall strength of the Marine Corps.

EXISTING LAW

Existing law authorizes the grade of general for the Assistant Commandant if the overall strength of the Marine Corps exceeds 200,000.

NEED FOR THE BILL

The legislation would allow the Marine Corps to continue to have two officers in the grade of general: the Commandant and the Assistant Commandant. Up until July 1975, the Assistant Commandant held the rank of general. By that time, Marine Corps strength had declined to approximately 200,000. Rather than appoint the new Assistant Commandant to the grade of general while Marine Corps strength hovered at the 200,000 mark, the Commandant decided to seek legislation to make permanent the authorized grade of general for the Assistant Commandant.

The Assistant Commandant should hold the rank of general for several reasons: first, he performs the duties and responsibilities of the Commandant in the event he is temporarily unavailable or incapacitated and such backup is needed; second, the duties and responsibilities of the Assistant Commandant are substantial, important and commensurate with the Vice Chiefs of Staff of the other Services and the rank of general; third, the Assistant Commandant from time to time acts for the Commandant with the Joint Chiefs of Staff who hold the rank of general; finally, the current law making the rank of the Commandant depend on Marine Corps strength exceeding 200,000 could provide an incentive to manipulate Marine Corps strength so as to keep four star rank for the Assistant Commandant.

BACKGROUND OF THE BILL

The overall authorized number of general officers in the Marine Corps established by law is not changed by this legislation. This legislation authorizes one of those general officers—the Assistant Commandant—to hold the rank of general. There are 69 general officers in the Marine Corps. One of them—the Commandant—holds the grade of general and eight now hold the grade of lieutenant general.

There are fewer generals and lieutenant generals in the Marine Corps than any other Service as shown below:

NUMBER OF GENERALS AND LIEUTENANT GENERALS (1975)

	Generals	Lieutenant generals	Total
Marine Corps.....	2	7	9
Army.....	12	34	46
Navy.....	10	42	52
Air Force.....	13	43	56

The ratio of total Marine Corps general officers as well as generals and lieutenant generals is also lower than the other Services as shown below:

RATIO TO TOTAL MILITARY STRENGTH (1975)

	Total general officers	Generals and lieutenant generals
Marine Corps.....	1/2, 840	1/21, 772
Army.....	1/1, 706	1/17, 050
Navy.....	1/1, 859	1/10, 290
Air Force.....	1/1, 649	1/10, 942

There are negligible costs associated with this bill since no additional general officers would be created.

The Committee believes we must have a high quality Marine Corps, even if total strength is reduced. The Committee has requested the Commandant to study the overall Marine Corps force structure, manpower levels and force mix as it relates to missions. However, the Committee believes that the position of Assistant Commandant should retain the grade of general even if Marine Corps strength is reduced below 200,000.

OTHER ASPECTS OF THE BILL

The Committee considered but did not recommend the original provisions of the bill that related to the authorization of lieutenant generals. The Commandant testified that this was not as urgent as the portion relating to the Assistant Commandant and the Committee decided to consider this issue along with an overall review of general officers in all Services planned by the Subcommittee on Manpower and Personnel. The Committee believes that the overall number of Marine Corps generals and lieutenant generals should not exceed the current level of nine until such review is completed.

FISCAL DATA

Executive Branch Estimate

The Department of the Navy has stated that enactment of this bill would result in no increase in budgetary requirements of the Department of Defense.

Congressional Budget Office Estimate

CONGRESS OF THE UNITED STATES,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, D.C., December 5, 1975.

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

DEAR MR. CHAIRMAN: This letter is in response to a request from the Committee staff for a cost estimate, in accordance with our responsibilities under Section 403 of the Congressional Budget Act of 1974, for S. 2117, a bill to amend Sections 5202 and 5232 of Title 10, United States Code, relating to the appointment to the grades of general and lieutenant general of the Marine Corps.

We have examined the bill and have determined that within foreseeable force levels over the next five years the number of generals and lieutenant generals of the Marine Corps on active duty would not be increased by this legislation. Consequently, it is our conclusion that the bill will have no effect on budget authority or outlays over the next five years.

Sincerely,

ALICE M. RIVLIN, *Director.*

DEPARTMENT POSITION

DEPARTMENT OF THE NAVY,
 OFFICE OF THE SECRETARY,
 Washington, D.C., June 25, 1975.

HON. NELSON A. ROCKEFELLER,
 President of the Senate,
 Washington, D.C.

DEAR MR. PRESIDENT: There is forwarded herewith a draft of proposed legislation "To amend sections 5202 and 5232 of title 10, United States Code relating to the appointment to the grades of general and lieutenant general of Marine Corps officers designated for appropriate higher commands or for performance of duties of great importance and responsibility."

This proposal is a part of the Department of Defense legislative program for the 94th Congress. 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 proposal for the consideration of the Congress. The Department of the Navy has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by the Congress.

PURPOSE OF THE PROPOSED LEGISLATION

The purpose of the proposed legislation is to make statutory provision for the senior leadership needed by the Marine Corps in time of war or national emergency and also when the status of war or national emergency has been terminated. The proposed legislation relates to the appointment of Marine Corps officers to the grades of general

and lieutenant general, including the officer appointed as Assistant Commandant of the Marine Corps.

EXISTING LAW

Under present law Marine Corps officers may serve in the grades of general and lieutenant general as follows:

GENERAL¹

Commandant of the Marine Corps, 10 U.S.C. 5201.
 Assistant Commandant—At the discretion of the President and provided the Marine Corps active duty strength exceeds 200,000 at the time of appointment. 10 U.S.C. 5202.

LIEUTENANT GENERAL

(Not to exceed 2—10 U.S.C. 5232)

In time of war or national emergency: 10 percent of the general officers. (This provision presently suspended under the authority of 10 U.S.C. 5234 and E.O. 11270).

When the National Emergency Proclamation of 1950 is terminated, the senior leadership of the Marine Corps could be limited to:

1. General—Commandant (On the premise the Marine Corps active duty strength may then be less than 200,000 at the time an Assistant Commandant is appointed.)
2. Lieutenant Generals.

MARINE CORPS REQUIREMENTS

The proposed legislation will not bring about any changes in the current command structure of the Marine Corps; nor is it designed to make the Marine Corps leadership more senior in grade or more numerous.

At present the Marine Corps senior leadership is as follows:

- 2 Generals—Commandant and Assistant Commandant.
- 7 Lieutenant Generals—6 in posts internal to the Marine Corps; 1 in Department of Defense assignment chargeable to the Marine Corps.

The Marine Corps anticipates, under foreseeable force levels, a continuing requirement for not more than 10 officers in the grades of general and lieutenant general. However, the draft bill does not employ this finite number but rather makes use of a percentage figure: the number of generals and lieutenant generals may not exceed 15% of the Marine Corps general officer prescribed strength.

This formula would, if computed on the basis of present strengths, authorize now a total of 10 3 and 4 star generals. If there should be future strength variations, the adjusted total would be established according to the percentage formula.

With the wind down of Southeast Asia operations, the Marine Corps has practiced coordinate personnel economy in its general officer grades. The following figures set out the Marine Corps ceilings estab-

¹ An officer of the armed services assigned as Chief of Staff to the President may have four star grade. This post has not been filled since World War II.

lished by the Officer Grade Limitation Act of 1954 (OGLA) (10 USC 5443) and by the Senate Armed Services Committee (SASC):

MARINE CORPS GENERAL OFFICER STRENGTHS

End fiscal year:	OGLA ceiling	SASC ceiling	USMC chargeable
1969.....	81	75	75
1970.....	80	75	75
1971.....	75	75	74
1972.....	73	75	73
1973.....	72	75	70
1974.....	71	75	70
1975.....	71	75	69

The draft bill's purpose is to provide for the senior leadership of the Marine Corps both in time of war or national emergency and also in a time of peace when the status of national emergency has been terminated. The peacetime law affecting this leadership (10 USC 5232) has not been operable since the beginning of the Korean War. The basic command structure of the Marine Corps has not changed substantially in 20 years except for certain general officer billets directly associated with the Vietnam effort, and they have now been deleted from the command structure of the Marine Corps. The actual total number of general officers on board is below the Senate Armed Services Committee ceiling and statutory (OGLA) authorizations. Short of a massive reduction in the strength of the Marine Corps, no significant changes to the basic present command structure of the Marine Corps can now be foreseen.

EXISTING LAW FOR ARMY, AIR FORCE, AND NAVY 0/10-0/9 APPOINTMENTS

Existing law relating to Army and Air Force appointments to general and lieutenant general is neither complex nor related to a national status of war or peace. For these services the authority is expressed in terms of a percentage formula. This formula provides that of the total number of generals on active duty, not more than 15% may be 3 and 4 star generals, and of that number, not more than 25% may be 4 star, including the Chiefs of Staff of the Army and Air Force. (10 USC 3066, 8066).

In the case of the Navy, not more than 15% of the number of line rear admirals may serve in 3 and 4 star grades; and of that 15% not more than 8 may be admirals. Except in war or national emergency, the number of 3 and 4 star admirals may not exceed 26, and of this number only 4 may be admirals. (10 USC 5231).

The office of Vice Chief of Naval Operations is established by statute which authorizes the President to designate the Vice Chief as an officer who performs special or unusual duty or duty of great importance and responsibility. (10 USC 5085).

CHANGES TO BE ACCOMPLISHED BY THE PROPOSED LEGISLATION

The draft bill enclosed herewith would define the appointment to the office of Assistant Commandant of the Marine Corps in language comparable to the office of the Vice Chief of Naval Operations:

The Assistant Commandant would be appointed from officers on the active list of the Marine Corps.

The President would be authorized to designate the Assistant Commandant as an officer who performs duty of great importance and responsibility under section 5232 of title 10, U.S.C.

Appointment to this office by the President, with Senate confirmation, could be either in the grade of general or lieutenant general. The statutory tie to the 200,000 strength figure of the Marine Corps would be deleted.

Appointment to the grades of general and lieutenant general would be made on the basis of foreseeable needs of the Marine Corps and would be in language and percentage generally comparable to the other services:

Not more than 15 percent of the Marine Corps general officers would be authorized to serve in the grades of general and lieutenant general. And of this number, not more than two, including the Commandant of the Marine Corps, could have the grade of general. However, an officer of the Marine Corps while serving as Chairman of the Joint Chiefs of Staff, if serving in the grade of general, would be in addition to such number. The language of the draft legislation in this particular would be similar to that of the Navy statute. (10 U.S.C. 5231 (d)).

COST AND BUDGET DATA

The present total number of general officers of the Marine Corps on active duty would *not* be increased by this legislation. Further, the present total of generals and lieutenant generals of the Marine Corps on active duty would not be increased by this legislation. Its enactment would result in no increase in budgetary requirements of the Department of Defense.

Sincerely yours,

J. WILLIAM MIDDENDORF II,
Secretary of the Navy.

Enclosure (draft bill).

A BILL To amend section 5202 and 5232 of title 10, United States Code, relating to the appointment to the grades of general and lieutenant general of Marine Corps officers designated for appropriate higher commands or for performance of duties of great importance and responsibility

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

(1) Chapter 515 is amended by amending section 5202 to read as follows and by amending the analysis item for that section to correspond with the revised catchline:

“§ 5202. Assistant Commandant: appointment; powers; duties

“(a) There is an Assistant Commandant of the Marine Corps, appointed by the President, by and with the advice and consent of the Senate, from officers on the active list of the Marine Corps.

“(b) The Assistant Commandant of the Marine Corps has such authority and duties with respect to the Marine Corps as the Commandant of the Marine Corps, with the approval of the Sec-

retary of the Navy, may delegate to or prescribe for him. Orders issued by the Assistant Commandant of the Marine Corps in performing such duties have the same effect as those issued by the Commandant of the Marine Corps.

“(c) When there is a vacancy in the office of the Commandant of the Marine Corps, or during the absence or disability of the Commandant of the Marine Corps, the Assistant Commandant of the Marine Corps and then the officers of the Marine Corps on duty at Headquarters, Marine Corps, in order of seniority, unless otherwise directed by the President, shall perform the duties of the Commandant until a successor is appointed or the absence or disability ceases.

“(d) The President may designate the Assistant Commandant of the Marine Corps as an officer who performs duty of great importance and responsibility under section 5232 of this title.”

(2) Chapter 517 is amended by amending section 5232 to read as follows, and by amending the analysis item for that section to correspond with the revised catchline:

“§ 5232. **Marine Corps positions: generals and lieutenant generals**

“(a) The President may designate officers on the active list of the Marine Corps above the grade of colonel and, in time of war or national emergency, above the grade of lieutenant colonel for—

“(1) appropriate higher commands; or

“(2) performance of duty of great importance and responsibility.

An officer so designated may be appointed by the President, by and with the advice and consent of the Senate, to the grade of general or lieutenant general. Such an appointment is effective on the date an officer reports for the designated duty and terminates on the date he is detached. The Secretary of the Navy shall determine the rank of officers in the grade in which they are serving under this section.

“(b) The number of officers serving in the grades of general and lieutenant general under subsection (a) and section 5201 of this title may not, at any time, exceed 15 percent of the number of officers prescribed for the grades of brigadier general and major general in—

“(1) section 5443 of this title, if that section is operative;

or

“(2) section 5448 of this title, if section 5443 is inoperative.

Of the number of officers that may serve in the grades of general and lieutenant general, as determined under this subsection, not more than two may have the grade of general.

“(c) An officer of the Marine Corps assigned as Chief of Staff to the President shall be appointed by the President, by and with the advice and consent of the Senate, to the grade of general. Such an appointment is effective while the officer is so serving.

“(d) An officer of the Marine Corps while serving as Chairman of the Joint Chiefs of Staff, if serving in the grade of general, is in addition to the numbers authorized under subsection (b) of this section.

“(e) An appointment under this section does not create a vacancy in the grade held by the officer at the time he is appointed and does not increase the authorized strength of the Marine Corps in officers on the active list.”

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, existing law in which no change is proposed is shown in roman, and existing law to be omitted is enclosed in black brackets.

TITLE 10, UNITED STATES CODE—ARMED FORCES

* * * * *

Chapter 515.—Commandant of the Marine Corps; Headquarters, Marine Corps

* * * * *

§ 5202. Assistant Commandant: detail; pay; succession to duties

(a) An officer on the active list of the Marine Corps not restricted in the performance of duty may be detailed as Assistant Commandant of the Marine Corps.

(b) When there is a vacancy in the office of Commandant of the Marine Corps, or during the absence or disability of the Commandant, The Assistant Commandant and then the officers of the Marine Corps not restricted in the performance of duty on duty at Headquarters, Marine Corps, in order of seniority, shall perform the duties of the Commandant, unless otherwise directed by the President.

(c) The Assistant Commandant has such authority and duties with respect to the Marine Corps as the Commandant, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the Assistant Commandant in performing such duties have the same effect as those issued by the Commandant.

(d) The Assistant Commandant of the Marine Corps, while so serving, has the grade of general, at the discretion of the President, by and with the advice and consent of the Senate: *Provided, however,* That the total active duty strength of the Marine Corps exceeds two hundred thousand, at the time of the appointment.

(e) Notwithstanding the strength proviso in subsection (d), an officer once appointed to the grade of general under this section shall retain that grade so long as his appointment as the Assistant Commandant remains in effect.

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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 section 5202 of title 10, United States Code, relating to the detail, pay, and succession to duties of the Assistant Commandant of the Marine Corps and to amend title 10 of the United States Code in order to make certain disability retirement determinations by the Secretaries of the military departments subject to review by the Secretary of Defense.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (d) of section 5202 of title 10, United States Code, is amended by striking out the colon after the word "Senate" and all that follows down through the word "appointment".

(b) Subsection (e) of section 5202 of such title is repealed.

SEC. 2. (a) Section 1216 of title 10, United States Code, is amended—

(1) by striking out "The Secretary" in subsection (b) and inserting in lieu thereof "Except as provided in subsection (d) of this section, the Secretary"; and

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

"(d) The Secretary concerned may not, with respect to any member who is in pay grade O-7 or higher or is a Medical Corps officer or medical officer of the Air Force being processed for retirement under any provisions of this title by reason of age or length of service—

"(1) retire such member under section 1201 of this title;

"(2) place such member on the temporary disability retired list pursuant to section 1202 of this title; or

"(3) separate such member from an armed force pursuant to section 1203 of this title

by reason of unfitness to perform the duties of his office, grade, rank, or rating unless the determination of the Secretary concerned with respect to unfitness is first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health and Environment."

(b) The amendments made by subsection (a) of this section shall apply with respect to unfitness determinations made on or after the date of the enactment of this Act by the Secretaries of the military departments concerned for purposes of sections 1201, 1202, and 1203 of title 10, United States Code.

Speaker of the House of Representatives.

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