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HEARING
BEFORE THE
SUBCOMMITTEE ON COMMERCE AND FINANCE
OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

SECOND SESSION

ON

H.R. 8668 and S. 1170

BILLS TO AUTHORIZE THE DEPARTMENT OF COMMERCE
TO MAKE SPECIAL STUDIES, TO PROVIDE SERVICES, AND
TO ENGAGE IN JOINT PROJECTS, AND FOR OTHER
PURPOSES

JUNE 3, 1970

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DEPARTMENT OF COMMERCE PROJECTS AND STUDIES

WEDNESDAY, JUNE 3, 1970

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE AND FINANCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice in room 2218, Rayburn House Office Building, Hon. John E. Moss (chairman) presiding.

Mr. Moss. The subcommittee will be in order.

This morning we commence hearings on H.R. 8668, by Mr. Staggers of West Virginia, and S. 1170, a bill which is identical, providing for uniform authority for the Secretary of Commerce to undertake upon request special studies on matters within the province of the Department, to prepare some records of the Department special tabulations and reports, and to furnish transcripts or copies of Department records upon payment of the cost of such work, and in the case of nonprofit and research organizations or Government agencies to engage in joint projects or perform services on matters of mutual interest with an equitable sharing of the costs.

The bills would also repeal several statutes which no longer are used or which are inconsistent with the provisions.

(The text of H.R. 8668 and S. 1170 and departmental reports thereon follow:)

[H.R. 8668, 91st Cong., 1st sess., introduced by Mr. Staggers on March 11, 1969, and S. 1170, 91st Cong., 1st sess., referred to the Committee on Interstate and Foreign Commerce on November 24, 1969, are identical as follows:]

A BILL To authorize the Department of Commerce to make special studies, to provide services, and to engage in joint projects, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Commerce is authorized, upon the request of any person, firm, organization, or others, public or private, to make special studies on matters within the authority of the Department of Commerce; to prepare from its records special compilations, lists, bulletins, or reports; to perform the functions authorized by section 2 of the Act of September 9, 1950 (64 Stat. 823; 15 U.S.C. 1152); and to furnish transcripts or copies of its studies, compilations, and other records; upon the payment of the actual or estimated cost of such special work.

In the case of nonprofit organizations, research organizations, or public organizations or agencies, the Secretary may engage in joint projects, or perform services, on matters of mutual interest, the cost of which shall be apportioned equitably, as determined by the Secretary, who may, however, waive payment of any portion of such costs by others, when authorized to do so under regulations approved by the Bureau of the Budget.

SEC. 2. All payments for work or services performed or to be performed under this Act shall be deposited in a separate account or accounts which may be used to pay directly the costs of such work or services, to repay or make advances to appropriations or funds which do or will initially bear all or part of such costs,

or to refund excess sums when necessary: *Provided*, That said receipts may be credited to a working capital fund otherwise established by law, and used under the law governing said funds, if the fund is available for use by the agency of the Department of Commerce which is responsible for performing the work or services for which payment is received. Acts appropriating funds to the Department of Commerce may include provisions limiting annual expenditure from said account or accounts.

SEC. 3. The following laws, or parts of laws, are hereby repealed:

(a) That proviso in the Act of March 1, 1919 (ch. 86, sec. 1, at 40 Stat. 1256), which reads as follows: "*Provided further*, That all moneys hereafter received by the Bureau of Foreign and Domestic Commerce in payment of photographic and other mechanical reproduction of special statistical compilations from its records shall be covered into the Treasury as a miscellaneous receipt."

(b) The Act of May 27, 1935 (ch. 148, 49 Stat. 292; 15 U.S.C. 189a, 192, 192a).

(c) The proviso in the Act of May 15, 1936 (ch. 405, sec. 1, at 49 Stat. 2335; 15 U.S.C. 189), which reads as follows: "*Provided*, That the Secretary of Commerce may make such charges as he deems reasonable for lists of foreign buyers, special statistical services, special commodity news bulletins, and World Trade Directory Reports, and the amounts collected therefrom shall be deposited in the Treasury as miscellaneous receipts."

(d) The Act of December 19, 1942 (ch. 780, 56 Stat. 1067; 15 U.S.C. 1520).

(e) The proviso in section 3 of the Act of September 9, 1950 (64 Stat. 823; 15 U.S.C. 1153), which reads as follows: "*Provided*, That all moneys hereafter received by the Secretary in payment for publications under this Act shall be deposited in a special account in the Treasury, such account to be available, subject to authorization in any appropriation Act, for reimbursing any appropriation then current and chargeable for the cost of furnishing copies of reproductions as herein authorized, and for making refunds to organizations and individuals when entitled thereto: *And provided further*, That an appropriation reimbursed by this special account shall, notwithstanding any other provision of law, be available for the purposes of the original appropriation."

(f) The proviso in title III of the Act of October 22, 1951 (ch. 533, title III, section 301 at 65 Stat. 586; 15 U.S.C. 1153a), which reads as follows: "*Provided*, That moneys hereafter received by the Secretary pursuant to section 3 of said Act of September 9, 1950, for publications provided thereunder, shall be available for reimbursing any appropriation as provided by said section."

SEC. 4. Except as to those laws expressly repealed herein, nothing in this Act shall alter, amend, modify, or repeal any existing law prescribing fees or charges or authorizing the prescribing of fees or charges for services performed or for any publication furnished by the Department of Commerce, or any of its several bureaus or offices.

DEPARTMENT OF COMMERCE,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., March 24, 1969.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department concerning H.R. 8668, a bill "To authorize the Department of Commerce to make special studies, to provide services, and to engage in joint projects, and for other purposes."

This legislation is identical to a draft of legislation submitted to the Congress on January 9, 1969 by the then Secretary of Commerce.

The Department of Commerce has reexamined this legislation and continued to support its enactment by the Congress. We are advised by the Bureau of the Budget that there would be no objection to our continued support of this legislation from the standpoint of the Administration's program.

Sincerely,

JAMES T. LYNN,
General Counsel.

GENERAL ACCOUNTING OFFICE,
COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 25, 1969.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.*

DEAR MR. CHAIRMAN: This is in reference to your letter of March 17, 1969, requesting our comments on H.R. 8668.

The proposed legislation would provide general authority to the Department of Commerce to perform upon request special services, and provide that funds received in payment therefor could be deposited in a special account and used to pay the costs of performing the requested work. This would replace some of the various specific authorities now provided to the Department. The authority as proposed in H.R. 8668 is a matter of policy which we feel is primarily for the Congress to determine. Consequently, we have no comment to offer regarding the merits of the bill.

H.R. 8668 is similar to H.R. 15544, 89th Congress, which was the subject of our comments to you in letter of August 11, 1966, B-134944. It reflects, however, several modifications made as a result of our comments. These modifications meet the object of our comments.

Sincerely yours,

R. F. KELLER,
Acting Comptroller General of the United States.

Mr. Moss. This legislation was requested on January 9, 1969, by the Secretary of Commerce. It has been supported by that Department and we are pleased to welcome our witnesses this morning, Mr. Larry A. Jobe, Assistant Secretary of Commerce for Administration, and Mr. Charles H. Alexander, Director, Office of Budget and Program Analysis.

Gentlemen, you have a statement, and would you prefer to include it in the record at this point, summarize it, or read it verbatim?

**STATEMENT OF LARRY A. JOBE, ASSISTANT SECRETARY FOR
ADMINISTRATION, DEPARTMENT OF COMMERCE; ACCOMPANIED
BY CHARLES H. ALEXANDER, DIRECTOR, OFFICE OF BUDGET AND
PROGRAM ANALYSIS**

Mr. JOBE. Mr. Chairman, it is very short, if I could read it.

Mr. Moss. Certainly.

Mr. JOBE. Mr. Chairman and members of the committee, I have with me Mr. Alexander, as you mentioned, Director of our Office of Budget and Program Analysis.

I am pleased to have the opportunity to appear before you in support of S. 1170 or H.R. 8668.

S. 1170 provides for uniform authority that will facilitate the administration of user charges programs of the Department and make it possible for the Department to broaden the range of services and to make existing information more readily available to the public at no additional expense to the taxpayer. The authority to conduct joint projects on a cost-sharing basis with nonprofit or research organizations and public bodies will enable the Department to expand basic knowledge in important fields with less appropriations than would otherwise be required.

Specifically, the Department of Commerce collects a wide range of economic and scientific data. Within the limits of its funds, it makes available to the general public the most essential and widely useful data through news media or printed reports and charts. A great deal

more information than is generally published is available in the Department of Commerce files for special tabulations, studies, and research. It is presently the policy of the Department to make information which is not confidential or tabulations thereof available to the public upon request and upon payment of the full cost of the special service involved. Where there is a public interest in the results, supplementary data is collected and published at cost, or where authorized, on a sharing of cost. However, the inability in certain cases to offset costs incurred within an appropriation to supply such data results in either a hardship upon the agency involved or a curtailment in information available to the public.

As only one example, from time to time States request the Environmental Science Services Administration to supply aerial photographs of their shore, coast, and terrain features. Such a request may involve 3,000 to 4,000 photographs per request which ESSA must duplicate from its files at substantial cost. With the authority contained in the proposed bill, ESSA could be responsive to this and similar requests. Presently, ESSA's authority to perform and be reimbursed for such activities is not clear. There are similar examples of this in the Department.

Four other important points about S. 1170 that I would like to bring to the committee's attention are:

The proposed bill would repeal a number of statutes which authorize the Department to engage in special studies and services, and user fees; and provide general uniform authority in their stead. The statutes referred to are conflicting, overlapping, and vary as to the extent to which payment may be required and to the proportion of receipts which may be used to cover the cost of the services rendered.

Second, the proposed bill does not contain any new authorities not now available to one or more Commerce bureaus. Although it combines language of several existing statutes, the authority is patterned generally on that currently available to the Bureau of the Census, where it has been effectively used for a number of years.

The language has been drafted to provide safeguards against possible use of the authority for improper competition with private industry by providing that studies must be on matters within the authority of the Department.

Lastly, the language provides for annual budget control by stating that acts appropriating funds to the Department may include provisions limiting annual expenditures from the funds which are received pursuant to this authority.

This latter provision was added at the suggestion of the Comptroller General in consideration of a similar bill in an earlier Congress, S. 3370, 89th Congress. The Acting Comptroller General offered no objections to S. 1170 in a letter to the Senate, dated March 25, 1969.

I also understand the House has received a similar letter.

Mr. Chairman, we believe this bill will further the purposes and objectives of the Department of Commerce, and promote its effective administration. We respectfully urge your favorable consideration.

Mr. Chairman, I and Mr. Alexander will be happy to answer any questions the committee may have.

Mr. Moss. Mr. Eckhardt, do you have questions?

Mr. ECKHARDT. I have one with respect to the words "within the authority of the Department of Commerce", and I am wondering if that does not sort of beg the question? You have the authority within the authority. I was just thinking that perhaps the studies of matters within the area of interest of the Department of Commerce might be more descriptive of what could be done.

Mr. JOBE. The original draft of the bill provided for items within the province of the Department of Commerce. The Comptroller General felt this language was too broad and he, in a letter, and this was one of several comments he made on the original bill, in the 89th Congress, was that it was too broad, and it was his recommendation that the language as it now appears be included, but it originally said for items within the province of the Department of Commerce, and that was felt by the Comptroller General to need a narrower definition for those items specifically within his authority.

Mr. ECKHARDT. That may be so, but I think it raises some questions that are needlessly raised. For instance, just what is within the authority of the Department of Commerce? There may be things that are useful for the Department to know, and useful for those to know who are dealing with the Department, but there may be a question as to whether or not the authority of the Department would extend to those items. It would seem to me that the language is actually too restrictive. I have no quarrel with it other than, in other words, my quarrel is exactly on the other side of the picture.

Mr. JOBE. Yes.

Mr. ALEXANDER. Mr. Eckhardt, we construe this and discussed it with the Comptroller General, that we would have to find some law, some executive order, which authorized us to engage in a subject matter before we could provide a service relating thereto.

Now, many of your statutes and our basic statutory authority on domestic and foreign commerce are quite broad.

Mr. JOBE. That is correct.

Mr. ALEXANDER. However, they feel that as a matter of construction and, by the way, the Comptroller General feels that he must, and his policy on this kind of a statute is to construe the authority very, very narrowly any time that an agency is going to use funds which come into its possession other than by a direct appropriation. And all of the basic laws and policies are that these must be immediately deposited in the Treasury and not used except pursuant to specific statutory authorization, so that if we can keep our basic statutory authority broad enough, and we can go the full range of whatever is in our basic statutory authority to get into this.

So, as a practical matter, it will not be, we do not think it will be restrictive on us in any way.

Mr. ECKHARDT. Well, I hope not, because actually if this is done upon the payment of the actual estimated cost of such special work which is requested by an agency which is not nonprofit or a research organization or a public organization, it seems to me that the public interest is completely protected against undue expenditure of Federal moneys.

And then with respect to nonprofit organizations, research organizations, or public organizations or agencies, there is provision by which

you work out an equitable division, but you may waive it, and I would assume that the waiver would only be in those cases where your work was actually directly in the public interest. It would seem to me that this is very, very carefully guarded.

Mr. JOBE. Yes, we feel it is well guarded.

Mr. ECKHARDT. But I would merely hope that this would be sufficiently flexible to permit you to look into fields which may touch on the exercise of your authority, but over which you might not have complete control.

Mr. JOBE. We feel that it is amply protected by reference back to our basic statutory authority here, and by reference to that it can be interpreted broadly enough to avoid the type of conflict which you see.

Mr. ECKHARDT. Thank you, sir.

Thank you, Mr. Chairman.

Mr. MOSS. Mr. Blanton, do you have any questions?

Mr. BLANTON. No questions, Mr. Chairman.

Mr. MOSS. Well, gentlemen, I have no questions. I took the bill home last evening to study it, and as I see it, there is no reason why we cannot give you fairly speedy action on it.

There being no further questions, I want to express the committee's appreciation for your attendance. I am now trying to muster a quorum to see if we cannot report the bill out promptly, and thank you very much.

Mr. JOBE. Thank you. We appreciate it.

Mr. MOSS. For purposes of the record, the committee will stand adjourned.

(Whereupon, at 10:25 a.m., the committee adjourned.)





