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FEDERAL CONSTRUCTION SAFETY

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HEARINGS
BEFORE THE
SUBCOMMITTEE ON LABOR
OF THE
COMMITTEE ON
LABOR AND PUBLIC WELFARE
UNITED STATES SENATE
NINETY-FIRST CONGRESS

FIRST SESSION
ON

S. 1368

A BILL TO PROMOTE HEALTH AND SAFETY IN THE
BUILDING TRADES AND CONSTRUCTION INDUSTRY
IN ALL FEDERAL AND FEDERALLY FINANCED OR
FEDERALLY ASSISTED CONSTRUCTION PROJECTS

MARCH 25 AND MAY 7, 1969



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FEDERAL CONSTRUCTION SAFETY

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FEDERAL CONSTRUCTION SAFETY

TUESDAY, MARCH 25, 1969

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met at 2:10 p.m., pursuant to call, in room 4232, New Senate Office Building, Hon. Harrison A. Williams (chairman of the subcommittee) presiding.

Present: Senators Williams, Eagleton, Prouty, and Bellmon.

Committee staff members present: Robert O. Harris, staff director of full committee; Fred Blackwell, subcommittee counsel; Gerald M. Feder, associate counsel; Peter C. Benedict, minority labor counsel; and Gene Mittelman, minority counsel.

Senator WILLIAMS. We will begin our hearings this afternoon. This will be the beginning of our hearings on S. 1368, a bill to promote health and safety in the construction industry, on all Federal, federally financed, and federally assisted construction projects.

The bill, S. 1368, which I introduced for myself and 16 other Senators on March 4 of this year, has been developed by the building trades department of the AFL-CIO, and it is a companion measure to House bill, H.R. 3290, which was introduced by Congressman Perkins, of Kentucky, for himself on the House side, and 16 other Members there.

It is similar in many respects to H.R. 2567, which was reported favorably with an amendment by the House Committee on Education and Labor last year.

Senate sponsors, and I would like to mention them, of the bill before the Senate, S. 1368, are, besides myself, Senators Bayh, Case, Dodd, Harris, Hart, Hughes, Inouye, Jackson, Javits, McGee, McIntyre, Metcalf, Mondale, Montoya, Pell, and the chairman of the Labor and Public Welfare Committee, Senator Yarborough.

(S. 1368 and report from the Comptroller General follow:)

S. 1368

IN THE SENATE OF THE UNITED STATES

MARCH 4, 1969

Mr. WILLIAMS of New Jersey (for himself, Mr. BAYH, Mr. CASE, Mr. DODD, Mr. HARRIS, Mr. HART, Mr. HUGHES, Mr. INOUE, Mr. JACKSON, Mr. JAVITS, Mr. MCGEE, Mr. MCINTYRE, Mr. METCALF, Mr. MONDALE, Mr. MONTOYA, Mr. PELL, and Mr. YARBOROUGH) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To promote health and safety in the building trades and construction industry in all Federal and federally financed or federally assisted construction projects.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That the Contract Work Hours Standards Act is amended
4 by adding at the end thereof the following:

5 “SEC. 107. (a) It shall be a condition of each contract
6 entered into under legislation subject to Reorganization Plan
7 Numbered 14 of 1950 (64 Stat. 1267) that no contractor or
8 subcontractor contracting for any part of the contract work
9 shall require any laborer or mechanic engaged in the perform-

1 ance of the contract to work in surroundings, or under work-
2 ing conditions, which are unsanitary, hazardous, or dangerous
3 to his health or safety. In the event of a violation, as deter-
4 mined by the Secretary of Labor, of any such condition of
5 a contract of a type described in clause (1) or (2) of sec-
6 tion 103 (a) of the Contract Work Hours Standards Act,
7 the governmental agency for which the contract work is
8 done shall have the right to cancel the contract, and to enter
9 into other contracts for the completion of the contract work,
10 charging any additional cost to the original contractor. In
11 the event of a violation, as determined by the Secretary of
12 Labor, of any such condition of a contract of a type described
13 in clause (3) of section 103 (a), the governmental agency
14 by which financial, guarantee, assistance or insurance for
15 the contract work is provided shall have the right to with-
16 hold any such assistance attributable to the performance of
17 the contract.

18 “(b) (1) Sections 4 and 5 of the Act of June 30,
19 1936 (41 U.S.C. 38, 39) as amended shall govern the
20 Secretary’s authority to enforce this section, issue orders,
21 hold hearings, and make decisions based on findings of fact,
22 and take other appropriate action hereunder. Section 554 of
23 title 5, United States Code, shall apply to any adjudication
24 under this section.

25 “(2) All questions relating to the interpretation and

1 application of the provisions of this section or the standards,
2 regulations, rulings, interpretations, and procedures promul-
3 gated by the Secretary, shall be referred to the Secretary for
4 appropriate ruling or interpretation and such rulings and
5 interpretations shall be final and binding upon all agencies
6 of the United States except the courts of the United States.

7 “(3) Section 104 of this Act shall not apply to the
8 enforcement of this section.

9 “(c) The Comptroller General is directed to distribute
10 a list to all agencies of the Government giving the names of
11 all persons or firms that the Federal agencies of the Secre-
12 tary have found to have violated this section. Unless the
13 Secretary otherwise recommends, no contract subject to this
14 section shall be awarded to the persons or firms on this list
15 or to any firm, corporation, partnership, or association in
16 which such persons have a substantial interest until three
17 years have elapsed from the date of publication of the list
18 containing the name of such persons or firms.”

19 SEC. 2. The first section and section 2 of the Act of
20 August 13, 1962, are each amended by inserting “and
21 Safety” after “Hours” each time it appears.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 20, 1969.

B-123085.

HON. RALPH YARBOROUGH,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate.

DEAR MR. CHAIRMAN: Your letter dated March 7, 1969, requests our comments on S. 1368 entitled "A Bill To promote health and safety in the building trades and construction industry in all Federal and federally financed or federally assisted construction projects."

Section 1 of the bill would amend the Contract Work Hours Standards Act, 76 Stat. 357, by adding at the end thereof a new section 107, subsection (a) of which would provide that it shall be a condition of each contract entered into under legislation subject to Reorganization Plan No. 14 of 1950, 64 Stat. 1267, that no contractor or subcontractor contracting for any part of the contract work shall require any laborer or mechanic engaged in the performance of the contract to work in surroundings, or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety. Appropriate actions would be taken in the event of violations as determined by the Secretary of Labor.

We have no special information as to the desirability of the measure or as to whether its purposes could best be accomplished by adding a new section to the Contract Work Hours Standards Act. Hence, we offer no comments with respect to its merits and no recommendation regarding its enactment.

We should like to point out, however, that the enactment of this proposed legislation in its present form, and as an amendment to the Contract Work Hours Standards Act might be productive of some confusion because of the difference between the coverage as defined in the proposed section 107(a) and the coverage of the existing act as set out in section 103(a). In this connection, it should be noted that Reorganization Plan No. 14 of 1950 is not applicable by its own terms to any act subsequently enacted, and while we believe later acts authorizing Federal assistance for construction programs of any kind do contain specific provisions making them subject to that Plan, it is possible that there may be exceptions. For these reasons, and since the intention of the proposed legislation is to provide health and safety standards for Federal or federally assisted construction projects or programs, we would suggest that consideration be given to providing that the proposed new sections be applicable to any contract defined by section 103(a) of the act which involves construction, alteration, or repair, including painting and decorating, of buildings, structures, or public works, or the demolition, wrecking, or removal thereof.

Inasmuch as the applicability of the Davis-Bacon Act is limited to construction contracts of the United States in excess of \$2,000, it should also be considered whether any such limitation should be included in the proposed legislation. In this connection it should also be noted that contracts not in excess of \$2,500 are exempt from the health and safety provisions of the Service Contract Act of 1965, Public Law 89-286, 79 Stat. 1034, and the Walsh-Healey Act (41 U.S.C. 35-45) applies only to contracts in excess of \$10,000.

It is noted that the proposed new section 107(b) provides that section 554 of Title 5, United States Code, shall apply to any adjudication under the section. We are not aware of any reason why the reference should not be to subchapter II of Chapter 5 of Title 5, and we suggest that it be modified in this respect unless it is intended to exclude applicability of some provisions of the Administrative Procedures Act. We note also that the proposed new section contains no specific provision for judicial review of any determinations, decisions, orders, or other administrative actions thereunder. In view of the virtually unlimited administrative authority which would be created by the proposed provisions we recommend that some such judicial review be provided.

Finally, we suggest that if the term "subcontractor" as appearing on lines 7 and 8, p. 1, is intended to include subcontractors at all tiers below the first tier subcontractor, you may wish to consider inclusion of a definition of the term "subcontractor" in the bill in view of the contrary interpretation adopted by the Court of Claims in *Schweigert, Inc. v. The United States*, 388 F. 2d 697 (1967).

We assume that the word "of" in line 11, page 3, of the bill is intended to be "or".

Sincerely yours,

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

Senator WILLIAMS. Since 1936, with the enactment of the Walsh-Healey Act, protective legislation has existed for employees of Government supply contractors with respect to health and safety. Employees of Government service contractors are now also covered by the protective provisions of the McNamara-O'Hara Service Contracts Act.

But the final major component of Government contractors, construction contractors, are not covered by any such protective health and safety legislation. This is indeed an anomaly.

Construction is a very hazardous occupation in terms of both the frequency of accidents and their severity. Data for 1966, from the National Safety Council, show that the construction industry had an accident frequency rate of 12.24 per million man-hours worked—a rate that was almost twice the all-industry rate of 6.91.

Department of Labor statistics, higher for most industries than those of the National Safety Council, show very high rates for construction, ranging from 20.7 per million man-hours worked for electrical work to 24.0 for heavy construction, to 28.8 for general building, to 43.9 for roofing and sheet metal work.

Additional evidence of the hazardous nature of construction is found in the data which reflect the severity of injuries. The severity rates, indicating how badly workers are injured, place construction with a higher number of days lost to accidents per million man-hours worked than any other industry, except mining, lumber, and marine transportation.

Put another way, the men who risk their lives erecting the buildings that house the Government of this country, who build our roads and bridges, our State universities and hospitals, do not have the benefits of protective legislation. There are no requirements that safe and healthful working conditions prevail for them.

Another factor to be considered is the economic impact of accidents. In 1963, the Associated General Contractors computed the cost of accidents in the construction industry to be \$2 billion, including costs of compensation, damaged equipment, work stoppage, spoiled work, and other categories of loss.

These figures do not tell the human story of immeasurable pain and suffering.

This bill is not the occupational health and safety bill. That bill is a broader bill neither limited to a single industry nor limited to Government contracts. We expect to deal with that broader bill separately, later.

The bill before us now, S. 1368, places Federal construction contracts on the same basis, with respect to the health and safety of workers, as Federal supply contracts and Federal service contracts.

We expect a report from the Department of Labor on experience in enforcing the health and safety provisions of those contracts.

The bill, in short, breaks no new ground. It does remedy years of oversight with respect to an important segment of workingmen who are subjected to very high work injury and death rates.

I am advised that the president of the AFL-CIO Building Trades Department, Mr. C. J. Haggerty, wanted to be here but was unable to make it. He is most ably represented by a friend, certainly, of this committee and of the entire Congress, known to us for years of great work, constructive work: Walter Mason, director of legislation.

Mr. Mason, we are honored again to have you before our committee. Proceed.

STATEMENT OF WALTER J. MASON, DIRECTOR OF LEGISLATION, BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO; ALBERT E. HUTCHINSON, GENERAL PRESIDENT, INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS; JAMES BAILEY, LEGISLATIVE REPRESENTATIVE, UNITED BROTHERHOOD OF CARPENTERS & JOINERS; ALAN F. BURCH, REPRESENTING THE STANDING COMMITTEE ON SAFETY OF THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT AND DIRECTOR OF SAFETY OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS; VICTOR WHITEHOUSE, SAFETY DIRECTOR, AND MELVIN BOYLE, LEGISLATIVE REPRESENTATIVE, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; JACK CURRAN, LEGISLATIVE DIRECTOR, LABORERS' INTERNATIONAL UNION; GEORGE RILEY, LEGISLATIVE REPRESENTATIVE, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS; AND BRYCE HOLCOMBE, LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF PAINTERS, DECORATORS, & PAPERHANGERS OF AMERICA

Mr. MASON. Thank you, Mr. Chairman.

My name is Walter J. Mason. I am legislative director of the Building and Construction Trades Department, AFL-CIO.

I am appearing here today on behalf of President Haggerty, who, because of unforeseen developments, asked me to convey to you his deep regrets that he could not be present. He has asked me to present to this committee his statement in support of S. 1368.

With the committee's permission, I will proceed in a moment with President Haggerty's statement.

Senator WILLIAMS. If you would, please, and thank you.

Mr. MASON. Before doing so, however, I would like to introduce those officers and representatives of unions affiliated with the building and construction trades department who are with me here today.

On my right is General President Albert E. Hutchinson, of the International Association of Heat & Frost Insulators and Asbestos Workers, and Mr. James Bailey, legislative representative of the United Brotherhood of Carpenters & Joiners.

On my left, closest to me here, is Alan F. Burch, representing the Standing Committee on Safety of the Building and Construction Trades Department, and director of safety, the International Union of Operating Engineers. Next to him is Victor Whitehouse, safety director of the International Brotherhood of Electrical Workers, and at the end is Jack Curran, legislative representative of the Laborers' International Union. Also accompanying me are George Riley, legislative representative of the International Association of Bridge, Structural and Ornamental Iron Workers; Bryce Holcombe, legislative representative of the Brotherhood of Painters, Decorators & Paperhangers of America; and Melvin Boyle, legislative representative of the International Brotherhood of Electrical Workers.

Mr. Chairman, I will now proceed to present President Haggerty's statement to the committee.

The department is a federation of 17 national and international unions, composed of 8,400 local unions throughout the United States.

The opportunity to appear before this committee in support of S. 1368, the construction safety bill, is greatly appreciated. We in the building trades have an intense interest in the health and safety of our membership. To provide adequate protection against fatal accidents and disabling injuries has always been a major goal of our department.

The committee is to be highly commended for calling hearings early in this first session of the 91st Congress to reveal the facts which clearly demonstrate the immediate need to establish Federal safety standards and provide for enforcement of those standards on all Government and federally assisted construction projects.

The construction industry, as no other industry, reaches into every center of activity in this country. Its approximately 4 million workers are spread out in every State, city, county, and small town in this Nation.

For all of its progressive greatness and its growing economic strength throughout the years, the construction industry has neglected its first obligation—the protection of the health and safety of its workers.

Last year, when we appeared before the House Labor Committee, I pointed out that thousands of construction workers had been killed and hundreds of thousands had been maimed and disabled.

A year has passed by, and I am sad to report to the committee that another 2,800 construction workers were killed on the job, and over another quarter of a million construction workers have been disabled by construction accidents.

The Congress at present is justifiably engaged in the consideration of stronger legislation for the safety and health of miners. There has been legislation on the books concerning mine safety for many years. However, the need for effective legislation did not capture the Nation's attention until 78 miners lost their lives in a single preventable accident recently.

My question to those that would oppose construction safety legislation is: How many construction workers must be killed at one time to see safety legislation enacted for the construction industry?

We are now suffering as many deaths annually as the mining industry. Must we see large numbers killed at one time before the need for construction safety legislation is realized?

The Bureau of Labor Statistics has reported that, in 1967, 42 million man-days were lost due to work stoppages. I think all will agree that 42 million man-days lost out of this Nation's work force is a serious concern.

However, that same year, 1967, the construction industry alone suffered almost as many man-days lost, 33.5 million, due to disabling injuries, as was lost by all industries due to work stoppages.

We have heard over the past years how safe the construction industry has been, and how much over the years has been accomplished to reduce the number of deaths and injuries.

The facts, however, do not support this as a truth. Since 1959, never has there been less than 209,000 construction workers disabled per year. Since 1959, there has never been less than 2,300 construction workers killed per year.

In fact, in 1968, no other industry in the United States suffered more deaths than the construction industry. There were approximately

2,800 construction workers killed on the job in 1968. Yet, the opponents of S. 1368 will probably appear before this committee and try to tell you what great strides are supposed to have been made in construction safety in recent years.

Gentlemen, to say that approximately 2,800 deaths, 242,800 disabling injuries, and 33.5 million man-days of lost work is making progress is absurd.

I want to emphasize that the figures I have given do not reflect the total injury and death experience of the construction industry, but rather they are based only on the experience of those companies who have elected to report their experience. The figures, therefore, represent only the experience base of a small group of companies.

In September 1968, Labor Commissioner Ricciuti, of the State of Connecticut, in commenting about that State's work injury experience, had this to say about the construction industry:

The incidence of injury in the construction trades continues to be more than twice that of manufacturing. I am sorry to report that too many of our highly skilled construction workers are being injured at work. Construction is one of the most hazardous industries in Connecticut. Most distressing is the fact that one in every five deaths occurs in construction and that one out of every seven disabling injuries occurs to a construction worker. Yet, only four percent of the State's work force were in the construction industry.

I think the facts and figures I have just quoted on death and injuries in the construction industry are by themselves singularly sufficient motivation to enact the construction safety legislation.

However, for those opponents who care not to think in humanistic terms, let me present a few facts concerning money which may convince them of the material need for this legislation.

In 1966, the building trades conservatively set the price tag on construction accidents at \$2.3 billion. During that period, about \$75 billion was spent on new construction.

The Department of Commerce has recently set a \$91 billion value on new construction for 1969. This represents a \$16 billion increase since 1966. Given this increased construction expenditure, then, we in the building trades estimate that work accidents which were costing \$2.3 billion in 1966 will rise to approximately \$3 billion in 1969.

Here is an industry, with an annual economic dollar value equal to more than 10 percent of the gross national product, causing an economic drain of \$3 billion, due to preventable accidents.

I cannot set a monetary value on the amount of pain, suffering, or "spinoff" effects an injured man and his family suffers, but if I were forced to declare such a dollar amount, I could only say it is at least equal to the \$3 billion in national measurement, or a total of \$6 billion!

In the past, those that have opposed this safety legislation, have presented programs, standards development actions, and a whole host of other methodology on what the industry was doing to correct the admitted problem.

The fact is there is still no set of national safety and health standards for construction work. Insofar as we in the building trades are able to determine, the accomplishments they related to the committee have produced exactly nothing. If anything—and I will base my comments on the experience of the National Safety Council's construction safety statistics—they have done worse.

The opponents of this legislation have made a great to-do over statistics during past encounters. In testimony before a House committee during the 90th Congress, they admitted to changing their methodology of computing their accident statistics, which prior to their testimony was running around a frequency rate of 28. This, they said, was an unfair statistical computation, that the true rate should be reported at about 12, instead of the 28 previously reported.

The building trades did not choose to argue this statistical gerrymandering, because we knew that if there was any honesty to the reporting system, that the truth would in the long term be known.

We would not predict, however, that this statistical gerrymandering would become apparent so soon. When the construction industry made a decision to change how they would figure their reporting of the frequency of injuries, they were able to show a rate of 12.

Now all the gerrymandering notwithstanding, the National Safety Council's latest accident frequency report, even with the change, shows an increased accident frequency rate of more than 13. This is twice the national average for all industries!

I might note here that the Bureau of Labor Statistics accident rate, which was not changed, still shows as its latest computation an accident frequency rate still in the high twenties—26.0, to be exact.

Now the AGC has stated what a successful safety program their members enjoy. Yet they reported a 1967-68 frequency rate of 32.52, based on 5,699 member companies' reports. This is a higher rate than BLS or the NSC, and is almost equal to the mining rate, which is the highest.

My purpose on dwelling on the accident statistical measurement of what is happening in the construction industry is not to defame anyone. My purpose is, rather, to point out to the committee that no matter how you compute the accident experience, it is still a preventable national waste.

But we are not before this committee to play a game of statistics. We are here because a real problem does exist, of which this committee has taken notice. The construction industry, no matter how you wish to count the toll, is still among the highest group of workers that are being injured.

If you considered the industry solely on the economic impact, construction has the greatest toll to be remedied.

As I mentioned before, the value of new construction in 1969 has been set at \$91 billion, or more than 10 percent of the gross national product. The construction industry employs directly approximately 4 million workers. In addition, another 20 million of this Nation's work force look directly to the construction industry for its livelihood.

We are, therefore, today, talking about one-third of the Nation's work force, when we speak of the construction industry.

The facts that I have talked about only speak of the conditions and problems of today. I ask that the committee project its thoughts to the future. Every crucial problem that this Nation and this Congress is trying to cope with today centers around construction in one phase or another, whether it be military or civilian.

We are faced with rebuilding our cities, creating new cities and towns, building new roads, developing rapid transit, constructing new industrial complexes. No matter what the program for this Nation's renewal, construction is involved.

If, then, today we are talking about a 10-percent value of the gross national product for construction, what, then, of future years? We must look to the future of construction in the safety and health field, as well. Is it asking too much that the Federal Government provide for the safety and health of construction workers on the job?

Surprisingly, few people appear to realize that there is no Federal authority at the present time to set safety and health standards in the construction industry, not to mention power to enforce them.

When a construction safety proposal came before the House floor last year, questions were raised as to whether construction work was already covered under other safety legislation, such as the Walsh-Healey Act or the Service Contracts Act. The answer was that construction was not covered by these acts or any other Federal law at that time, and this is still the case.

The Walsh-Healey Act and the Service Contracts Act cover two of the three major types of Government contractors. Walsh-Healey covers manufacturers and suppliers, and requires that the prevailing wage be paid and that safe and healthful working conditions be maintained.

The Service Contract Act covers service contractors. That act also requires safe and healthful working conditions and compliance with the prevailing wage rates.

The third group of major Government contractors are the construction contractors. Unlike manufacturers, suppliers, and service contractors, construction contractors are not subject to any Federal statute imposing safety or health requirements.

The Walsh-Healey Act is now 33 years old, and, prior to leaving office, former Secretary of Labor Wirtz announced new and stricter industrial safety and health regulations under that act. Walsh-Healey health and safety standards have been updated several times, and this latest move by the Johnson administration can be seen as a recognition of a need to strengthen certain standards to further protect workers.

Yet, in the midst of this effort by the Federal Government to better the lot of employees of suppliers to the Government, nothing can be done administratively to help employees of construction contractors, because the Department of Labor lacks such authority.

We are, therefore, greatly gratified, Mr. Chairman, that your committee is moving forward with the consideration of S. 1368 to correct this extremely serious oversight in the Federal statutes, and we feel this bill would provide a sound and workable approach to the problem.

The industry sometimes attempts to give the impression that construction safety legislation, such as S. 1368, would duplicate to a considerable extent the present safety efforts being carried out by the various Federal contracting agencies. Nothing could be further from the truth.

Aside from the fairly good safety programs of the Corps of Engineers and the Bureau of Reclamation, we do not believe that the others are worthy of the name.

Some of the other Federal contracting agencies may do a better or worse—usually worse—job on safety, but well-conceived and well-enforced safety standards are about as rare on Federal jobs as they are in the rest of the construction industry. And to the best of our

knowledge, such standards on federally financed and federally assisted work are almost completely nonexistent.

During testimony from a representative of the Associated General Contractors in the House last year, it was stated that, when a safety hazard exists, the Federal agency involved shuts down the project until the contractor corrects the situation.

It would be interesting to question all the Federal agencies involved in construction as to how many jobs they shut down because of safety hazards, and of that number, if any, what penalty the particular contractor was assessed for preventable job delay.

There have been statements to the effect that the existing State safety laws equitably protect the construction worker, no matter in which State he works. This we in the building trades know to be an untruth. Code comparison studies which are available from the Department of Labor's Office of Occupational Safety graphically portray this falsehood.

The Department of Labor just recently published a "white paper" entitled "Status of Safety Standards," which objectively reviews the condition of safety standards in the United States. I quote from that study:

Thus, it furthers both the Department's interest and its policy to adopt for regulatory purposes all consensus standards which meet the requirements imposed by its legal responsibilities. Yet this year's analysis shows:

★ Nearly 60 percent of these consensus standards are five or more years old—the largest percentage 10 years plus.

★ Based on past performances, only about one-fifth of these old standards may be revised or reaffirmed during 1968.

★ By 1969, 40 percent of all USASI standards will be 10 or more years old.

★ At least 50 areas where national standards either do not exist or are inadequate.

I might add that the whole United States of America Standards Institute construction standards under A-10 classification have been in the process of updating and/or development for many years now, and they still are not available for use.

In our discussion of the lack of safety standards, we have been talking here mainly about general contractors. A greater safety problem exists for employees of subcontractors.

Only recently has there been any attempt by general contractors to bring subcontractors under contractual obligation to adhere to the "safe work procedures"—assuming there are any—adopted by the general contractor. Most subcontractors do not, and I repeat, do not, have to observe the safety standards of the prime contractor, even if those standards are required by a contracting agency.

The prevalence of this lack of safety standards on the part of subcontractors has a great significance on the safety practices as regards a total job.

I should add, in defense to the general contractor, that the administrative difficulties which would arise in trying to enforce his safety standards on a subcontractor would be so great that it is no wonder most don't do it.

That is why Government needs to step into the picture—to make certain subcontractors meet safety and health standards for their employees.

I would now like to take a moment to tell this committee how we feel S. 1368 would work in practice, if enacted in its present form.

S. 1368 would work in a manner similar to Walsh-Healey as far as enforcement is concerned. As we understand the intent of S. 1368, it is to apply only to Federal, federally financed, or federally assisted construction projects under programs subject to Reorganization Plan No. 14 of 1950.

Reorganization Plan No. 14 relates to the enforcement of the prevailing wage provisions of the Davis-Bacon Act and other similar acts on Federal, federally financed, or federally assisted construction projects. I have appended to my statement a list of the programs which would be covered by this legislation.

Under S. 1368, contractors and subcontractors would be required to meet the health and safety standards expressly provided for by the act or which are established under its authority by the Secretary of Labor.

The Secretary's authority to enforce the act, to issue orders, hold hearings and make decisions based on findings of fact, and to take other appropriate action, would be governed by the same law as Walsh-Healey—specifically, title 41, United States Code, sections 38 and 39.

Any interested person could file a report of a violation. This includes employers, employees, unions, and trade associations.

On the basis of a reported violation, or on his own motion, the Secretary of Labor can hold a hearing to determine whether a violation has occurred.

Although the Secretary can promulgate detailed procedural regulations, the safeguards of the Administrative Procedure Act would apply, and determinations by the Secretary would be subject to review by the courts.

Should the Secretary of Labor determine there has been a violation of the act, then in the case of contracts to which the United States or any agency or instrumentality, territory, or the District of Columbia is a party, or in the case of a contract made for or on behalf of the United States, any agency or instrumentality, or territory, or the District of Columbia, the Government agency for which the contract work is being done would have the right to cancel the contract and to enter into other contracts for the completion of the contract work, charging any additional cost to the original contractor.

It should be noted that the bill reads that the agency has the right to cancel the contract upon a violation determined by the Secretary of Labor. Discretion is involved. The agency can cancel the contract, in its discretion, but it is under no obligation to do so.

To provide for effective enforcement of the act, the bill also provides for a system of "blacklisting" such as is used under the Walsh-Healey Act, the Fair Labor Standards Act, the Service Contracts Act, and the Davis-Bacon Act.

The Comptroller General is directed to distribute a list to all agencies of the Government, giving the names of all persons or firms that the Secretary of Labor has found to have violated the act. Unless the Secretary recommends otherwise, no contract would be awarded to the persons or firms on the list, or to any firm, corporation, partnership, or association in which such persons have a substantial interest, until 3 years have elapsed from the date of publication of the list by the Comptroller General.

I want to emphasize at this point that the "blacklisting" of a contractor or subcontractor would be discretionary with the Secretary of Labor. If a contractor is found to have violated the act, he can appeal to the Secretary to be relieved of the "blacklisting" penalty.

To assert that "blacklisting" could occur by arbitrary action by the Secretary of Labor results from the failure by critics to look at just what the bill says. Full safeguards are provided, and a petitioner could even go into court to have his name removed from the published list, if he felt the Secretary acted wrongly.

The committee will no doubt hear testimony full of gloom and doom in opposition to this legislation, but we know from experience what can be accomplished through Federal safety laws.

To give you a specific example, I would like to turn to the Department of Labor's maritime safety and health program.

Late in the second session of the 85th Congress, Public Law 85-742, commonly referred to as the Maritime Safety Act, was enacted. That law authorized the Secretary of Labor to establish rules and regulations, promote safety, and train and educate those involved in the stevedoring and ship-repairing employments.

The opposition to that legislation—I am aware of this because I worked on the legislation at that time—was basically the same as that leveled at the construction safety bill last year.

Critics claimed it would cripple the industry, put individual companies out of business, and be ineffective to say the least.

But history has proved these prophets of doom wrong. The record of the Department of Labor in administering the Maritime Safety Act speaks for itself.

1960 was the first full year that the Department started administering the act. The injury frequency rate for longshoring at that time was 132, and in shipyards it was 39, according to reports submitted by employers to the Bureau of Labor Statistics.

At the end of 1966, the employers in the longshore and shipyard business reported injury frequency rates of 81.4 and 23.6 respectively. This represented a 39-percent reduction of injuries in longshoring, and a 41-percent reduction of injuries in shipyard work in a 6-year period. We understand the figures are even lower today.

No one has shown me where any companies were put out of business during this period because of Federal safety laws. In fact, if the truth were known, the maritime people saved hundreds of thousands of dollars in insurance premiums, and also costly accidents.

The maritime safety program shows what can be accomplished through Federal safety laws. The Building and Construction Trades Department feels that the same marked improvement in injury frequency rates and the severity of injuries as took place in the maritime industry can be projected for the construction industry by the enactment of S. 1368.

It has been 10 years since the enactment of the Maritime Safety Act, and we believe action is long overdue for a similar safety program in the construction industry.

We in the building trades believe that this legislation would benefit not only the workers but also the contractors and the Federal Govern-

ment. As proven by similar safety and health legislation currently administered by the Department of Labor, S. 1368 can be expected to:

- (a) Reduce the number of serious accidents which delay project completion dates and consequently reduce the number of injuries to employees;
- (b) Provide minimum national uniformity in safe work practices;
- (c) Reduce employers' injury compensation costs;
- (d) Reduce contractor liability by meeting accepted safety standards;
- (e) Reduce contract costs through improved operational efficiency;
- (f) Improve competition status of companies through reduced costs;
- (g) Improve the safety skills throughout the industry by training workers on Federal projects, who then move on to private construction projects;
- (h) Assist States to upgrade their safety posture through improved national programing;
- (i) Save the Government millions of dollars in construction costs.

To give you an example of how construction work can be made safe, I would like to point to a recent record posted by the DuPont Co. Chamber's works construction project at Deepwater Point, N.J.

The firm provided proper equipment and tools for the job. They made sure the machinery was guarded, and that scaffolds, passageways, equipment, and ladders were in safe condition, and an excellent housekeeping job was done.

The result was that that firm and its construction subcontractors worked 8,099,626 man-hours without a single disabling injury.

Now, in closing, Mr. Chairman, I would like to quote some comments made by other people involved in the construction industry with regard to safety.

The first is a quote from a speech by Mr. H. S. Latham, Chief Safety Engineer of Interior's Bureau of Reclamation:

If contractors managed or mismanaged other company business in the same manner as many do safety, they wouldn't be around to pick up their first monthly payment estimate.

Finally, a quote from the report of the Associated General Contractors to its membership at their very recent national convention, 2 weeks ago:

With the makeup and tenor of the Congress, coupled with President Nixon's public statement favoring a construction safety bill, this activity takes on a larger degree of importance. We cannot afford the risk of hope of defeating this type of legislation on mere technicalities again.

Senator WILLIAMS. Let us go over that again.

Mr. MASON. Gentlemen, by—

Senator WILLIAMS. When was this, again?

Mr. MASON. Just about 2 weeks ago, at their convention here in Washington.

Senator BELLMON. Mr. Chairman.

Senator WILLIAMS. Yes.

Senator BELLMON. Could I inquire, who was it that made the statement?

Mr. MASON. I received this information from somebody that attended the meeting. I don't know just who made the statement, Senator.

Senator WILLIAMS. Very well.

While we are still on that, the Associated General Contractors will be testifying. That is a severe indictment, as I read it, by the General Contractors, and they will be given an opportunity to change their mind, if, indeed, that was said, and of course you cannot say it as a personally known fact.

You were not at the meeting, were you?

Mr. MASON. I was not, personally, at the meeting, but I did receive this information from somebody that attended.

Senator WILLIAMS. Well, it is a shocking indictment, and I will stop there, because they will be in to be heard.

Mr. MASON. I understand from my assistant here that it was in a report that they made.

Senator WILLIAMS. Now, while your assistant is still there, what report, and where is it? Is that obtainable?

Mr. MASON. We will look into it and try to get a copy for the committee.

Gentlemen, by the Associated General Contractors' own admission, action was stopped last year on construction safety legislation because of mere technicalities. And I can assure you that is all it was.

Failure of the House to favorably act on the legislation was not due to any lack of need, but was because of mere technicalities, which we feel have been eliminated in S. 1368.

We in the building trades implore the committee not to let this happen again. Give the construction worker the protection he so obviously needs. Don't be deceived by mere technicalities. We feel the vital need for this legislation has been clearly established.

I again commend the committee for taking up S. 1368 at this time, and I hope the committee will act promptly to favorably report this legislation to the Senate so that action can be completed on the bill at the earliest possible date.

(Attachment to statement follows:)

ACTS SUBJECT TO PREDETERMINATION OF WAGE RATES UNDER REORGANIZATION PLAN NO. 14 OF 1950¹

§ 1.1 **Purpose and scope.** The regulations contained in this part set forth the procedure for the determination of wage rates pursuant to each of the following acts: Davis-Bacon Act, National Housing Act, Hospital Survey and Construction Act, Federal Airport Act, Housing Act of 1949, School Survey and Construction Act of 1950, Defense Housing and Community Facilities and Services Act of 1951, Federal-Aid Highway Act of 1956, Federal Civil Defense Act of 1950, College Housing Act of 1950, Federal Water Pollution Control Act, Area Redevelopment Act, Delaware River Basin Compact, Housing Act of 1959, and Health Professions Educational Assistance Act of 1963, Mental Retardation Facilities Construction Act, Community Mental Health Centers Act, Higher Educational Facilities Act of 1963, Vocational Educational Act of 1963, Library Services and Construction Act, Urban Mass Transportation Act of 1964, Economic Opportunity Act of 1964, Hospital Medical Facilities Amendments of 1964, Housing Act of 1964, The Commercial Fisheries Research and Development Act of 1964, The Nurse Training Act of 1964, and such other statutes as may, from time to time, confer upon the Secretary of Labor similar wage determining authority. (5 U.S.C. 22)

¹ (Source: Title 29, Subtitle A, Code of Federal Regulations, 1969 Reprint).

NOTE: In addition to the Acts listed in Section 1.1 the following Acts have been recently enacted to which these Regulations may be applicable:

1. Elementary and Secondary Education Act of 1965 (79 Stat. 33, sec. 209, 79 Stat. 44, sec. 308; 79 Stat. 46, sec. 403 (4)(c)).
2. Appalachian Regional Development Act of 1965 (79 Stat. 21, sec 402).
3. National Technical Institute for the Deaf Act (79 Stat. 126, P.L. 89-36).
4. Housing and Urban Development Act of 1965 (P.L. 89-117).
5. National Foundation on the Arts and the Humanities Act of 1965 (79 Stat. 845).
6. Public Works and Economic Development Act of 1965 (79 Stat. 552, P.L. 89-136).
7. High Speed Ground Transportation Study (P.L. 89-220).
8. Water Quality Act of 1965 (79 Stat. 903).
9. Heart Disease, Cancer and Stroke Amendments of 1965 (79 Stat. 926, P.L. 89-239).
10. Mental Retardation Facilities and Community Mental Health Centers Construction Act Amendments of 1965 (P.L. 89-105).
11. Vocational Rehabilitation Act Amendments of 1965 (79 Stat. 1282).
12. Clean Air and Solid Waste Disposal Acts (79 Stat. 997).
13. Medical Library Assistance Act of 1965 (79 Stat. 1095).
14. Veterans Nursing Home Care Act (78 Stat. 500).
15. United States Housing Act of 1937, as amended (42 U.S.C. 1416).
16. National Capital Transportation Act of 1965 (79 Stat. 663).
17. Alaska Centennial—1967 (80 Stat. 82).
18. Model Secondary School for the Deaf Act (80 Stat. 1028).
19. Allied Health Professions Personnel Training Act of 1966 (80 Stat. 1224).
20. Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1259).
21. Federal-Aid Highway Act of 1966 (80 Stat. 766).
22. Air Quality Act of 1967 (81 Stat. 485, P.L. 90-148).
23. Elementary and Secondary Education Amendments of 1967 (Title VII—Bilingual Education Act) (81 Stat. 783, P.L. 90-247).
24. Vocational Rehabilitation Amendments of 1967 (81 Stat. 250, P.L. 90-99).
25. National Visitor Center Facilities Act of 1968 (82 Stat. 43, P.L. 90-264).
26. Juvenile Delinquency Prevention and Control Act of 1968 (82 Stat. 462, P.L. 90-445).
27. Federal-Aid Highway Act of 1968 (P.L. 90-495).
28. Housing and Urban Development Act of 1968 (P.L. 90-448).
29. Health Manpower Act of 1968 (P.L. 90-490).
30. Vocational Rehabilitation Amendments of 1968 (82 Stat. 297, P.L. 90-391).
31. Public Health Service Act Amendment (Alcoholic and Narcotic Addict Rehabilitation Amendments of 1968) (P.L. 90-574, 42 U.S.C. 2681, et. seq.).
32. Vocational Education Amendments of 1968 (P.L. 90-576).

Senator WILLIAMS. Well, we want to thank you, Mr. Mason, for speaking for your organization, Mr. Haggerty, and your continued persistence in bringing us to where we are; I trust on the threshold of favorable consideration of this important legislation.

I would like to turn to Senator Prouty, now.

Senator PROUTY. Mr. Chairman, I am already late for a meeting downtown, but I did want to be here out of deference to Mr. Mason, who, as a director of legislation, has been an outstanding representative of the Building Trades Department of the AFL-CIO.

I have not had an opportunity to study the bill in depth, but certainly the overall objectives seem very worth while to me. I want to assure Mr. Mason and the other building trades representatives here today that it will be given my very serious consideration.

Thank you, Mr. Chairman.

Mr. MASON. Thank you, Senator Prouty.

Now, with your permission, Mr. Chairman, I would like to introduce again Mr. Alan Burch, representing the Standing Committee on Safety of the Department, who will present additional testimony to the committee in support of this legislation.

Senator WILLIAMS. Could you pause 1 minute?

I would be willing to hear those who are going to be spokesmen from this eminent panel and then go into questions, if that is agreeable, Senator Eagleton, Senator Bellmon.

Mr. Burch?

Mr. BURCH. Mr. Chairman, my name is Alan F. Burch. I am the safety director of the International Union of Operating Engineers, and I am speaking on behalf of the Standing Committee on Safety of the Building and Construction Trades Department of the AFL-CIO, of which I am the secretary, and of which my boss, President Warden, is the chairman.

The construction industry is the Nation's largest single industry, and bears the stigma of having the Nation's worst record on occupational safety. No other industry can match our achievement of 2,800 killed and 240,000 disabled in the year 1968.

In the last 10 years, nearly 30,000 American construction workers have died, and something on the order of 2.5 million have been disabled in the course of erecting our Nation's buildings and providing our highways, dams, and powerplants.

This sorry history has been a matter of major concern to the department and its constituent organizations, but our efforts to alleviate the suffering and loss have so far been fruitless.

That the industry remains viable under a financial burden that approaches \$3 billion in direct costs, with the consequent loss of tens of thousands of skilled workmen every year, is remarkable.

How long the industry can continue to function under such severe economic and human penalties is also a major concern of ours, as it should be to all segments of the industry.

We detailed our concern in testimony before a House committee in 1967 on H.R. 2567, and see no need to repeat that here. The record speaks for itself, or ought to, and we have no desire to take up the committee's time in useless repetition.

We have been unable to persuade the several national associations of contractors to engage in meaningful joint action to prevent accidents.

Our efforts in the State legislatures to get appropriate legislation and enforcement have been successful only in a few instances.

We have concluded that only the Federal Government, with its broad powers of legislation, enforcement, and persuasion, can lead us out of wilderness and help us to become a reasonable safe industry.

S. 1368 is, in my view, a very modest bill. It seeks only to extend to construction tradesmen the same minimal protection for safety and health already provided for other workers by the Walsh-Healey Act.

As the many thousands of American businessmen who have contracted to supply the Federal Government with goods since Walsh-Healey's enactment in 1936 have not been bankrupted by the bill's provisions, I am sure many of the impassioned arguments used against passage of a construction safety bill in 1967 will be even further invalidated and have lost what little force they may have had.

I don't think for an instant that the arguments won't be presented, but I am confident that they will be even less able to stand up under inspection than they were before.

I am struck by the fact that those who oppose passage of safety legislation for the construction industry always seem to base their main argument on their great fear that the Federal Government will upset their present excellent safety programs, as well as on the contention they will be driven to financial ruin.

I have yet to see the slightest evidence put forth to support these fears. Indeed, the only evidence I see is to the contrary.

The Associated General Contractors of America and the National Constructors Association both claim to possess and promote excellent safety programs. Members of both associations do contract work for the U.S. Army Corps of Engineers and the Bureau of Reclamation, each of whom demands adherence to their own requirements for safety. But I do not hear the same cries of disastrous interference raised in these cases.

I wonder why. Is it because there is little basis in fact for the fears, or is it that by some happy chance the two Federal agencies' requirements mesh perfectly with the contractors' programs?

If the first is true, we have a solution to the problems our contractors fear may result from enactment of S. 1368. We simply tell them their fears are groundless.

If it is the second that is true, there still is an easy solution. Why not suggest that the Secretary of Labor, subsequent to the passage of S. 1368, promulgate the AGC's Manual for Accident Prevention in the construction industry as mandatory Federal regulations?

They would then only be required to do what they claim they are already doing. How can they quarrel with that? Federal inspectors would only have to proceed to a jobsite with the AGC's manual in hand and check off the items one by one.

Of course, I think the Secretary should insist that the general contractors' subcontractors live up to the same rules, and this might cause some adjustment of present practices. Few general contractors pay any attention whatever to the work practices of their subcontractors, and safety suffers.

Some of the members of this committee may suspect I made the last proposal with tongue in cheek. I hasten to assure you that this is only partly so. I am aware that the AGC manual is weakly worded and has many omissions, but poor and weak as it is, if it were religiously adhered to, the industry would be in a far better position today, and many of our dead brothers would still be alive.

Of course, I realize that the AGC represents only some 8,200 out of the approximately 800,000 construction and maintenance contractors the Internal Revenue Service tells us are doing business in the Nation today.

I find it curious that those in the industry who claim success for their private programs find it necessary to oppose legislation to enforce such programs, while the very large number of contractors who are not represented by any association are mute.

Does this mean that the hundreds of thousands of contractors unheard from are for passage of the bill? Or that they simply don't care?

It may be that a good many of them are silently hoping that some sort of enforceable safety regulation will be forthcoming to remove

safety from the area of competition for contracts, for we are convinced that this is the nub of the matter.

To do things safely, in a reasonably safe environment, may appear to cost more money than to do as one pleases, although the true costs of accidents give the lie to this assumption.

Frequently, the difference between profit and loss in the construction business depends on speed of completion. All too often, speed means shortcuts, which almost always mean taking chances against one's better judgment. It would be a rare superintendent, indeed, who would put his company in the hole—and thereby jeopardize his entire future in the industry—when there was a bare chance he could meet the deadline.

I don't want to cast stones at construction superintendents, because they are only human beings, subject to the same frailties as the rest of us.

I simply want to make the point that one can ask too much of a man. This is a situation faced every day in the construction industry, and I see no way to ever get on-the-job supervision off the economic hook they are on other than to legislate some of the more abhorrent choices out of the picture.

People don't obey traffic signs because they always do what is right. They obey them because the traffic cop writes out tickets when he catches them violating the rule, and that costs money and points.

We in the building trades have no quarrel with management's right to manage, although we think it rather a poor management practice not to make their employees and their representatives full partners in the drive to prevent accidents.

We do question, however, just how far management's right to mismanage extends. I suppose that the right to mismanage should be accorded to contractors if the consequences were only economic in nature, but the record shows this is not so, for 242,800 times a year a part of those consequences are red blood. Seldom, I assure you, the blood of the manager making the choice, but that of his more unfortunate employees.

At this point I would like to expose some of the more prevalent euphemisms that are bandied about as if they were eternal truths in the industrial safety game.

All the talk about the supervisor being responsible for safety, and the workers needing only more safety training, are evasions of reality. Workmen are hired to produce, not to be safe, and supervisors are hired to see that they do produce, not to look out for their welfare.

This is a simple fact of life that we always bump up against hard when we try to make safety programs work.

The workman who spends any large portion of his time making sure he is not too close to the edge of the floor, or examining a job-made ladder to see if it is safe, or waiting for a supervisor, who may be miles away, to see that a trench is shored before he enters it, usually achieves only one thing—he gets fired for not producing. Not because he failed to observe all these swell little work rules that have been plastered about the job on bulletin boards, but because he spends too much time for himself and not enough for the company.

The supervisor is in the same boat. If he holds up the job until the proper scaffolding is in place, or the shoring is built, or the new hoist

cable is installed—too often, he gets replaced by someone who concentrates more on production and less on welfare.

This, gentlemen, is why we have industrial accidents, and why the record of the construction industry is so poor. In a plant situation, more safety measures can be economically justified than under the ever-changing conditions on the construction site.

The guardrail put up in the plant is a long-term investment. The guardrail on the construction job is a temporary nuisance that costs money and uses up the valuable production time of skilled tradesmen.

Management knows from experience that much of the time you can get away without putting up with these so-called frills, and so the choice is made.

If you get away with it, it is money in the pocket. If you don't get away with it, and someone gets hurt, that is what you pay insurance premiums for. It sounds coldblooded and callous—and it is.

The frustrating part of it is that these decisions are seldom made by coldblooded, callous men. It may or may not be a consideration in this decisionmaking process that it is someone else's fanny that is put to hazard, but whether it is or not, that is what the net effect is. And don't forget, 242,800 of these decisions last year turned out badly.

I see no value in pointing the finger of guilt at any one individual, from the chief executive of the company down through the accounting department and the engineering staff, to the on-the-job supervision and the workmen. All bear some share of guilt, and all are in varying degrees innocent.

Nobody made a decision to have an accident, but it did not "just happen." After the stage was set by allowing, or creating, an unsafe condition on the job, all the actors, who should have known better, played their roles until death or injury stopped the show.

This is the kind of thing that makes me believe that we simply ask too much of men whose primary concerns are economic. The tradesman's first concern is for his paycheck, the supervisor's for his salary, bonuses, and future position in the company, and the owner for a profit on his investment.

Is it not at this stage where Government should exercise its legislative and police powers to protect men, who are driven by economic imperatives to do things they know may easily result in tragedy, from the consequences of tragedy?

It seems to me that in our democracy the electorate provides itself with a Government charged with the responsibility for setting down and enforcing rules by which we can live and work with each other without suffering undue harm. Our whole body of law is directed to this end.

The laws of the marketplace and the fallibility of men seem to have combined, in the construction industry, to prevent us from putting our own accident prevention house in order. If we are to lessen the sickening toll that our largest single industry pays each day to build our Nation, I see no alternative to legislation and enforcement from the Federal level.

Whether the job is accomplished by direct Federal action or through delegation to the States is immaterial, so long as it gets done. It will not be done until the Federal Government gets into the act on a large scale.

We urge that S. 1368 be enacted into law, and we offer one suggestion for an addition to the bill as it now stands.

Obviously to do the job the bill envisages will take money. Our suggestion is that an initial authorization for \$10 million be appended to the bill.

Thank you, Mr. Chairman, for this opportunity to present this material to you.

Senator WILLIAMS. Thank you, Mr. Burch, for a very helpful statement.

Mr. MASON. Mr. Chairman, General President Albert E. Hutchinson, of the Asbestos Workers, would like to make an oral statement concerning his particular interest in the asbestos industry.

Senator WILLIAMS. We did have another "Hutcheson" scheduled, the president of the Carpenters and Joiners, but that Mr. Hutcheson could not appear today. His statement has been presented to us for the record, and it will be included.

Mr. MASON. Well, I have additional statements here, too, that I would like to offer for the record, with your permission, Mr. Chairman.

Senator WILLIAMS. All right.

Mr. MASON. This is one from the Carpenters, M. A. Hutcheson, general president.

(The statement follows:)

STATEMENT OF M. A. HUTCHESON, GENERAL PRESIDENT, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, ON S. 1368 (CONSTRUCTION SAFETY BILL)

S. 1368 represents a rather modest and conservative approach to the need for effective Federal action to reduce the toll of accidental death and injury in the construction industry. Its direct impact is limited only to construction work undertaken or financed by the Federal government itself. Construction workers can rightly feel that safety legislation requiring employers to provide safe work places on Federal projects is long overdue. Workers of federal suppliers of manufactured goods have been covered by similar legislation under the Walsh-Healey Act for more than thirty years. This long neglect of the Federal responsibility to protect workers on Federal construction must have contributed substantially to the construction industry's long-time and continuing miserable safety record. S. 1368 is a belated step in the right direction; and we strongly support its objectives.

All that S. 1368 really proposes to do is to give the worker on Federal construction work the same kind of protection it has long given to workers on other Federal work. Like the Walsh-Healey Act it would give the Secretary of Labor the authority to set and enforce decent safety regulations. We would hope that in passing this legislation, the Congress would give the Secretary not only the authority but also the financial and manpower resources to carry out these responsibilities in an effective manner.

Although the Federal responsibility and interest in this matter is unquestioned, we may be certain that industry spokesmen will react with their usual conditioned reflex of opposition to any Federal legislation aimed at making them live up to their responsibilities. In the face of an indefensible construction industry accident record, they will say that there really isn't any problem. In the face of a hodge-podge of inconsistent standards, usually ignored and seldom enforced, they will say that uniform Federal safety standards will bring chaos to the industry. In the face of an atrocious safety performance by the industry, a few contractors may point with pride to their own good programs, even though a few good programs make little impact on the industry as a whole. But whatever the opposition may say, they cannot successfully deny that the industry safety performance is bad and getting worse.

No one who knows anything at all about construction safety will believe that this legislation will solve all of the industry's safety problems; but good, effectively enforced Federal safety standards would save many lives and prevent many serious injuries to our members and our fellow building tradesmen. Setting and enforcing good physical standards would prevent thousands of the injuries and fatalities caused by such easily controlled hazards as unprotected scaffolding, unshored trenches, unguarded openings, and sloppy housekeeping. Good standards and enforcement can eliminate these kinds of unnecessary hazards. On federal jobs, there is no doubt of the Federal responsibility to protect workers from these man-killing and preventable hazardous conditions.

In summary, we believe that the Federal responsibility is unquestioned, and that the urgent need has been amply demonstrated by construction industry deaths now running at the rate of about 2,800 per year and disabling injuries at the rate of a quarter of a million per year. The expected reduction of accidents in Federal construction would be great; and we would hope that the indirect effects of this legislation would also improve the safety performance of the whole industry. We recommend the early enactment and vigorous enforcement of S. 1368.

Mr. MASON. From the International Brotherhood of Electrical Workers, Charles H. Pillard, general president.

(The statement follows:)

STATEMENT IN SUPPORT OF SENATE BILL S. 1368, BY CHARLES H. PILLARD,
INTERNATIONAL PRESIDENT, INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS

It is a matter of public record that the International Brotherhood of Electrical Workers has over the years, not only been vitally interested in the Health and Safety of its membership and all workers in the construction industry, but has diligently promoted the adoption of safety standards at both local and state levels throughout the nation. Results have been meager because of the opposition of some management groups who have wanted *no* restrictions placed on their modus operandi and who have wanted the unilateral right to change operating procedures at will.

The states have not (in most cases) assumed their proclaimed responsibility to provide for the health and safety in this very important but hazardous construction industry. Thus our only recourse is to appeal to you to provide at the Federal level the protection that the workers so richly deserve.

Last year the International Brotherhood of Electrical Workers submitted a statement of position and appeared with the Building and Construction Trades Department, AFL-CIO before the Honorable James G. O'Hara and the Select Subcommittee of Labor, Committee of Education and Labor as proponents of House Bill H.R. 2567.

This year, again in company with the Building and Construction Trades Department, AFL-CIO, we are supporting legislation designed to afford a greater degree of safety in the field of construction in both the House of Representatives and the Senate.

Representatives of our organization will be present at your hearings and will be glad to assist your committee by answering any questions that you wish to address to our Brotherhood.

We respectfully suggest that passage of S. 1368 will be a constructive step forward in saving many lives and limbs of skilled craftsmen in the construction industry, to the benefit not only of the craftsmen themselves but also the Employers and the Country as a whole. However, we feel that in addition to the Bill as now written, funds must be forthcoming to implement the rules, regulations and to set up an enforcement structure; therefore, the International Brotherhood of Electrical Workers recommends that the Committee attach an addendum to the Bill providing ten million dollars (\$10,000,000) for the first year and a continuing funding to assure the effective continuance of the program.

Therefore, the International Brotherhood of Electrical Workers supports and encourages adoption of S. 1368 as a necessary constructive step toward the reduction of accidents in construction and the construction industry.

Sincerely,

CHARLES H. PILLARD,
International Secretary.

Mr. MASON. And General President Pete Fosco, of the Laborers' International Union of North America.

(The statement follows:)

STATEMENT OF PETER FOSCO, GENERAL PRESIDENT, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, ON S. 1368, TO PROMOTE HEALTH AND SAFETY IN THE BUILDING TRADES AND CONSTRUCTION INDUSTRY IN ALL FEDERAL AND FEDERALLY FINANCED OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

Mr. Chairman, my name is Peter Fosco. I am President of the Laborers' International Union of North America, which has a membership of over a half of a million members, most of whom make their living in the building and construction trades industry.

I appreciate the opportunity of appearing before you to support S. 1368, the Construction Safety Bill. It has long been my priority position to work in the interest of health, safety and accident prevention programs. I wish to also commend the subcommittee for calling these hearings to fully gather pertinent information concerning this proposed legislation, which in my opinion is a giant step forward in providing adequate protection against fatal accidents and disabling injuries in at least that portion of our construction industry in the Federal area or the Federally assisted programs.

For years we have had the experience of working with the Corps of Engineers on Federally inspected programs under the Bureau of Reclamation. In those programs, we enjoy the experience of working under reasonable safety standards and effective enforcement. In both programs we have found that the severity and frequency rate of accidents has gone down remarkably. This record speaks for itself in the interest of our people where they have had experience with standards and enforcement under the protection of the Federal Government.

In addition to the on-the-job safety program by these Federal Agencies and the enforcement of such reasonable rules and regulations, we also find representatives of these groups participating in safety conferences at the state and area basis, along with representatives of management and labor from the construction industry.

When it comes to describing our experience at the state and local level concerning accident prevention programs in the construction industry and the enforcement of such regulations, it is almost like describing day and night. In some areas there are reasonable programs that are periodically reviewed and where enforcement is strengthened due to the cooperation of organized management and organized labor.

We must point out, however, that there are several areas where rules and regulations are few and far between and where enforcement is practically nonexistent. We also have found that a wide difference of attitude toward accident prevention exists among employers. We are proud and happy to be connected with many fine employers in this country among the organized groups that are also affiliated with the National Safety Council. In such instances we find programs of health, safety and accident prevention given equal priority and attention as management does to the quality and quantity of work. It is sad to report, however, that in many instances we find contractors who pay particular attention to the quantity of work, but have little regard to the quality and absolutely no concern for preventing accidents. They may think they are concerned, but they have no concrete program to reduce accident rates through their foreman or other appropriate personnel.

Admittedly, the construction industry is a hazardous one. But it need not be as hazardous and dangerous as the recent statistics on fatalities and disabling injuries reveal. Where the contracting authority demands a construction safety program and where these reasonable rules and regulations are enforced, we are confident that the tremendous annual toll in accidental deaths, injuries and sickness can be substantially reduced. This should be done not only in the name of humanity but also in consideration of millions of wasted dollars each year. This is why there must be uniform standards to provide for accident prevention and health protection for the men who work in this industry.

In several classifications of construction, the members of the Laborers' International Union suffer both as to the frequency and severity of accidents. This is why the International Union and I, as General President, assigned top priority to safety, health and accident prevention in all of our activities. We are increasing

our abilities and resources at all institutional levels to increase correspondingly an educational program in the field of health, safety and accident prevention.

We are urging and insisting more local unions join the National Safety Council and urging them to use all mediums of communication to the membership in cooperating with all of the component parts of the construction industry for an overall safety program in each area.

We are currently spending thousands of dollars for medical research information on what is causing the ill health and premature deaths among our hard rock miners as it pertains to free air and compressed air tunnel construction. It will be our intention to place such information into the hands of such individuals and associations that have an interest in the well being of the people who are our members performing this type of construction. It is our ambition to give all possible protection and to increase safeguards and procedures when and how science makes this possible.

We have in the past and will continue to meet with the other component parts of the construction industry or contracting agencies and such interested authorities who can make contributions to the field of safety and accident prevention in this industry. We know that the severity and the frequency rate can and must be improved but we do believe most sincerely that the industry needs assistance in really attacking the problem of accident prevention in construction. We further believe that this Bill S. 1368 goes a long way towards this end.

Mr. MASON. And General President Edward F. Carlough of the Sheet and Metal Workers International Association.

(Statement follows:)

STATEMENT OF GENERAL PRESIDENT CARLOUGH, SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION

My name is Edward F. Carlough, General President of the Sheet Metal Workers' International Association, representing approximately 140,000 members and 500 local unions throughout the United States of America. I wish to take this opportunity on behalf of my associates to go on record supporting the enactment of S. 1368, a bill designed to protect the construction workers on Federal job sites.

A great deal of testimony has been submitted regarding cost factors, percentages of man hours lost, slow down of production, deaths and disabilities resulting from accidents based predominately on the total lack of effective safety precautions in the industry.

Neil J. Haggerty, President of the Building and Construction Trades Department, has submitted an exhaustive and thorough statement regarding a need for legislation in the building industry. I see no point in belabouring this august body with repetitious material and information. I do, however, wish to reiterate my position on behalf of the Sheet Metal Workers' International Association in support of S. 1368. I would strongly urge favorable action on this legislation.

Mr. MASON. And General President John H. Lyons of the International Association of Bridge, Structural, and Ornamental Ironworkers Union.

(The statement follows:)

STATEMENT OF JOHN H. LYONS, GENERAL PRESIDENT, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS ON THE BILLS TO PROMOTE CONSTRUCTION SAFETY

For some six years or longer the problems of how to set construction safety standards and enforcement seems to have been resolved as something better to be done tomorrow than today.

Recently, it has taken the lives of 88 in West Virginia once more to dilate the fact that safety is no accident and that safety must be worked on and at by all parties or it is likely to be but a minimum of safety and a maximum of danger.

I say this because I have observed how mere straws in the wind have been grasped by those who openly are unwilling to observe safety and who wish to use as many methods as possible to forestall enactment of meaningful ways for reducing the loss of life and the maiming of those who are so sorely needed to carry on the job of building a new America.

Some of the excuses—and I use the word advisedly—to fight the good cause of construction safety can be listed somewhat along the following lines:

1. We have a wonderful safety program. The only thing is it must be allowed to work without governmental interference and guidance.

2. The Federal establishment must not tell the States what to do and how to do it.

3. If there is to be a safety bill, we will be for it. The job then really is to see to it that there will be no such bill.

Inasmuch as safety just doesn't make exciting headlines, the glamour of enacting safety legislation somehow is lacking. But the hard facts and figures are such that they need to be brought to light here and now.

Of the more than fifteen thousand wage-earners killed or injured on the job each year, I assure you the Iron Workers are represented. The story is only complete when we add the injuries and disabilities of these men highly skilled in their trade. This does not include the economic loss in a presently fully employed industry.

If we turn the pages back 60 years, we find that President Taft even in those days was trying to bring some sense into the jungle of unsafe working conditions. I will not say that nothing has happened since then but I will say that any changes have been few and greatly lacking in consequences. This, then is why we are here today once more trying to get results. Somehow I am convinced that it is this Ninety-first Congress that will do something.

The bills before your committee are clear and uninvolved. Many are saying we have the votes for passage in both houses. This I believe.

In some states, there are far more game wardens than there are work safety inspectors. This has led some to observe that perhaps after all, safety is "for the birds." If such remark will be answered with the cry of "levity," let us look at the facts and figures straight-on.

I am including with my statement a chart showing just what the states really are doing or not doing in the wide range of safety. You will note construction safety inspectors are close to the vanishing point. Only four states have construction safety inspectors.

As recently as 1967 when reports were compiled and which included nine fields of employment, construction ranked highest with 71 accidental work deaths per 100,000. I am including the chart on this phase along with this statement.

Last year, this proposed legislation narrowly missed passage in the House. There were 260 votes for the bill, 137 in opposition. I think we can expect as many or more votes this time with reasonable expectation that a rule will be granted for House consideration.

Inasmuch as a two-thirds vote is required for suspension of the rules, the construction safety bill needed only four more votes for a two-thirds passage in 1968. Clearly a majority vote was present.

Now, before the Calendar is heavily loaded with a volume of reported bills is the appropriate time for conclusive action. In the Senate, Labor Chairman Yarborough and others personally inspected the catastrophe at Crystal City last year. I am convinced the House also is prepared to move this safety bill once the Senate has acted. Surely the story has been said and resaid.

Last October 21, as a reminder to those who may have missed it, there were some rather clear phrases in the radio remarks of candidate Richard Nixon who talked of safety. His quotes on safety were:

"What can Labor expect from a Nixon Administration? * * *"

"* * * Leadership by example. I believe better occupational safety laws are needed on both federal and state levels. A good place to begin would be proper and uniform safety standards on all federal projects."

It is evident from his own words that the President stands ready to redeem his pledge.

We cannot assert that because this legislation becomes law that absolute safety will result. Nor can anyone else. What we can say is that many here today will be here tomorrow and that is what this program we are endorsing is all about.

Just the other day, the first aquanaut died on the first submersion. It happened that a hose line sprang a leak or some other technical flaw was involved. But whatever it was, can anyone say it would have happened with proper safety precautions? Maybe the answer is to pass this bill and find out in advance, not postmortem, what happens and what can be prevented.

Safety is a broad term. Safety is an activity built into the Atomic Energy Act because hazard is a prime and present danger.

There is railroad safety, a federal enterprise. And there is drug safety. There are federal health standards, including food, safety boards in transportation in the air and elsewhere. All these and many others are based upon federal action. And still, construction safety is nowhere to be found in the list. It's like the weather—not much has been done about it.

As I look over the list of committee members, it is evident this bill will be reported. And with the showing last year on suspension of the rules, I regard the Rules Committee's action as evident.

The Iron Workers endorse this measure 100 percent and ask that it be given early action.

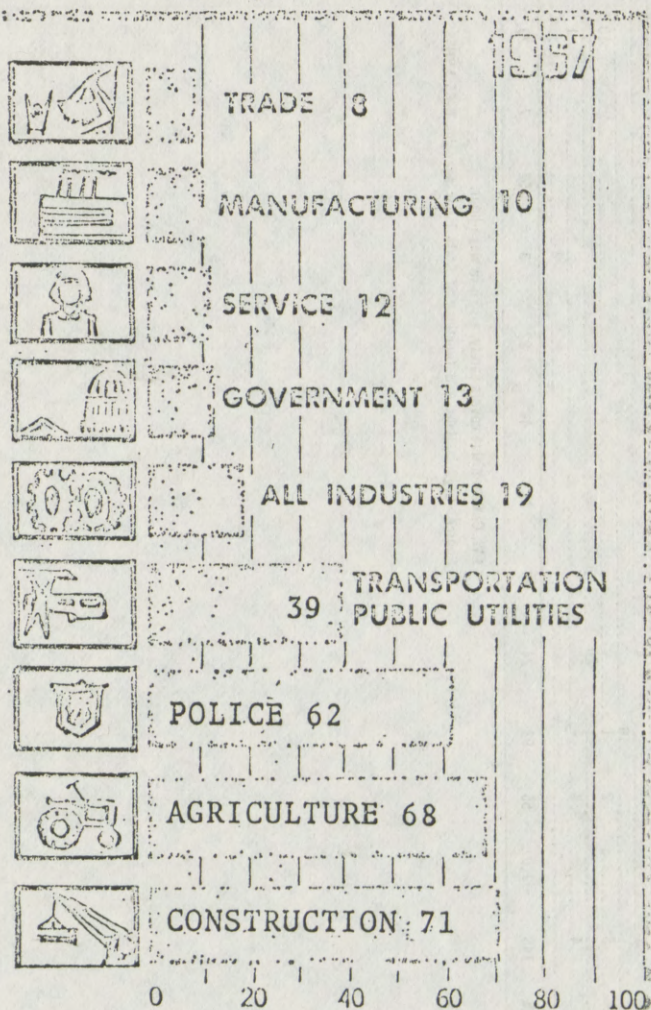
In order to make clear just what confronts construction workmen, including Iron Workers, even in a state where safety inspectors are on the job, I offer some brief facts and figures. Without adequate and timely inspection, the results can be anyone's guess.

Of 14 crafts listed by the New York State Department of Labor, the Iron Workers rank fourth in accident frequency and sixth in severity rate. I include that portion of the report.

INJURY FREQUENCY RATES BY TYPES OF CONTRACTOR, NEW YORK, 1964

Type	Frequency rate	Severance rate
Glazing, glass work.....	18.0	256
Floor laying.....	18.4	2,175
Painting, decorating.....	20.0	2,890
Terrazzo, tile, marble.....	25.7	366
Excavating, foundation.....	26.0	1,966
Plumbing, heating.....	26.0	987
Electrical work.....	27.7	1,195
Carpentering.....	31.0	2,151
Masonry, stonework.....	33.5	2,280
Roofing.....	40.6	3,267
Structural, steel erection.....	41.1	2,238
Concrete work.....	43.1	5,070
Plastering, lathing.....	47.7	1,679
Demolition.....	60.4	8,955

ACCIDENTAL WORK DEATHS PER 100,000 WORKERS



Sources: National Safety Council; Federal Bureau of Investigation;
IAFF Research and Education Department.

Senator WILLIAMS. Thank you. They will be included.

Mr. HUTCHINSON.

Mr. HUTCHINSON. Mr. Chairman, I am Albert E. Hutchinson of the Asbestos Workers.

Senator WILLIAMS. Would you use the microphone, please?

Mr. HUTCHINSON. I am Albert E. Hutchinson, general president of the Asbestos Workers, and I am here in support of health and safety legislation.

However, I do not have a prepared script.

I thought it might be well for the committee to know that there are some who are doing some things for themselves, and the Asbestos Workers are one.

We have recently formed, within the insulation industry, a program known as the insulation industry hygiene and research program, and this is run through the Mount Sinai Hospital in New York. Dr. Irving J. Selikoff, M.D., is our program director.

Johns-Manville Corp. is in cooperation with us, and our membership think enough of this health safety problem that they have voluntarily assessed themselves in the amount of \$10 per year to finance the program.

Now, we think that we are going to make much progress in our program, in researching ways and means of better protecting the asbestos worker in the handling of insulating materials on jobsites. We also think that we are going to be able to develop better masks for our people.

Senator WILLIAMS. Are you dealing with both health and safety?

Mr. HUTCHINSON. Health and safety.

Now, this program, and what I would like to alert this committee on, is while we are doing this for ourselves, and we recognize the problem of health hazards in our trade, I think it is commonly known now that the asbestos worker has more health problems, lung condition, than any other trade, that this isn't only the problem with us. It is going to be a problem with the general population.

And this is the program that we would like to alert this committee to. It may be that the legislation we now have before us, or the other legislation, could be amended in some way to include this problem.

But in the air-conditioning industry, for instance, in the last 10 years, all of the insulating materials that we know to be hazardous to us, while applying them, are now being applied to the inside of the duct, and in many cases are the duct, as they are using glassboard now to substitute cheap metal.

Now, it is our contention that none of these materials will stand air erosion, therefore the same problems that we are having in applying these materials will be thrown onto the unsuspecting public through the air-conditioning systems, and in some 20 or 25 years you may have a problem that goes far beyond the problem that you are having with the miners today.

This glass is unseen to you, but in this building you are probably breathing air from ducts that were lined on the inside.

I know the State Department, the new State Department Building, which has been occupied some 6 or 7 years, has a million feet of duct that was lined on the inside, and I know for the first 2 years that that building was in operation the sheet metal workers were in that building every weekend, for the first 2 years, cleaning out the laterals,

because the glass was blowing loose and stopping up the laterals, and we don't know what went into the lungs of the people that occupied those buildings.

But now, that is one phase of it. Now we are also talking about the hazards of sprayed asbestos.

A new construction technique is to spray the beams of the new buildings with fireproofing. This is asbestos spray that is originally sprayed for fireproofing.

Now, many times, portions of this sealing area are boxed off and made into a plenum area, so you not only have fiberglass ducts leading into it, but you have an asbestos sprayed sealing that is connected to it, so you are getting asbestos as well as fiberglass sprayed out on the unsuspecting public.

Now, we believe this to be a true hazard, and I am not an engineer, nor am I a scientist, or a doctor, so I don't profess to tell you too much about what may happen. In fact, I doubt if many doctors could today tell you what the end results will be.

But I do know now that Dr. Selikoff has lungs taken from my people, both living and dead, that show fiberglass in the lungs, and we were fortunate in picking up a brochure the other day from Dr. Theodos, in Philadelphia, who writes an article in the American Chest Surgeon's Journal on fiberglass pneumoconiosis, which is fiberglass in the lungs, so we do know now that your body does not assimilate it, it does get into the lungs, the same as asbestos.

The thing that we don't know is whether or not it will do the same damage after it has lain there over a period of some years that asbestos does, but I think it is time now for us to consider this problem, and until such time as we know that it is not harmful to us, it should not be allowed to be installed next to the airstream.

And I wanted to alert this committee of what we are working on, through our program here, in order that you may become interested to the point of learning more of this problem, and, if necessary, or if possible, amending the legislation to maybe include some of the problems that may be in connection with it.

This is construction. This is what we are talking about. After we build the building, and walk away from it, we have known the hazards while we were building it, and we have worn masks to protect ourselves, and we have handled the material very carefully, and the problem that I am trying to report to the committee is that after we turn the building over, the unsuspecting public, who is going to visit or live or go to school or be hospitalized in these buildings, are actually being subjected to the same problem, because it is the same air that they are breathing, the same materials are being involved. Only they don't know about it. We do.

Senator WILLIAMS. Well, this is most informative, and I think probably comes as a new conclusion or finding, or speculation, to me. I don't know.

Senator EAGLETON, are you familiar with this as an environmental health hazard?

Senator EAGLETON. I am familiar with asbestosis.

Mr. HUTCHINSON. I have some brochures of our joint committee that I would be glad to leave with the Senators.

Senator WILLIAMS. What you are saying here is that we know how many years asbestos has been associated as an occupational

hazard of work in asbestos, and it is a respiratory, a lung disease. In analogy, it is something like black lung, only it is asbestos, and not coal. You are suggesting that the use of fiberglass materials is comparable to the use of asbestos, right?

Mr. HUTCHINSON. Yes, sir.

Senator WILLIAMS. This goes on, and there might be a fallout effect on users, not those who work in it, but users of buildings incorporating fiberglass.

I think obviously this is broader than what we are considering here through this bill. It would be broader than our basic industrial safety and health bill.

What this is is an environmental, call it a pollutant, situation.

Mr. HUTCHINSON. That is right. It is injurious to the workers, and it is also injurious to all the future people that are going to be in that building. For the life of the building, you have the same hazard.

Senator WILLIAMS. Well, those who stopped smoking, they thought they had all the problems beaten, but I see they don't, obviously, around here.

Mr. HUTCHINSON. I would be prepared to furnish the committee with pictures of some of the materials we are talking about, and the installations, to show you just what is going on, and I did not bring too much here today, but I could certainly leave you some of it, if you would care to pass this around and look at it.

This is a duct being fabricated from fiberglass, and you can see the end result, the duct itself, and that is next to the airstream.

Senator WILLIAMS. I would hazard a prediction that you have opened the door to further inquiry here.

We will return to Mr. Mason now.

Senator BELLMON. Mr. Chairman, could I ask one question?

Senator WILLIAMS. Yes.

Senator BELLMON. Is it your intention by raising the question to recommend that asbestos not be used in this application in the future?

Mr. HUTCHINSON. It is my recommendation, sir, that no insulating material should be placed next to the airstream in any air-conditioning system. It should be put on the outside, where it will do the same amount of good, and never subject anyone to any possible health hazard.

And for many, many years, we did it just that way. In the last 10 years it seems it has become fashionable to line or make the ducts from fiberglass, or other insulating materials. It is a much cheaper job.

Senator WILLIAMS. Anything else?

Senator EAGLETON. Mr. Chairman, could I inquire on the asbestos?

Senator WILLIAMS. Yes.

Senator EAGLETON. Mr. Hutchinson, do you represent asbestos workers not only who apply asbestos in the construction field, but fabricate it, or engage in the manufacturing process thereof?

Mr. HUTCHINSON. We only have one plant, sir, in the manufacture. We have one fiberglass plant at Kansas City. The rest of the manufacturing units are controlled by others.

Senator EAGLETON. By another unit?

Mr. HUTCHINSON. By Oil Chemical Workers, or some unit such as that, and for the information of the committee, I actually only represent approximately 25 percent of the people who apply asbestos in the construction field.

The asbestos workers comprise the smallest segment of the building trades department. We are about 20,000 nationally, and the carpenters do a tremendous amount of insulation. All of the home insulation is blown in by the carpenters. They have that jurisdiction; the perimeter walls is mainly the carpenters', the roofer does a tremendous amount of insulation in connection with his roof.

There are others that also do some insulation. I would say we do about 25 percent of it.

Senator EAGLETON. Are the bulk of those who actually work in the manufacture of asbestos under the Oil Chemical & Atomic Workers? Is that it?

Mr. HUTCHINSON. The Oil Chemical Atomic Workers, or others.

Senator EAGLETON. Well, you have some familiarity, especially through your health institute work and so forth, with asbestosis, and I am not going to inquire of you as a medical man, but I just want some background information on this.

Asbestosis, as the chairman has pointed out, is a disease, lung disease, roughly analogous to black lung, except it affects a different segment of the working populace.

Are there any States that treat asbestosis as an industrial, compensable disease under workmen's compensation?

Mr. HUTCHINSON. Yes, sir.

Senator EAGLETON. The bulk of them?

Mr. HUTCHINSON. The majority of them do, now; yes, sir.

Senator EAGLETON. Do you happen to know if Missouri does? That is my State.

Mr. HUTCHINSON. I would not know whether Missouri is one or not, but the majority of them now do have it. It is a compensable disease.

Senator EAGLETON. On what measure of proof, though? Is it solely by X-ray?

Mr. HUTCHINSON. Not necessarily. I think that X-ray is a large factor in it, but—

Senator EAGLETON. Has your doctor—perhaps some day we will hear from him—uncovered a significant number of cases, as has been true in the black lung area, wherein the disease was not detectable by common or ordinary X-ray or radiology, but later showed up, too late for recovery, to wit, in a post mortem?

Mr. HUTCHINSON. This is one of our greatest problems, and it is one of the things that Dr. Selikoff has been encouraging, and in fact was trying to secure a grant over.

He wanted to have in his clinic doctors from all over the United States come in for a 3-day visit with him, so that they could learn the real problems and learn how to read X-rays in connection with our problems.

Dr. Selikoff has done a wonderful job for us, and he is assisting doctors all over the country in reading our X-rays. Oftentimes we will go to a doctor, and he will find something, but the lines in the X-ray are so slight that they say, "Well, he has something, but I don't think this is going to hurt him," and they send you home, without really telling you the problem.

Those same X-rays can be sent to Dr. Selikoff, and he will tell you to come in immediately because your time is short here.

And this is the big problem. There are many doctors around the country who just don't have the knowledge of our problem.

Senator EAGLETON. Then I take it to be that even though under most State laws, asbestosis as detected by X-rays is compensable, there is enormous difficulty in proving a case by the use of X-ray in its current state of technology.

Mr. HUTCHINSON. That is right.

Senator EAGLETON. Can I ask some other questions on industrial health?

Senator WILLIAMS. Certainly.

Senator EAGLETON. I will direct these to Mr. Mason or Mr. Burch.

In the construction industry, in which you people are expert, are there other industrial health type diseases, and eliminate safety for the moment, but I am talking about lung conditions, basically, that affect construction workers?

You have already talked about asbestosis. Are there others that you gentlemen are familiar with?

Mr. BURCH. Yes, Senator, there are a number of them. The familiarity, unfortunately, does not extend as far as we would like it to.

There simply has not been enough work done on it. There have been some studies done on the effects of dust of various kinds. Of course, the effects of silicon dust are pretty well known, and that has been shown to be a serious hazard by a series of studies, done partly by the Federal Government, but mostly by the California Department of Public Health in the State of California.

We have also found some rather serious health effects from heat stress, from shock and vibration, and from noise.

Perhaps this is one of the major problems that we find in the construction industry today. We have found these to take two aspects, the long-term effects of these exposures, which are what we normally consider to be health hazards, and the short-term or acute effects, which we are now coming to believe have a major effect on accidents.

In other words, the exposures to heat stress, shock, and vibration, noise, and so forth, appear to have effects on the cardiovascular system that are identical to those of extreme fatigue, and they do take place with high exposures, which are common in the industry in a short period of time.

There are a great long series of difficulties with the chemicals, modern chemicals used in industry. Of course, asbestos and fiberglass, as President Hutchinson has spoken about, but epoxy resins in the use of cement is coming into use; cement workers have long been victims of various kinds of skin disorders.

For painters there has been a long history of difficulties.

Senator EAGLETON. Are those skin disorders, or lung diseases, or both?

Mr. BURCH. I think both. The skin disorders we have more information about, because they are so obvious, and people have gone for treatment, where they have not gone, obviously, for other problems.

We have done some research on our own, with our limited means.

Senator EAGLETON. Are skin disorders customarily compensable under the State workmen's compensation statutes?

Mr. BURCH. I don't know. I really don't know, Senator. I cannot give you any real answer on that.

Senator EAGLETON. Now, if I may indulge one further question, Mr. Chairman, I will direct this again to Mr. Mason or Mr. Burch.

In both your prepared statements, you used the figures in the construction industry last year of 2,800 construction workers killed in one statement, 240,000 disabled, and the other, 250,000 disabled.

Now that is with respect to construction industry as a whole, having no direct bearing on a breakdown as to federally funded and financed projects. Is that correct?

Mr. MASON. You can see that is only a very small section of the industry, because those statistics are only those that have been reported to the National Safety Council or to the Bureau of Labor Statistics, and they represent a very low percentage of the total work force in the industry.

Mr. BURCH. If I might clarify this situation. You have got three different sets of figures that get involved in statistics, in safety, generally, and in the construction industry in particular.

You have those figures, from which you derive these industry frequency rates of 12, 13, 14, as they are variously recounted.

Those are figures gotten from reporters, to the Safety Council who are members of the Safety Council, and for the construction industry there is a total number of those of 278.

Then you have figures that are gathered by the Bureau of Labor Statistics, in a rather desultory manner and from a sample, and they conclude that the injury frequency rate is around 26 or 28 for the construction industry.

The gross figures that we used, 240,000 disabling injuries, and 2,800 deaths, are collected by the Public Health Service, as a part of the national health survey, which is done on an annual basis, and these are the raw material from which all the gross figures are obtained.

If you apply the American standard you—for your frequency rates to those gross figures, you come out with an injury frequency rate for the construction industry of 46.4. All this serves to cast nothing but a lot of doubts on the statistics that are used, I realize. However, in the Province of Ontario, in our neighboring country of Canada, they do again have a pretty good mandatory data collection system.

This has been made available to me, and in the Province of Ontario for the year 1968, the injury frequency in construction was 57.2.

We presume for pretty good reasons that this is about what the overall injury frequency rate in the United States is, in that neighborhood.

More than 50.

Senator EAGLETON. Well I think you told me all that, Mr. Burch.

But what I am trying to get at, these overall figures, as imperfect as they may be, based on cross sectional samples, estimates, projections, and the like, and I readily admit that they are not perfect figures, are reflecting the construction industry as a whole, whereas the bill we have before us is, of course, limited to federally financed or federally oriented projections, and the conclusion I am drawing is that if there is to be a significant dent in industrial safety and health hazards as construction workers are concerned, in order to move the matter, and to prove the statistical results, we would have to go beyond the limited purview of S. 1368, being just a federally oriented construction. Is that right?

Mr. BURCH. That would be desirable, but the coverage of this bill, I think would make a significant dent.

Senator EAGLETON. A start in the right direction.

Well, of all the construction done in this country, by working men that amount to those that would be covered by S. 1368, just give me a rough percentage of what you think you are talking about here in terms of man-hours put in on work.

Mr. BURCH. Oh, well I would think 50 percent.

Senator EAGLETON. Fifty percent?

Mr. BURCH. If you want federally assisted and Federal projects?

Mr. MASON. I believe the Department of Commerce came out with a figure of \$91 billion next year for construction, and I would say that it depends on the government right today is trying to encourage private construction instead of federally assisted construction projects. They are trying to get private industry interested themselves, and I don't think you can give any exact figure. But I believe that it must have run between 50 and 60 percent, over the past year.

Senator EAGLETON. Without holding you to any figure, because it is an estimate, but then a significant percent of construction work would not be covered by the enactment of 1368.

Mr. MASON. You see, what we are trying to point out, and what I have tried to point out in our statement, is that the construction industry goes into every city, town and community in the country. I would say in most part, we have federally assisted projects in those communities. If the Government sets up Federal standards on federally assisted projects, it is certainly going to encourage private contractors to do the same thing.

I mean, it is just the beginning.

Senator EAGLETON. Thank you.

Mr. MASON. The same as we have under Walsh-Healy today.

Senator EAGLETON. I understand.

Mr. MASON. Now manufacturing, where the Government does not have to purchase any goods, the Walsh-Healy Act does not apply. Now you can take a company that does \$50 million worth of business a year, but if they buy \$10,000 worth of goods from the Government, they have to comply with a safety program in that particular plant.

See, that is what we are hoping for here in construction.

Senator EAGLETON. Thank you very much.

Mr. BAILEY. As a general rule, contractors are not limited to Federal work or federally assisted projects, and it is our hope that once this bill does become law, that they will benefit. They will see the benefits of having some Federal regulations and will project them on into the private sector of construction.

To me, it is pretty obvious that if you find a job going smoothly under one condition, you carry those conditions on to the next job no matter who is paying for it.

I would think that there will be benefits extended into private sectors of the construction industry, once this bill is enacted.

Senator EAGLETON. Thank you very much.

Thank you, Mr. Chairman.

Senator WILLIAMS. Senator Bellmon.

Senator BELLMON. No questions.

Mr. MASON. Mr. Chairman, I have prepared for the benefit of the committee a memorandum for the record, which outlines the changes

in the bill that was considered by the House last year, and changes that we made to try to correct the technicalities that AGC mentioned before.

I also have a copy of—

Senator WILLIAMS. What was that memorandum again, Mr. Mason?

Mr. MASON. It is a comparison between the bill that was considered by the House last year, which, as I stated before, was killed because of "mere technicalities," to use the AGC's language, and the bill now under consideration by this Committee. S. 1368 does not do much more than the bill that was considered last year, and I have tried to compare the two in this memorandum.

I also have a list of the Acts which would be covered by this bill. This is a list of all the federally assisted projects, so you know just what projects are covered by the bill. It does not go into anything in the commerce clause, like the occupation and health and safety bill did.

I also have a copy of Reorganization Plan No. 14, which the coverage is limited to, and a copy of H.R. 2567 of the 90th Congress, so that you can make a comparison between the bill that was considered by the House last year and the bill that is now being considered by your committee.

Senator WILLIAMS. Well, last year's bill and this year's House bill are very similar, just minor changes. Our bill this year, as is pointed out in my statement, is a companion bill to the House bill.

Mr. MASON. S. 1368 is not completely identical to last year's bill. We clarified it by limitations of the coverage to Reorganization Plan 14, which only covers federally assisted projects and federal projects covered by the prevailing wage provisions of the Davis-Bacon Act.

And in fact, last year in the chamber of commerce, in testifying in this before the committee on the occupational health and safety bill, indicated that they had no objections to federal standards on any Federal or federally assisted project.

You will find that in the House testimony of last year.

Senator WILLIAMS. That was the national chamber?

Mr. MASON. Yes.

Senator WILLIAMS. Senator Bellmon?

Senator BELLMON. Mr. Chairman, I am not as familiar with this legislation as I hope to be. When it says that no contractor or subcontractor shall require laborers to work in surroundings or under work conditions which are unsanitary, hazardous for dangerous to his health or safety. There are some types of work or instance divers who work in inherently dangerous situations.

Is there a provision that will keep this sort of work from being discontinued?

Mr. MASON. Pardon me, Senator Bellmon?

Senator BELLMON. I say some types of construction work are by their very nature necessarily hazardous. Then what provision is there to keep these jobs from being shut down now?

Mr. MASON. It is entirely up to the Secretary of Labor; naturally he is going to set up certain standards on construction projects and he would probably have an advisory committee similar to what he has now on unemployment compensation and vocational rehabilitation. Such a committee should be composed of both labor and management—people who know something about the construction

industry. Regulations would be based on whatever the committee recommends.

Mr. BURCH. If I might, Senator, add to what Mr. Mason said, all the work in the construction industry, as in many other industries, is hazardous, but in almost all instances there are well known ways to minimize the hazard, and this is our concern that these steps are taken, to minimize the hazard.

We recognize that there is some degree of hazard in any of the work. It must be minimized. This is not now done, and this includes diving, working on high style, steeplejacking, and so forth.

Mr. MASON. I would like to mention one more aspect of the safety hazard problem, the helmets construction workers should be required to wear.

If a worker on a job refuses to wear a helmet, there is nothing the contractor can do about it; but if you established the requirement by a safety regulation which would require helmets to be worn on construction jobs, then the contractor could just chase the worker off the job until he abides by the requirement.

Senator BELLMON. This committee has been considering mine safety legislation, and under the terms of that act, a worker who disobeys a safety regulation is fined.

Do you propose something then like that in connection with construction workers?

Mr. BURCH. No, we don't propose that.

Mr. MASON. I think that there could be an educational program, so we can train our people, and I don't think we would have any objections to that.

That is the way it works under the Longshoremen and Harbor Workers Compensation Act, the Maritime Safety Act—they have a good program, where both the employers and the workers together coordinate a program. I think in New York, when we worked on the Longshoremen and Harbor Workers Compensation Act 10 years ago, that the premium rate was about \$28 to \$30 a hundred, and now I think it is between \$15 and \$18 a hundred. You can see from this the savings to the shipping industry and the stevedore, in their premium rates on insurance. The law itself, I think, not only prevented accidents, but also saved the employers a lot of money in insurance costs.

Senator WILLIAMS. Just one or two points, if I may, Mr. Mason.

The cancellation provisions for a contractor who violates the standards of safety that are set would be in the bill that is before us. It is similar to provisions in supply and services contracts, isn't it?

Mr. MASON. That is right.

Senator WILLIAMS. Do you gentlemen by any chance have any idea of the experience of cancellations, under supply and services?

Mr. MASON. Yes, I checked with the Department of Labor, and I find that over a 10-year period, there were only 40 companies black-listed; this included 20 mining companies, coal mining companies, so you can figure that as far as blacklists are concerned, under Walsh-Healy, it only amounts to about two a year.

Senator WILLIAMS. Well I was thinking in terms of supply and service. With what I know, I would make the conclusion that safety is far less a problem in supply and service than it is in construction.

Mr. MASON. Very much so.

Senator WILLIAMS. It is a total anomaly that the low-risk industries are covered by safety laws and regulations, and the high-risk construction industry is not. It should be just the other way around, I would think.

Mr. MASON. I would say that if the true facts were known, the construction industry probably has the highest accident frequency rate of any industry in the country.

Senator WILLIAMS. Well, this is where the risk is, and this is where the laws and regulations are not, and that is what we are trying to correct.

I am not suggesting that supply and service should not be covered, but certainly we are long overdue in moving in on the high-risk area.

Now, the other question, I wonder if there is any persuasiveness to provide for a penalty that is less strict than cancellation of the contract, for example, money fines for the contractor who does not honor the safety regulations. Cancellation is the strongest possible medicine. That is tantamount to a worker losing his job for violation of the safety standards. Is there any lesser penalty that you evolved, that any of you have considered, for a violation by the contractor?

Mr. MASON. Well I don't think we should permit a contractor to continue to violate, say, safety regulations, and even though the workers lose their jobs for the time being, they are certainly better off than going on the job and being injured, and maimed and disabled for the rest of their lives.

But as I stated before, there have been very few cancellations. I will try to point out what the situation is with respect to the enforcement of prevailing wage provisions under Reorganization Plan No. 14.

It is enforced now by the Wage and Hour Division. They have 11 regional offices throughout the country. The contractors are required to post their minimum prevailing wage rates on the bulletin board.

Now the same could apply on safety standards, and of course, if those safety standards are not lived up to, then the employer or the employee could make a complaint. And that is what is happening today as far as prevailing wages are concerned, and I can tell you right now that when they are not complying with the law we can take action and submit our complaints.

Senator WILLIAMS. Is there anything else from our panel?

Senator BELLMON. Mr. Chairman, could I ask one additional question?

Senator WILLIAMS. Yes.

Senator BELLMON. I would like to inquire, Mr. Mason, whether or not workers through their unions have any voice in safety on construction projects?

Mr. MASON. If they do what?

Senator BELLMON. If construction workers have any control over the conditions under which they work, over the safety conditions?

Mr. BURCH. Under some conditions they do. Where they are well organized, and there is a sufficient concern, they have been able then in some instances to exercise some control. However, this is the exception and not the rule, Senator

The only real weapon in the hands of a local union in this event is a strike, and nobody likes to strike.

Everybody loses from a strike.

And unfortunately it comes down to that.

We hope to find means of achieving safety without resorting to this. There really is not any other resort.

Mr. WHITEHOUSE. As a matter of fact, Senator, it is my understanding that the Federal Government has repeatedly in the past many years asked the construction trades for no slowdown or stoppage on defense work, and where we might have, on another job that was not defense work, a situation where we would ask for a shutdown of an operation until it is corrected, our hands are pretty much tied on defense work at the present time.

This would help on that area; yes.

Senator BELLMON. The contracts that are entered into between the unions and the companies don't make any efforts to establish safety standards or working conditions?

Mr. BURCH. Some do.

They are usually pretty general sorts of things, Senator, and unfortunately as I mentioned in my statement on behalf of the standing committee, you run headlong into the economic imperatives here.

Everybody starts to lose money, and nobody wants to do that, and so unfortunately the usual outcome is to go ahead and take a chance.

Unless you have a local union which is particularly hard nosed about it, things are usually let go by the board. We have tried in some instances to pick out target areas and have tried to negotiate some sort of meaningful safety provisions in collective bargaining agreements.

Whenever you try to make them meaningful by reference to a specific set of standards, you run into adamant opposition, and collective bargaining being what it is and the pressures that are put on from other sources to conclude collective-bargaining agreements, usually the things are dropped, or effectively emasculated before they are finally accepted.

I can give you an example, without the necessity of naming the association, my own organization recently tried to include a clause in the national agreement providing that all work be done in accordance with a safety manual written unilaterally by this association, and they flatly refused. Under no circumstances would they even consider putting such a clause in the contract.

Senator BELLMON. Then from what you have said, I assume you do have safety standards that could possibly be considered in negotiating.

Mr. BURCH. Yes, sir.

Senator BELLMON. That is all, Mr. Chairman.

Senator WILLIAMS. Thank you very much.

Mr. MASON. Thank you, Mr. Chairman.

Senator WILLIAMS. I will say that we can't announce the next day of hearings on the bill, but suffice it to say at the earliest possible time we will move ahead, and with as much dispatch as possible, gentlemen.

(Whereupon, at 3:50 p.m. the subcommittee adjourned, subject to the call of the Chair.)

FEDERAL CONSTRUCTION SAFETY

WEDNESDAY, MAY 7, 1969

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met at 9:40 a.m., pursuant to notice, in room 4200, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee) presiding.

Present: Senators Williams, Saxbe, Bellmon, and Schweiker.

Committee staff members present: Frederick R. Blackwell, counsel, and Gerald M. Feder, associate counsel; Eugene Mittelman and Peter C. Benedict, minority counsel.

Senator WILLIAMS. The subcommittee will come to order.

We will get under way with consideration of the construction safety bill S. 1368. This morning we resume hearings on this bill regarding construction safety on Federal and federally assisted projects.

It is important to reiterate that this legislation is not the general occupational health and safety legislation with which we will be concerned later on.

What we are dealing with today is an amendment to the Contract Work Hours Standards Act, which would have the effect of protecting the safety of construction workers on Federal projects; that is, giving construction workers the same protective safety provisions as industrial and service workers under Federal supply and service contracts.

This morning we will hear testimony from representatives of Government, the construction contractors, and the construction workers. Most of our witnesses have already testified on a companion bill on the House side. I am informed that the House subcommittee reported a bill with amendments to the full committee over there.

The reported bill I am told differs from S. 1368 only with respect to procedures and methods of enforcement. It is my understanding that the amendment would adopt substantially the procedures and enforcement tools of the Maritime Safety Act in this area of Federal construction safety.

I suggest that witnesses might want to comment on this aspect.

Our first witness this morning is Under Secretary of Labor James Hodgson. Since, as I understand it, this is your first official appearance before this subcommittee, as I recall, I think I am right—

STATEMENT OF HON. JAMES D. HODGSON, UNDER SECRETARY OF LABOR, DEPARTMENT OF LABOR

Mr. HODGSON. Indeed it is.

Senator WILLIAMS. We certainly want to welcome you and we look forward to having your views today and in the future on this and quite a few other matters.

Before we begin, I might suggest that your views are particularly important since the Secretary of Labor is charged with the ultimate responsibility of promulgation of safety standards and their enforcement, not only under the legislation now pending before us, but also under the Public Contracts Act, the Service Contracts Act, and the Maritime Safety Act.

So, with that I will say we are again honored to have you here, Mr. Hodgson, and we welcome you before the committee.

Mr. HODGSON. Thank you, Mr. Chairman. If I may I will just proceed with my statement.

I am pleased to be with you today. As one new to the ranks of Government, it strikes me as a happy circumstance that my early appearances before congressional committees should center around what might be called a theme of "safety first."

In recent weeks I have found myself testifying on uranium mining safety, building and construction safety, and coal mine safety; 1969 is obviously a year of considerable congressional attention to the subject of safety in the workplace. We, in the Labor Department, applaud this attention. We hope concern with occupational health and safety in particular industries will ultimately be extended by this Congress to a consideration of comprehensive health and safety legislation.

Important as these various bills for safety improvement in individual industries may be, they should not be viewed as suitable substitutes for a subsequent comprehensive approach to health and safety improvements in the American workplace.

I have digressed a bit to make this point because occupational safety and health is a continuing problem in the United States. More than 14,000 workers died and over 2 million became disabled, temporarily or permanently, due to on the job accidents in 1967.

Also, it is not generally realized that the Nation has been experiencing no improvement in this area. After an earlier three decades of safety improvement, the injury rate trend turned upward about 10 years ago.

Judged in terms of dollars the cost of occupational accidents is tremendous. In 1967 the cost totaled more than \$7 billion in wages, workmen's compensation, medical expenses and other items. Two hundred and fifty million man-days of production was lost.

As a comparative measure this is several times the number of man-days lost due to strikes. I hope at a later date to expand on this general subject with you.

Senator WILLIAMS. What is that \$7 billion in wages, workmen's compensation, medical expenses and other items? That is the cost of accidents?

Mr. HODGSON. The total cost of accidents in terms of production loss, in terms of wages lost, in terms of costs paid out in workmen's compensation, medical expenses, the whole gamut of things that go into the expense of being off the job and having the job interrupted, due to accidents, whether disabling accidents or disabling disease.

Senator WILLIAMS. What is our gross national product now?

Mr. HODGSON. I think it is going to be about \$900 billion this next year.

Senator WILLIAMS. It is almost 1 percent of the gross national product.

Mr. HODGSON. It is very considerable. I may have to doublecheck those figures for you, but that is the information I have.

(Subsequent check of the figures indicates that it is only about 0.78 percent of the GNP.)

One thing we here in the Department are pleased with is that S. 1368 reflects an interest in the broad subject of occupational safety and health, even though its provisions deal only with the working conditions and practices of the building and construction industry when Federal contracting is involved.

S. 1368 would promote safe and healthful working conditions for those employed in one segment of a single industry. The measure recognizes that the Federal Government has a special responsibility toward those persons who work on contracts entered into under authority of the Federal Government.

Before going into the particulars of S. 1368, I believe it might be best to first gain some perspective on how S. 1368 fits into the more general view of industrial safety matters.

We have figures covering industry categories which give us a fair overall picture of the workplace hazards for American employees. Our figures show that, of the more than 14,000 total occupational deaths, approximately 20 percent occur in the construction industry. Of the total disabling injuries, the construction industry accounts for about 11 percent.

National Safety Council figures for the same year show an all-industry injury frequency rate of 7.22 disabling injuries for every 1 million man-hours worked, the highest since 1954. That same rate for the construction industry is nearly double that.

In terms of accident-severity rates, instead of frequency rates, data prepared by the National Safety Council shows more or less the same picture.

I want to digress a moment to say we realize that our statistics on work-related deaths and injuries are not what they should be. One of the major problems in the field of occupational safety and health is the insufficient and inadequate reporting of such fatalities and injuries.

But, incomplete as they are, the figures add up to the fact that the construction industry involves a more than normally hazardous type of employment. Indeed, that industry is one of the most hazardous in the Nation. And it is a sizable industry employing millions of workers and involving the investment of billions of dollars annually.

At the same time, we might observe that, while construction represents one of our most hazardous occupations, it is, in perspective, only a part of a general problem; it does not represent the whole problem. The construction industry accounts in statistical terms for a little less than a fifth of the overall national workers safety problem.

In the view of the Department, it would thus appear that some sort of comprehensive approach toward improving the working conditions and practices of all industries, including, of course, the building and construction industry, as a whole would be desirable.

However, legislation along the lines of S. 1368, which is confined to providing safe and healthful working conditions for the one group of employees working under Government contracting authorities who are not presently protected by Federal law, would fill an existing gap.

The Federal Government would thus round out its safety coverage of those who work under its contracting authorities.

The purpose of S. 1368 is to extend to Federal construction contracts the same health and safety protections already provided under other Federal laws to those who work under Government contracts for the procurement of services and of supplies. Those other laws are the McNamara-O'Hara Service Contract Act and the Walsh-Healey Public Contracts Act.

We are not yet fully prepared to speak to the specific provisions of this construction safety bill, or of a general bill. We will need more time to work out the details of such legislation. How much more I am not prepared to say. We do consider it a priority subject, however.

I would like to note, however, that, as we see it, S. 1368 would operate as follows:

The new safety and health protection would take the form of a condition in a contract. The condition would be inserted in the types of contracts specified in the Contract Work Hours Act.

In the event the Secretary of Labor should find a violation of a contract condition relating to worker safety and health, the Government agency for which the work is being done could, after full due process of law, cancel the contract and enter into other contracts charging the additional cost to the original contractor.

S. 1368 would authorize the Secretary of Labor to enforce the bill's provisions in a similar manner as the safety and health provisions of the Walsh-Healey Act are enforced. The Secretary would hold hearings, make decisions based on findings, make rules and regulations, and take other appropriate actions.

Finally, the bill substantially adopts the provisions of the Walsh-Healey Act authorizing the Secretary of Labor, following carefully defined procedures, to debar contract violators for 3 years.

In summary, Mr. Chairman, I reiterate that we in the Labor Department have a strong interest in a comprehensive occupational safety and health coverage for all industries, including the building and construction industry.

However, we can understand the desirability of going forward with legislation which is especially designed for the building and construction industry; thus filling a gap in Federal coverage of on-the-job safety and health of those employees who work under Federal contracting authorities.

Senator WILLIAMS. That is very concise and very precise and this bill is supported by the administration. I am mindful of the fact that it is only part of occupational safety. That is the sum of what you are saying and part of the substance?

Mr. HODGSON. I certainly would agree.

Senator WILLIAMS. As far as the specific safety measures, these will be arrived at by regulation and then after regulation they go into the contract.

Mr. HODGSON. That is right.

Senator WILLIAMS. In arriving at the regulation you have a hearing and notice-of-hearing proceeding.

Mr. HODGSON. That is the prescribed procedure for that purpose; yes, sir.

Senator WILLIAMS. Thank you very much. You have been most helpful. Senator Bellmon.

Senator BELLMON. I have no questions at this time, Mr. Chairman.

Senator WILLIAMS. Thank you very much.

Mr. HODGSON. Thank you, Mr. Chairman.

Senator WILLIAMS. The next witness is Mr. William E. Naumann, chairman of the Legislative Committee, Associated General Contractors of America.

My list has you accompanied by Mr. A. L. Schmuhl, director of the safety division of the association, and you have another—

Mr. NAUMANN. My colleague on my left, Mr. Scott Shotwell, legislative secretary of the AGC national office.

Senator WILLIAMS. Very well. We welcome you before the subcommittee.

STATEMENT OF WILLIAM E. NAUMANN, CHAIRMAN, LEGISLATIVE COMMITTEE, ASSOCIATED GENERAL CONTRACTORS OF AMERICA; ACCOMPANIED BY A. L. SCHMUHL, DIRECTOR OF SAFETY DIVISION, AND SCOTT SHOTWELL, LEGISLATIVE SECRETARY

Mr. NAUMANN. Thank you very much, Mr. Chairman. I have a prepared statement that I would like to read.

Senator WILLIAMS. We have it and we will be pleased to have you read it.

Mr. NAUMANN. Thank you. My name is William E. Naumann. I am chairman of the Legislative Committee of the Associated General Contractors of America, a trade association of approximately 9,000 of the Nation's leading general contractors who perform the greater part of all highway, heavy engineering, and building construction done in the United States each year. I am also a member of the heavy division and a member of the association's executive and labor committees.

We appreciate your giving us an opportunity to testify on S. 1368, and to present the construction industry's views with regard to construction safety.

At the outset, I want to emphasize that we are for safety, and do not oppose any positive program that would bring about greater safety in the construction industry. We disagree with the methods prescribed by S. 1368 because we don't think that they will accomplish the objectives intended.

The Associated General Contractors have had a longstanding interest in safety and have pioneered safety in construction. The AGC Manual of Accident Prevention in Construction has been recognized for several decades as the guide for safety in the construction industry and has been reprinted in several foreign languages.

Five foreign nations have translated the AGC Manual of Accident Prevention in Construction for application by contractors in their efforts to reduce construction accidents. They are: Japan, Spain, Norway, Israel, Afrikaans (Netherlands).

Plus those nations comprising the Inter-American Construction Association where the translation has been prepared for the Inter-American Federation of the Construction Industry by the Inter-American Safety Council.

For years this document has been recognized by the American Standards Association as the standard for the industry. We believe that employers, employees, unions, and government all have a part to play in providing safety at the worksite. We adhere to the idea

that a particular safety program must be designed to suit the needs of the individual situation.

Each segment of our industry has its own safety problems peculiar to its own operations, just as each agency regulates and services their particular area of authority.

The safety problems of the Corps of Engineers on its flood control work, for example, differ greatly from those of the General Services Administration in constructing a high-rise building in a large city. We believe that any proposal which would centralize control of safety matters would not be desirable, especially where suitable safeguards have already been established by the contracting agency.

For example, on work being done for the Bureau of Reclamation, health and safety standards are incorporated into the contract specifications. These specifications outline the obligations of the contractor in insuring the health and safety of his employees.

Thus, these standards constitute a contractual obligation to the Federal Government.

In addition, such specifications require the contractor to abide by State and municipal safety and health statutes and codes. Any contractor found to be in noncompliance with these standards or contractual provisions is subject to termination of the contract.

Senator WILLIAMS. When you say State statutes and codes, are all 50 States well regulated with good statutes and good codes, in your judgment?

Mr. NAUMANN. Mr. Chairman, there are 16 States that yet do not have what to our notion would be proper safety codes. I might point out as an aside that if you are doing work for Federal agencies in these areas then you are still bound by that agency's safety regulations as a matter of contract obligation.

Senator WILLIAMS. You may proceed.

Mr. NAUMANN. To assure compliance with the safety requirement, projects are under the surveillance of the project engineer and the safety staff of the contracting agency. In addition to the Bureau of Reclamation, the Corps of Engineers, the Naval Facilities Engineering Command, Bureau of Public Roads, the Atomic Energy Commission, the Air Force, and the General Services Administration, just to name a few, all have similar contractual specifications and which are sound requirements developed over a long period of time.

The safety records of the Bureau of Reclamation and Corps of Engineers are truly outstanding, and are so good that it would be unfortunate to divest them of their responsibility for safety and put this function in the hands of the Labor Department, which has no experience in construction safety. The corps' safety record is four times as good as the average. Why, then, should we say that they will no longer be responsible for this function?

The real solution is to get a better job done at the local level. S. 1368 merely covers that portion of the work force which is already well regulated. We believe that our efforts should be directed in those areas which need the attention and that any safety code can be more effectively administered at the local level.

One of the most compelling reasons that construction has been exempted from Walsh-Healey or McNamara-O'Hara Acts is due to the complexity and the difference of every job or categories of work done for the Federal agencies. In supply contracts and manufacturing

the problem of safety is more confined and less complex. Plant by plant the problem is more easily identified.

At this point I would like to spell out what we consider the most desirable way to get the job done. Up to this point all the attention has been on a bill that would impose another layer of Federal bureaucracy on top of existing Federal control.

What about those 2 million workers in construction who are not working on Government contracts, whose lives and safety are just as important as a man working on Federal or Federal-aid job?

Senator WILLIAMS. We will be dealing with them next.

Mr. NAUMANN. What I am saying is that we need to upgrade the standards of all construction safety throughout the country, whether it is a man digging a ditch at a nearby shopping center or building a \$10 million hospital.

What is needed is a proposal that would reach into the local community by encouraging States to upgrade their safety standards through Federal grants and training programs. This bill merely places more Federal controls in an area that is already covered when the need is greatest in those areas not covered.

In other words, let's have a standard of safety developed by industry, labor, and safety experts which would be the goal of every State throughout the Nation, and let there be grants from the Federal Government to assist the States in the improvement of their State laws and regulations in this connection.

What we are suggesting is that attention should be given to those areas which are now neglected instead of putting more controls on areas that are presently well regulated.

Government could make a unique contribution to construction safety through a program of developing standards through the consensus method and with the assistance of experts from industry, labor, professional groups, and the States, and not through the concept proposed in S. 1368.

The record will show a remarkable degree of voluntarism on the part of our industry in the area of safety. Coupled with a record of progress, we find absolutely no justification for the extensive and arbitrary enforcement powers contained in S. 1368.

The bill as drafted is punitive and vague in its application. It does not provide for adequate administrative review or any judicial review with regard to the methods of enforcement or in the standards. It is hard to believe that such a highly regulatory law, such as this would be, does not contain a simple provision for guaranteeing court review.

With regard to the development of standards, there is no way of determining beforehand what is unsanitary, hazardous, or dangerous to health and safety.

In addition, the bill does not require the Secretary of Labor to provide standards of conduct or procedures for standards of conduct, it is completely discretionary. An action could be arbitrary and not related to the violation.

The punitive approach taken by the bill would place severe penalties upon all employers. Once the Secretary of Labor determines that a violation exists, a contractor may be blacklisted for a period of 3 years, or in instances where the project is federally assisted, funds may be withheld regardless of past performances. There is no relationship between the seriousness of the violation and the penalty.

This compulsory approach, with severe penalties, has a number of conceptual weaknesses. Safety through police action accomplishes merely limited progress—such as automobile safety. Compulsion does not equal affirmative action which is necessary for safety progress—such as education and training.

Only through a meaningful effort can the people be reached before the fundamental importance of exercising day-to-day control—the toolbox approach, which is the one that this construction industry certainly endorses.

The more removed the enforcement effort—such as plant, State, Federal Government—the less import it has.

Safety cannot be legislated and such a method has its shortcomings. Safety is most of all an operating responsibility. Arthur Goldberg pointed out that “Good safety records are posted in the face of the greatest hazards because people talk, think, and act in safety.”

Federalizing existing safety enforcement efforts now accomplished by the contracting agencies or at the State level would provide no certain answer and could even be a step backward.

We see no panacea in mandatory codes coupled with stiff penalties. No matter what the enforcement approach, actual safety performance turns on the voluntary efforts by the employer and the employee.

The construction industry employers believe that the Federal Government could make a more valuable and constructive effort in promoting safety in the construction industry if it would endorse legislation that would—

1. Make the function of the Federal Government that of supporting, encouraging, and providing incentives in order to assist the States in carrying out their responsibilities for providing adequate safety standards for construction.

2. Establish minimum safety standards to be promulgated by a construction safety board composed of seven members who represent construction management, organized labor, the insurance industry, private organizations that develop safety standards on a national basis, and the general public.

3. Authorize the board to make investigations and conduct studies, in order to develop minimum construction safety standards.

4. Designate existing safety standards of Federal contracting agencies and those standards developed under the consensus principle by nationally recognized standards-producing agencies as initial standards.

5. Require States to provide assurances that they will apply minimum construction safety standards prescribed by the board.

6. Require that States must meet the Federal minimum safety standards in order to obtain financial assistance from the Federal Government.

7. Authorize States to enforce and administer the safety regulations including the availability of qualified personnel to carry out the purposes of the bill.

8. Provide that under a State plan, no penalty can be imposed with respect to the application of a minimum construction safety standard without first affording such concern reasonable notice and opportunity for a hearing.

Such a proposal gives the Federal Government a unique opportunity to make a significant contribution by assisting States through financial aid, research, and training, and would permit enforcement efforts which are closer to the site to become more meaningful.

We believe that any safety program should be focused upon State and local governments rather than the Federal Government. We feel that a construction safety board, composed of qualified people and operating as an independent agency, could better serve the purpose of safety.

In conclusion, we would like to again thank the subcommittee for this opportunity to express our views on this priority subject.

Mr. Chairman, if I might point out, a bill has been introduced in the House of Representatives, H.R. 10565, which endorses and contains the provisions that we have outlined in our testimony. We believe that this bill would be a better way to attack not only the problem of safety in the building and construction industry, but the problem of safety in all industry.

Senator WILLIAMS. I was diverted for a moment, Mr. Naumann. What bill is this that you support?

Mr. NAUMANN. H.R. 10565 as introduced by Mr. Anderson of Illinois and Mr. Eshelman of Pennsylvania and Mr. Smith of New York. It was referred to the Committee on Education and Labor.

As I point out, this bill which was introduced I believe on the 24th of April embodies in its proposals the very items that we have pointed out as our opinion of a better approach to a matter of safety not only in the building and construction industry, but in all industry.

Senator WILLIAMS. This is the general bill of which we have a counterpart here which has been introduced in the Senate that you are familiar with?

Mr. NAUMANN. Thus far there has been no counterpart of this bill.

Senator WILLIAMS. I am wrong. My staff advises me that they have not yet worked out all the details in general, but it is being worked on. You are dealing with the comprehensive general construction safety bill.

Mr. NAUMANN. In our proposal, that is correct.

Senator WILLIAMS. You passed over the matter before this committee, sharply before this committee, with the early conclusions in your statement that Federal agencies are already doing this adequately, therefore, we don't need the Department of Labor. Is that what you are saying?

Mr. NAUMANN. The thrust of our discussion is that the areas of Federal construction or federally assisted construction, by reason of the excellent safety programs of the agencies in charge of this construction, are already well regulated. We say that these fine efforts and fine records established by the agencies don't need any more regulation.

But all of those areas of construction otherwise in this country where there is not the proper regulation, we say that the thrust of the effort of the Government should be in this direction.

Senator WILLIAMS. I see. You see, that is coming. But that is not before us. What we are talking about here this morning is the Federal jobs and federally assisted jobs. That is what we are talking about. All we are saying is that in one place, in the Department of Labor,

there should be the people's right to have the agency say to the contractor, "These are the safety regulations. You abide or the penalties set in."

Now, the people whose money is being spent on the Federal contracts or federally assisted contracts, they have a right to make sure, don't they, that those jobs are safely constructed? There is no argument on that. You are only saying bureau by bureau by bureau by bureau that is the way to do it and the bill says the focus should be in one place for efficiency, for uniformity, for all the businesslike reasons. That is what we are saying.

Mr. NAUMANN. I quite agree that that is what this legislation says. We have no quarrel with the basic thesis except that we feel that it would not be fair to saddle the Secretary of Labor with this tremendous responsibility.

I think in the companion bill in the House, as it has been discussed, a portion of our thesis is being adopted. We say that the regulations as they are established should be established by knowledgeable people in the form of a board.

This idea is gaining strength, I might point out, and amendments to the companion bill in the House indicate that this is their idea now.

We say that there are certain safeguards that of necessity—

Senator WILLIAMS. As I understand, the provisions that they arrived at in the House bill, after subcommittee consideration, to which you are addressing yourself now, dealing with court review, some of the penalty aspects, meet with greater support or support of the general contractors.

Mr. NAUMANN. Yes, sir.

Senator WILLIAMS. I am glad to have that statement of amplification.

Mr. NAUMANN. If I might, Mr. Chairman, say with all sincerity that never once in all of our discussions about safety have we disagreed with the concept. The only disagreement that we have had is in the approach because we are very honest and very sincere in saying that if money is to be spent, if tremendous effort is to be made, then let us make it the most effective spending and the most effective effort possible.

Senator WILLIAMS. When we get to the general bill many of your ideas I am sure will then be discussed at greater length and in greater detail.

For instance, grants to States for legislation and enforcement, that, you know, comes to us at too much of a problem for us to even discuss this morning as we discuss Federal contracts and federally assisted contracts.

We don't know how much money we are dealing with when we talk about grants to the States. We don't know where that money will come from, whether it will be a tax on contractors, just how the revenue aspects of grants, Federal to State, would be arrived at. You probably have answers but that is not our situation here.

I would hope that you would not be advocating for us another tax on anybody. But you are talking grants and grants mean money and money means taxes.

Mr. NAUMANN. Let me point out that this industry in its own right and by its own action spends a lot of money on safety, and it is good business I might point out to spend money on safety.

I can give you an example. In my own construction operation in the year from November 1967 through November 1968 our total workmen's compensation premiums were just over a million dollars in one area of operation, in one State.

Because of our safety record, and our actual performance, our rebate of premiums for this same year amounted to almost \$400,000.

So, safety is good business. We are used to spending money on safety. We are used to having our toolbox meeting on our own time and at present rates per hour believe me a 15-minute meeting or a 20-minute meeting on a job that has 200 men on it, you know very quickly that this is an expensive thing. But we say this is the only way to do it, that you have to educate.

We can have all of the regulations in the world and all of the enforcement but if the individual is not constantly reminded of his own actions and responsibility in safety we will fail.

Senator WILLIAMS. That is certainly reassuring. You are speaking for yourself really in this connection in stating your own company puts so much of your own resources into safety. I gather there would be no hardship on you if some of your resources went to safety more generally as it would apply in your book to the State program of safety.

I don't know. I frankly am not familiar enough. I have only been advised that some here believe the House provisions dealing with court review and penalty revisions, which differ from those in our bill, are persuasive and we will have to look at that.

Where is your business, Mr. Naumann?

Mr. NAUMANN. Our headquarters are in Tucson, Ariz., and have been for the past 40 years. For the 40 years prior to that they were in Las Vegas, N. Mex.

Senator WILLIAMS. How far is Tucson from Denver?

Mr. NAUMANN. From Denver? Let me make a real quick calculation. I never did actually measure it. It must be about 470 to 520 miles.

Senator WILLIAMS. I was just 470 miles off. I guessed you were from Denver.

Mr. NAUMANN. You guessed me from Denver?

Senator WILLIAMS. You know why? You have the vigor and force of what I consider the dynamic West.

Mr. NAUMANN. Thank you very much, sir. I would hope that I could be persuasive with you on this legislation.

This is a complex industry. One of our great concerns is the ability, in the event this legislation becomes effective, the ability of the Labor Department or any department in a real big hurry to acquire the competent people in the field of enforcement and inspection. There are many dangers as we see it.

We would most sincerely hope that there would be no disturbing of those already efficient programs that are in effect, such as the Corps of Engineers, the Bureau of Reclamation that covers a large volume of Federal construction. I am happy to say that the smaller agencies who don't have their own programs, they borrow, and the larger agencies very generally loan to the small agencies, the language for their contracts, the documentation for their enforcement procedures and these kinds of things.

We feel these are very, very effective. I would hope that in any consideration of a general moving of the responsibility to a single

department of Government that these good things that have been developed over a long period of time with a very enviable record I might point out, for example, the Corps of Engineers, in all of their work in fiscal 1968, their frequency rate was only 4.61 as compared to a national average of 13.21.

In other words, three times as good.

The same thing is true of the Naval Facilities Engineering Command. Their frequency rate, 4.23. The Atomic Energy Commission, 4.51. The Bureau of Reclamation, while excellent, is a little higher. But all of these programs, as I say, have been developed and have been used and have been effective and under any circumstances to our notion we would hope that they never be disturbed.

Senator WILLIAMS. Senator Schweiker.

Senator SCHWEIKER. No questions, Mr. Chairman. Thank you.

Senator WILLIAMS. Thank you very much. You do all right even though you do lose your sheets once in a while.

Mr. NAUMANN. This is not my fault. This is my helper's fault.

Mr. Chairman, could I please ask that the House bill, H.R. 10565, that I referred to, be made a part of the record and also a brochure on safety.

Senator WILLIAMS. That will be done, without objection.

(H.R. 10565 and the brochure follow:)

1 to develop minimum safety standards, and to provide finan-
2 cial assistance to States in which such standards are adopted
3 to carry out State construction safety standards programs.

4 DEFINITIONS

5 SEC. 3. As used in this Act—

6 (1) "Board" means the Construction Safety Stand-
7 ards Board established under section 4 of this Act;

8 (2) "construction safety standards" means reason-
9 able criteria which will assure safe working conditions
10 for employees at construction sites within any State or
11 which will contribute to the prevention of accidents at
12 any such site; and

13 (3) "State" includes in addition to each of the
14 several States of the Union the District of Columbia.

15 ESTABLISHMENT OF CONSTRUCTION SAFETY STANDARDS

16 BOARD

17 SEC. 4. (a) There is hereby established in the Depart-
18 ment of Labor a Construction Safety Standards Board.

19 (b) The Board shall be composed of seven members
20 to be appointed by the President, by and with the advice
21 and consent of the Senate, from among individuals who
22 by virtue of their service, experience, or education are
23 especially qualified to serve on the Board. In making such
24 appointments, the President shall appoint individuals who
25 are representative of the construction industry, organized

1 labor, the insurance industry, private organizations engaged
2 in developing safety standards applicable on a national basis,
3 and the general public. Not more than four members of the
4 Board shall be members of the same political party.

5 (c) The terms of office of each member of the Board
6 shall be seven years, except that—

7 (1) the members first taking office shall serve, as
8 designated by the President, one for a term of one year,
9 one for a term of two years, one for a term of three
10 years, one for a term of four years, one for a term of
11 five years, one for a term of six years, and one for a
12 term of seven years; and

13 (2) any member appointed to fill a vacancy shall
14 serve for the remainder of the term for which his prede-
15 cessor was appointed.

16 (d) The President shall designate one of the members
17 to serve as Chairman and one to serve as Vice Chairman
18 of the Board.

19 (e) Any vacancy in the Board shall not affect its powers
20 and four members of the Board shall constitute a quorum.

21 (f) Organized labor and management shall always be
22 equally represented on the Board.

23 DUTIES OF THE BOARD

24 SEC. 5. (a) Subject to the general supervision of the
25 Secretary of Labor, the Board is authorized to—

1 (1) make necessary investigations and conduct
2 studies in order to develop minimum construction safety
3 standards;

4 (2) establish within one year after the enactment
5 of this Act minimum construction safety standards;

6 (3) make grants to States which have State plans
7 approved by the Board under section 6 in accordance
8 with the provisions of this Act;

9 (4) conduct special studies on matters pertaining to
10 the prevention of accidents in the construction industry;
11 and

12 (5) report to the Congress annually on the conduct
13 of its activities under this Act, together with such recom-
14 mendations for additional legislation as the Board may
15 deem appropriate.

16 (b) In developing minimum construction safety stand-
17 ards under paragraph (2) of subsection (a) the Board shall
18 consider existing State regulations with respect to construc-
19 tion safety, construction safety standards developed by the
20 consensus method by nationally recognized private organiza-
21 tions, and such standards in effect for Federal contracting
22 agencies.

23 (c) Subchapter II of chapter 5 of title 5, United States
24 Code, shall apply to regulations promulgated by the Board.

1 establishing, amending, or revoking construction safety stand-
2 ards under this Act.

3 STATE PLANS

4 SEC. 6. (a) Any State desiring to participate in the
5 grant program under this Act shall designate or create an
6 appropriate State agency for the purpose of this section,
7 and submit through such State agency a State plan which
8 shall—

9 (1) provide assurances that the State will accept
10 and apply minimum construction safety standards pre-
11 scribed by the Board pursuant to this Act;

12 (2) set forth a program for State enforcement of
13 construction safety standards at sites within such State
14 in accordance with the provisions of this Act, includ-
15 ing adequate provisions for inspection and certification
16 of compliance with such standards;

17 (3) provide for the administration of such plan
18 by such State agency;

19 (4) provide that no penalty with respect to the
20 application of a minimum construction safety standard
21 to a business concern in such State shall be imposed
22 without first affording such concern reasonable notice
23 and opportunity for a hearing;

1 (2) For the purposes of this subsection, the Federal
2 share for any fiscal year stated in percentage terms, shall
3 be determined by the Board on the basis of the funds appro-
4 priated for the purpose of making grants pursuant to section
5 12 for that fiscal year and the number of States having State
6 plans approved by the Board; except that no State may
7 receive a grant under this Act for any fiscal year in excess
8 of \$1,000,000.

9 (b) No payments shall be made to any State from
10 its allotment for any fiscal year unless and until the Board
11 finds that the State which will carry out the State plan for
12 that year will have available during that year for expendi-
13 ture from non-Federal sources for construction safety pur-
14 poses not less than the total amount actually expended by
15 such States for such purposes from such sources during the
16 preceding fiscal year, plus an amount equal to not less than
17 the non-Federal share of the costs with respect to which pay-
18 ment pursuant to subsection (a) is sought.

19 (c) Payments to a State under this Act may be made in
20 installments and in advance or by way of reimbursement
21 with necessary adjustments on account of overpayments or
22 underpayments, and they may be paid directly to the State
23 or to one or more public agencies designated for this pur-
24 pose by the State, or to both.

ADMINISTRATION OF STATE PLANS

1
2 SEC. 8. (a) The Board shall not finally disapprove any
3 State plan submitted under this Act, or any modification
4 thereof, without first affording the State agency submitting
5 the plan reasonable notice and opportunity for a hearing.

6 (b) Whenever the Board, after reasonable notice and
7 opportunity for hearing to the State agency administering a
8 State plan approved under section 6, finds that—

9 (1) the State plan has been so changed that it no
10 longer complies with the provisions of such section, or

11 (2) in the administration of the plan there is a fail-
12 ure to comply substantially with any such provision, the
13 Board shall notify the State agency that the State will
14 not be regarded as eligible to participate in the program
15 under this Act until it is satisfied that there is no longer
16 any such failure to comply.

ADMINISTRATIVE POWERS

17
18 SEC. 9. (a) In order to carry out the provisions of this
19 Act, the Board, or on authorization of the Board, a sub-
20 committee of not more than two members thereof, is author-
21 ized, in addition to other powers conferred by this Act, to—

22 (1) provide such rules and regulations as the Board
23 deems reasonably necessary;

24 (2) appoint and fix the compensation of an Execu-
25 tive Director, without regard to the provisions of title

1 5, United States Code, governing appointments in the
2 competitive services and without regard to the provi-
3 sions of chapter 51 and subchapter III of chapter 53
4 of such title relating to classification and General Sched-
5 ule pay rates, but no individual so appointed shall re-
6 ceive compensation in excess of the rate prescribed for
7 GS-18 in the General Schedule under section 5332 of
8 title 5, United States Code;

9 (3) appoint and fix the compensation of such other
10 personnel as the Board deems necessary;

11 (4) enter into contracts and make grants or other
12 arrangements with public and private agencies and or-
13 ganizations necessary for the discharge of its functions
14 under this Act;

15 (5) delegate any function of the Board, except the
16 establishment of construction safety standards, to any
17 officer or official of the Board, or, with the approval of
18 the Secretary of Labor, to any officer or employee of
19 the Department of Labor; and

20 (6) request directly from any department or agency
21 of the Federal Government information, suggestions,
22 estimates, and statistics needed to carry out its functions
23 under this Act, and such department or agency is
24 authorized to furnish such information, suggestions, esti-
25 mates, and statistics directly to the Board.

1 (b) The Chairman shall be the chief executive and
2 administrative officer of the Board and shall exercise the
3 responsibility of the Board with respect to (1) the appoint-
4 ment and supervision of personnel employed by the Board;
5 (2) the distribution of business among the personnel of the
6 Board; and (3) the use and expenditure of funds. In execut-
7 ing and administering the functions of the Board on its behalf,
8 the Chairman shall be governed by the general policies of
9 the Board and by its decisions, findings, and determinations.

10

COMPENSATION

11

SEC. 10. (a) Section 5314 of title 5, United States Code,
12 is amended by adding at the end thereof the following new
13 paragraph:

14

“(54) Chairman, Construction Safety Standards
15 Board.”

16

(b) Section 5315 of title 5, United States Code, is
17 amended by adding at the end thereof the following new
18 paragraph:

19

“(92) Members, Construction Safety Standards
20 Board.”

21

EFFECT UPON STATE LAW

22

SEC. 11. Nothing in this Act shall be construed to pre-
23 vent the Federal Government with respect to construction
24 safety standards applicable to contractors of the Federal
25 Government or projects assisted by the Federal Government,

100 each of 12 different safety booklets, or a total of 1,200 booklets. They are each 8 pages, printed in two colors, and are of a convenient size ($3\frac{1}{2}'' \times 8''$) to carry in the shirt or hip pocket or to insert in a #10 envelope. The customary plan is to distribute one of the booklets every month (or more frequently) at a safety meeting so that the supervisor can make use of them as text books that are easily understood because of the cartoon drawings and simple readable copy.

10 each of 24 small posters, or a total of 240 posters, size $8\frac{1}{2}'' \times 11''$, printed in two colors, on the same general subject, and are intended to be displayed concurrently with the study of the booklet on the same subject.

10 each of 24 large posters or a total of 240 posters, size $17'' \times 22''$, printed in two colors. The large posters are the same as the small posters except for size, and are designed for display on larger wall areas.

100 each of 24 coordinated Payroll Enclosures, or a total of 2,400 enclosures. They are printed in two colors, and of a size suitable for enclosure in a pay envelope or as handouts. This is a sufficient supply for 24 pay periods to be used concurrently with study booklets.

2 each of 12 sets of outdoor flags, or a total of 24 flags. These are durable flags that will stand up in rough weather, and are $18'' \times 18''$ in size, with a 48'' staff. Each set will contain the safety theme that will be featured during the course of the month. The flags can be planted in the ground at construction sites, or attached to motor vehicle or heavy construction equipment.

2 each of 12 sets of large decals, size $8'' \times 12''$, or a total of 24 decals. The safety message of each set will correspond with that of the outdoor flags. These are pressure sensitive decals for easy attachment and removal.

5 each of 12 sets of small decals, size $2\frac{1}{2}'' \times 3\frac{1}{2}''$, or a total of 60 decals. They are the same as the large decals except for size, and may be applied to pieces of construction equipment or used in small areas.

100 each of 12 Off-the-Job safety booklets, or a total of 1,200 booklets. They are printed in two colors, and of the total, 6 booklets consist of 8 pages each and the other 6 of 12 pages each. The importance of off-the-job safety is becoming increasingly recognized, for you are deprived of the services of a disabled workman regardless of whether he was injured on or off the job, or he may be absent from his job because of some accident that has occurred to a member of his family. The booklets may be inserted into the pay envelope of the workman or handed to him with a request that he take them home and study them—or even mailed directly to him at his home in order that his wife may have a better opportunity of seeing them.

All Safety Program materials have been prepared for the Associated General Contractors of America to be distributed by Girardin, Inc., 318 W. Washington, Chicago, Ill. 60606, a company that has a long and successful record in visual safety, training and educational programs for the Federal government, national associations, and private industry.

Cost—The cost of the Safety Program is less than one cent per man per day, and certainly represents the most inexpensive industry safety program that has ever been made available.

To make this Program feasible, we must receive orders from the industry for a minimum of 500 units at a cost of \$360.00 per unit, but if we can secure pledges for a total of 1,000 units or more this price can be reduced to \$300.00 per unit, which represents a considerable savings. Your prompt cooperation will therefore greatly assist us in obtaining a proper estimate of your requirements and obtain a price saving which will benefit you and all of our other members. In addition to all of the safety materials previously described, the prices quoted include packaging, handling and shipping charges.

As stated, one unit is designed to provide safety materials for one hundred workmen for a period of one year. In determining your own requirements, you will wish to purchase one unit if you have a total, including turnover, of approximately one hundred men per month. If you have a larger number of men, you can either purchase two or more complete units or indicate your total number of employees on the order card. Orders for one or more complete units can be sent direct to Girardin, Inc., 318 W. Washington, Chicago, Ill. 60606, who will invoice you at time of shipment.

If you have less than 100, you will purchase your needs according to the number of your employees from your A.G.C. Chapter at a prorated cost of the unit figure.

In order to secure the lowest possible price, it is highly important that you indicate the materials you will need on the enclosed Order Form, sending the original to Girardin, Inc. in the event one or more complete units are ordered, second and third copies to the A.G.C. Chapter, retaining the fourth copy for your files. In the

event less than one complete unit is ordered, send all three copies to the Chapter on or before November 20, 1968. All requirements must be on file with Girardin, Inc. not later than December 1, 1968. Your so doing will assure you of receiving the supply of the safety materials you need, and will benefit all other A.G.C. members as well. There is nothing for you to pay until your order has been delivered to you.

Senator WILLIAMS. Our next witness is Mr. James J. Kelly, chairman of the Accident Prevention Committee, National Constructors and I believe accompanied by Wayne L. Christensen, who is cochairman and also by Gerald S. Ostrowski, manager of public affairs, and Mr. E. D. Hoekstra, executive secretary.

STATEMENT OF JAMES J. KELLY, CHAIRMAN, ACCIDENT PREVENTION COMMITTEE, NATIONAL CONSTRUCTORS; ACCOMPANIED BY; WAYNE L. CHRISTENSEN, COCHAIRMAN; GERALD S. OSTROWSKI, MANAGER OF PUBLIC AFFAIRS; AND E. D. HOEKSTRA, EXECUTIVE SECRETARY

Mr. KELLY. Thank you, Mr. Chairman. My name is James J. Kelly. I am an employee of M. W. Kellogg Co., subsidiary of Pullman, Inc. I am also chairman of the accident prevention committee of the National Constructors Association.

This is Mr. Gerald Ostrowski, manager of public affairs, on my right for NCA and my cochairman, Wayne Christensen, cochairman of the Accident Prevention Committee of NCA.

I have a statement, Mr. Chairman, which I would like to read with your permission.

Senator WILLIAMS. Yes, we will be pleased to have that.

Mr. KELLY. The National Constructors Association welcomes this opportunity to present its views in opposition to S. 1368.

The association, known as NCA, is composed of 34 internationally known firms of engineers and constructors which design and erect large-scale industrial complexes for both private industry and the Government. These include oil refineries, chemical plants, steel and paper mills and power generating plants throughout the United States and abroad.

NCA companies have engineered and constructed many Government facilities. Among these are atomic energy installations, desalinizing plants, missile and space projects, work for the Bureau of Reclamation and the Corps of Engineers.

Attached to this statement is an informational folder describing the association and listing its members, officers and major committees.

In carrying out construction projects, NCA members employ many thousands of building trades workers. These companies, in their own interest and in the interest of their employees, have been leaders in promoting safety in the construction industry.

NCA firms as a group have consistently recorded accident frequency and severity rates which are far below the index for heavy construction as published by the National Safety Council. The association annually gives recognition to each of its member companies which achieves an accident prevention experience at least 25 percent lower than the experience reported by the National Safety Council for the heavy construction industry. Last year 25 of our 34 member companies received such recognition.

We feel that our safety record can be attributed to the accident prevention activities of our members as individual employers, and collectively as an association.

The safety director of each of our companies is a member of our Accident Prevention Committee. Through that group we maintain representation on appropriate committees of the USA Standards Institute. NCA companies also participate actively in the National Safety Council's construction safety programs.

In addition, our members take part in a wide range of local and regional safety activities, including assistance in developing State and local safety codes.

The Accident Prevention Committee pioneered in developing a standard set of craft safety rules for the industry. Our booklet, "Job Site Safety Program," is used throughout the country. We maintain a constant exchange of information within the association on safety equipment, hazards peculiar to industrial plant construction, and accident prevention methods.

In addition to group activities, each member company prepares and publishes a set of specific safety rules for distribution to employees on all field projects. A comprehensive safety manual incorporating material contributed by all members is currently being developed for publication.

On March 5, 1969, the Bureau of Labor Statistics, U.S. Department of Labor, released the latest statistics for the year 1967 clearly showing a continuation of the declining trend in the injury-frequency rate for construction industries.

The rate has dropped to 26.0 in 1967 from 28.3 in 1965 and 27.9 in 1966. Although employment in contract construction has risen over the past 10 years, the incidence of injuries has declined since 1959.

Many Federal agencies administering construction contracts have consistently achieved excellent safety records through comprehensive safety programs specifically established for the particular type of construction operation. For example, the Corps of Engineers, the Atomic Energy Commission, the Bureau of Reclamation and others include an accident-prevention clause in all of their construction and architect-engineer contracts.

Thus, the safety program is enforced as a contract requirement in the same manner as any other contractual provision.

Federally assisted projects are essentially state and local projects subject to applicable State and local laws, ordinances, rules and regulations. The contractor is required to comply with any State or municipal safety or sanitation code applicable to a construction project.

If a new Federal system were superimposed upon existing requirements in the field of accident prevention, the construction contractor, subject to the bill, would have to comply with still another set of safety standards. He would have to accommodate himself to visits by another set of inspectors. He would have to maintain additional records and fill out another set of forms for each accident involving lost time or major property damage.

The result, inevitably, would be higher overhead costs and, therefore, higher prices for the same amount of construction work. These higher costs would almost certainly be paid for by increased appropriations for all federally financed or assisted construction projects.

It is our view that safety cannot be achieved in any real or meaningful way by passing additional laws. Rather than laws what is required is education. In this context, education means the process of imparting knowledge in a planned and effective manner to project supervisors and workers as to potential hazards, safety procedures, and equipment safety to reduce or eliminate accidents.

The ASME Code is an outstanding example of a voluntary private program. This code developed by the American Society of Mechanical Engineers, for the safe construction, safe use, maintenance and inspection of boilers and pressure vessels has been accepted as the basis for Federal, State and city regulations, while its qualifications for State and insurance inspectors under the code, is a standard accepted throughout the world.

Members of the National Constructors Association believe that safety is the primary responsibility of management and they accept that responsibility without reservation.

For over 20 years, from the time the association was formed, they have sought to improve safety performance by individual company effort through collective action and study within NCA, and by working with all other elements in the construction industry.

In summary, we respectfully submit that the progress described previously is the result of a continuous, concerted, and cooperative effort on the part of Federal and State agencies and construction contractors. We respectfully urge, therefore that S. 1368 not be enacted.

Senator WILLIAMS. Do your colleagues have statements?

Mr. KELLY. No, sir.

Senator WILLIAMS. Do you want to add anything to Mr. Kelly's statement?

Mr. CHRISTENSEN. No, Mr. Chairman.

Mr. OSTROWSKI. No, Mr. Chairman.

Senator WILLIAMS. Where do you operate from, Mr. Kelly?

Mr. KELLY. From New York.

Senator WILLIAMS. You have an imposing part of one of the divisions over in New York, don't you?

Mr. KELLY. Yes; we have a research laboratory at Piscataway and we also have a tools depot in New Jersey.

Senator WILLIAMS. For the benefit of the reporter will you spell Piscataway?

Mr. KELLY. P-i-s-c-a-t-a-w-a-y.

Senator WILLIAMS. I was born about 70 feet from Piscataway.

Mr. KELLY. I live in Berkeley Heights myself. So I am a native of New Jersey.

Senator WILLIAMS. Is that right? Where?

Mr. KELLY. Berkeley Heights, N.J. It is Union County.

Senator WILLIAMS. We appreciate your statement.

In areas where you are familiar with Federal oversight of safety on Federal jobs you believe the Federal Government is doing a good job.

Mr. KELLY. Our experience and experience of all of NCA members with the Federal agencies that we work with has been very good safetywise.

Senator WILLIAMS. Senator Schweiker.

Senator SCHWEIKER. I have no questions, Mr. Chairman.

Senator WILLIAMS. Thank you, gentlemen.

Mr. KELLY. Thank you for the opportunity, Mr. Chairman and gentlemen of the committee.

Senator WILLIAMS, Now Mr. Dan Hanson, deputy executive vice president of the American Road Builders Association, and Mr. Reed Sprinkel, president of the contractors division.

We are getting all our witnesses this morning geographically placed in personal terms.

STATEMENT OF REED SPRINKEL, PRESIDENT, CONTRACTORS DIVISION, AMERICAN ROAD BUILDERS ASSOCIATION, ACCOMPANIED BY DAN HANSON, DEPUTY EXECUTIVE VICE PRESIDENT

Mr. HANSON. I am Dan Hanson, deputy executive vice president.

Senator WILLIAMS. You would not consider that vote in one of the House committees a vote of lack of confidence in road building, would you? It should not be interpreted that way from what I understand. It is just a question of how much of the city is going to be given over to freeways had how much is to be left to people who are not moving in automobiles.

Isn't that what it boils down to?

Mr. HANSON. I think it does, Senator. I would have to disqualify myself on the subject because my former position was traffic director for the District of Columbia, so I was vitally involved and still am as a member of the Mayor's traffic committee. The question of trying to move people and our goods in the Nation's Capital.

Hopefully we can unsnarl the present stalemate. I think that would be our vote that we can reach some kind of agreement where we can move ahead with some portions of the balanced transportation system that obviously by the traffic congestion that we are confronted with have been stalled in the last decade here in Washington. That is not the reason I left the District of Columbia, I might add.

Mr. Chairman, Mr. Sprinkel is the president of the Contractors Division of the American Road Builders Association. It is one of our seven divisions. In that capacity he does have responsibility and a great deal of knowledge of our contractors activities and more specifically our construction safety programs.

Mr. Sprinkel is the president of Fontana Paving, Inc., in Fontana, Calif. I would, with your approval, let Mr. Sprinkel proceed with the testimony on behalf of the American Road Builders' Association.

Senator WILLIAMS. Fine. Mr. Sprinkel.

Mr. SPRINKEL. Mr. Chairman and members of the subcommittee, my name is Reed Sprinkel. I am the president of the Fontana Paving Co. of Fontana, Calif., and I am here today in my capacity as president of the Contractors Division of the American Road Builders' Association.

I consider this opportunity to present testimony to this committee a privilege. This is my first time to speak before the Federal Government. I am an appointee of Governor Reagan in the State of California to the Contractors State License Board representing the engineering licenses and part of our jurisdiction is the enforcement of safety. I am also a member of the Governor's Industrial Safety Conference, the Southern Committee on Construction Section of California, a member of the National Safety Council Construction Section. I was a major in the Air Force as the flying safety officer for the Fifth Air Force in

Pusan, Korea, in 1951 and 1952. My duties there involved accident prevention and investigation as my prior responsibility.

ARBA is a national federation of businessmen and governmental officials concerned with the planning, engineering and construction of highway, airport and other transportation facilities.

Within our organization of approximately 5,500 firms and individuals, we have Federal, State, county, and municipal engineers; consulting engineers, highway contractors; manufacturers of equipment; materials producers and suppliers; civil engineering educators and students.

Many of our members are closely involved in safety activities of various kinds. The association serves as a meeting ground and a clearinghouse for the exchange of ideas in many areas, including the very important matter of safety procedures and safety training.

Many of the hazardous conditions which occur in highway construction occur also in the paving of airport runways, taxi strips and aprons and, perhaps to an even greater extent, in the construction of sub-surface transit lines.

At a time when very serious consideration is being given to the need for expanded airport and mass transit facilities, it is highly important to emphasize construction safety procedures. We are pleased that the subcommittee is considering this timely subject.

Because of our broad representation, we are able to serve effectively as a bridge between the various segments of the industry and between industry and government. Reduced to its basic essentials, ours is a program which seeks to promote agreement on goals and then, when the goals are set, looks for the most efficient and effective ways of reaching the goals.

In regard to the matter of construction safety, all concerned are in full agreement as to the goals. Safe working conditions are obviously desirable, and moreover they are economically attainable. The record is clear that employers with good safety records benefit from higher employee morale, from lower insurance premiums and from fewer costly disruptions on the job.

It seems evident, then, that every manager of a construction operation should be interested in safety, if only from the standpoint of business efficiency and economy. It is equally evident that not every manager is a good one. There are marginal operators in every business who fail to follow sound business precepts.

As we understand S. 1368, the purpose of the bill is to establish some minimum level of safety operations and to require all employers engaged in the execution of Federal or Federal-aid projects to conform.

Under the terms of the bill, both the development of standards and the enforcement of the law would be the primary responsibility of the Secretary of Labor.

The problems inherent in this procedure are:

1. In order to be practicable for general application, minimum standards must seek a common denominator level. This means that the generalized standards will be lower than they should be for some types of work.

Unfortunately, a Federal seal of approval tends to be interpreted as a finding that the minimum standards are fully adequate for all applications. Thus, the net result may be a weakening of the construction safety effort instead of the desired strengthening.

2. If, on the other hand, Federal requirements are set too high, the administrative complications will result in costly delays. The emphasis should be on performance, not on precedures. Inflexible requirements discourage private initiative to safeguard safety, encourage the red-tape kind of compliance where the emphasis is on succeeding in submitting acceptable reports.

3. Whatever the intent may be, the issuance of Federal regulations tends to preempt the field. State and local governments will be inclined to withdraw from an active part in any area where the Federal Government seems to be taking over the responsibility.

4. The Federal-aid highway program is basically a State operation, and this Federal-State relationship has been well established over the years. S. 1368 gives authority to the Secretary of Labor to make findings which could result in the cancellation of Federal-aid highway contracts and the blacklisting of the highway contractors involved.

These are the two areas of our basic concern in this legislation. This bill also provides penalties which are in our opinion both unjust and unnecessary.

Further, such procedures would clearly interfere with the right of the State highway departments to award and administer contracts.

In the light of these considerations, we are forced to the conclusion that S. 1368 will not achieve its intended purpose. How, then, should we proceed in our joint efforts to insure the health and safety of the highway construction workers?

In our judgement, the industry and all levels of government have important roles to play. At the Federal level, a program of research and investigation to determine the primary causes of construction accidents and the most effective means of preventing them would constitute a most useful role.

The results of such research would provide a most useful guide for the States and local governments, as well as the industry, in carrying on an effective construction safety program.

We have several important exhibits to leave with the committee. We believe they will be useful in your further study of this subject. These documents plainly indicate that there is currently extensive work underway in the highway construction safety field.

Exhibit "A" is a Bureau of Public Roads publication entitled "Construction Safety Requirements." These requirements are applicable to direct Federal highway construction and have the added value of serving as guidelines to the States. We are proud to have had a small part in the development of these standards and strongly endorse their use by both industry and government.

Exhibit "B" is a "Crawler Tractor Safety Manual" published by the Construction Industry Manufacturers Association, which is the Manufacturers Division of ARBA. This manual was prepared co-operatively by the principal manufacturers of crawler tractors. While the subject matter is expressed in very clear and simple terms, it does reflect a thorough expert knowledge of this type of machinery and the hazards involved in its use.

I might comment on that. You will notice there are cartoons in there which I think operators tend to pay attention to showing the "Do it right" and "Don't do it" methods, the right and wrong way which we feel emphasizes the problems that exist in the area of accident prevention.

Exhibit "C" is the Manual on Uniform Traffic Control Devices, prepared by the National Joint Committee on Uniform Traffic Control Devices and published by the Bureau of Public Roads. This is another example of cooperative effort.

The manual includes a more than 40-page chapter on the procedures for controlling traffic in highway construction zones. Our staff has substantially contributed to a revision of this material which is currently in the process of being prepared for publication.

I might comment that job safety is also traffic safety of the traveling public while traveling through our construction projects. This is a very in depth study that we make prior to the commencement of the work. It is a requirement in the contract specifications and also it is a matter of understanding the techniques of driving through hazardous conditions while the projects are under construction.

Exhibit "D" is volume 12 of the very recently issued U.S. Department of Transportation Highway Design Construction and Maintenance Manual. This document has been prepared by the National Highway Safety Bureau and includes a chapter specifically relating to highway construction site safety.

These are four excellent examples of cooperative safety action which should be strongly encouraged at the Federal level.

I have for your information some additional exhibits, primarily from the State of California, but which are also in many other States being utilized to the benefit of the contractor.

In April of this year we had a Western Safety Congress which was entitled "Investment in Tomorrow" which covered a multitude of areas for the contractors and all those engaged in construction, seminars on performance and the need for accident prevention programs.

Here is a safety manual which our state organization, California Asphalt Pavement Association, prepared. Since I am in the business of asphalt paving plants, manufacturing asphalt products, our association prepared this document which all of our superintendents and our personnel using equipment are required to read and we use this as a guideline for our tool safety meetings.

Here in the State of California which is one of the States which was mentioned by previous testimony is a publication called accident prevention program for the construction industry required by construction safety orders. This is a division of industrial safety, State of California.

On the Federal level the U.S. Department of Labor safety training programs has prepared many documents, practical one-page statements, on procedures for a guide to safe operations. This is part of the Wage and Labor Standards Administration.

For example, working around cranes, on the job traffic, and many more, crane signals, identifying the procedures for arm signals in the operation of cranes.

The American Road Builders' Association which I represent issued a publication for 1 month, the publication was a special safety issue, which went out to our 5,500 members. These are just a sample of some of the additional publications which are made available to the contractor for implementation of his safety program.

(The publications and exhibits referred to can be found in the files of the subcommittee.)

The American Road Builders' Association is also an active participant in the work of the United States of America Standards Institute. This organization is currently engaged in writing safety standards for the construction industry. The consensus process is used—may I emphasize consensus process—this is that the standards are developed with the full collaboration of representatives of industry, government, and labor. We are convinced that this is a more practical way to develop standards than through the Federal establishment.

The ARBA also participates in and fully supports the work of both the traffic conference and the construction section of the National Safety Council. We vigorously support the Council's efforts to gain the effective participation of individual contractors and of the national organizations which represent them.

A number of our affiliated State contractor organizations have outstanding construction safety programs. We feel that the success of these programs is a strong factor in encouraging other State organizations to do likewise. We are extending every effort to broaden this safety activity and believe that the effort will be very fruitful.

I am diverting from my prepared statement by making additional comments. It has been previously stated but it is a truism and an actuality that we believe in that job safety, accident prevention is management's responsibility. The incentive for safety of our employees is not achieved through regulations. It is achieved through real concern for the employees' safety, whether he is on the job, whether he is traveling to or from his work, or even in his home.

The other incentive for management is to want to achieve a workable, acceptable, active accident-prevention program. That, gentlemen, is dollars. We can achieve that through the reduction in our premium rates in accident prevention.

The bill also boldly and seriously invades an area which has traditionally been the concern of the State governments. The legislation was drafted without consultation with State authorities in this field.

It contributes to the general trend toward the loss of faith in local and State governments and the concentration of unprecedented power in Washington. States may retain some limited jurisdiction in the safety field and be eligible for some financial aid only if they adopt and enforce standards as effective as those promulgated by the Secretary.

The alternate courses are preferred. These other courses designed to preserve our traditional Federal-State relationship and upgrade local programs are needed. They are to be preferred to the present suggestion to federalize our safety efforts, bringing the safety and health experts of this Nation together, encourage them to work toward the goal of improving our industrial safety programs.

Let them identify the problems facing us and let them recommend specific and alternate solutions. ARBA challenges the assumption that this legislation is the only way or the best way to achieve the goal of obtaining safety improvements.

In conclusion we wish to express our appreciation to the committee for the diligent attention it is giving to the problem of construction safety, and to express our thanks for this opportunity to present the views of the American Road Builders' Association.

Thank you.

Senator WILLIAMS. We appreciate your statement, Mr. Sprinkel, and also giving us the various publications dealing with construction

safety in roadbuilding. These graphic descriptions of the rights and the wrongs bring the message very clearly, simply, and clearly home, don't they?

Mr. SPRINKEL. Yes, they do.

Senator WILLIAMS. I just glanced through one of the books. On a bulldozer which is easier to handle, a bulldozer with a full blade or a partial blade?

Mr. SPRINKEL. The full blade is the best because you have better control of the equipment. But there are many times when the work situation would involve a lesser amount. Naturally you are looking for efficiency, so, therefore, the full-blade dozer would be the most efficient.

Senator WILLIAMS. Why is that? Is there greater stability somehow?

Mr. SPRINKEL. The turning of a tractor is not necessarily dependent on the full blade. So from a safety point of view it is not that necessary.

Senator WILLIAMS. Regarding one aspect of roadbuilders' work that is maybe not unique but not the average situation in construction, the main roadbuilding program you talk about around here, the interstate highway program, of course, by its very definition crosses State lines.

Now, when a contractor has that part of the highway that does cross State lines he, of course, is under the jurisdiction of the State where he is working and subject to all the regulations on safety in the State where he is working. If he is working his crew in New York and New Jersey, he has two sets of regulations to watch out for even though half the bulldozer is in New Jersey and half in New York.

Is that right?

Mr. SPRINKEL. I don't know in California our operations are limited to State work. This could conceivably be that this situation would exist. This is one of the areas where perhaps your legislation could make some guidelines so that New York and New Jersey would conform to some standard guidelines of safety, so they would not be one less desirable than the other as far as safety standards.

Mr. HANSON. Mr. Chairman, exhibit A, that little brown booklet, was prepared by the Bureau of Public Roads. It was signed by Frank Turner, who is now the Federal Highway Administrator.

But at the present time, as it indicates on the cover, that book is only applicable to Federal projects. This would be a project in Rock Creek Park or in Yellowstone or some of the roads that are directly under the jurisdiction of the Bureau of Public Roads.

We would support and endorse and encourage the development and acceptance of a standard such as that by State governments. At the present time a number of the State highway departments are using that document as a guide, but it is not uniform across the country and it could very well be, as you indicated, that New Jersey and New York would have separate standards or somewhat different standards at the present time.

I think the Bureau of Public Roads and our people and others who are concerned with this would endorse the uniformity of such regulations.

Senator WILLIAMS. You expressed reservation and some concern about the penalty provisions in the bill which would give broad discretionary authority to the Secretary.

Mr. SPRINKEL. Yes, sir; I did.

Senator WILLIAMS. The severest penalty I would think, one that is most severe, would be the blacklisting of the contractor on Federal jobs.

Mr. SPRINKEL. Yes; for a 3-year period of time.

Senator WILLIAMS. I think the law as it is would protect the contractor in his opportunity to have a court review. You would not find that in the bill. That would be basic law; judicial findings.

There are cases that say that. We do know that the House bill is now on its route out of the subcommittee to the full committee. It has a different procedure on court review. They specify court review. We do not.

It was our feeling that it is covered by judicial decision that says that there is this right to a court review. This is tentative at this point. I feel that maybe an inclusion of that in the bill in the Senate would make sense because the 3-year blacklist is its own jail sentence, isn't it?

Mr. SPRINKEL. No; it isn't.

Senator WILLIAMS. It isn't?

Mr. SPRINKEL. No.

Senator WILLIAMS. Why?

Mr. SPRINKEL. When you have employees on your project and you have an injury, your conscience has to be affected by that man's family and his injury.

Senator WILLIAMS. I was talking about the blacklist.

Mr. SPRINKEL. All right. But the punitive things that happen on the project, that law, whether it be a 3-year blacklist that precludes me from working, is not really going to be the incentive to make me a better contractor to protect my employees.

Most of the contractors are trying to instill this thing that you have to have care and concern.

Senator WILLIAMS. I am glad you put it this way. When I said the blacklist is its own jail sentence you were thinking of this in terms of a deterrent and whether you do it right with that deterrent penalty staring you in the face.

I was thinking of what the blacklist means in economic terms and the financial position of the company, when you are not allowed to bid on jobs. That is what I was thinking of.

Mr. SPRINKEL. That is true, yes, sir.

Mr. HANSON. Mr. Chairman, Mr. Sprinkel as contractor and myself as engineer disqualify ourselves from practicing law, but I think we would observe that once the contractor's name does go on that list he is immediately in trouble. Whether a suit follows or some judicial action follows he is still on the list until some other course of action is taken and consequently he is going to be unable to bid on the then pending jobs.

Senator WILLIAMS. I know of the economic hardships that follow blacklisting and it only should be imposed after it has been thoroughly reviewed in a judicial way. That is the way I look at it.

Yet, there are situations where the failure to exercise practices that equal the rudiments of safety in construction suggest that severe penalties follow. You know, in any business, in any profession there will be those who will take the shortcut for one reason or another. We all know that.

We have had some leading cases in the State I come from. One of the hardest ones I recall was the fellow who was making a few extra

dollars by putting less cement and more sand and water in the concrete and the roof fell. You know in my book that is kind of bad, I mean very bad, and the sanction should be equal to, in this case, his dereliction.

Mr. SPRINKEL. I cannot disagree with you, but it is an area in a building requirement, specification design and if he is taking those shortcuts he is taking shortcuts in his job safety as well.

Senator WILLIAMS. When the contents, in this case, of structural cement do not come up to standard there is lack of safety built right into the product, is that right?

Mr. SPRINKEL. Yes. Of course your core testing and breaking of the concrete would reveal that and probably the acceptance of the building should not have been accepted because the core test would not have come to standard.

Senator WILLIAMS. You mean acceptance of the building. The one I am thinking of specifically fell in construction and killed a guy.

Mr. SPRINKEL. Naturally if you do not put in the design strength of the concrete you are in trouble.

Senator WILLIAMS. In your business, if you were subject to sleepless nights, what failure would give you more sleepless nights than any? The bridge that fell on Sunday afternoon with a lot of people coming back from the shore?

Mr. SPRINKEL. Yes, this would give me a certain amount of concern. I don't build bridges. If I were to design and build or help in the area of construction of a bridge this would be a tremendous concern of mine.

Senator WILLIAMS. Or if you are building in one State and another guy in another State and you are supposed to meet and you miss by 8 feet.

Mr. SPRINKEL. Yes.

Senator WILLIAMS. That happened recently.

Mr. SPRINKEL. It did.

Mr. HANSON. It might be a surveyor's fault.

Senator WILLIAMS. Where did that happen?

Mr. SPRINKEL. Life magazine some years ago wrote it up in Kansas.

Senator WILLIAMS. Even in your business there can be that margin where there can be error of substance.

Mr. SPRINKEL. Yes.

Senator WILLIAMS. You have been very helpful to us. We appreciate your being here.

Are there any questions?

Thank you very much.

Mr. HANSON. Thank you, Senator.

Senator WILLIAMS. Mr. Paul Connelley, Safety Director, United Brotherhood of Carpenters & Joiners.

Mr. Connelley, we are glad to have you aboard this morning. We look forward to your testimony.

STATEMENT OF PAUL CONNELLEY, SAFETY DIRECTOR, UNITED BROTHERHOOD OF CARPENTERS & JOINERS, WASHINGTON, D.C.

Mr. CONNELLEY. Thank you. Mr. Chairman.

Senator WILLIAMS. Do we have a statement from you?

Mr. CONNELLEY. You have a statement from the organization filed in the past, but you don't have this statement.

Senator WILLIAMS. Will you proceed?

Mr. CONNELLEY. May I begin by saying that labor does not support this legislation just because it is good for safety. We also think it is good for the industry. A big portion of the estimated \$3 billion lost through accidents would be saved by the investment of a few million dollars in effective Federal construction safety legislation.

Obviously this legislation would be futile unless it is properly financed. We don't really know how much it will cost but we can be sure that that cost will be infinitesimal when compared with the vast potential savings to the individuals, the Government and the national economy.

Industry would certainly benefit from a continued use of the skills of the 2,800 craftsmen killed on the job every year and perhaps another 50,000 are lost through injuries severe enough to force retirement from the industry.

In this time of complaints of labor shortages this additional manpower would be a big plus to the industry and its customers.

Before I comment on some of the arguments of those who oppose this kind of legislation, I would like to try to deal briefly with some miscellaneous issues which relate in one way or another to this legislation.

The first is statistics. Injury frequency rates in construction are often used to argue lack of need for this legislation. They were so used this morning. Uncritical but not always intentional use of the available statistics can lead us to underestimate the seriousness of the problem.

If, for example, we talk about National Safety Council figures we think of rates in the range of 12 to 15. This, of course, is based only on 278 National Safety Council members who choose to report.

Obviously it is not representative of the industry.

If we talk about Bureau of Labor statistic figures we think of rates in the 26 to 28 range. These figures are based on a sample of voluntary reporters.

While the sample may be statistically impeccable we don't think accidents happen in the tidy manner assumed by the sampling procedure. The Bureau itself states that their rates should be regarded as minimums rather than maximums.

Rough data from the annual survey of the Public Health Service combined with construction employment figures give us a rate of 46 disabling injuries per million man-hours.

Figures from the Province of Ontario which I came across recently give a rate of 63 in 1967 which dropped to 57 in 1968. I regard these as particularly significant because I happen to know that the Province of Ontario has very good safety laws and its contractors have been very active in safety in recent years.

I would be willing to bet that their practice and performance is as good or better than that in most of the United States. It is obvious here, I think, that I am playing the game with statistics just to convince you that you should not pay too much attention to this kind of game and I am willing that you should apply the same criteria to what I am just saying.

Another problem whose magnitude we are only beginning to realize is that of industrial health. In construction with its extreme and vari-

able physical conditions we suspect that the problem is particularly acute and we know that it is particularly neglected.

Increasing evidence is coming to light to indicate that noise, heat, dust, vibration, chemicals, and gases are taking a hitherto unsuspected toll of workers health and safety. Contractors won't solve these problems by pretending they don't exist. We hope this legislation will provide some impetus toward their consideration and solution.

Many contractors may feel that they have really done something about safety when they pay their insurance premiums and had a job inspected by a safety inspector from an insurance company.

Such inspections are generally infrequent and can't begin to keep up with changing conditions.

The real job of an insurance inspector is to see that the premium is big enough to cover the risk, whatever that risk may be. They might well make more money on a bum job than on a good job. This is not an attack on insurance safety inspectors. I know some of them, they are conscientious men but their real job is not to concentrate on safety, it is to concentrate on making money for the company.

Now, I would like to comment on specific arguments made in the testimony opposing this legislation.

The argument has been made that this legislation would in some unspecified manner centralize control of safety matters and interfere with the safety programs of such contracting Federal agencies as the Army Engineers and the Bureau of Reclamation.

The setting of uniform minimum standards hardly constitutes centralized control. We see nothing in this bill to prevent a Federal agency which has a good safety program from maintaining a good program. Responsibility for safety on-the-job stays right where it is, with its contracting agency.

By leaning on the admittedly good programs of the Army Engineers and the Bureau of Reclamation some testimony attempts to infer that the safety performance of all safety contracting agencies is on the same level. This inference, of course, is absurd.

Moreover, it ignores the fact that much of this bill's impact is directed to federally assisted projects including such high volume construction as the Interstate Highway program.

Some opposing testimony criticized such legislation because it won't solve the safety problems of all of the industry. This seems to me the logical equivalent of saying if you can't save all the victims of the shipwreck you should not bother to save any.

It also overlooks the multiplying effects which we could reasonably expect from Federal leadership. If, of course, the bill were broader in scope and there is every justification for making it so, it would be criticized for that too.

The bill is criticized for not providing for setting standards by the consensus method. Our experience under such parallel legislation as the Walsh-Healey Act and Longshoremen and Harborworkers Act indicates that the consensus standards are precisely the kind of standards that would be used in enforcing this legislation.

Senator WILLIAMS. How did you know all this was coming? Did you follow the testimony in the House?

Mr. CONNELLEY. Right. It didn't change much.
It is rather pointed, isn't it?

As usual the committee has heard testimony that local and State safety enforcement is more meaningful than Federal enforcement because it is closer to the construction site. Safety on the job is achieved by good standards plus good inspection and enforcement.

I know of no reason for believing that a State safety inspector as such on a job site will do a better job than a federal inspector on the same site.

The whole thrust of their argument is to keep the effective authority out of the hands of the Government and in the hands of the States which, with very few exceptions, have for generations refused to take effective action.

It may be only coincidental that the only practical effect of such a policy is to assure that the present policy of unsalutary neglect is maintained.

The legislation does permit the delegation of enforcement authority to the States, provided that they demonstrate the will and the ability to do the job. This kind of approach does make administrative sense. It is also an intelligent use of Federal initiative to develop State initiative.

But the important thing is to assure good standards and good enforcement. A Federal program which fails to do this is no program at all.

Opposition to this kind of legislation always emphasizes the limitations of compulsion and the superior virtues of education and training in achieving safety. Even when they are sincere in making such statements, their unconscious and rather arrogant assumption is that it is only workers who are in need of such education.

Actually safety in the industry is the mess it is mainly because those who have the responsibility—and the authority—to do something about the problem somehow haven't been educated or trained to exercise that responsibility and authority voluntarily.

I don't believe that construction management is less humane or that construction labor is less interested in working safely than anybody else. The truth is that the necessary diffusion of responsibility in the industry has created economic imperatives which work against safety at all levels of the industry.

These imperatives have made safety an item of competition, instead of the basic working condition it should be. To illustrate, let's try to look at safety through the eyes of a contractor, a subcontractor, a supervisor, and a worker.

To a contractor who is uninformed or has very limited resources, safety is an expense to be avoided—pure and simple. It makes it harder to bid low, harder to finish a job, and cuts down his profits. In the long run, he is wrong. But his numbers are legion.

The safety-minded contractor knows better; but he can lose work to the gambler who bids below the true cost of a job. Sometimes the gambler gets away with it; but usually he loses. If he loses too often, he goes out of business. But not before many construction workers have paid with their lives and limbs for this irresponsible and short-sighted way of doing business.

The subcontractor is, of course, subject to the same pressures as the general contractor—often intensified by extremely competitive bidding and shoestring financial resources.

One would expect that the general contractor would assume the general responsibility for coordinating the work of the various sub-contractors and assuring that safety was achieved on the entire job.

Unfortunately, it usually doesn't happen that way. One reason for the reluctance and general inability of general contractors to control their subs is their fear of third-party liability. Even conscientious safety minded contractors are inhibited from doing everything they know they should to assure safety on their jobs.

These competitive pressures of course are very quickly felt by supervisors and workers. In his previous testimony for the Building Trades Department, Alan Burch gives a vivid picture of how these pressures are felt at the job level.

Workmen are hired to produce, not to be safe, and supervisors are hired to see that they do produce, not to look out for their welfare. This is a simple fact of life that we always bump up against hard when we try to make safety programs work.

The workman who spends any large portion of his time examining a job-made ladder to see if it is safe, or waiting for a supervisor (who may be miles away) to see that a trench is shored before he enters it, usually achieves only one thing: He gets fired for not producing.

The supervisor is in the same boat. If he holds up the job until the proper scaffolding is in place, or the new hoist cable installed, too often he gets replaced by someone who concentrates more on production and less on welfare.

This gentlemen, is why we have industrial accidents and why the record of the construction industry is so poor.

No amount of education alone is going to eliminate these economic pressures which impel both management and labor to skimp on safety. Good mandatory standards with real enforcement can do much to set a safety floor which everyone will have to observe as a condition of doing business.

There will still be plenty of room for voluntarism; and as more contractors are forced to experience the economic and human benefits of good safety programs, we would hope that industry performance would begin to rise far above the legally required minimum.

The building trades unions, like their employers, traditionally have not come easily to the view that Government intervention is necessary. Here the situation is desperate and longstanding.

In spite of virtuous protestations to the contrary, nothing much is going to happen to change this situation—unless Federal initiative starts making things happen. Legislation like this is long past due. I hope the men who do the work of the construction industry won't have to wait much longer.

Thank you.

Senator WILLIAMS. Thank you very much, Mr. Connelley.

You suggest things not in broad generalities but with specific attitude right there on the job. It is most appreciated. It really comes down ultimately to standards and men who will abide by the standards. Isn't that it?

Mr. CONNELLEY. I think so.

Senator WILLIAMS. Of course we legislate the requirement that the Secretary of Labor would promulgate safety standards. When it gets down to the standards themselves there would seem to be a great maze of specifics.

Now, you were talking about hoists. Now so much depends on a sound cable in construction, doesn't it?

MR. CONNELLEY. That is right. Of course there are standards for the kind of cables that are to be used. I am quoting Mr. Burch who is an operating engineer and I am sorry I got into cables, but there are standards for that, there are standards for inspecting them to be sure that they are in proper working condition and that sort of thing.

So, it is very specific. Actually, as I am sure you know, the building industry is sadly in need of good standards on many things, but there are standards available on most of the simple things such as trenching, shoring of trenches, and scaffolds and things like that where most of the people are getting killed.

Lack of standards is certainly no excuse for those kinds of things being under a lot better control than they are.

Have I responded to your question?

Senator WILLIAMS. Yes. As a pedestrian walking near a construction site you, if possible, get on the other side of the street. It is terrifying sometimes.

MR. CONNELLEY. I feel the same way.

Senator WILLIAMS. To set methods of hoisting, dropping, and demolition.

MR. CONNELLEY. There are times when the workmen would be better off on the other side of the street, too.

Senator WILLIAMS. That is the way it appeared to me.

Now, these massive cranes, they take section upon section upon section. How high is "up"? This is operating engineers; isn't it?

MR. CONNELLEY. Yes.

Senator WILLIAMS. They would be under this legislation, wouldn't they?

MR. CONNELLEY. He would probably give you a 15-minute dissertation when you ask a question like that, but I had better not try.

Senator WILLIAMS. To link it to your specialty, carpentry, carpenters work in the area where the cranes go up; don't they?

MR. CONNELLEY. Yes, sir. In fact, this is one of the things that the engineers say, usually when they do something wrong it is not an engineer that gets killed. It is some other craft. They are standing around in the wrong place. When a load comes down, it does not matter much what craft you are in, you are still dead.

Senator WILLIAMS. It is one job; isn't it? There is one purchaser of the product.

The more I heard this morning the more it impressed me that in safety on Federal jobs and federally assisted jobs, and that is what our legislation before us is directed to, it makes more and more sense to have a repository of responsibility in one place, and I would think contractors who have maybe a job with the Corps of Engineers, Bureau of Reclamation, Atomic Energy, have them all going at once, would like to have one clear manual of standards.

MR. CONNELLEY. You would think so.

Senator WILLIAMS. I wonder why they don't. Why would they want their shelves filled with different safety approaches?

MR. CONNELLEY. I don't think they really feel that way. I think this is just another way of saying that the bill is no good, you know. Actually, if you are looking for a good standard, any kind of standard, you are lucky if you find one.

Anybody who wants to use that standard is going to use it.

Senator WILLIAMS. Now, maybe we should not even be speculating or projecting here. I should think that the Secretary of Labor with this new responsibility he will have with the end result of joint action by the Senate and the House would bring in a compendium of the experiences of all of the agencies, indeed of the contractors and their experience, and make a safety code for construction.

Mr. CONNELLEY. He would have to. There aren't that many experts in the Department of Labor or any other department in the U.S. Government.

Senator WILLIAMS. We had the roadbuilders contractors here with some material that impressed me greatly, documentary and pictorial guidelines for safety in their particular industry. This would be the sort of thing that would all be brought together.

Mr. CONNELLEY. You see, most of these standards will be worked out through the USASI Committee, United States of America Standards Institute.

Senator WILLIAMS. Who is in that now?

Mr. CONNELLEY. This is a voluntary organization which is a way for all elements in the industry or in any industry to get together and work out consensus standards.

Senator WILLIAMS. With whom? With Government?

Mr. CONNELLEY. Government will usually be represented on that committee.

Senator WILLIAMS. What is that committee again?

Mr. CONNELLEY. If you wanted to have a standard, say, on safety glass, that committee would enlist through the USASI procedures, people from labor, management, from the industry, from the users, Government, and they would all work together to come to an agreement on a standard that was useful, adequate.

You don't always get one that is useful and adequate, but that is the object.

The U.S. Government, the Department of Labor, goes to the same source. If there is a good standard that has been worked out by USASI, that is what the Department will use.

Senator WILLIAMS. What is USASI again?

Mr. CONNELLEY. The U.S. American Standard Institute.

Senator WILLIAMS. This is a Federal Government-supported institute?

Mr. CONNELLEY. No. It is a nonprofit organization. In fact, the Federal Government has hitherto participated in certain limited ways. I think they are now going to be allowed to actually be members of it and contribute in a more direct way, if I understand correctly.

Senator WILLIAMS. I gather the Secretary of Labor has created something comparable to that within the Federal structure.

Mr. CONNELLEY. What the Secretary of Labor would have to do, I think, he needs a standard to cover this issue and he will see if there is a good standard, a consensus standard, and he will adopt that.

Now, in connection with Walsh-Healey, the Secretary of Labor has been going to USASI for standards and finding that they don't have a lot of standards, and it has created pressure on the voluntary standard-making organization to get on the ball and start coming out with these standards in order that the Government does not have to make up its own.

Industry always likes voluntary standards much better than standards worked out by a governmental agency.

Senator WILLIAMS. Or State level.

Mr. CONNELLEY. A governmental agency of any kind. Regardless of who it is, you look for the best standard available, and if it is good enough, you use it. If it isn't you try to improve it. That is what a State government will do. That is what a Federal Government will do.

Senator WILLIAMS. We are talking about a situation where the buyer is the Federal Government. This is a simplification; yes. The buyer, the Federal Government, the people of this country are saying that "We will determine what the safety standards are on the job that is producing the product for us."

They will say, "Well, we will use the standards in a State where the job is done." But we don't have any authority, the purchaser, the Federal Government, to tell the State how to arrive at its standards? Do we?

We have no authority to tell them to have standards. I know States that don't have standards.

Mr. CONNELLEY. There are plenty of them. There are plenty who have them on paper and don't do anything about enforcing them, too.

Senator WILLIAMS. That is right. This certainly is not an over-reach. It is a necessary reach. That is the way it looks to me.

One of our witnesses this morning suggested Federal grants to States to create standards and in order to get the grants there is legislation proposed that there would be minimum standards that they ought to arrive at.

Now here you get, talking about layers upon layers, here you get some good layers. First, you have the Federal Government establishing the standard criteria. Now that will have to be a grouping of people from all parts of life in the construction industry promulgating the recommended minimum and then the minimum goes forth to the State.

Now, the State has to make a determination. Do they want that grant of money and after their determination would come, do they want to live up to that minimum standard?

I think this is almost an administrative matter that Franz Kafka might be interested in.

Mr. CONNELLEY. Under Walsh-Healey you know that the Department of Labor has administered safety standards for Government contract work. Now at times they have chosen to delegate the enforcement authority to States which met certain Federal standards for, first of all, meeting the Federal standards themselves and second, having a decent enforcement program that they would do something about.

Senator WILLIAMS. This is in supply and service.

Mr. CONNELLEY. Right. Here we really get out of our particular concern here because then you get into the approach of the Occupational Health and Safety Act which would use Federal initiative through the delegation of enforcement powers and hopefully through the grant-in-aid method too, to in essence encourage, actively encourage the States to do something about their health and safety program.

I personally think it is a very good approach, but it does get us a little bit beyond the bounds of this particular hearing as you say, not that I am not willing to discuss it.

Senator WILLIAMS. This is for the comprehensive occupational health and safety.

Mr. CONNELLEY. Yes. You can see this about a broad general concept of using the Federal power and money to try to bring safety performance up from the grassroots in the States as well as at the Federal Government.

Senator WILLIAMS. Mr. Benedict.

Mr. BENEDICT. Mr. Connelley, I would like to ask you a few questions on S. 1368 and this goes more to the penalty provisions than anything else, and, if you feel that you are in a position to comment on what I say, I would like to have your feelings.

It has been suggested that the section which provides for contract cancellation there might be added a provision giving the Secretary of Labor authority to assess a fine for a first violation. It would be a discretionary thing as to whether it would be a fine or contract cancellation, depending on the severity of penalty or anything else that the Secretary of Labor wishes to consider.

Have you thought of anything along these lines?

Mr. CONNELLEY. I am not a lawyer. May I give a weasel answer?

I think safety is a very urgent matter and construction safety is even more urgent than most other safety problems. I think it is desirable that an administrator have as much flexibility in getting problems solved, using the necessary amount of force consistent with due process and so forth to get the job done simply and get the unsafe condition cleared up.

Now, I am not sure that that is an answer to your question. It is about as much as I should say, I think.

Mr. BENEDICT. I think that is helpful.

My next question goes to the question of blacklisting. As I understand it now, this is discretionary under Walsh-Healey.

Mr. CONNELLEY. Yes. And it has been used very lightly under Walsh-Healey.

Mr. BENEDICT. It is either not invoked at all or it is invoked for a 3-year period. That is the way the law reads.

Mr. CONNELLEY. Yes.

Mr. BENEDICT. My suggestion here again would be to consider giving the Secretary more flexibility by writing in a minimum blacklist period, say of 1 year, giving him the flexibility of imposing a 1- to 3-year period of blacklisting depending upon the severity of the violation, perhaps if he did not have to be so severe he might use it more often.

Mr. CONNELLEY. As a personal opinion I think it might very well make sense.

Mr. BENEDICT. My next question goes to coal mine safety. It goes to the question, following the establishment of safety standards by the Secretary of Labor and assuming that they have been publicized and knowledge of them been given to all people on the job and then you have a violation of one of these standards by an employee, do you have any feeling on whether there should be a civil penalty assessed

against the employee for violating this standard or do you feel it should be left to company discipline, subject to the union's grievance procedure where there is a union?

Mr. CONNELLEY. Let me say this. I think it is a good rule of equity or of administration when you give the man responsibility for something that you also give him the authority to carry out that responsibility. Obviously on a construction job it is the management who decides the kind of equipment that will be used, the timing of the job, all of the conditions of the work.

It would certainly be unfair to charge the workman with that sort of responsibility unless you are going to give him an equal voice in deciding all the conditions under which he has to work.

I would add this, that in the construction industry men are fired every day for no other reason than the foreman doesn't like the way they part their hair. Now it is not a very tough job, a man who violates safety provisions—

Senator WILLIAMS. I thought this was a tight union area and the union was there to protect the guy from arbitrary action.

Mr. CONNELLEY. Arbitrary. Yes.

Senator WILLIAMS. That is certainly arbitrary.

Mr. CONNELLEY. Violation of the safety clause?

Senator WILLIAMS. I missed something.

Mr. CONNELLEY. If a workman is not producing properly and the foreman doesn't think he is, you know, he may not like him. There is no real seniority in the construction industry for the most part. A man gets fired casually there. This is routine.

So, if you have a man on your job who won't behave himself safety-wise you get rid of him and there isn't a contractor in the country—I don't say in certain instances that you might not have an ill-advised union making an issue of it, unfairly, you know, there are bad unions. Unions are like everybody else in their attitude toward safety. They don't always know what is good for them either.

But in essence the boss has an answer. He can enforce other conditions on his job. He can damn well enforce safety conditions.

Mr. BENEDICT. The thrust of my question was that most of the representatives of the international unions here in Washington that I have talked to have felt that this should be left to the employer's disciplining of the employee and the grievance procedure then being invoked if requested.

Mr. CONNELLEY. Yes.

Mr. BENEDICT. On the other hand, people not here in Washington, officers of local unions that I have talked to about this, have told me that even if these safety standards promulgated by the Secretary of Labor are posted in the union hall and posted on the jobsite, possibly hand distributed to every employee on the job, that due to the peculiar or local conditions, relationships between the union, the local union and the particular contractor, it might be easier to get rid of a man who flagrantly violates some of these standards if it were written into the law rather than leaving it to the grievance procedure.

Mr. CONNELLEY. It is natural for local business agents that don't want to take the heat from their members for not backing them up when they are wrong to feel this way.

Mr. BENEDICT. Thank you. That is all, Mr. Chairman.

Senator WILLIAMS. Mr. Feder.

Mr. FEDER. Mr. Connelley, I have a couple of questions. I understand that the House subcommittee has reported to the full committee in the House an amendment to the companion bill of S. 1368 which basically would apply the enforcement and procedural provisions of the Maritime Safety Act to construction safety on Federal and federally assisted projects.

Particularly I am told it would differ in two specific provisions from S. 1368; one, that the Administrative Procedure Act would apply in the development and promulgation of health and safety conditions and, two, that an additional remedy would be given to the Secretary of Labor; that is, he could go into court to get an injunction against the contractor who was violating the safety standards.

I wanted to get your reaction and the reaction perhaps of the—

Mr. CONNELLEY. I haven't studied it, and I probably am not even competent to render a decision if I had studied it. I understand that the building trades department thinks it is a good bill. The first part of your question rather intrigued me.

What is the effect of applying the Administrative Procedure Act to the promulgating of standards? Does that require the hearing procedure?

Mr. FEDER. That is right. It requires a hearing.

Mr. CONNELLEY. I don't see anything wrong with that.

Mr. MITTELMAN. There is some question, whether it is actually required. Under the rulemaking procedure notice must be given in the Federal Register 30 days prior to the promulgation of the rule and all interested parties given an opportunity to submit their views.

There is no absolute requirement that the Secretary hold a hearing. That is discretionary under the Administrative Procedure Act.

Also, there is some question as to the judicial review ability of standards promulgated pursuant to the Administrative Procedure Act. They probably are judicially reviewable.

Mr. CONNELLEY. I have an opinion on how that should be, but again I am not a lawyer. I think there is so much due process built into the standardmaking procedure, itself, that you don't need the additional review of having a court look at the content of the standards.

This is a personal opinion.

Mr. MITTELMAN. I appreciate that.

Mr. Connelley, during this interim, do you know how many inspectors the Labor Department has assigned in past years to the Walsh-Healey program?

Mr. CONNELLEY. Very few. As a matter of deliberate policy I try not to carry figures like that in my head. If I had known I was going to be asked a question I would have had it on a piece of paper.

Mr. MITTELMAN. But it is very few.

Mr. CONNELLEY. Very few.

Mr. MITTELMAN. Somehow the figure 15 sticks in my mind.

Mr. CONNELLEY. I think it is more than that now, but it is still ridiculously few.

Mr. MITTELMAN. Would you also like to say that the Labor Department was not particularly vigorous in enforcing Walsh-Healey safety standards, at least up to a year and a half ago?

Mr. CONNELLEY. You are asking for a personal opinion.

Mr. MITTELMAN. Yes.

Mr. CONNELLEY. The answer is "Yes."

Mr. MITTELMAN. One last question. This is going to come up in another context. I think we might as well raise it in the construction and safety context. There has been a lot of talk in recent years about user taxes to pay for Federal programs designed to benefit a particular industry.

For example, there is a proposal right now for imposing the user tax on airline passengers to pay for improvements in airport construction. Quite obviously if any Federal construction safety program is going to be meaningful it is going to cost money. You have to hire and pay for inspectors, set up hearing procedures and so forth, all of which is not cheap.

The question comes down to whether this additional expense should be paid for by the general public or should the cost be borne by the industry.

Do you have any views on that?

Mr. CONNELLEY. Again a personal view.

Mr. MITTELMAN. That is all I am asking for.

Mr. CONNELLEY. You understand why I am saying that.

Mr. MITTELMAN. Correct.

Mr. CONNELLEY. I should not bind the—

Mr. MITTELMAN. Yes, I understand.

Mr. CONNELLEY. It seems to me first of all that would be kind of rubbing it in to charge the contractor for his enforcement. It seems to me at least psychologically that this is a bad way to go about enforcement.

Public policy is something that should be enforced at public expense I think.

Mr. BENEDICT. It is in the public interest, therefore it should be public tax moneys that are used to enforce it.

Mr. CONNELLEY. This is a very personal feeling. Something that I haven't considered deeply.

Senator WILLIAMS. You will admit it was a very interesting observation put in terms of the question, that those who have the new and higher standards directed to them should pay the cost of administering the standards.

Mr. CONNELLEY. Isn't there a specific example of a proposal like like that?

Mr. MITTELMAN. There was a specific example last year. The longshoreman and harborworkers compensation bill proposed by the administration last year had a provision in it for user charges to be borne by the industry for the safety program.

Certainly an analogy could be drawn between the maritime safety program and any construction safety program. I think this is an issue that will recur in a number of contexts as we go through all the safety legislation, not only safety legislation, but other types of legislation designed to benefit specific groups of businesses or people.

Mr. CONNELLEY. It is a very thin line between enforcement and punishment there, and to make a man pay for it—you know.

Mr. BENEDICT. To make the record complete by the time the hearings had concluded on the prepared longshoremen and harbor workers legislation last year both of the international unions who had an interest in that legislation had come out against the user tax.

Mr. CONNELLEY. You mean I guessed right?

Mr. MITTELMAN. Just one other observation. That does not surprise me. Obviously the people who are going to get socked by the tax, both labor and the business establishment——

Mr. CONNELLEY. Oh, labor would get it?

Mr. MITTELMAN. It would impose an extra cost on the employers of the workers in that particular industry.

Naturally labor in its own self-interest would see that there might be less money available to go into the paycheck. I think you could very reasonably expect that any and all of these proposals are going to be opposed by the specific industries involved.

Mr. CONNELLEY. Yes. I think there is a better argument than that.

Mr. BENEDICT. Of course, the other alternative we frequently see is that these extra charges are passed on to the consumer.

Mr. CONNELLEY. That happens one way or another.

Senator WILLIAMS. Thank you very much. Thank you, Mr. Connelley. You have been very helpful.

Mr. CONNELLEY. Thank you.

Senator WILLIAMS. You have made very helpful statements in response to the inquiries.

I believe this concludes the schedule of hearings.

This concludes the hearing on S. 1368.

(The following communications were subsequently received:)

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., March 26, 1969.

HON. HARRISON A. WILLIAMS, JR.,
*Chairman, Subcommittee on Labor, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: In connection with the hearings of your Subcommittee on S. 1368, a bill to promote health and safety in the building trades and construction industry in all federal and federally financed or federally assisted construction projects, I wish to express the support of the AFL-CIO for this legislation. We endorse the testimony presented to your Subcommittee in support of this bill by C. J. Haggerty, President of the Building and Construction Trades Department, AFL-CIO.

Mr. Chairman, I respectfully request that this letter be included in the record of hearings by your Subcommittee on S. 1368. Thank you.

Sincerely,

ANDREW J. BIEMILLER,
Director, Department of Legislation.

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF HOME BUILDERS

Mr. Chairman and Members of the Subcommittee, the National Association of Home Builders is a trade association representing the residential construction industry. Our Association has over 50,000 members affiliated with over 450 State and local home builder associations in the United States, the Virgin Islands and Puerto Rico.

The subject of worker health and safety within this industry has been and continues to be, of prime concern to this Association and its members. Our members work in close cooperation with State and local officials on the effective implementation of existing requirements for on-site construction worker safety, and on steps to increase their effectiveness in the home building industry.

We believe that the development and application of safe work practices should be the responsibility of State and local officials and appropriate representatives of the home building industry. Construction on-site work conditions relate necessarily to the type of construction involved, the scope of such work, and the degree of management control required to insure safe conditions of work.

Accordingly, when this proposal which is now embodied in S. 1368 was before the House last fall, we vigorously opposed its passage and restated our belief that construction safety is, and should be, a matter of State and local law and control. As we read S. 1368, this proposal, if enacted into law, would grant the Secretary of Labor unlimited authority to issue standards, regulations, rulings, interpretations, and enforcement procedures relating to construction worker safety.

Enactment of this legislation would override or effectively displace existing on-site safety requirements enforced by Federal contracting agencies and by agencies of State and local governments. All of these now operate closer than the Federal government to local contractor on-site operations, worker's needs, and to those elements of construction activity which are a potential source of harm or injury to the worker.

We are convinced that any decrease in the number of injuries and accidents at building sites will only be obtainable through greater education of construction workers to the dangers of unsafe work practices and effective enforcement of required safety programs at the local level. Therefore, we feel that the interest of the Congress towards improved construction site worker health and safety should be directed primarily at meaningful steps which will enable concerned Federal agencies and units of local government to improve their present safety education programs, on-site safety requirements, and enforcement procedures.

Federal direction and assistance could be tailored along the lines of existing financial grant-in-aid programs in other fields and would afford the Federal government, the State and local agencies, and the industry an opportunity to become partners in a national construction safety effort. The NAHB Executive Committee is currently studying the possibility of supporting just such a proposal. The benefits accruing to the on-site worker and his family, the general public, and the industry would be well worth the financial contribution required and would, we think, produce greater worker protection within a much shorter time.

We are hopeful that every consideration will be given to this alternative legislative approach prior to any final determination by the Subcommittee on the issues raised in S. 1368.

We appreciate very much this opportunity to submit our views on this important question. Thank you for your consideration.

PREPARED STATEMENT OF S. FRANK RAFTERY, GENERAL PRESIDENT, BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, AFL-CIO

Mr. Chairman and members of the Subcommittee of the Senate Labor and Public Welfare Committee, the opportunity for me to appear and support the Construction Safety Bill is, I assure you, deeply appreciated. Not only do I personally support this legislation, but as General President of our Brotherhood, I hereby convey the endorsement and support of the 205,000 members of our Brotherhood who are affiliated with 1,150 District Councils and Local Unions throughout the Nation.

Senate Resolution 1368 would, if finally enacted, serve a great and humanitarian benefit to the Nation's construction workers—at least those employed on all government and federally-assisted construction projects.

The construction industry is the Nation's largest single enterprise, and the fact is that during 1968 more than 2,750 construction workers were killed and 240,000 disabled. Only four (4) states of the Nation have construction safety laws, and some of these states have failed to appropriate for proper inspection. Only a total of 135 full time safety inspectors are engaged in this country. It is important to mention here that no local or state inspector, regardless of the statutes in the area, can have any jurisdiction on government and federally assisted construction projects. These federal reservations are actually "no-mans-land" when it comes to safety regulations and the protection of human health, life, limb and body.

At present, the U.S. Corps of Engineers, the Department of Interior, and other major federal procurement agencies engaged in construction work have virtually no safety rules and regulations for the safety of the construction workers. Actually, today in this great country of ours construction management groups are using the overall question of safety on the fact that there are no safety requirements as a

competitive element throughout the construction industry, and this is especially true on federal general government work such as would be affected by the passage of S. 1368. Experience has proven that "safety is good business"—at least it has been proven by such employers and industries of the Nation who comply with safety requirements. The legislation now before the Senate Subcommittee on Labor is, in my judgment, fully justified. The passage of same would fill a wide void in the Government's operations, because throughout the federal government procurement policies with the exception of the construction industry, the workers are protected under the terms of the Walsh-Healey Act, and this has been the case since the passage of this protective legislation in 1936.

To illustrate the point that federal public works is sorely in need of statutory safety standards, let me cite that when the Department of Interior building was constructed, 13 construction workers were killed because of bad management work arrangements. As a matter of fact, the Washington, D.C. Building and Construction Trades Council actually called a strike on the new Interior Department project and declined to return to work until safety measures were established.

PREPARED STATEMENT OF ASSOCIATED BUILDERS & CONTRACTORS, INC.

This statement is filed on behalf of Associated Builders and Contractors, an association of more than 2500 firms in 19 states with its national office in Friendship Heights, Maryland. Most of the member firms are directly engaged in the construction industry and a large number of others, such as suppliers and financial institutions, although not builders, are directly involved in the industry.

The Association throughout its history has had a deep interest in construction safety. It has worked assiduously toward eliminating hazardous working conditions in whatever form they may exist.

Out of its interest in this subject the Association files this statement. It opposes S. 1368 because of a definite belief that the bill will interfere with the progress that is being made in the construction safety field.

The Department of Labor itself grants that progress has been steadily made in the construction industry as evidenced by the declining trend in the injury frequency rate. A news release from the Department of Labor dated March 5, 1969, states: "Contract construction industries, in contrast, have had a generally declining trend in the injury-frequency rate. The rate has dropped to 26.0 in 1967 and 28.3 in 1965, and 27.9 in 1966. The incidence of injuries in contract construction has been declining since 1959, when the rate was 32.1. Although employment in contract construction has been rising over the past 10 years, there has been no corresponding growth in the injury-frequency rate, partly because increased mechanization has eliminated many injuries that resulted from manual handling."

Other statistics bear out this statement made by the Department of Labor in the news release quoted above. For example, statistics of the National Safety Council show a decline in recent years in the accident frequency rate in general building construction.*

ABC further opposes this bill because it places an inordinate amount of power in the hands of the Secretary of Labor. The Secretary of Labor, pursuant to the bill, would be authorized to:

- (1) Make rules and regulations.
- (2) Issue orders.
- (3) Make decisions.
- (4) Have the final say as to what firms are precluded from federal contracts.

He would have all this power, yet there is not a word in the bill that would specifically give aggrieved employers the opportunity to appeal to the courts.

We should be honest with ourselves and admit that once the bill were to become law, there would have to be a veritable army of inspectors because of the far-flung activities of the building industry performing federal construction projects. Some of them would almost surely be drawn from the ranks of organized labor. These inspectors being only human, certain of them would be highly prejudiced. With their human foibles, there would be no way to stop them from taking a highly prejudiced action against employers whose employees had not seen fit to have a labor organization represent them. There are no safeguards in the bill for the contractor who might be the victim of such highly prejudicial action against him.

*See Work Injury Rates, 1968 Edition, National Safety Council, p. 9:

The bill is defective moreover because it appears to envision the same sort of standards for all branches of construction. At the present time the different Federal agencies have responsibility for their own safety programs. The problems of the Corps of Engineers, for instance, may be very different from those of the Air Force. Those of the General Services Administration would be very different from the Bureau of Public Roads. Yet S. 1368 would place all these agencies under a common rulemaker, to wit: the Secretary of Labor. ABC submits that this kind of blind uniformity would likely defeat the purpose of the bill because there is not uniformity in the safety problems of these different agencies.

After all, safety is to a great extent a matter of education. A great deal more can always be done in this area. Federal assistance in promotion of safety education can be of very great service and would in no way run the risk of upsetting the current favorable trend in the reduction of construction accidents.

Anyone who thinks federal action is a panacea in this field should have second thoughts when he views what has happened in the Walsh-Healey area. Efforts of the federal government to promulgate satisfactory safety regulations under that Act have been a subject of heated controversy for a number of years. Even now, these regulations are anything but generally acceptable. That these regulations have not helped with respect to safety in manufacturing, moreover, is indicated by the fact that the Department of Labor in the news release mentioned at the outset of this statement says very definitely that the accident rate has been rising in manufacturing. Likewise the Federal Government has failed to bring a solution to accidents in the field of coal mining because the same release shows that the accident frequency rate in that industry is far higher than it is in either manufacturing or construction.

It is to be hoped, therefore, that the Congress will not disturb the current favorable trend in construction safety by injecting itself at this time. It is suggested, moreover, that time be allowed the Secretary of Labor's National Safety Advisory Committee to assess the entire safety situation, and that now is an ill-advised time to pass new safety legislation accordingly.

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, Inc.,

Washington, D.C., May 16, 1969.

Hon. HARRISON A. WILLIAMS, Jr.,
 Chairman, Subcommittee on Labor, Committee on Labor and Public Welfare, U.S.
 Senate, Washington, D.C.

DEAR SENATOR WILLIAMS: Thank you for affording us an opportunity to comment on S. 1368 relating to the subject of construction safety.

The National Electrical Contractors Association, which was organized in 1901, is the nationally recognized spokesman for the electrical contracting industry. This industry is composed of small business firms primarily engaged in making on-the-site electrical installations. These concerns individually employ about ten workmen on the average, although a number have payrolls which average in the thousands of men. These companies can be found in every community of the United States and are engaged in construction projects which range from wiring of small homes to such highly technical and involved installations as atomic energy plants and missile complexes.

The typical electrical contractor provides the skilled service of procuring materials and fixtures and installing them in a safe, efficient and workmanlike manner whereby the electric power generated and brought to the owner's property line can be utilized to energize fixtures, appliances and equipment. In short, the contractor serves as the vital link between energy and its application.

The health and safety of their journeymen electricians, apprentices and other employees is a prime responsibility of the professional qualified contractors. The National Electrical Contractors Association agrees with the desirability of the stated goals and objectives of S. 1368 which are: "To promote health and safety in the building trades and construction industry in all Federal and federally assisted construction projects." However, we do not believe the promulgation of health and safety standards by the Secretary of Labor to be the best means of controlling environmental and human factors on Federal construction or federally assisted construction.

We believe the best way to achieve the lowest possible accident rate is through the continuing education of the apprentice and the journeyman. Such education creates an awareness of unsafe practices, and fosters an attitude conducive to

health and safety. The National Electrical Contractors Association, in cooperation with the International Brotherhood of Electrical Workers sponsors a program of this type through their National Joint Apprenticeship and Training Committee. Electrical contracting has the lowest accident frequency rate in the construction industry with 25 injuries per one million man hours and this low accident rate was achieved through educating workers to the dangers inherent in their jobs.

We fundamentally object to the approach of S. 1368 because we feel this legislation places far too much arbitrary power to determine standards of safety in the hands of the Secretary of Labor. We are not persuaded that the Secretary of Labor would possess in all cases the experience and expertise to set construction safety standards that would be realistic and fair to all parties involved.

We are familiar with H.R. 10946 which has been reported favorably by the House Committee on Education and Labor. While this bill, with its provisions for an advisory committee, agency hearings, judicial review, and a softening of the "blacklisting" feature, is a great improvement in our opinion over S. 1368, the fact remains that final authority for setting safety standards is retained in the hands of one man—the Secretary of Labor, agency hearings and advisory committee notwithstanding. Thus, we would continue to oppose similar legislation even though it contained the improvements of H.R. 10946.

If the Congress feels that construction safety legislation is needed, we would hope that an advisory council, truly and fairly representative of employees, employers, and the public interest, would be provided for, and that the advice of this council relative to safety standards would be binding on the Secretary of Labor.

We greatly appreciate this opportunity to present our views in this matter.

Yours most sincerely,

ROBERT L. HIGGINS,
Executive Vice President.

NATIONAL ASSOCIATION OF MANUFACTURERS,
Washington, D.C., May 19, 1969.

HON. HARRISON A. WILLIAMS,
*Chairman, Subcommittee on Labor,
Senate Committee on Labor and Public Welfare,
Washington, D.C.*

DEAR MR. CHAIRMAN: We are writing to express the concern of manufacturers that S. 1368 entitled, "A bill to promote health and safety in the building trades and construction industry in all Federal and federally financed or federally assisted construction projects," which is the subject of hearings before your Subcommittee, may inadvertently be applied to cover contracts or subcontracts for manufactured materials, supplies, articles and equipment and other manufactured items that may be used in construction projects.

We assume that the purpose of the bill is, as set forth in its title, to provide health and safety standards and regulations for work at the site of construction of Federal and federally financed or assisted construction projects. Our concern is that it might be construed to cover also work done in manufacturing plants away from the construction site if such manufacturers have contracts to supply materials, supplies, etc. that go into the building or other construction.

The bill is designed as an amendment to the Federal Contract Work Hours Standards Act of 1962. That Act, by the terms of its Section 103 (40 USCA 329) seems to apply not only to contracts relating to public works of the United States (usually construction) but also to any other contract to which the United States or any agency or instrumentality thereof, any territory, or the District of Columbia is a party, or any contract made for or on behalf of any of the foregoing, or any contract for work under federally assisted or insured programs.

The Secretary of Labor's regulations under the Federal Contract Work Hours Standards Act, as published in 29 CFR, Part 5, and in effect as of January 1, 1969, list contracts under some 29 different federal Acts relating to government contracts and federally assisted programs as being subject to that Act. The regulations also contemplate that other Acts will be added from time to time. Accordingly, S. 1368 would apparently apply to contracts under all of these Acts.

We believe it is clear that health and safety standards and regulations which the Secretary of Labor might adopt for construction work at construction sites would not be appropriate for manufacturing work at plants completely removed

from the construction site, and we assume that it is not the intention for the bill to apply to such manufacturing work away from the construction site. It would seem desirable to make this clear by specific amendatory language in the bill to limit it expressly to work at the construction site and to exclude manufacturing work at plants away from the construction site.

We shall appreciate it if this letter can be made part of the record of hearings on S. 1368 and we hope that the matters set forth in this letter may be given favorable consideration by the Committee.

Respectfully submitted,

LAMBERT H. MILLER,
General Counsel.

REORGANIZATION PLAN NO. 14 OF 1950

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 14 of 1950, prepared in accordance with the provisions of the Reorganization Act of 1949. For the purpose of coordinating the administration of labor standards under various statutes relating to Federal construction and public works or to construction with federally financed assistance or guaranties, the reorganization plan authorizes the Secretary of Labor to prescribe appropriate standards, regulations, and procedures with respect to these matters and to make such investigations concerning compliance with, and enforcement of, labor standards as he deems desirable. The purpose is to assure consistent and effective enforcement of such standards.

The plan is in general accord with the recommendations of the Commission on Organization of the Executive Branch of the Government. It constitutes a further step in rebuilding and strengthening the Department of Labor to make it the central agency of the Government for dealing with labor problems.

After investigation I have found and hereby declare that the reorganization, contained in this plan is necessary to accomplish one or more of the purposes set forth in section 2 (a) of the Reorganization Act of 1949.

There are several laws regulating wages and hours of workers employed on Federal contracts for public works or construction. The "eight hour laws" limit the employment of laborers and mechanics on such projects to 8 hours per day and permit their employment in excess of that limit only upon condition that time and one-half the basic-wage rate is paid for the excess hours. The Davis-Bacon Act provides that the minimum rates of pay for laborers and mechanics on certain Federal public-works contracts shall be those prevailing for the corresponding classes of workers in the locality as determined by the Secretary of Labor. The Copeland anti-kick-back law prohibits the exaction of rebates or kick-backs from workers employed on the construction of Federal public works or works financed by the Federal Government and authorizes the Secretary of Labor to make regulations for contractors engaged on such projects.

In addition to the above statutes, there are several acts which require the payment of prevailing-wage rates, as determined by the Secretary of Labor, to laborers and mechanics employed on construction financed in whole or in part by loans or grants from the Federal Government or by mortgages guaranteed by the Federal Government. These acts are: the National Housing Act, the Housing Act of 1949, the Federal Airport Act, and the Hospital Survey and Construction Act of 1946.

With the exception of the Department of Labor, the Federal agencies involved in the administration of the various acts are divided into two classes: (1) agencies which contract for Federal public works or construction; and (2) agencies which lend or grant Federal funds, or act as guarantors of mortgages, to aid in the construction of projects to be built by State or local public agencies or private individuals and groups. The methods of enforcing labor standards necessarily differ between these two groups of agencies.

The methods adopted by the various agencies for the enforcement of labor standards vary widely in character and effectiveness. As a result, uniformity of enforcement is lacking and the degree of protection afforded workers varies from agency to agency.

In order to correct this situation, this plan authorizes the Secretary of Labor to coordinate the administration of legislation relating to wages and hours on federally financed or assisted projects by prescribing standards, regulations, and procedures to govern the enforcement activities of the various Federal agencies and by making such investigations as he deems desirable to assure consistent

enforcement. The actual performance of enforcement activities, normally including the investigation of complaints of violations, will remain the duty of the respective agencies awarding the contracts or providing the Federal assistance.

Since the principal objective of the plan is more effective enforcement of labor standards, it is not probable that it will result in savings. But it will provide more uniform and more adequate protection for workers through the expenditures made for the enforcement of the existing legislation.

HARRY S. TRUMAN.

THE WHITE HOUSE, *March 13, 1950.*

REORGANIZATION PLAN NO. 14 OF 1950

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949

LABOR STANDARDS ENFORCEMENT

In order to assure coordination of administration and consistency of enforcement of the labor standards provisions of each of the following Acts by the Federal agencies responsible for the administration thereof, the Secretary of Labor shall prescribe appropriate standards, regulations, and procedures, which shall be observed by these agencies, and cause to be made by the Department of Labor such investigations, with respect to compliance with and enforcement of such labor standards, as he deems desirable, namely: (a) The Act of March 3, 1931 (46 Stat. 1494, ch. 411), as amended; (b) the Act of June 13, 1934 (48 Stat. 948, ch. 482); (c) the Act of August 1, 1892 (27 Stat. 340, ch. 352), as amended; (d) the Act of June 19, 1912 (37 Stat. 137, ch. 174), as amended; (e) the Act of June 3, 1939 (53 Stat. 804, ch. 175), as amended; (f) the Act of August 13, 1946 (60 Stat. 1040, ch. 958); (g) the Act of May 13, 1946 (60 Stat. 170, ch. 251), as amended; and (h) the Act of July 15, 1949 (ch. 338, Public Law 171, Eighty-first Congress, first session).

(Whereupon, at 12 noon, the subcommittee was adjourned subject to call.)

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