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RESERVOIRS, AIR SPACE, ADMINISTRATIVE IMPROVEMENTS, CHARITABLE TRUSTS, AND INCORPORATION OF PROFESSIONAL INDIVIDUALS

GOVERNMENT

DOCUMENTS

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HEARING

BEFORE THE

SUBCOMMITTEE ON
BUSINESS, COMMERCE, AND JUDICIARY

OF THE

COMMITTEE ON
THE DISTRICT OF COLUMBIA
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 1362

PAY DISTRICT'S PORTIONS OF RESERVOIRS COSTS

S. 1367

FREEWAY AIRSPACE UTILIZATION

S. 2204

DISTRICT OF COLUMBIA ADMINISTRATIVE IMPROVEMENTS

S. 2409

CHARITABLE AND SPLIT INTEREST TRUSTS AMENDMENTS

H.R. 10383

PROPOSED DISTRICT OF COLUMBIA PROFESSIONAL CORPORATION ACT

OCTOBER 28, 1971

Printed for the use of the Committee on the District of Columbia



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CONTENTS

BILLS AND EXECUTIVE COMMUNICATIONS

	Page
S. 1362-----	2
Executive communication-----	4
S. 1367-----	7
Executive communication-----	22
S. 2204-----	29
Executive communication-----	60
S. 2409-----	79
Executive communication-----	86
H.R. 10383-----	87
Executive communication-----	103

WITNESSES

Caciola, Orlando, acting D.C. procurement officer, on S. 2204-----	133
Corey, William S., District of Columbia Bar Association, on:	
H.R. 10383-----	142
S. 2409-----	156
DeForest, Vincent A., president, Afro-American Bicentennial Corporation, on S. 1367-----	169
Freeze, Paul, director, Water Resources Division, Department of Environ- mental Services, District of Columbia Government, on S. 1362-----	104
Haley, Joseph, Office of Planning and Management, on S. 2204-----	133
Heim, Dr. Henry J., president, District of Columbia Dental Society, on H.R. 10383-----	142
Korengold, Dr. Marvin C., president, Medical Society of the District of Co- lumbia, on H.R. 10383-----	142
Lyons, Francis J., Fiduciary Section, District of Columbia Bankers Asso- ciation, on S. 2409-----	158
MacKinnon, Janice, office of Budget and Program Analysis, on S. 2204-----	133
Middlekauff, Roger D., District of Columbia Bar Association, on H.R. 10383-----	142
Milstead, Cornelius R., chairman, Legislative Committee, Washington Metropolitan Chapter of American Institute of Architects, on H.R. 10383-----	142
Robinson, William A., assistant corporation counsel, on:	
S. 1367-----	133
S. 2204-----	133
H.R. 10383-----	140
Thompson, Walter, assistant director for tax administration, Depart- ment of Finance and Revenue, on H.R. 10383-----	140
Tranter, Revan A. F., deputy executive director, Metropolitan Washing- ton Council of Governments, on S. 2204-----	167
Proposed amendment-----	168
Wallace, Dana, deputy director, Department of Highways and Traffic, on S. 1367-----	106

PREPARED STATEMENTS

American Institute of Architects, Washington Metropolitan Chapter, on H.R. 10383-----	148
Bankers Association, District of Columbia, on S. 2409-----	159

IV

Bar Association of the District of Columbia, on :	
H.R. 10383-----	143
S. 2409-----	155
Medical Society of the District of Columbia, on H.R. 10383-----	152

MATERIAL SUBMITTED

Certified Public Accountants, District of Columbia Institute of, letter to the chairman, November 4, 1971, on S. 2409-----	166
DeForest, Vincent, president, Afro-American Bicentennial Corporation, letter to the general counsel, October 28, 1971, with attachments, on S. 1367-----	171
Lehrfeld, William J., attorney, letter to the chairman, November 8, 1971, on S. 2409, with enclosure-----	163
Photographs of airspace utilization-----	109
Tawes, J. Millard, secretary, Maryland Department of Natural Resources, letter to the chairman on S. 1362, July 1, 1971-----	106
Watt, Graham W., Assistant to the Commissioner of the District of Columbia, letter to Senator Stevenson, November 5, 1971, on S. 2204 and H.R. 10383-----	137

RESERVOIRS, AIR SPACE, ADMINISTRATIVE IMPROVEMENTS, CHARITABLE TRUSTS, AND INCORPORATION OF PROFESSIONAL INDIVIDUALS

THURSDAY, OCTOBER 28, 1971

U.S. SENATE,
SUBCOMMITTEE ON BUSINESS, COMMERCE AND JUDICIARY,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 6226, New Senate Office Building, Senator Adlai E. Stevenson III (chairman of the subcommittee) presiding.

Present: Senator Stevenson.

Also present: Gene E. Godley, general counsel; and Carolyn W. Johnson, minority staff director.

Senator STEVENSON. The hearing of the Subcommittee on Business, Commerce, and Judiciary will be in order.

This morning's hearing concerns five bills, three of which are a part of the District of Columbia's legislative program.

Another of the bills has already passed the House of Representatives, and the fifth has a deadline of the end of the year.

The latter bill conforms certain provisions dealing with trusts and charitable organizations to the provisions of the Internal Revenue Code.

The three bills which are a part of the District's legislative program are S. 1367, the District of Columbia Freeway Air Space Utilization Act, which has had hearings before this committee in the last two Congresses and passed the Senate last year.

S. 2204 is the District of Columbia Administrative Improvements Act which incorporates several administrative changes in one bill; and S. 1362, which would authorize the District Government to pay its share of costs of the Potomac River Reservoirs providing water to the District.

S. 2409 is a bill which facilitates the amendment of certain charitable trusts and foundations so as to bring them into conformity with the Tax Reform Act of 1969 by the December 31 deadline which I mentioned.

H.R. 10383, the District Professional Corporation Act, enables professional individuals and firms to obtain the benefits of corporate organization—benefits which are allowed in all of the 50 States.

We hope that we can facilitate the consideration of these measures which are on the whole, I believe, noncontroversial, by hearing them all this morning at this hearing.

I now place in the record copies of the five bills and the executive communications concerning them.

(The bills and communications referred to follow:)

92^D CONGRESS
1ST SESSION

S. 1362

IN THE SENATE OF THE UNITED STATES

MARCH 24 (legislative day, MARCH 23), 1971

Mr. STEVENSON (by request) introduced the following bill; which was read twice and referred to the Committee on the District of Columbia

A BILL

To authorize the Commissioner of the District of Columbia to enter into contracts for the payment of the District's equitable portions of the costs of reservoirs on the Potomac River and its tributaries, and for other purposes.

- 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 Commissioner of the District of Columbia is hereby
4 authorized to contract, within an amount specified in a
5 District of Columbia Appropriation Act, with the United
6 States, any State in the Potomac River Basin, any agency
7 or political subdivision thereof, and any other competent
8 State or local authority, with respect to the payment by
9 the District of Columbia to the United States, either directly

1 or indirectly, of the District's equitable share of any part
2 or parts of the non-Federal portion of the costs of any reser-
3 voirs authorized by the Congress for construction on the
4 Potomac River or any of its tributaries. Every such contract
5 may contain such provisions as the Commissioner may deem
6 necessary or appropriate.

7 SEC. 2. Unless hereafter otherwise provided by law, all
8 payments made by the District of Columbia and all moneys
9 received by the District of Columbia pursuant to any con-
10 tract made under the authority of this Act shall be paid
11 from, or be deposited in, the District of Columbia Water
12 Fund. Charges for water delivered from the District of Co-
13 lumbia water system for use outside the District of Colum-
14 bia may be adjusted to reflect the portions of any payments
15 made by the District of Columbia under contracts author-
16 ized by this Act which are equitably attributable to such use
17 outside the District.

18 SEC. 3. There are hereby authorized to be appropriated
19 such sums as may be necessary to carry out the purposes of
20 this Act.

THE DISTRICT OF COLUMBIA,
Washington, D.C. February 1, 1971.

The PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT: The Commissioner of the District of Columbia has the honor to submit herewith a draft bill "To authorize the Commissioner of the District of Columbia to enter into contracts for the payment of the District's equitable portions of the costs of reservoirs on the Potomac River and its tributaries, and for other purposes."

The purpose of the proposed legislation is to give broad authorization to the Commissioner of the District of Columbia to enter into such contracts as he deems appropriate for the purpose of providing for payment to the United States of the District of Columbia's equitable share of the non-Federal costs of any reservoir which may be authorized by Congress for construction on the Potomac River or any of its tributaries which would benefit the District of Columbia water supply.

Section 203 of the Flood Control Act of 1962 (Title II, Public Law 87-874), under the caption "Potomac River Basin" (76 Stat. 1182), authorizes the construction on the North Branch of the Potomac River of a project which has come to be known as the Bloomington Dam and Reservoir. Since the project is to include water supply benefits, subsection (b) of section 301 of the Water Supply Act of 1958 (Title III, Public Law 85-500; 72 Stat. 319), as amended by section 10 of the Federal Water Pollution Control Act Amendments of 1961 (Public Law 87-88; 75 Stat. 210), becomes applicable. This subsection provides—

"That before construction or modification of any project including water supply provisions for present demand is initiated, State or local interests shall agree to pay for the cost of such provisions in accordance with the provisions of this section: *And Provided further*, That not to exceed 30 per centum of the total estimated cost of any project may be allocated to anticipated future demands where State or local interests give reasonable assurances, and there is reasonable evidence, that such demands for the use of such storage will be made within a period of time which will permit paying out the costs allocated to water supply within the life of the project."

When the construction of the Bloomington Dam and Reservoir was authorized it was believed that the District of Columbia would have no present demand for water stored at this reservoir, so the District of Columbia was called upon by the Secretary of the Army to give assurances that it would, at a future date, contract to pay for its share of the non-Federal portion of the costs. Assurances given by the former Board of Commissioners of the District of Columbia were determined by the Secretary of the Army to be insufficient in the absence of a present authority in the District of Columbia to enter into a contract for the payment of its share of the costs. For this reason, two bills were introduced in the 90th Congress (H.R. 11158 and H.R. 11183) to authorize the Commissioner of the District of Columbia to so contract with the Secretary of the Army. Neither bill was enacted.

The Secretary of the Army, by law, determines only the non-Federal portion of a project's costs, and not the proportionate shares to be assumed by local interests responsible therefor; nor does he identify the local interests. In the case of the Bloomington Dam and Reservoir, water users in Maryland, Virginia, West Virginia, and the District of Columbia will benefit, either initially or in the future, from the provisions of storage for water supply, and it is their obligation to determine among themselves the proportionate share of the non-Federal costs to be paid by each.

In 1969, the State of Maryland, whose water users were anticipated to have the major present demand for stored water, enacted legislation authorizing a new agency, the Maryland Potomac Water Authority, to contract with the United States to pay the share of non-Federal costs attributable to present demand of Maryland water users for Bloomington storage and, in turn, collect proportionate parts from such users. It became apparent, however, prior to final enactment of the Maryland legislation, that the District of Columbia water system, which also supplies water to certain Virginia users, required a present guarantee of water during times of low flow such as occurred in 1966, so that it would properly be included with Maryland as having a present demand. Therefore, as enacted, the Maryland legislation authorized the Maryland Potomac Water Authority to contract with the District of Columbia with respect to the District's equitable

share in the non-Federal cost of the Bloomington project, based upon present demand. Discussions with Maryland authorities indicated that it would be in the interest of both jurisdictions to determine, jointly, their respective equitable shares in the non-Federal portion of the cost of water storage for present demand and possibly, for the District to pay its share to the United States indirectly through payment to the Maryland Potomac Water Authority.

The importance of authorizing the District to enter into contracts for the payment of its equitable share of non-Federal costs for water supply reservoirs is underscored by the possibility of additional expansion of the Potomac River's water storage facilities. A bill was introduced in the 91st Congress, S. 4572, which would have authorized, among other items, the construction of two water supply reservoirs within the Potomac River Basin, one at Verona, Virginia, and the other at Sixes Bridge, Maryland. These two projects would have provided water supply storage beneficial to the District of Columbia. Unfortunately, the public works bill ultimately enacted as the Omnibus Rivers and Harbors and Flood Control Act, omitted the Verona and Sixes Bridge projects. It is reasonable to anticipate, however, that the authorization for the two projects will be enacted at an early date, at which time it will be essential for the District to be able to contract to pay its share of the non-Federal costs.

The Commissioner of the District of Columbia believes it advisable that he have the authority to contract to pay to the United States the District's equitable share of the non-Federal costs of not only the Bloomington Dam and Reservoir and other such projects already planned, but also of any other reservoir which may hereafter be authorized for construction by the Congress and from which the District of Columbia water system would derive direct and essential benefits. Likewise, the District of Columbia should have latitude to work out with the States, their agencies and other competent authorities the respective equitable shares that will equal the total non-Federal costs, and the precise manner in which the respective shares will be paid by the several water users and to the United States. Moreover, as additional users take water from the river the equitable shares of the previous users could be reduced to reflect the changed situation, and as additional reservoirs come into operation some adjustments in equitable shares may be appropriate.

Although the bill authorizes the District of Columbia to pay its fair share of the non-Federal costs of any such dam, nevertheless it must be recognized that the District's demand for water includes the demands of other jurisdictions in the Washington Metropolitan Area which are supplied water through District of Columbia facilities. If the demands of all Washington Metropolitan Area jurisdictions increase equally in the future, that part of the increase in demand attributable to the District of Columbia would be in proportion to the increase in demand of the other jurisdictions. Estimates indicate, however, that the District's demand will not increase in the same proportion as the demands of the other jurisdictions of the area. For example, for the period between 1965 and 2000, it has been estimated that the increase in the District of Columbia water demand will be 8 percent; that for the Maryland portion of the Washington Metropolitan Area, 56 percent; and that for the Virginia portion of the Washington Metropolitan Area, 36 percent. If the increase in any of the Maryland and Virginia jurisdictions in the Washington Metropolitan Area is greater proportionately than the increase attributable to the District of Columbia proper, the Government of the District of Columbia will find it necessary to charge that jurisdiction receiving water through District facilities an amount which will take into consideration the disproportionate increase in demand in that jurisdiction as compared with the demand in the District.

Because the amounts that would be paid by the District of Columbia under the contracts that would be authorized by section 1 of the draft bill are properly a part of the cost of supplying water to consumers, section 2 of the draft bill specifically provides that such payments shall be made from, as well as any reimbursements being deposited in, the Water Fund because existing law restricts use of that fund to "maintenance, management and repair of the system of water-distribution" (D.C. Code, sec. 43-1522). And for the reasons set forth in the preceding paragraph, section 2 also specifically authorizes adjustment of charges for water delivered from the District of Columbia system for use outside the District of Columbia to reflect the portions of the payments made under contracts that would be authorized by section 1 which are equitably attributable to such use outside the District.

The authority which would be granted by the proposed legislation is not, however, without important limitations. The authority to contract may be exercised only with respect to reservoirs whose construction has been authorized by Congress, so that, in effect, the scope of the draft bill is limited to the same subject matter as the bills which were before the 90th Congress, until such time as the Congress may act affirmatively by authorizing construction of an additional reservoir that would benefit the District of Columbia. While the draft bill would authorize the District to contract with, for example, the Maryland Potomac Water Authority "with respect to" the District's payment of its equitable share of the cost of Bloomington Dam and Reservoir, this authority, by the terms of the Maryland statute, is limited to the costs of storage for present demand, and could relate only to mutually acceptable methods of determining respective equitable shares.

Supplemental water from the Bloomington Reservoir was needed in the summer of 1966 when the flow of the Potomac River was the lowest of record, approaching the total withdrawal of water in the Washington Metropolitan Area, and some restrictions were placed on the use of water in the Washington Metropolitan Area. With the increase in population since 1966, and a corresponding increase in water use, it is probable that another drought year will require drastic and extensive restrictions on water use, absent a supplemental flow from Bloomington. Since the Water Supply Act of 1958, as amended, requires contractual commitments for present demand and assurances of payment for future demand before construction may begin on a reservoir that includes water supply storage, such as Bloomington, it seems essential to the well being of the inhabitants of all parts of the Washington Metropolitan Area that the attached draft bill be enacted. For the foregoing reasons, the Commissioner urges favorable consideration by the Congress of this proposed legislation.

Sincerely yours,

GRAHAM W. WATT,
Assistant to the Commissioner.

FOR: WALTER E. WASHINGTON,
Commissioner.

Attachment.

A BILL To authorize the Commissioner of the District of Columbia to enter into contracts for the payment of the District's equitable portions of the costs of reservoirs on the Potomac River and its tributaries, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of the District of Columbia is hereby authorized to contract, within an amount specified in a District of Columbia appropriation act, with the United States, any State in the Potomac River Basin, any agency or political subdivision thereof, and any other competent State or local authority, with respect to the payment by the District of Columbia to the United States, either directly or indirectly, of the District's equitable share of any part or parts of the non-Federal portion of the costs of any reservoirs authorized by the Congress for construction on the Potomac River or any of its tributaries. Every such contract may contain such provisions as the Commissioner may deem necessary or appropriate.

SEC. 2. Unless hereafter otherwise provided by law, all payments made by the District of Columbia and all monies received by the District of Columbia pursuant to any contract made under the authority of this Act shall be paid from, or be deposited in, the District of Columbia Water Fund. Charges for water delivered from the District of Columbia Water System for use outside the District of Columbia may be adjusted to reflect the portions of any payments made by the District of Columbia under contracts authorized by this Act which are equitably attributable to such use outside the District.

SEC. 3. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

92^D CONGRESS
1ST SESSION

S. 1367

IN THE SENATE OF THE UNITED STATES

MARCH 24 (legislative day, MARCH 23), 1971

Mr. STEVENSON (by request) introduced the following bill; which was read twice and referred to the Committee on the District of Columbia

A BILL

To authorize the Commissioner of the District of Columbia to lease airspace above and below freeway rights-of-way within the District of Columbia, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "District of Columbia
4 Freeway Airspace Utilization Act".

5 SEC. 2. When used in this Act—

6 "Airspace" means so much of the space above, on, and
7 below freeway rights-of-way as is not needed for freeway
8 purposes.

9 "Commissioner" means the Commissioner of the District
10 of Columbia.

1 "District" means the District of Columbia.

2 "Freeway" means any limited access divided highway
3 within the District.

4 "Right-of-way" means land, property, or interest therein
5 acquired for or devoted to a freeway, including connecting
6 ramps.

7 "United States" means the Government of the United
8 States or any department or agency thereof, including, with-
9 out limitation, any agency established or authorized to be
10 established by Act of Congress or by interstate compact to
11 which consent of Congress is given.

12 "Council" means the District of Columbia Council.

13 SEC. 3. The Commissioner is hereby authorized—

14 (a) to make or permit such use of airspace in the
15 District for any municipal purpose, including, without
16 limitation, housing for low-income families, public wel-
17 fare, public works, parks, recreational, and vehicle park-
18 ing, as will not be detrimental to or impair the efficient
19 use, operation, and maintenance of any freeway;

20 (b) to enter into contracts or agreements with the
21 United States for the use of airspace and for the purpose
22 of receiving, or qualifying any permittee or lessee to
23 receive, grants or other financial assistance under avail-
24 able Federal programs in connection with the construc-

1 tion, use, or operation of buildings, structures, and other
2 things therein;

3 (c) to enter into agreements with the United
4 States for the granting to the United States of ease-
5 ments to use airspace for the purpose of constructing
6 therein Federal public buildings and for such other pur-
7 poses as may be agreed upon. Such easements shall,
8 for the purpose of section 355 of the Revised Statutes
9 of the United States, as amended (40 U.S.C. 255), be
10 deemed sufficient and valid title in the United States
11 in the areas in which are to be constructed public build-
12 ings or other facilities; and

13 (d) to enter into leases of, or grant revocable per-
14 mits for, the use of airspace in the District, including
15 rights of or for support, access, utilities, light, and air
16 to an extent not inconsistent with the use of a freeway
17 by the general public for the purpose of travel, and, in
18 connection with any such lease or permit, to impose
19 such terms and conditions including, but not limited to,
20 the deposit of bond or other security, and to provide for
21 the payment of such rents or fees as the Commissioner
22 may, in his discretion, determine to be necessary or
23 desirable, but the Commissioner may, in connection with
24 the entry into a lease, or the granting of a permit, for the

1 use of such airspace, provide as conditions of any such
2 lease or permit (1) that such airspace shall not be used
3 by the lessee or permittee in such manner as to deprive
4 of its easements of light, air, and access any real prop-
5 erty not owned or controlled by such lessee or permittee,
6 and (2) that upon the expiration of the lease or permit
7 and of any renewal thereof, any building or other struc-
8 ture which may have been constructed in such airspace
9 shall, at the direction of the Commissioner, be removed
10 therefrom by and at the expense of the lessee or permittee
11 or his successor in interest, and the airspace shall be
12 restored to the condition which obtained prior to the
13 construction of such building or other structure, all to
14 the satisfaction of the Commissioner.

15 SEC. 4. (a) The authority contained in section 3 shall
16 be exercised by the Commissioner in furtherance of the
17 Comprehensive Plan for the National Capital prepared pur-
18 suant to the National Capital Planning Act of 1952 (40
19 U.S.C. 71) and in the following order of priority:

20 (1) The Commissioner shall determine whether such
21 space is required for a municipal purpose, as authorized by
22 subsection (a) of section 3, and if he determines the space
23 is so required, he is authorized to make such use of it, or to
24 grant easements therefor to the United States.

25 (2) The Commissioner shall ascertain, through the Ex-

1 ecutive Director of the National Capital Housing Authority
2 established by the Act approved June 12, 1934 (48 Stat.
3 930), whether such space is required for the construction
4 therein of dwellings for low-income families at rents in ac-
5 cordance with their incomes, and if the Commissioner finds
6 that such space is so required he is authorized, with or with-
7 out charge, to make it available for such construction by
8 granting an easement to use such space, and such easement
9 shall constitute sufficient and valid title in the Authority or in
10 the United States, or in any private developer under contract
11 to convey the completed property to the Authority, as the
12 case may be, to construct therein buildings or other facilities.
13 The use of such space by the Authority shall be subject to
14 such agreement as the Authority has entered into with the
15 District respecting the making of payments in lieu of taxes.

16 (3) The Commissioner shall ascertain through the Ad-
17 ministrator of General Services, whether the United States
18 (other than the National Capital Housing Authority) re-
19 quires such space for the construction therein of a building,
20 other structure, or facility, and if such space is so required,
21 the Commissioner is authorized to make it available with-
22 out charge to the United States, or on the basis of such
23 charge as may be agreed upon between the Commissioner
24 and the United States.

1 (4) The Commissioner shall determine whether such
2 space should be leased to a public or private developer or
3 easements granted to the United States to provide housing
4 for low- and moderate-income individuals and families, and
5 accessory uses if the Commissioner so determines, he may
6 include in such lease, or make such permit subject to, an
7 agreement whereby a preference in admission to the housing
8 will be given to low- and moderate-income individuals and
9 families displaced by urban renewal activities or as a result
10 of other governmental action.

11 (5) The Commissioner shall determine whether the
12 space should be leased to a nonprofit organization, such as
13 a hospital, welfare agency, or the like, for the construction
14 therein of a building, other structure, or facility to be used
15 in connection with the activities of such organization.

16 (6) The Commissioner shall determine whether such
17 space should be made available for business purposes, in-
18 cluding, without limitation, housing for individuals and
19 families.

20 (b) In connection with the lease of such space either
21 for housing for low- and moderate-income families and fami-
22 lies displaced from urban renewal areas or as a result of gov-
23 ernmental action, or for use by nonprofit organizations or for
24 business purposes, the Commissioner is authorized to lease
25 the space either on the basis of competitive bids or on a nego-

1 tiated basis, as the Commissioner determines is in the best
2 interests of the District and of the general public.

3 SEC. 5. For the purposes of this Act, airspace, and build-
4 ings, structures, and improvements constructed or erected
5 within such airspace, pursuant to a lease or permit, shall be
6 deemed to be real property and be liable to assessment and
7 taxation as such from the beginning of the term or period
8 of such lease or permit. For the purposes of real property
9 assessment and taxation, the value of such airspace, other
10 than any building, structure, or improvement constructed
11 or erected therein, shall be deemed to be the value of the
12 underlying land as if the same were not occupied and used
13 for public purposes. No such tax shall be assessed with re-
14 spect to any airspace and buildings, structures, and improve-
15 ments therein (1) for which the United States has been
16 granted an easement (but nothing herein contained shall
17 be construed to abrogate such agreement as the United
18 States may have entered into, or may enter into, with the
19 District with respect to making payments in lieu of real
20 property taxes) or used for the purposes specified in sub-
21 sections (a), (b), and (c) of section 3 of this Act; or (2)
22 occupied and used by one or more organizations exclusively
23 for a purpose or for purposes which, under section 1 of the
24 Act of December 24, 1942 (56 Stat. 1089), as amended
25 (D.C. Code, sec. 47-801a), would entitle real property so

1 occupied and used to be exempt from taxation. Except as
2 otherwise provided in this section, for the purposes of this
3 Act the provisions of law applicable to special assessments
4 for public improvements, and the provisions of law applicable
5 to sanitary sewer service charges and to water service
6 charges, shall be applicable with respect to airspace and build-
7 ings, structures and improvements therein used pursuant to
8 a lease entered into with, or permit granted to, a lessee or
9 permittee under the authority of subsection (d) of section 3
10 of this Act. The leasehold or permit interest in any airspace
11 so leased or granted, including any building, structure or
12 improvement constructed or erected therein, shall, in cases
13 of nonpayment of real property taxes, nonpayment of special
14 assessments for public improvements, and nonpayment of
15 sanitary sewer service or water service charges, be subject
16 to private, outright sale by the District, without any right
17 in the lessee or permittee to redeem the leasehold or permit
18 interest so sold: *Provided*, That the proceeds from such sale
19 in excess of such delinquent taxes, assessments, or charges,
20 or a combination thereof, including any interest, penalties
21 and costs relating thereto, shall be paid by the District to
22 the lessee or permittee, or to such person as he may, in writ-
23 ing, designate.

24 SEC. 6. (a) Prior to the entry by the Commissioner
25 into any agreement or lease, or his granting of any permit

1 for the use of airspace, the following actions, except with
2 respect to the construction of public buildings by the Federal
3 or District of Columbia government, shall be taken:

4 (1) The Zoning Commission of the District of Colum-
5 bia, after public hearing and after securing the advice and
6 recommendations of the National Capital Planning Commis-
7 sion, shall have determined the use to be permitted in such
8 airspace and shall have promulgated regulations pertaining
9 thereto, including but not limited to, limitations and require-
10 ments respecting the height of any structure to be erected in
11 such space, off-street parking and floor area ratio, which limi-
12 tations and requirements need not be the same as those
13 provided for properties not within airspace. The provisions
14 of section 10 of the Act entitled "An Act providing for the
15 zoning of the District of Columbia and the regulation of the
16 location, height, bulk, and uses of buildings and other struc-
17 tures and of the uses of land in the District of Columbia, and
18 for other purposes", approved June 20, 1938 (52 Stat.
19 800; D.C. Code, sec. 5-422), shall be applicable to regu-
20 lations made pursuant to this section and to violations of
21 such regulations.

22 (2) The lessee or permittee shall have submitted to
23 the Commissioner and the Zoning Commission for their
24 review and approval, plans, elevations, sections, and a scale
25 model for any structure to be erected in such airspace, and

1 a description of the texture, material, and method of con-
2 struction of exterior walls.

3 (3) The Commissioner shall have determined that all
4 necessary precautions will be taken to insure adequate pro-
5 tection from air pollution, dirt, noise, light, and glare emitted
6 by vehicles using the freeway. In making such a deter-
7 mination, the Commissioner shall assume a volume of free-
8 way traffic equal to the capacity.

9 (b) (1) The provisions of section 16 of the Act ap-
10 proved June 20, 1938 (52 Stat. 802), as amended (D.C.
11 Code, sec. 5-428), shall be applicable to the construction
12 of Federal public buildings in like manner as if the build-
13 ings were constructed entirely on property owned by the
14 United States, and to the extent that such section is, by sub-
15 section 5 (c) of the National Capital Planning Act of 1952,
16 as amended (40 U.S.C. 71d (c)), made applicable thereto,
17 such section 16 shall also be applicable to the construction
18 by the District of Columbia of any building.

19 (2) Plans for construction in airspace by the Federal
20 or District Governments shall be subject to consultation,
21 advice, and recommendation of the National Capital Plan-
22 ning Commission in accordance with the National Capital
23 Planning Act of 1952, as amended (40 U.S.C. 71 et seq.).

24 (3) Plan for construction in airspace shall be subject
25 to review and recommendation of the Commission of Fine

1 Arts to the extent required by, and in accordance with, the
2 Act approved May 16, 1930 (46 Stat. 366), as amended
3 (D.C. Code, secs. 5-410 and 5-411), the Act approved Sep-
4 tember 22, 1950 (64 Stat. 903; D.C. Code, title 5, chapter
5 8), and Executive orders dated October 25, 1910, and
6 November 28, 1913.

7 (c) Whenever the Commissioner shall find that there
8 is any significant change in, or substantial modification of,
9 the plans for the proposed structure after such plans have
10 been approved in accordance with the requirements of the
11 preceding subsections of this section and of section 3, or if,
12 after the construction of the structure, he finds there is any
13 significant change in, or substantial modification of, the
14 structure or the use made of it, each such change or modifi-
15 cation shall be subject to approval by the agencies specified
16 in this section, as their interests may appear, in like manner
17 as is set forth in subsections (a) and (b) of this section.

18 SEC. 7. The cost of removing or relocating publicly
19 owned and privately owned facilities in a street, highway, or
20 alley, including, without limitation, water lines and sewers,
21 to the extent that any such removal or relocation is required
22 in connection with the construction of a building in airspace
23 under the authority of this Act, other than a building con-
24 structed by or on behalf of the District, shall not be borne
25 by the District, but the cost of any such removal or relocation

1 shall be defrayed by another or by others than the District
2 in accordance with such arrangements as may be acceptable
3 to the Commissioner and be approved by him in writing. The
4 removal or relocation by the District of sewers and water
5 mains, and the removal or relocation of any other facilities
6 in such space, shall be in accordance with plans and schedules
7 approved by the Commissioner.

8 SEC. 8. Except as provided in section 6, laws and regu-
9 lations now or hereafter in effect in the District and appli-
10 cable to the construction, use, and occupancy of buildings and
11 premises, including, but not limited to, building, electrical,
12 plumbing, housing, health, and fire regulations, shall be
13 applicable to buildings, structures, and improvements erected
14 in airspace under lease or agreement entered into or permit
15 issued pursuant to this Act.

16 SEC. 9. (a) The Council is authorized, after public
17 hearing, to promulgate regulations to carry out the purposes
18 of this Act.

19 (b) Any regulations adopted under the authority of this
20 section may provide for the imposition of a fine of not more
21 than \$300 or imprisonment for not more than ninety days,
22 or both such fine and imprisonment, for any violation of such
23 regulations. Prosecutions for violations of regulations made
24 pursuant to this section shall be conducted in the name of the
25 District by the Corporation Counsel or any of his assistants.

1 (c) Whenever there exists any violation or failure to
2 comply with regulations adopted under the authority of this
3 Act, or regulations specified in section 8 of this Act, after
4 notice of such violation or failure has been given by the
5 Commissioner, each and every day such violation exists, or
6 each and every day beyond a time limit set for compliance
7 during which there is failure to comply fully with any of
8 the said regulations or with orders issued pursuant to the
9 authority contained therein, shall constitute a separate
10 offense, and the penalty specified for the violation of such
11 regulation shall be applicable to each such separate offense.

12 SEC. 10. All collections, including rents and fees,
13 received by the District pursuant to this Act shall be de-
14 posited in the Treasury of the United States in a trust fund
15 which is hereby authorized and from which may be paid, in
16 the same manner as is provided by law for other expenditures
17 of the District, such expenditures as are necessary to carry
18 out the purposes of this Act, including, without limitation,
19 necessary expenses connected with the operation, mainte-
20 nance, and disposition of property coming into the possession
21 of the District by reason of default under leases entered into
22 or permits issued pursuant to this Act: *Provided*, That taxes
23 (including payments in lieu of taxes), special assessments,
24 and sanitary sewer and water service charges shall be depos-
25 ited directly to the respective funds to which such revenues

1 are normally deposited. The unobligated balance in such trust
2 fund as of June 30 of any year which exceeds \$100,000 shall
3 be deposited in the Treasury to the credit of such special
4 funds or the general fund of the District in such proportions
5 as the Commissioner shall, in his discretion determine.

6 SEC. 11. Nothing in this Act shall be construed so as
7 to affect the authority vested in the Commissioner by Re-
8 organization Plan Numbered 3 of 1967 (81 Stat. 948).
9 The performance of any function vested by this Act in the
10 Commissioner or in any office or agency under the jurisdic-
11 tion and control of said Commissioner may be delegated
12 by the Commissioner in accordance with section 305 of
13 such plan.

14 SEC. 12. Nothing in this Act shall be construed as
15 modifying or superseding title 23, United States Code:
16 *Provided*, That the use of public space under the authority
17 of this Act shall not be deemed to deprive the District of its
18 eligibility for financial assistance under any federally
19 assisted program, regardless of the fact that the District
20 may, in the case of a privately owned building, receive rental
21 for the use of such public space.

22 SEC. 13. If any provision of this Act or of the regula-
23 tions promulgated under the authority of this Act is held
24 invalid, such invalidity shall not affect other provisions
25 either of this Act or of the said regulations which can be

1 effected without the invalid provision, and to this end the
2 provisions of this Act and the said regulations are separable.

3 SEC. 14. Appropriations to carry out the purposes of
4 this Act are hereby authorized.

THE DISTRICT OF COLUMBIA,
Washington, D.C., January 26, 1971.

The PRESIDENT,
*U.S. Senate,
Washington, D.C.*

MY DEAR MR. PRESIDENT: The Commissioner of the District of Columbia has the honor to submit for the consideration of the Congress a bill "To authorize the Commissioner of the District of Columbia to lease airspace above and below freeway rights-of-way within the District of Columbia, and for other purposes."

In recent years, the potentialities involved in a fuller utilization of space over and under freeways not required for freeway use (hereinafter referred to as "airspace") have become increasingly important to the orderly planning and development of urban areas. The acquisition of sites for freeway construction displaces persons from their residences, removes commercial properties, and initially takes land and improvements off of the tax rolls. The problem is especially acute in the District because of a lack of land on which residential and commercial enterprises displaced by freeway and urban renewal projects may be conveniently resettled. The availability of airspace above and below the rights-of-way of freeways, however, should minimize the adverse economic and social effects caused by the displacement of persons and businesses by facilitating their relocation in structures which may be erected in airspace. In order that the District may take full advantage of the possibilities to be found in the expanding concept of airspace usage, the Commissioner recommends the enactment of legislation which will enable the District to make available for public and private purposes such portions of airspace as are not required by the general public for the purpose of travel and as will not impair the full and safe use of freeways.

Section 1 of the bill provides that the Act may be cited as the "District of Columbia Freeway Airspace Utilization Act." Section 2 contains definitions.

As land use in the District intensifies, the need for additional municipal facilities increases. Section 3(a) of the bill authorizes the Commissioner to make or permit the use of airspace for any municipal purpose, including, without limitation, low-income housing, public welfare, public works, park, recreational, and vehicle parking purposes.

Under section 3(b), the Commissioner is authorized generally to enter into agreements with the United States relating to the use of airspace and for the purpose of receiving, or qualifying any permittee or lessee to receive grants or other financial assistance in connection with the construction and operation of buildings and other facilities within airspace. Among other things, this section enables the Commissioner to enter into agreements with the Secretary of Transportation for the use of airspace above and below highways of the Interstate System as authorized by section 111 of Title 23, U.S. Code. Section 3(c) further authorizes the Commissioner to enter into agreements with the United States for the use of airspace by any of the Federal agencies or instrumentalities.

Subsection (d) of section 3 authorizes the Commissioner to enter into leases of or to grant revocable permits for the use of airspace. The many possible uses of airspace make it necessary that the Commissioner retain the greatest possible degree of flexibility in the control and management of this space in order that he, in the public interest, may effectively guide the orderly planning and development of its usage. In connection with any lease or permit affecting airspace, the Commissioner, therefore, is further authorized to impose such terms and conditions, including the furnishing of bond or other security, and to provide for the payment of such rents or fees, as he determines to be appropriate. This subsection also provides that, as a condition of any lease entered into or permit granted, the Commissioner is authorized to require that the airspace will not be used in such manner as to deprive any property not owned by the lessee or permittee of its easements of light, air, and access, and that any building or other structure in such space shall be removed therefrom at the expiration of the permit or lease and any extension thereof.

Section 4 provides that the Commissioner shall exercise the authority contained in section 3 in furtherance of the Comprehensive Plan for the National Capital prepared pursuant to the National Capital Planning Act of 1952 (40 U.S.C. 71) and in accordance with the priorities established by section 4. First, the Commissioner is to determine whether the District requires the space for a municipal purpose of a kind specified, without limitation, in subsection (a) of

section 3. Next, he must ascertain whether the National Capital Housing Authority requires the space for public housing for low-income families. Third, the Commissioner must ascertain whether the United States (other than the National Capital Housing Authority) requires such space. Fourth, the Commissioner shall determine whether the space should be made available to a private developer for construction of housing for low- and moderate-income families. In this connection, the Commissioner is authorized to include in the lease, or as a condition of the permit, a requirement that families in the specified income categories are to be given a preference in admission to such housing. Fifth, the Commissioner is to determine whether the space is to be made available to a nonprofit organization, such as a hospital or welfare agency. Finally, after the foregoing determinations have been made, the Commissioner will then be in a position to make it available for business purposes, including, without limitation, housing for individuals and families. In those cases in which the Commissioner enters into a lease of such space, the section authorizes him to proceed either on the basis of competitive bids or on a negotiated basis, as he may determine is in the best interest of the District of Columbia and of the general public.

The erection of buildings, structures, and improvements within airspace for an income-producing purpose, pursuant to a lease or permit, should return to the tax rolls improvements on property similar or superior to those removed during the construction of freeways. Section 5 thus provides that such facilities (but not including those erected by or on behalf of the United States, the District, or an organization entitled to a general real property tax exemption under section 1 of the Act of December 24, 1942) shall be deemed real property subject to real property taxation as well as to the provisions of law applicable to sanitary sewer service charges and water service charges. The leasehold or permit interest in any airspace, together with any building, structure, or improvement constructed or erected therein, shall, in cases of taxes, assessments, and charges in arrears, be subject to private, outright sale by the District, without any right in the lessee or permittee to redeem the leasehold or permit interest so sold. This provision will enable the District to dispose of such leasehold or permit interest under such circumstances as will best promote the interests of the general public.

Section 6, in subsection (a), provides that, prior to entry by the Commissioner into any agreement or lease with either a public body or private party for the use of airspace, or prior to his granting a permit for such use, the Zoning Commission of the District shall, after public hearing and after securing the advice and recommendations of the National Capital Planning Commission, determine the uses to be permitted in the airspace and promulgate regulations with respect thereto, including, without limitation, those pertaining to the height and bulk of buildings, and off-street parking. This subsection further provides that the limitations and requirements established for buildings and premises erected in airspace need not be the same as those provided for properties not within airspace. In addition, the subsection makes applicable to such regulations as may be promulgated provisions of section 10 of the Act approved June 20, 1938 (52 Stat. 800; D.C. Code, sec. 5-422), relating to the erection, construction, conversion, alteration, use, and maintenance of any building or structure within the District, including the penalties, injunctive relief, and other remedies available therein.

Subsection (b) of section 6 generally provides for review by the National Capital Planning Commission and the Commission of Fine Arts, to the extent required by applicable law, of plans for the construction of buildings by or on behalf of the Federal or District Governments.

Subsection (c) of section 6 provides that whenever the Commissioner shall find that there is any significant change in the plans for the proposed structure after approval of such plans or if he finds that there is any significant change in the structure or the use made of it after construction, each change shall be subject to the approval of the appropriate agencies, as provided by subsections (a) and (b).

In the expectation that the construction of a building in space leased under the authority of the bill may require the removal or relocation of publicly-owned or privately-owned facilities in a street, highway, or alley, including, without limitation, water lines and sewers, section 7 specifies that any such cost shall not be borne by the District of Columbia Government, but by someone other than the District in accordance with such arrangements as may be accepta-

ble to the Commissioner and to be approved by him in writing. Since any such removal or relocation of underground facilities must be coordinated, the bill further provides that this section shall be in accordance with plans and schedules approved by the Commissioner.

Section 8 specifies that, except as provided in section 6, the construction, use and occupancy of buildings, structures, and improvements erected in airspace shall be subject to building, electrical, plumbing, housing, health and fire regulations.

Section 9(a) authorizes the District of Columbia Council, after public hearing, to promulgate regulations to carry out the purposes of the Act. Section 9(b) provides that regulations adopted by the Council may include a penalty of not more than \$300 or imprisonment for not more than ninety days, or both such fine and imprisonment, for any violation of such regulations. Section 9(c) provides that each day such a violation exists shall constitute a separate offense.

Section 10 establishes a trust fund in the Treasury, into which shall be deposited all rents and fees received for the use of airspace, except that taxes (including payments in lieu of taxes), special assessments, and sanitary sewer and water service charges are to be deposited directly to the respective funds in which such revenues are normally deposited. The trust fund so established is made available to carry out the purposes of the Act, including necessary expenses in connection with the operation, maintenance and disposition of property acquired by the District by reason of default of a lessee. Amounts in such trust fund which, as of June 30 of any year, exceed \$100,000, shall be credited to such special funds or the general fund of the District in such proportions as the Commissioner shall determine.

Section 11 states that nothing in the bill shall be construed as modifying or superseding Title 23 of the United States Code, and specifies that the use of public space under the authority of the bill shall not be deemed to deprive the District of its eligibility for financial assistance under any federally-assisted program. Section 12 is a separability provision, and section 13 authorizes appropriations to carry out the purposes of the Act.

The Commissioner of the District of Columbia believes that the controlled and regulated use of airspace within the rights-of-way of freeways is in the best interest of the District. Accordingly, he strongly urges the enactment of the bill. The District of Columbia Council has expressed its support for this legislation.

Sincerely yours,

GRAHAM W. WATT,
Assistant to the Commissioner.
For: WALTER E. WASHINGTON,
Commissioner.

Attachment.

A BILL To authorize the Commissioner of the District of Columbia to lease airspace above and below freeway rights-of-way within the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "District of Columbia Freeway Airspace Utilization Act."

SEC. 2. When used in this Act—

"Airspace" means so much of the space above, on, and below freeway rights-of-way as is not needed for freeway purposes.

"Commissioner" means the Commissioner of the District of Columbia.

"District" means the District of Columbia.

"Freeway" means any limited access divided highway within the District.

"Right-of-way" means land, property or interest therein acquired for or devoted to a freeway, including connecting ramps.

"United States" means the Government of the United States or any department or agency thereof, including, without limitation, any agency established or authorized to be established by Act of Congress or by interstate compact to which consent of Congress is given.

"Council" means the District of Columbia Council.

SEC. 3. The Commissioner is hereby authorized—

(a) to make or permit such use of airspace in the District for any municipal purpose, including, without limitation, housing for low-income families, public

welfare, public works, park, recreational, and vehicle parking, as will not be detrimental to or impair the efficient use, operation, and maintenance of any freeway ;

(b) to enter into contracts or agreements with the United States for the use of airspace and for the purpose of receiving, or qualifying any permittee or lessee to receive, grants or other financial assistance under available Federal programs in connection with the construction, use, or operation of buildings, structures and other things therein ;

(c) to enter into agreements with the United States for the granting to the United States of easements to use airspace for the purpose of constructing therein Federal public buildings and for such other purposes as may be agreed upon. Such easements shall, for the purpose of section 355 of the Revised Statutes of the United States, as amended (40 U.S.C. 255), be deemed sufficient and valid title in the United States in the areas in which are to be constructed public buildings or other facilities ; and

(d) to enter into leases of, or grant revocable permits for, the use of airspace in the District, including rights of or for support, access, utilities, light and air to an extent not inconsistent with the use of a freeway by the general public for the purpose of travel, and, in connection with any such lease or permit, to impose such terms and conditions including, but not limited to, the deposit of bond or other security, and to provide for the payment of such rents or fees as the Commissioner may, in his discretion, determine to be necessary or desirable, but the Commissioner may, in connection with the entry into a lease, or the granting of a permit, for the use of such airspace, provide as conditions of any such lease or permit (1) that such airspace shall not be used by the lessee or permittee in such manner as to deprive of its easements of light, air, and access any real property not owned or controlled by such lessee or permittee, and (2) that upon the expiration of the lease or permit and of any renewal thereof, any building or other structure which may have been constructed in such airspace shall, at the direction of the Commissioner, be removed therefrom by and at the expense of the lessee or permittee or his successor in interest, and the airspace shall be restored to the condition which obtained prior to the construction of such building or other structure, all to the satisfaction of the Commissioner.

SEC. 4. (a) The authority contained in section 3 shall be exercised by the Commissioner in furtherance of the Comprehensive Plan for the National Capital prepared pursuant to the National Capital Planning Act of 1952 (40 U.S.C. 71) and in the following order of priority :

(1) The Commissioner shall determine whether such space is required for a municipal purpose, as authorized by subsection (a) of section 3, and if he determines the space is so required, he is authorized to make such use of it, or to grant easements therefor to the United States.

(2) The Commissioner shall ascertain, through the Executive Director of the National Capital Housing Authority established by the Act approved June 12, 1934 (48 Stat. 930), whether such space is required for the construction therein of dwellings for low-income families at rents in accordance with their incomes, and if the Commissioner finds that such space is so required he is authorized, with or without charge, to make it available for such construction by granting an easement to use such space, and such easement shall constitute sufficient and valid title in the Authority or in the United States, or in any private developer under contract to convey the completed property to the Authority, as the case may be, to construct therein buildings or other facilities. The use of such space by the Authority shall be subject to such agreement as the Authority has entered into with the District respecting the making of payments in lieu of taxes.

(3) The Commissioner shall ascertain through the Administrator of General Services, whether the United States (other than the National Capital Housing Authority) requires much space for the construction therein of a building, other structure, or facility, and if such space is so required, the Commissioner is authorized to make it available without charge to the United States, or on the basis of such charge as may be agreed upon between the Commissioner and the United States.

(4) The Commissioner shall determine whether such space should be leased to a public or private developer or easements granted to the United States to provide housing for low- and moderate-income individuals and families, and accessory uses if the Commissioner so determines, he may include in such lease, or make such permit subject to, an agreement whereby a prefer-

ence in admission to the housing will be given to low- and moderate-income individuals and families displaced by urban renewal activities or as a result of other governmental action.

(5) The Commissioner shall determine whether the space should be leased to a nonprofit organization, such as a hospital, welfare agency, or the like, for the construction therein of a building, other structure, or facility to be used in connection with the activities of such organization.

(6) The Commissioner shall determine whether such space should be made available for business purposes, including, without limitation, housing for individuals and families.

(b) In connection with the lease of such space either for housing for low- and moderate-income families and families displaced from urban renewal areas or as a result of governmental action, or for use by nonprofit organizations or for business purposes, the Commissioner is authorized to lease the space either on the basis of competitive bids or on a negotiated basis, as the Commissioner determines is in the best interests of the District and of the general public.

SEC. 5. For the purposes of this Act, airspace, and buildings, structures, and improvements constructed or erected within such airspace, pursuant to a lease or permit, shall be deemed to be real property and be liable to assessment and taxation as such from the beginning of the term or period of such lease or permit. For the purposes of real property assessment and taxation, the value of such airspace, other than any building, structure, or improvement constructed or erected therein, shall be deemed to be the value of the underlying land as if the same were not occupied and used for public purposes. No such tax shall be assessed with respect to any airspace and buildings, structures, and improvements therein (1) for which the United States has been granted an easement (but nothing herein contained shall be construed to abrogate such agreement as the United States may have entered into, or may enter into, with the District with respect to making payments in lieu of real property taxes) or used for the purposes specified in subsections (a), (b), and (c) of section 3 of this Act; or (2) occupied and used by one or more organizations exclusively for a purpose or for purposes which under section 1 of the Act of December 24, 1942 (56 Stat. 1089), as amended (D.C. Code, sec. 47-801a), would entitle real property so occupied and used to be exempt from taxation. Except as otherwise provided in this section, for the purposes of this Act the provisions of law applicable to special assessments for public improvements, and the provisions of law applicable to sanitary sewer service charges and to water service charges, shall be applicable with respect to airspace and buildings, structures and improvements therein used pursuant to a lease entered into with, or permit granted to, a lessee or permittee under the authority of subsection (d) of section 3 of this Act. The leasehold or permit interest in any airspace so leased or granted, including any building, structure or improvement constructed or erected therein, shall, in cases of nonpayment of real property taxes, nonpayment of special assessments for public improvements, and nonpayment of sanitary sewer facilities or water service charges, be subject to private, outright sale by the District, without any right in the lessee or permittee to redeem the leasehold or permit interest so sold: *Provided*, That the proceeds from such sale in excess of such delinquent taxes, assessments, or charges, or a combination thereof, including any interest, penalties and costs relating thereto, shall be paid by the District to the lessee or permittee, or to such person as he may, in writing, designate.

SEC. 6. (a) Prior to the entry by the Commissioner into any agreement or lease, or his granting of any permit for the use of airspace, the following actions, except with respect to the construction of public buildings by the Federal or District of Columbia government, shall be taken:

(1) The Zoning Commission of the District of Columbia, after public hearing and after securing the advice and recommendations of the National Capital Planning Commission, shall have determined the use to be permitted in such airspace and shall have promulgated regulations pertaining thereto, including but not limited to, limitations and requirements respecting the height of any structure to be erected in such space, off-street parking and floor area ratio, which limitations and requirements need not be the same as those provided for properties not within airspace. The provisions of section 10 of the Act entitled "An Act providing for the zoning of the District of Columbia and the regulation of the location, height, bulk, and uses of buildings and other structures and of the uses of land in the District

of Columbia, and for other purposes", approved June 20, 1938 (52 Stat. 800; D.C. Code, sec. 5-422), shall be applicable to regulations made pursuant to this section and to violations of such regulations.

(2) The lessee or permittee shall have submitted to the Commissioner and the zoning Commission for their review and approval, plans, elevations, sections, and a scale model for any structure to be erected in such airspace, and a description of the texture, material, and method of construction of exterior walls.

(3) The Commissioner shall have determined that all necessary precautions will be taken to insure adequate protection from air pollution, dirt, noise, light, and glare emitted by vehicles using the freeway. In making such a determination, the Commissioner shall assume a volume of freeway traffic equal to capacity.

(b) (1) The provisions of section 16 of the Act approved June 20, 1938 (52 Stat. 802), as amended (D. C. Code, sec. 5-428), shall be applicable to the construction of Federal buildings in like manner as if the buildings were constructed entirely on property owned by the United States, and, to the extent that such section is, by subsection 5(c) of the National Capital Planning Act of 1952, as amended (40 U.S.C. sec. 71d(c)), made applicable thereto, such section 16 shall also be applicable to the construction by the District of Columbia of any building.

(2) Plans for construction in airspace by the Federal or District Governments shall be subject to consultation, advice, and recommendation of the National Capital Planning Commission in accordance with the National Capital Planning Act of 1952, as amended (40 U.S.C. sec. 71 et seq.).

(3) Plans for construction in airspace shall be subject to review and recommendation of the Commission of Fine Arts to the extent required by, and in accordance with, the Act approved May 16, 1930 (46 Stat. 366), as amended (D. C. Code, secs. 5-410 and 411), the Act approved September 22, 1950 (64 Stat. 903; D. C. Code, title 5, chapter 8), and Executive Orders dated October 25, 1910, and November 28, 1913.

(c) Whenever the Commissioner shall find that there is any significant change in, or substantial modification of, the plans for the proposed structure after such plans have been approved in accordance with the requirements of the preceding subsections of this section and of section 3, or if, after the construction of the structure, he finds there is any significant change in, or substantial modification of, the structure or the use made of it, each such change or modification shall be subject to approval by the agencies specified in this section, as their interests may appear, in like manner as is set forth in subsections (a) and (b) of this section.

SEC. 7. The cost of removing or relocating publicly owned and privately owned facilities in a street, highway, or alley, including, without limitation, water lines and sewers, to the extent that any such removal or relocation is required in connection with the construction of a building in airspace under the authority of this Act, other than a building constructed by or on behalf of the District, shall not be borne by the District, but the cost of any such removal or relocation shall be defrayed by another or by others than the District in accordance with such arrangements as may be acceptable to the Commissioner and be approved by him in writing. The removal or relocation by the District of sewers and water mains, and the removal or relocation of any other facilities in such space, shall be in accordance with plans and schedules approved by the Commissioner.

SEC. 8. Except as provided in section 6, laws and regulations now or hereafter in effect in the District and applicable to the construction, use, and occupancy of buildings and premises, including, but not limited to, building, electrical, plumbing, housing, health, and fire regulations, shall be applicable to buildings, structures, and improvements erected in airspace under lease or agreement entered into or permit issued pursuant to this Act.

SEC. 9. (a) The Council is authorized, after public hearing, to promulgate regulations to carry out the purposes of this Act.

(b) Any regulations adopted under the authority of this section may provide for the imposition of a fine of not more than \$300 or imprisonment for not more than ninety days, or both such fine and imprisonment, for any violation of such regulations. Prosecutions for violations of regulations made pursuant to this section shall be conducted in the name of the District by the Corporation Counsel or any of his assistants.

(c) Whenever there exists any violation or failure to comply with regulations adopted under the authority of this Act, or regulations specified in section 8 of this Act, after notice of such violation or failure has been given by the Commissioner, each and every day such violation exists, or each and every day beyond a time limit set for compliance during which there is failure to comply fully with any of the said regulations or with orders issued pursuant to the authority contained therein, shall constitute a separate offense, and the penalty specified for the violation of such regulation shall be applicable to each such separate offense.

SEC. 10. All collections, including rents and fees, received by the District pursuant to this Act shall be deposited in the Treasury of the United States in a trust fund which is hereby authorized and from which may be paid, in the same manner as is provided by law for other expenditures of the District, such expenditures as are necessary to carry out the purposes of this Act, including, without limitation, necessary expenses connected with the operation, maintenance, and disposition of property coming into the possession of the District by reason of default under leases entered into or permits issued pursuant to this Act: *Provided*, That taxes (including payments in lieu of taxes), special assessments, and sanitary sewer and water service charges shall be deposited directly to the respective funds to which such revenues are normally deposited. The unobligated balance in such trust fund as of June 30 of any year which exceeds \$100,000 shall be deposited in the Treasury to the credit of such special funds or the general fund of the District in such proportions as the Commissioner shall, in his discretion determine.

SEC. 11. Nothing in this Act shall be construed so as to affect the authority vested in the Commissioner by Reorganization Plan No. 3 of 1967 (81 Stat. 948). The performance of any function vested by this Act in the Commissioner or in any office or agency under the jurisdiction and control of said Commissioner may be delegated by the Commissioner in accordance with section 305 of such plan.

SEC. 12. Nothing in this Act shall be construed as modifying or superseding title 23, United States Code: *Provided*, That the use of public space under the authority of this Act shall not be deemed to deprive the District of its eligibility for financial assistance under any federally-assisted program, regardless of the fact that the District may, in the case of a privately owned building, receive rental for the use of such public space.

SEC. 13. If any provision of this Act or of the regulations promulgated under the authority of this Act is held invalid, such invalidity shall not affect other provisions either of this Act or of the said regulations which can be effected without the invalid provision, and to this end the provisions of this Act and the said regulations are separable.

SEC. 14. Appropriations to carry out the purposes of this Act are hereby authorized.

92^D CONGRESS
1ST SESSION

S. 2204

IN THE SENATE OF THE UNITED STATES

JUNE 30, 1971

Mr. STEVENSON (by request) introduced the following bill; which was read twice and referred to the Committee on the District of Columbia

A BILL

To provide for improvements in the administration of the government of the District of Columbia, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That this Act may be cited as the "District of Columbia
 4 Administrative Improvements Act".

5 TITLE I—GENERAL WORKING CAPITAL FUND

6 SEC. 101. In order to control and account more ef-
 7 fectively for the cost of programs, activities, and work per-
 8 formed in the District of Columbia government, there is
 9 established in the Treasury a general working capital fund for
 10 the government of the District of Columbia, to be available
 11 without fiscal year limitation, for the financing of inven-

II

1 tories, services, and common-use equipment, and for other
2 purposes. Such subaccounts as are deemed necessary may be
3 established in the fund. The fund shall be reimbursed for
4 merchandise or services furnished by the fund to a depart-
5 ment or agency of the District of Columbia or Federal Gov-
6 ernment, or to a non-Government entity: *Provided*, That any
7 Government department or agency furnished such mer-
8 chandise or services is authorized to make payment therefor
9 in advance, if required.

10 SEC. 102. The Commissioner of the District of Colum-
11 bia (hereinafter, "Commissioner") is authorized to establish
12 within the fund such reserves as may be necessary, including
13 a reserve for depreciation, and to fix charges which will fund
14 such reserves and cover overhead and administrative costs.

15 SEC. 103. Notwithstanding the provisions of any other
16 law, the Commissioner is authorized to transfer to the fund
17 established by this title the assets (including cash and inven-
18 tories) and liabilities of such existing working or revolving
19 funds as he deems feasible: *Provided*, That when such action
20 is taken, the laws in reference to any such fund shall be
21 superseded by the provisions of this title and any regulations,
22 policies, or procedures issued pursuant thereto.

23 SEC. 104. The Commissioner is authorized to apply
24 the provisions of this title to such other activities as he shall

1 designate and to establish policies and procedures to govern
2 the operation of the fund.

3 SEC. 105. There is authorized to be appropriated such
4 sums as may be necessary to carry out the purposes of
5 this title.

6 TITLE II—WASTE DISPOSAL CONTRACTS

7 SEC. 201. The second paragraph under the subheading
8 “DISPOSAL OF CITY REFUSE” of section 1 of the Act
9 entitled “An Act making appropriations to provide for the
10 expenses of the government of the District of Columbia
11 for the fiscal year ending June thirtieth, nineteen hundred
12 and eleven, and for other purposes”, approved May 18, 1910
13 (36 Stat. 389; D.C. Code, sec. 6-502), is amended to read
14 as follows:

15 “The Commissioner of the District of Columbia is au-
16 thorized to enter into contracts for the collection and disposal
17 of garbage, miscellaneous refuse, ashes, sewage sludge, night
18 soil, and dead animals, for periods not exceeding twenty
19 years, subject to annual appropriations by Congress, under
20 such conditions and specifications as he may prescribe.”

21 SEC. 202. The proviso appearing under the subhead-
22 ing “DISPOSAL OF CITY REFUSE” of section 1 of the Act
23 entitled “An Act Making appropriations to provide for the
24 expenses of the government of the District of Columbia for

1 the fiscal year ending June thirtieth, nineteen hundred and
2 sixteen, and for other purposes", approved March 3, 1915
3 (38 Stat. 904; D.C. Code, sec. 6-502), is repealed.

4 TITLE III—CONTRACTS FOR SUPPLIES AND
5 SERVICES

6 SEC. 301. The Commissioner of the District of Colum-
7 bia is authorized to enter into contracts for periods not
8 exceeding three years for the furnishing of supplies and
9 services to the District of Columbia. Contracts entered into
10 under the authority of this section shall be subject to annual
11 appropriations by the Congress.

12 TITLE IV—JOINT CONTRACTS

13 SEC. 401. The Commissioner of the District of Colum-
14 bia is authorized and empowered to include in contracts for
15 the procurement of supplies and services for the government
16 of the District of Columbia the requirements for like supplies
17 and services of any political division or subdivision in the
18 National Capital region, possessing legal authority to have
19 its supplies and services procured in such manner, upon a
20 request therefor from an official who is authorized to and
21 does thereby obligate such political division or subdivision
22 to perform all liabilities or obligations which may result
23 from the granting of such request or from action taken pur-
24 suant thereto, and after such political division or subdivision
25 shall have paid or agreed to pay its fair share of any in-

1 crease in District of Columbia procurement costs which, in
2 the judgment of the Commissioner, is attributable to the
3 operation of the joint procurement program.

4 SEC. 402. As used in this title, "National Capital region"
5 means the District of Columbia; Montgomery and Prince
6 Georges Counties in Maryland; Arlington, Fairfax, Loudoun,
7 and Prince William Counties in Virginia; and all cities,
8 municipalities, and other political divisions and subdivisions
9 now or hereafter existing within the geographic area bounded
10 by the outer boundaries of the combined area of said counties.

11 TITLE V—AUDITS OF CERTAIN ACTIVITIES AND
12 FUNCTIONS

13 SEC. 501. The eighth and ninth sentences of section
14 7 of "An Act to define the term 'registered nurse' and to
15 provide for the registration of nurses in the District of Co-
16 lumbia" (34 Stat. 889; D.C. Code, sec. 2-408) are amended
17 to read as follows:

18 "The accounts of the Board shall be audited in the same
19 manner as other accounts of the District of Columbia, and for
20 such purposes, the Commissioner of the District of Columbia,
21 or his authorized agent, shall have free access to all books,
22 papers, and records of the Board."

23 SEC. 502. Section 11 of "An Act to regulate boxing
24 contests and exhibitions in the District of Columbia, and for

1 other purposes" (58 Stat. 826; D.C. Code, sec. 2-1220) is
2 amended to read as follows:

3 "The accounts of the Commission shall be audited in the
4 same manner as other accounts of the District of Columbia,
5 and for such purposes, the Commissioner of the District of
6 Columbia, or his authorized agent, shall have free access to
7 all books of accounts, records, and papers of the said
8 Commission."

9 SEC. 503. The penultimate and last sentence of section
10 13 of the Professional Engineers' Registration Act (64 Stat.
11 864; D.C. Code, sec. 2-1813) are amended to read as
12 follows:

13 "The accounts of the Board shall be audited in the same
14 manner as other accounts of the District of Columbia, and for
15 such purposes, the Commissioner of the District of Columbia,
16 or his authorized agent, shall have free access to the books
17 of accounts, records, and papers of the Board."

18 SEC. 504. Section 4 of article II of "An Act to create a
19 Recreation Board for the District of Columbia, to define its
20 duties, and for other purposes" (56 Stat. 263; D.C. Code,
21 sec. 8-211) is amended—

22 (1) by striking out "Board" each place it appears
23 and inserting in lieu thereof "Commissioner"; and

24 (2) by striking out "its" and inserting in lieu
25 thereof "recreational"; and

1 (3) by striking out "quarterly by the auditor" and
2 inserting in lieu thereof "in the same manner as other
3 accounts".

4 SEC. 505. Section 9 of title I of the District of Colum-
5 bia Public School Food Service Act (65 Stat. 370; D.C.
6 Code, sec. 31-1408) is amended to read as follows:

7 "The accounts of the Department of Food Services shall
8 be audited in the same manner as other accounts of the Dis-
9 trict of Columbia."

10 SEC. 506. The tenth paragraph of section 3 of "An Act
11 to define, regulate, and license real-estate brokers, business
12 chance brokers, and real-estate salesmen; to create a Real
13 Estate Commission in the District of Columbia; to protect
14 the public against fraud in real-estate transactions; and for
15 other purposes" (50 Stat. 788; D.C. Code, sec. 45-1403)
16 is amended to read as follows:

17 "The accounts of the Commission shall be audited in the
18 same manner as other accounts of the District of Columbia,
19 and for such purposes, the Commissioner of the District of
20 Columbia, or his authorized agent, shall have free access
21 to all books of accounts, papers, and records of the said
22 Commission."

23 SEC. 507. The third sentence of section 2 of title I
24 of "An Act to provide additional revenue for the District
25 of Columbia, and for other purposes" (50 Stat. 673; D.C.

1 Code, sec. 47-1402) is amended (1) by striking out
2 "Commissioners" and inserting in lieu thereof "Commis-
3 sioner"; and (2) by striking out "the auditor of the
4 District of Columbia and shall be audited by him", and
5 inserting in lieu thereof "and audited by the Commissioner
6 or his authorized agent".

7 TITLE VI—VOLUNTEER SERVICES

8 SEC. 601. The Commissioner of the District of Columbia
9 is authorized, notwithstanding any other provision of law, to
10 accept or permit the acceptance of the service of persons volun-
11 teering (1) to perform services as members of various boards
12 or commissions established as part of the municipal government
13 of the District of Columbia, such services to be performed on the
14 basis of no compensation, or on the basis of the payment of hon-
15 oraria in such amounts as the Commissioner in his discretion
16 may from time to time determine, and (2) to furnish infor-
17 mation, receive and refer complaints and inquiries, provide
18 transportation services, and perform other functions in fur-
19 therance of related community-oriented programs. The serv-
20 ices of such volunteers shall not be employed in replacement
21 of the duties of persons in authorized positions in the com-
22 petitive service. The Commissioner is further authorized to
23 provide for the payment of all necessary expenses incurred
24 by such persons in connection with carrying out the duties
25 assigned to them, including traveling expenses. Persons per-

1 forming services for and on behalf of the municipal govern-
2 ment of the District of Columbia under the authority of this
3 title shall not be considered employees of the Govern-
4 ments of the United States or of the District of Columbia
5 for purposes of laws relating to retirement, insurance, health
6 benefits, veterans' preference, or any Act relating to employees
7 of such governments, except as otherwise provided in this title.

8 SEC. 602. Persons performing volunteer services for
9 the District of Columbia under the authority of this title
10 shall not be personally liable in damages for any action in
11 which said persons participate, nor shall any such person
12 be liable for any costs that may be taxed against him on
13 account of any action by him in connection with the per-
14 formance of any function delegated to him; nor shall any
15 such person be required to give any bond or security for
16 costs or damages or any appeal whatever.

17 SEC. 603. (a) Subject to the other subsections of this
18 section, volunteers serving under the authority of this title
19 shall be deemed to be employees of the District of Columbia
20 for the purposes of eligibility under subchapter I of chap-
21 ter 81 of title 5 of the United States Code, relating to com-
22 pensation for employment-connected injury or death, and
23 any subsequent amendment thereof; and liability under such
24 subchapter I shall be exclusive and in place of all other

1 liability of the District of Columbia or of the United States
2 or of the agents, officers, and employees of either, to the
3 employee, his legal representatives, spouse, dependents,
4 next-of-kin, and anyone otherwise entitled to recover dam-
5 ages from the District of Columbia or the United States or
6 from the agents, officers, and employees of either, on ac-
7 count of such injury or death, in any judicial proceedings,
8 or by proceedings whether administrative or judicial, under
9 any other workmen's compensation law: *Provided*, That
10 for benefit computation, regardless of pay or status, such
11 volunteer shall be deemed to have had a monthly pay in an
12 amount fixed by the Commissioner but not exceeding one-
13 twelfth of the maximum rate for grade 15 of the General
14 Schedule contained in section 5332 (a) of title 5, United
15 States Code.

16 (b) Where, because of his status elsewhere as an em-
17 ployee or as a retired annuitant or pensioner, such volunteer
18 accrues benefits for disability or death under the District of
19 Columbia workmen's compensation law, or the workmen's
20 compensation law of any State or territory, or subchapter I
21 of chapter 81 of title 5, United States Code, or under a pen-
22 sion or disability system applicable to members of a police
23 force or fire department, the volunteer entitled to such other
24 benefits shall not be entitled to benefits for the same injury
25 under this section.

1 (c) The District of Columbia shall have a lien and a
2 right of recovery, to the extent of any payment made under
3 this section on account of injury or death, against any com-
4 pensation paid or payable under any of the laws enumerated
5 in subsection (b) on account of the same injury or death;
6 and any amounts recovered under this subsection shall be
7 deposited in the Treasury to the credit of the revenues of the
8 District of Columbia.

9 (d) Whenever a claim is filed with the Secretary of
10 Labor for benefits because of an alleged injury or death
11 within the purview of this title, he shall notify the Commis-
12 sioner of the District of Columbia who shall investigate or
13 cause to be investigated the facts surrounding such alleged in-
14 jury and make certification with respect thereto, including
15 certification as to such injured or deceased person's status as
16 a volunteer under this title, and whether the injury or death
17 arose out of and in the course of performing service as a vol-
18 unteer for and on behalf of the municipal government of the
19 District of Columbia. Such certification shall not excuse the
20 making of such reports as are required by subchapter I of
21 chapter 81 of title 5 of the United States Code, nor shall it be
22 conclusive as to any facts therein.

23 (e) Any compensation award made pursuant to the au-
24 thority contained in this section shall be paid in the manner

1 provided by law for the payment of general expenses of the
2 government of the District of Columbia.

3 SEC. 604. Volunteers serving under the authority of this
4 title shall, for the purposes of the District of Columbia Em-
5 ployee Non-Liability Act approved July 14, 1960 (74 Stat.
6 519; D.C. Code, sec. 1-921 et seq.), be deemed to be
7 employees of the District of Columbia.

8 SEC. 605. Appropriations to carry out the purposes of
9 this title are hereby authorized.

10 SEC. 606. Nothing in section 601 of this title shall
11 be construed as making inapplicable to persons performing
12 volunteer services as authorized by this title the provisions
13 of the Act entitled "An Act to strengthen the criminal
14 laws relating to bribery, graft, and conflicts of interest, and
15 for other purposes"; approved October 23, 1962 (76 Stat.
16 119).

17 TITLE VII—RECOVERY OF EXPENSES FROM
18 NEGLIGENT THIRD PERSONS

19 SEC. 701. Whenever the District of Columbia is au-
20 thorized or required by law to (a) furnish or pay the ex-
21 penses of hospital, medical, surgical, or dental care and
22 treatment (including prostheses and medical appliances),
23 or the funeral expenses, of an officer or member of the
24 Metropolitan Police force or of the Fire Department of
25 the District of Columbia (hereinafter, "policeman or fire-

1 man"); or (b) extend leave of absence with pay to a
2 policeman or fireman who is injured or suffers a disease
3 under circumstances creating a tort liability upon a third
4 person to pay damages therefor (whether or not received
5 or contracted in the performance of duty), the District
6 of Columbia shall have a right to recover from said third
7 person the reasonable value of the care and treatment
8 so furnished or to be furnished, or for which payment has
9 been or will be made, and the amount of wages paid
10 or to be paid during the leave of absence resulting there-
11 from, and shall, as to such right, be subrogated to any
12 right or claim which the injured or diseased policeman or
13 fireman, his guardian, personal representative, estate, de-
14 pendents, or survivors has or have against such third person
15 to the extent of the reasonable value of the care and treat-
16 ment so furnished or to be furnished, or for which payment
17 has been or will be made, and the amount of wages based
18 upon an authorized leave of absence paid or to be paid
19 to such policeman or fireman. The Commissioner may also
20 require the injured or diseased policeman, his guardian, per-
21 sonal representative, estate, dependents, or survivors, as
22 appropriate, to assign his claim or cause of action against
23 the third person to the District of Columbia to the extent
24 of the District's right or claim.

25 SEC. 702. To enforce such right, the District of Colum-

1 bia may (a) intervene or join in any action or proceeding
2 brought by the injured or diseased policeman or fireman, his
3 guardian, personal representative, estate, dependents, or
4 survivors, against the third person who is or may be liable
5 in damages for the injury or disease; or (b) if such action
6 or proceeding is not commenced within six months after the
7 first day in which care and treatment is furnished by the
8 District of Columbia in connection with the injury or disease
9 involved, institute and prosecute legal proceedings in a
10 District of Columbia, State or Federal court, either alone
11 (in its name or in the name of the injured policeman or
12 fireman, his guardian, personal representative, estate, de-
13 pendents, or survivors) or in conjunction with the injured
14 policeman or fireman, his guardian, personal representative,
15 estate, dependents, or survivors, against the third person who
16 is liable for the injury or disease. Any employee of the Dis-
17 trict of Columbia or of the United States who is required
18 to appear as a party or witness in the prosecution of said
19 action or proceeding is, when directed to participate in the
20 preparation for trial or the trial thereof, and while so en-
21 gaged, in an active duty status.

22 SEC. 703. (a) The District of Columbia shall have a lien,
23 to the amount of the reasonable value of the care and treat-
24 ment, funeral expenses, and wage payments described in
25 section 701, upon any recovery or sum received or collected

1 or to be collected by an injured or diseased policeman or
2 fireman, his guardian, personal representative, estate depend-
3 ents, or survivors, in a claim or action asserted or main-
4 tained by such policeman or fireman or his personal repre-
5 sentative against a liable third person for damages.

6 (b) No such lien described above shall be effective,
7 however, unless, prior to the payment of any moneys to such
8 injured or diseased policeman or fireman, his attorney, or
9 personal representative as compensation for such injury or
10 disease, the District of Columbia shall have filed in the office
11 of the Recorder of Deeds of the District of Columbia in a
12 docket provided for such liens, a written notice containing
13 the name and address of the injured or diseased policeman or
14 fireman, the date and approximate place of the accident or
15 incident giving rise thereto, and the name of the person
16 alleged to be liable to the policeman or fireman for the in-
17 juries or disease received; nor unless the District of Columbia
18 shall also mail, postage prepaid, a copy of such notice with a
19 statement of the date of filing thereof to the person alleged
20 to be liable to the policeman or fireman for the injuries or
21 disease received, prior to the payment of any moneys to such
22 injured or diseased policeman or fireman, his attorney, or
23 personal representative as compensation for such injury or
24 disease. Where the name of an insurance carrier for the third

1 party tortfeasor is ascertained, the District of Columbia shall
2 also mail a copy of such notice to such insurance carrier.

3 (c) Any person, including an insurance carrier, which,
4 after the mailing of such notice, shall make any payment to
5 such policeman or fireman or to his attorney or personal
6 representative as compensation for the injury sustained or
7 disease contracted, without paying to the District of Colum-
8 bia the amount of its lien or so much thereof as can be satis-
9 fied out of the moneys due under any final judgment or com-
10 promise or settlement agreement after paying the amount
11 of any prior liens, shall for a period of one year from the
12 date of payment to such policeman or fireman, his attorney,
13 or personal representative, as aforesaid, be and remain liable
14 to said District of Columbia for the amount which the Dis-
15 trict was entitled to receive as aforesaid; and the District of
16 Columbia, may, within such period, enforce said lien by an
17 action against the person making any such payment.

18 (d) Whenever a policeman or fireman or his attorney
19 or personal representative receives, as a result of an action
20 or proceeding brought by the policeman or fireman or on
21 his behalf, or as a result of a settlement made by him or
22 on his behalf, any moneys or other property in satisfaction
23 of the liability of a third person for the injury sustained or
24 disease contracted, such policeman or fireman or his attorney
25 or personal representative, as the case may be, shall ascertain

1 and pay to the District of Columbia the amount of its lien or
2 so much thereof as can be realized out of any such recovery
3 or settlement. Notwithstanding any other provision of law,
4 whenever a policeman or fireman or his attorney or personal
5 representative receives any payment as described in the pre-
6 ceding sentence and fails to pay to the District of Columbia
7 the amount of its lien, the District of Columbia is authorized
8 to take appropriate action to recover from such policeman or
9 fireman or his attorney or personal representative the amount
10 of its lien as aforesaid, including, but not limited to, the right
11 to counterclaim, setoff, or attach moneys or other property
12 otherwise due and payable from the District of Columbia to
13 said policeman or fireman, his guardian, personal representa-
14 tive, estate, dependents, or survivors.

15 SEC. 704. The District of Columbia Council is author-
16 ized to promulgate rules and regulations to carry out the
17 purposes of this title, including, but not limited to, regula-
18 tions (a) with respect to the determination and establish-
19 ment of the reasonable value of the hospital, medical, surgi-
20 cal, or dental care and treatment (including prostheses and
21 medical appliances) furnished or to be furnished, or paid or
22 to be paid; and (b) to provide procedures for distributing
23 the proceeds from recoveries and settlements obtained by
24 either the injured or diseased policeman or fireman or the

1 District of Columbia: *Provided*, That in any event said
2 policeman or fireman, or his guardian, personal representa-
3 tive, estate, dependents, or survivors shall be paid, or shall
4 have the right to retain, not less than one-fifth of the net
5 amount of any recovery or settlement remaining after the
6 legal expenses thereof have been deducted.

7 SEC. 705. To the extent prescribed by regulations
8 under section 704, the Commissioner may (a) compromise,
9 or settle and execute a release of, any claim which the Dis-
10 trict of Columbia has by virtue of the rights established by
11 sections 701, 702, or 703; or (b) for the convenience of
12 the District of Columbia, or if the Commissioner determines
13 that collection would result in undue hardship upon the
14 policeman or fireman who suffered the injury or disease
15 resulting in care and treatment described in section 701,
16 or upon his dependents or survivors, waive any such claim
17 in whole or in part.

18 SEC. 706. No action taken by the District of Columbia
19 in connection with the rights afforded under this title shall
20 operate to deny to the injured or diseased policeman or fire-
21 man recovery for any damages or portion thereof not covered
22 by this title.

23 SEC. 707. Nothing in this title shall be deemed to apply
24 to any hospital, medical, surgical, or dental care or treatment,
25 or wage payments based upon an authorized leave of absence

1 which a policeman or fireman is receiving, or is entitled to re-
 2 ceive, from the District of Columbia for an injury received or
 3 disease contracted prior to enactment of this title.

4 SEC. 708. As used in this title the term "Commissioner"
 5 means the Commissioner of the District of Columbia or his
 6 designated agent, and the term "person" means an individ-
 7 ual, firm, partnership, joint stock company, corporation, as-
 8 sociation, incorporated society, statutory or common law
 9 trust, estate, executor, administrator, receiver, trustee, con-
 10 servator, liquidator, committee, assignee, officer, employee,
 11 principal, or agent.

12 SEC. 709. Appropriations to carry out the purposes of
 13 this title, including funds for the advancement of costs and
 14 expenses for the enforcement of recoveries, are hereby
 15 authorized.

16 TITLE VIII—AUTHORIZATION OF
 17 APPROPRIATIONS

18 CONFIDENTIAL FUNDS

19 SEC. 801. The Commissioner of the District of Co-
 20 lumbia, the Chairman of the District of Columbia Council,
 21 the Superintendent of Schools, the President of the Federal
 22 City College, the President of the Washington Technical
 23 Institute, and the President of the District of Columbia
 24 Teachers College are hereby authorized to provide for the
 25 expenditure, within the limits of specified annual appro-

1 through 27-131), or of the District of Columbia Public As-
2 sistance Act of 1962 (D.C. Code, sec. 3-201 et seq.).

3 FUNDS FOR THE PREVENTION AND DETECTION OF CRIME

4 SEC. 804. The Chief of Police of the Metropolitan
5 Police Department is authorized, with the approval of the
6 Commissioner of the District of Columbia and within the lim-
7 its of appropriations therefor, to make expenditures for the
8 prevention and detection of crime under his certificate. The
9 certificate of the Chief of Police for such expenditures shall
10 be deemed a sufficient voucher for the sum therein expressed
11 to have been expended.

12 EXPENSES OF PISTOL MATCHES

13 SEC. 805. The Commissioner of the District of Colum-
14 bia is authorized to pay the expenses of officers and members
15 of the Metropolitan Police Department for attending pistol
16 matches, including entrance fees, and is further authorized to
17 permit officers and members to attend such matches without
18 loss of pay or time.

19 FIRE PROTECTION SERVICES

20 SEC. 806. The Commissioner of the District of Colum-
21 bia is authorized to make provisions and payment for the
22 furnishing of fire prevention and fire protection services to
23 District of Columbia government institutions located outside
24 the District of Columbia.

1 BENEFITS FURNISHED WORKERS IN DISTRICT FACILITIES

2 SEC. 810. Notwithstanding any other provision of law,
3 the Commissioner of the District of Columbia is authorized
4 to furnish, pursuant to regulations prescribed by the District
5 of Columbia Council, subsistence, living quarters, and laun-
6 dry in lieu of salary to persons authorized by the Commis-
7 sioner to work in facilities of the government of the District
8 of Columbia for the purpose of securing training and expe-
9 rience in their future vocations. Nothing contained herein
10 shall be construed as conferring employee status on any
11 person covered by this section, nor as superseding the re-
12 quirements of sections 5352 and 5353 of title 5, United
13 States Code, relating to student employees specified therein
14 who are assigned or attached to a hospital, clinic, or medical
15 or dental laboratory.

16 CIVIL DEFENSE MATCHING FUNDS

17 SEC. 811. Section 3 (h) of the Act entitled "An Act to
18 authorize the District of Columbia government to establish
19 an Office of Civil Defense, and for other purposes", approved
20 August 11, 1950 (64 Stat. 439; D.C. Code, sec. 6-1203
21 (h)), is amended by striking the semicolon and inserting
22 in lieu thereof a comma and the following: "and, when au-
23 thorized by the Commissioner, appropriations available to
24 the District of Columbia may be used to match financial con-

1 tributions made by any department or agency of the United
2 States to the government of the District for the purchase of
3 civil defense equipment and supplies;”.

4 SNGW AND ICE REMOVAL

5 SEC. 812. Notwithstanding any other provision of law,
6 appropriations for the Department of Highways and Traffic
7 and the Department of Sanitary Engineering of the gov-
8 ernment of the District of Columbia shall be available for
9 purposes of snow and ice control when so ordered by the
10 Commissioner of the District of Columbia.

11 CONSTRUCTION SERVICES WORKING FUND

12 SEC. 813. There is established in the Treasury of the
13 United States a permanent working fund, without fiscal year
14 limitation, to be known as the “Construction Services Fund,
15 Department of General Services, District of Columbia.” The
16 Commissioner is authorized to transfer to such fund from
17 capital outlay appropriations for public building construction
18 such amounts as he may deem necessary to carry out the
19 purposes of this section, and, subject to subsequent adjust-
20 ment, advances and reimbursements may be made to such
21 fund from appropriations for services to other departments
22 and agencies of the District government, without reference
23 to fiscal year limitations on such appropriations. The fund
24 shall be available for expenses incurred in the initial plan-
25 ning for construction projects, for work performed under

1 contract or otherwise, including, but not limited to, pre-
2 liminary planning and related expenses, surveys, preparation
3 of plans and specifications, soil investigation, administration,
4 overhead, planning design, engineering, inspection, and con-
5 tract management.

6 ACQUISITION OF LAND FOR WASHINGTON AQUEDUCT

7 SEC. 814. Appropriations are hereby authorized for the
8 acquisition, by gift, dedication, exchange, purchase, or con-
9 demnation, of land or rights in or on land or easements
10 therein for the Washington Aqueduct by the Chief of
11 Engineers, Corps of Engineers, United States Army, or his
12 designated agents.

13 PAYMENT OF REWARDS

14 SEC. 815. The Commissioner of the District of Co-
15 lumbia is authorized to provide for the payment of rewards
16 for the capture, or for information leading to the apprehen-
17 sion, of fugitives from District of Columbia penal, correc-
18 tional, and welfare institutions and of conditional release
19 and parole violators. Funds appropriated pursuant to this
20 section shall be apportioned and expended in the discretion
21 of, and upon such conditions as may be imposed by, the
22 Commissioner of the District of Columbia: *Provided*, That
23 no reward money shall be paid to any officer or employee of
24 the Metropolitan Police Department or of any penal, cor-
25 rectional, or welfare institution.

1 DISCHARGE AND RELEASE PAYMENTS

2 SEC. 816. The Commissioner of the District of Colum-
3 bia is authorized to furnish each prisoner upon his release
4 from a penal or correctional institution under the jurisdic-
5 tion of the government of the District of Columbia with
6 suitable clothing and, in the discretion of the Commissioner,
7 a sum of money, which shall not exceed \$100.

8 SUMMER SCHOOL COMPENSATION

9 SEC. 817. Compensation payable to personnel em-
10 ployed in the summer school program of the public school
11 system of the District of Columbia is hereby authorized to
12 be charged to the appropriation for the fiscal year in which
13 the pay periods end.

14 DRIVER EDUCATION PROGRAM

15 SEC. 818. The Board of Education is authorized, within
16 the limits of appropriations therefor, to accept, on a loan
17 basis, and to maintain and provide for insurance of passen-
18 ger motor vehicles, for use in the driver education program
19 of the public schools.

20 ADMINISTRATIVE EXPENSES OF WORKMEN'S

21 COMPENSATION LAW

22 SEC. 819. The Act entitled "An Act to provide com-
23 pensation for disability or death resulting from injury to em-
24 ployees in certain employments in the District of Columbia,
25 and for other purposes", approved May 17, 1928, as amended

1 (D.C. Code, secs. 36-501, 502), is further amended by re-
2 numbering section 3 as section 4 and by inserting the follow-
3 ing new section immediately after section 2:

4 "SEC. 3. Appropriations are hereby authorized for pay-
5 ment of all necessary expenses incurred by the United States
6 Department of Labor in the administration of this Act."

7 AMENDMENT OF LAWS RELATING TO ADVERTISING

8 SEC. 820. (a) The second sentence of section 1 of the
9 Act approved February 28, 1898 (30 Stat. 250; D.C.
10 Code, sec. 47-1001), is amended to read as follows: "The
11 notice of sale and the delinquent tax list shall be adver-
12 tised once a week for two successive weeks in the regular
13 issue of a daily newspaper of general circulation published
14 in the District of Columbia; and notice shall be given, by
15 advertising twice a week for two successive weeks in the
16 regular issues of two daily newspapers published in the
17 District of Columbia, that such delinquent tax list has been
18 published in a daily newspaper, giving the name of such
19 newspaper and the dates and the issues containing said list,
20 and such notice shall be published in the two weeks im-
21 mediately following the week in which the delinquent tax
22 list shall have been published: *Provided*, That competitive
23 proposals shall be invited by the Commissioner of the Dis-
24 trict of Columbia from the various daily newspapers pub-

1 lished in the District for publishing the said delinquent tax
2 list.”

3 (b) Section 7 of the Act approved February 28, 1898
4 (30 Stat. 252; D.C. Code, sec. 47-1008), is amended to
5 read as follows:

6 “The expenses of advertising the notice of sale and de-
7 linquent tax list for real property taxes, water charges, sani-
8 tary sewer service charges, and special assessments in arrears
9 together with penalties and costs, shall be reimbursed to the
10 District by a charge to be fixed annually by the Commis-
11 sioner and assessed against each lot or piece of property
12 advertised. The amounts so received shall be deposited to
13 such fund of the District as the Commissioner shall from time
14 to time determine.”

15 (c) The first sentence of section 5 of the Act approved
16 June 11, 1878 (20 Stat. 105; D.C. Code, sec. 7-601), is
17 amended by striking “and if the total cost shall exceed five
18 thousand dollars, then in one newspaper in each of the
19 cities of New York, Philadelphia, and Baltimore also for
20 one week,” and inserting in lieu thereof: “but not elsewhere,
21 unless the need for advertising outside the District shall have
22 been specifically approved by the Commissioner”.

23 (d) Appropriations authorized by this title or any Act
24 of Congress shall be available to the Commissioner for gen-
25 eral advertising authorized and required by law, and for the

1 publication of notices of public hearings, orders, regulations,
2 amendments of orders and regulations, tax and school notices,
3 and similar matters of public interest, in the District of Co-
4 lumbia Register, and, except as otherwise provided by law,
5 in such newspapers, legal periodicals, trade journals, and
6 other printed media at such times and in such places as may
7 be approved by the said Commissioner.

8 PURCHASE OF MALPRACTICE INSURANCE

9 SEC. 821. The Commissioner of the District of Colum-
10 bia is hereby authorized to provide for the purchase of mal-
11 practice insurance, including the payment of premiums and
12 other costs, to indemnify medical personnel, including phy-
13 sicians, dentists, osteopaths, and nurses, employed in hospi-
14 tals, clinics, and other medical facilities under the control of
15 the Government of the District of Columbia, for any judg-
16 ment of damages that may be awarded against such
17 personnel.

18 STUDENT LOAN PROGRAM

19 SEC. 822. (a) There is established in the Treasury of
20 the United States a revolving fund to be known as the "Fed-
21 eral City College Student Emergency Loan Fund, District of
22 Columbia". The fund shall be available without fiscal year
23 limitation and shall be used for the purpose of providing
24 emergency loans to students of the Federal City College
25 under standards prescribed by the Board of Higher Educa-

1 tion, with the approval of the Commissioner of the District
2 of Columbia. The fund shall be available for the payment
3 of all necessary expenses related to the issuance and collection
4 of such loans. Revenues from the repayment of loans shall be
5 deposited to the credit of the fund. The Board of Higher Edu-
6 cation is authorized to use amounts appropriated to the Dis-
7 trict of Columbia for the purposes of this section to establish
8 the fund.

9 (b) Notwithstanding the provision of any other law, if
10 the student borrower on any loan issued pursuant to this
11 section is a minor, any otherwise valid note or other written
12 agreement executed by him for the purposes of such loan
13 shall create a binding obligation.

14 COLLEGE BOOKSTORE FUND

15 SEC. 823. There is established in the Treasury of the
16 United States a revolving fund to be known as the "Fed-
17 eral City College Bookstore Fund, District of Columbia".
18 The fund shall be available without fiscal year limitation and
19 shall be used for the purpose of establishing and maintain-
20 ing a bookstore to purchase and sell textbooks and other
21 books at such prices as the Board of Higher Education may
22 from time to time determine necessary to approximate the
23 cost thereof to the District of Columbia, including such
24 administrative and overhead costs as are directly related to
25 the fund. Receipts from the sales of books and services shall

1 be deposited to the credit of the fund. The Board of
2 Higher Education is authorized to use amounts appropriated
3 to the District of Columbia for the purposes of this section to
4 establish the fund.

5 SCHOOL CEREMONIAL EXPENSES

6 SEC. 824. The President of the Federal City College, the
7 President of the Washington Technical Institute, the Presi-
8 dent of the District of Columbia Teachers College, and the
9 Superintendent of Schools are hereby authorized to utilize
10 moneys appropriated for the purposes of this section for such
11 expenses as they may respectively deem necessary to conduct
12 official ceremonial, representational, and graduation activ-
13 ities normally associated with the programs of educational
14 institutions.

15 SUBSISTENCE AND TRANSPORTATION FOR HANDICAPPED

16 CHILDREN

17 SEC. 825. The Board of Education is authorized to pro-
18 vide for the furnishing of subsistence supplies and trans-
19 portation for severely handicapped children attending special
20 education schools or classes established for their benefit in
21 the public school system of the District of Columbia.

22 APPROPRIATIONS

23 SEC. 826. Appropriations to carry out the purposes
24 of this title and the amendments made by this title are
25 hereby authorized.

THE DISTRICT OF COLUMBIA,
Washington, D.C., October 27, 1971.

Hon. THOMAS F. EAGLETON,
Chairman, Committee on the District of Columbia,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Commissioner of the District of Columbia has for report S. 2204, a bill "To provide for improvements in the administration of the government of the District of Columbia, and for other purposes".

S. 2204 is virtually identical to draft legislation submitted to the Congress by the Commissioner on April 30, 1971. A detailed summary of the provisions and a justification of the proposed legislation accompanied the transmittal to the Congress. A copy of that material is attached and the Commissioner requests that it be made a part of the record on S. 2204.

Title VIII of S. 2204 authorizes a number of appropriations for the District of Columbia in order to clarify the authority of the District to expend funds under various provisions of the annual appropriation bills. Since submission of this legislation, two additional authorizations have been brought to our attention as a result of inclusions in the pending appropriation bill for the 1972 fiscal year. It is, therefore, requested that the following additional provisions be included in title VIII of S. 2204:

"Sec. 826. The Commissioner of the District of Columbia is authorized to enter into contracts in connection with projects undertaken as Federal-aid highway projects under the provisions of the Federal Aid Highway Act of December 20, 1944, as amended, in such amounts as shall be approved by the Federal Highway Administration, Department of Transportation.

"Sec. 827. The Commissioner of the District of Columbia is authorized to construct grade-crossing elimination and other wholly District construction projects or those authorized under section 8 of the Act of June 16, 1936 (49 Stat. 1521), and section 1(b) of the Federal Aid Highway Act of 1938, as amended, in accordance with the provisions of such Acts. Pursuant to this authority, the Commissioner may make payment to contractors and payment for other expenses in connection with the costs of surveys, design, construction, and inspection pending reimbursement to the District of Columbia by the Federal Highway Administration, Department of Transportation, or other parties participating in such projects."

In connection with title VIII of S. 2204, there is also attached a statement in further explanation of each of the sections in that title.

In the belief that S. 2204 will provide much needed improvements in the administration of the District Government, the Commissioner of the District of Columbia urges favorable consideration of the bill.

Sincerely yours,

GRAHAM W. WATT,
Assistant to the Commissioner.
For: WALTER E. WASHINGTON,
Commissioner.

Attachments.

SUMMARY OF PROVISIONS AND JUSTIFICATION OF THE PROPOSED DISTRICT OF
COLUMBIA ADMINISTRATIVE IMPROVEMENTS ACT

TITLE I—GENERAL WORKING CAPITAL FUND

Title I of the proposed legislation authorizes the establishment in the Treasury of the United States of a general working capital fund, without fiscal year limitation, to be used for the financing of inventories, services, and common-use equipment, for the possible centralization of such services as the Central Garage, and for other purposes. The general working capital fund is expected to result in closer control of assets and inventories. It would replace such of the existing working capital funds as the Commissioner considers feasible and such other activities of the Government of the District of Columbia as he shall designate. However, existing funds of a specialized nature will not be affected.

The first capitalization of the new general working fund would result from a transfer of assets and inventories from those funds which the Commissioner determines should appropriately be included in the new fund, with credit

to the appropriate District agency for such transfer. The depletion of the inventories so transferred would be charged to the using agency in like manner as is presently done under section 1-224(k) of the District of Columbia Code in situations involving placement of orders by a department, office, or agency of the District with another District department, office, or agency, and payment of cost therefor. Additional needs, including the purchase of further inventories or services, would be met by annual appropriations, as is now done with the existing working capital funds, as well as by the sale of assets and inventories on hand.

Since a working capital fund should be self-sustaining to the extent feasible, title I authorizes the Commissioner to charge each using agency at such rate as will provide for the recovery of all costs, including overhead and administrative costs and appropriate allowances for depreciation.

The establishment of such a fund would facilitate the installation of accrual accounting, simplify accounting operations, and obviate the present problems concerning unexpended balances of the appropriations granted a certain District agency.

Appropriations from Congress would be required only to supplement the initial capitalization or for additional inventories.

The creation of such a fund would have several advantages. It would facilitate the proper utilization of common use items, thus making it unnecessary for one department or agency to order supplies which another has in abundance. It would promote the proper distribution of the cost of common-use equipment, materials, and supplies, and simplify administrative procedures for the financial and physical control of inventories through the use of one common fund for ordering, pricing, distributing, and otherwise accounting for such items.

TITLE II—WASTE DISPOSAL CONTRACTS

Section 201 of the bill amends existing law (D. C. Code, sec. 6-502) to vest in the Commissioner authority to enter into contracts for the collection and disposal of wastes and refuse, including garbage, ashes, and sewage sludge, for periods not exceeding twenty years. Such contracts would remain subject to annual appropriations by the Congress. At present waste disposal contracts are limited to periods not exceeding five years. Section 202 of title II repeals the second sentence set out in section 6-502 of the District of Columbia Code, as being unnecessary.

The District of Columbia, along with other metropolitan areas, is greatly concerned with the need to improve methods and programs for the disposal of the vast quantities of wastes which are generated by our urbanized populations. The general objective, of course, is to dispose of these unwanted materials economically and by means which will not damage the environment or increase the danger of pollution.

Waste disposal problems are most critical to the District, among all the jurisdictions in the Washington Metropolitan Area, because of its central location, its population concentration, and the exhaustion of all land suitable for receiving the wastes or their residues which, in any case, must be returned to the land.

The District's most immediate problem concerns arrangements for the disposal of solid wastes, especially that of sewage sludge. Among the more practical solutions to this problem are the barging or piping to sea or the pumping or transportation to abandoned mines in Appalachia of such waste products, either of which may involve joint or separate contracting and very heavy capital expenditures, for which long-term amortization must be provided.

It is essential, therefore, that authority be granted the District to negotiate and execute contracts, either separately or jointly with other jurisdictions, on a long-term basis to allow amortization of the very significant costs involved in the acquisition, construction, and equipping of the facilities which are required in the disposal of solid wastes.

TITLE III—CONTRACTS FOR SUPPLIES AND SERVICES

Title III of the proposed bill authorizes the Commissioner to enter into contracts with private business firms for the furnishing of supplies and services to the District for periods not exceeding three years, subject to the availability of funds through appropriations by Congress for the period or periods beyond the initial year.

Under existing law the District Government is not, with certain exceptions, authorized to execute multi-year contracts or long-term agreements. Contracts for most supplies and services furnished the District are, therefore, executed or renewed annually. This one-year contract limitation precludes the District from obtaining maximum potential benefits and savings.

The advantage of contracting for certain items for periods in excess of one year are many, particularly with respect to contracts for services. Presently, the District is party to approximately 250 contracts valued at about \$6,000,000 which are renewed annually. This yearly renewal not only generates a heavy workload but many of these contracts lapse, thereby creating a demand for open market purchases until deliveries begin under a new contract. Longer term contracts will provide savings through the reduced workload resulting from elimination of the annual preparation of plans and specifications and the costly advertising process while at the same time retaining the benefits of competition. Business firms supplying the District would also benefit from guaranteed business over a longer period of time. Contractors who do not have existing capabilities to handle a contract for one year would be in a position to increase or expand their facilities and to compete for the supplying of materials and services if the contract were for a longer period. The added competition logically would produce better prices to the District and coincidentally prove beneficial to the small business firms located within the District of Columbia.

Finally, multi-year contracts, it is believed, will provide better continuity of service to the District departments and agencies who are the beneficiaries thereof, improved quality of service at probably lower prices through familiarity of the supplier with the contract specifications and conditions, and provide an effective means of combating problems in areas of inadequate competition or where antitrust violations may be suspected.

TITLE IV—JOINT CONTRACTS

Under title IV of the proposed legislation the Commissioner of the District of Columbia is authorized to enter into joint contracts for supplies and services on behalf of the District of Columbia and for other political divisions and subdivisions in the National Capital region.

The Regional Chief Administrators' Group of the Metropolitan Washington Council of Governments has informed the District of Columbia Government that a program of joint contracting for supplies and services would be of considerable benefit to the several political divisions and subdivisions comprising the National Capital region, by which is meant that area consisting of the District of Columbia; the Counties of Montgomery and Prince Georges in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities, municipalities, and other political divisions and subdivisions now or hereafter existing within the geographic area bounded by the outer boundaries of the combined area of the said counties.

It is believed that the following benefits would result from the institution of such a program: (a) savings by virtue of lower prices effected through larger quantity prices; and (b) savings in administrative and clerical costs by elimination of duplicate functions.

On behalf of the several political divisions and subdivisions of the National Capital region, the Commissioner under this title would propose a joint contracting program for the procurement of services and supplies which would have the following principal features:

(a) All joint supply and service contracts would be entered into by the Commissioner of the District of Columbia;

(b) Participation in the proposed joint procurement program would be voluntary. A political division or subdivision would determine and control the extent of its participation. It would determine those commodities or services it desires to procure through any such program and submit its request therefor to the Commissioner;

(c) The Commissioner would prepare specifications and programs, notify the divisions and subdivisions of proposed commodity and service procurement programs in which they may participate, consolidate requirements submitted by such divisions and subdivisions if acceptable for consolidation, advertise and open bids, award contracts, furnish agencies with contract price schedules,

specifications, terms and conditions, administer contracts, and take actions against contractors when a contractor's failure to perform under the contract term is reported by an agency;

(d) The Commissioner would of necessity reserve the right to refuse a request of a division or subdivision for participation if, in his opinion, pooling of the requirement is not workable or advantageous.

The Commissioner recognizes that the administration of the joint contracting program, although generally of benefit to the participating political divisions or subdivisions in the National Capital region, nevertheless would create some additional work for the Bureau of Procurement of the District of Columbia, particularly in functions that require ascertaining specific supplies and services usable by the several divisions or subdivisions, the development of requirements, the development of contract provisions necessary to meet delivery conditions and other situations peculiar to the divisions or subdivisions, the administration of contracts that relate to the needs of the several divisions or subdivisions, and the publishing of contract information and related data for guidance of the participants in the joint contracting program. The Commissioner is not in a position to state at this time the volume of additional staffing which might be needed in the initial stages of the program. However, as the scope of the program is more defined and the degree of participation by the divisions and subdivisions is better established, some determination of staff requirements can be made. As these determinations become possible, the Commissioner anticipates that he will call upon the participating divisions and subdivisions to contribute toward meeting such needs, either by making an appropriate cash payment or by furnishing clerical assistance and supplies, as each division or subdivision may determine for itself.

TITLE V—AUDITS OF CERTAIN ACTIVITIES AND FUNCTIONS

This title of the draft bill amends certain statutes covering a variety of activities and functions, which are specifically required by law to be audited on a quarterly, annual, or individual basis, to require only that these accounts be audited in the same manner as other accounts of the District of Columbia. The accounts involved are those of the Nurses' Examining Board, the Boxing Commission, the Board of Registration for Professional Engineers, the Recreation Trust Fund, the Food Service Fund of the Board of Education, the Real Estate Commission, and the Finance Office in connection with its audit of each restraint and sale of personal property for the recovery of taxes.

The Commissioner believes that audits of these accounts at the frequencies presently required by law are not now essential and in some instances are impractical.

At the time these laws were enacted audits at the specified frequencies were needed. In the ensuing years since their enactment, however, significant improvements have been made in the internal accounting controls of the District Government. Better accounting systems and procedures, including the use of electronic equipment, have provided most of the improvements. These improved controls have reduced the risks of fraud and waste, thereby permitting the intervals between audits to be lengthened with reasonable safety. If at any time it should appear that controls over the functions and activities involved are not operating effectively, the Commissioner would again initiate frequent audits as an administrative action until improvement was demonstrated.

Enactment of title V will not result in additional costs. On the contrary, some savings of audit time are anticipated. Additional audit time is urgently needed and these savings would assist in meeting the increasing audit requirements of the District Government.

TITLE VI—VOLUNTEER SERVICES

Title VI of the bill authorizes the Commissioner of the District of Columbia to accept or permit the acceptance of the performance by volunteers of services for and on behalf of the municipal government of the District of Columbia.

Under existing law the District of Columbia generally is prohibited from utilizing the services of persons who desire to volunteer those services to the District, usually with no expectation of compensation, in the interest of performing a public service. Although there are statutory exceptions to this gen-

eral rule, as in the case of services performed for the Health Services Administration (Acts of July 15, 1939, June 12, 1940, and August 3, 1951; D.C. Code, sec. 1-215 note and sec. 32-327), and the Social Services Administration (Acts of May 18, 1910 and October 15, 1962; D.C. Code, sec. 3-119 and sec. 3-221), by and large no person who wants to perform service for the District as a civic duty without compensation may do so. This situation results from a provision of the Act of July 7, 1898 (30 Stat. 652 at 666; D.C. Code, sec. 1-215), and section 4 of Reorganization Plan No. 5 of 1952 (66 Stat. 824). The Act of July 7, 1898, provides that—

“The Commissioners [now Commissioner] of the District of Columbia shall not accept volunteer service for the government of the District of Columbia or employ personal services in excess of that authorized by law except in cases of sudden emergency involving the loss of human life or the destruction of property.” (Bracketed language added.)

Section 4 of Reorganization Plan No. 5 of 1952 in part provides that each officer performing the functions delegated to him “shall receive compensation to be fixed in accordance with the classification laws.” The effect of the foregoing provisions is that in general the District Government is unable to permit or accept the performance of services for it by any person not compensated for such services.

In many instances, public-spirited citizens of the District have indicated a willingness and a desire to perform civic duties on a volunteer basis by serving as members of various boards or commissions on which it is desirable to have representatives of the general public. It would appear equally desirable and beneficial to the District Government to utilize the services of uncompensated volunteers in a variety of activities involving relationships with the public, such as furnishing information, receiving and referring complaints and inquiries, providing transportation to patients and inmates of District institutions and facilities, and performing related functions in connection with other community-oriented programs. The services of such volunteers would be employed to supplement or complement existing activities and programs, and not to replace authorized positions in the competitive service.

Where such volunteer service is advisory only there is no problem. The Commissioner has been advised by the Corporation Counsel that in such circumstances a person acting in an advisory capacity is not performing a function for which he must be compensated. In many cases, however, it may be desirable to have public-spirited citizens serve in a capacity which does in fact involve the performance of a function; i.e., as members of boards or commissions of the District Government which perform governmental functions. In cases of this kind the matter of compensation has two aspects—(1) persons who are motivated by a desire to serve the city as volunteers may not want to receive compensation for their services; and (2) many potential volunteers consider it advisable, by reason of the possible application of laws relating to conflicts of interest, to perform no service for the District of Columbia Government which might render them subject to prosecution for violations of any such law in connection with carrying on their vocations. With respect to the problem set forth in the second of the foregoing clauses, section 606 of title VI is designed to indicate to potential volunteers that they may be within the ambit of the Act of October 23, 1962 (76 Stat. 1119), relating to conflicts of interest, depending upon the extent of their activities on behalf of the District Government.

In order, therefore, to permit the use of public-spirited citizens in various capacities in the Government of the District of Columbia, the Commissioner proposes the enactment of legislation which would allow the District to accept the performance of services by volunteers, either with or without the payment of honoraria. Section 601 of title VI vests the Commissioner of the District of Columbia with such authority. It specifies further that the Commissioner may reimburse volunteers for any expenses incurred by them in connection with their activities for the District of Columbia. This section of title VI does, however, emphasize that such persons are not employees of the District of Columbia or of the United States for any purpose, except to the extent provided in the proposed legislation.

Section 602 of title VI provides that a person performing volunteer services for the District shall not be liable in damages for any official action in which he may participate or for any costs that may be taxed against him in a legal proceeding arising out of any such action. Neither shall any person serving as

a volunteer be required to give bond or other security in connection with a civil proceeding arising out of any of his acts as a volunteer.

Another problem in connection with the use of volunteers in the performance of services for the District of Columbia is the possibility that a volunteer may be injured or may die as the result of, or while he is engaged in, the performance of duty. Subchapter I of chapter 81 of title 5 of the United States Code provides compensation for those employees of the District of Columbia who may be injured or who may die while engaged in the performance of duty for the District, but since title VI specifies that volunteers performing services for the District pursuant to the proposed legislation are not to be considered employees of the United States or the District of Columbia, such volunteers would not ordinarily be entitled to the benefits of these provisions of title 5 of the United States Code. The proposed title VI deals with this problem by establishing, in section 603, a means whereby volunteers performing services for the District who may be injured or who may die as a result thereof, will be entitled to be compensated for such injury or death in like manner as if they were civil employees of the District.

Further, such volunteers may, in connection with their work for the District, find it necessary or desirable to operate motor vehicles owned by or under the control of the District. Accordingly, section 604 of title VI provides that a volunteer who, while serving in such capacity, operates a motor vehicle owned or controlled by the District, shall be considered an "employee" of the District, within the meaning of that word as used in the District of Columbia Employee Non-Liability Act approved July 14, 1960 (74 Stat. 519; D.C. Code, sec. 1-921 et seq.).

Only to the extent provided in sections 603 and 604 of title VI are persons who perform services for the District as volunteers to be considered as employees of the District.

Section 605 authorizes appropriations to carry out the purposes of title VI, whether with respect to the payment of honoraria where such payment, in the discretion of the Commissioner, is desirable or necessary, or with respect to the payment of compensation to the extent required by the provisions of Subchapter I of chapter 81 of title 5, United States Code.

Section 606 provides that nothing in title VI shall be construed as making inapplicable to persons performing volunteer services any provision of the Act entitled "An Act to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes", approved October 23, 1962.

TITLE VII—RECOVERY OF EXPENSES FROM NEGLIGENT THIRD PERSONS

The purposes of title VII of the proposed bill are to provide for (1) the recovery by the District of Columbia from negligent third persons responsible therefor of the cost of hospital, medical, surgical, or dental care and treatment in cases in which such services have been furnished by or paid for by the District of Columbia, and (2) reimbursement to the District of Columbia for funeral expenses and for salary payments based upon an approved leave of absence with pay, paid pursuant to authority or requirement of law, to or on behalf of an officer or member of the Metropolitan Police force or of the Fire Department of the District of Columbia who is injured or suffers a disease under circumstances creating a tort liability against such third persons.

Under present law, the District of Columbia is required to furnish, without charge, through the Board of Police and Fire Surgeons, or, where the Board of Surgeons is not equipped to furnish the same, through physicians and surgeons in private practice, medical services and treatment to all members of the Metropolitan Police force and the Fire Department of the District of Columbia. In addition, members of these forces who become temporarily disabled by injury received or disease contracted in the performance of duty to such an extent as to require medical or surgical services or hospital treatment have the expenses thereof paid by the District of Columbia, and they may also receive during such period of temporary disability full salary payments based upon an approved leave of absence with pay. Further, the Commissioner of the District of Columbia is authorized to pay a sum not exceeding \$300 to defray the funeral expenses of a deceased member. Such members are not subject to the sick leave provisions applicable to other civilian employees of the Government, but neither, on the other hand, are they eligible to participate in the benefits afforded by the provisions of 5 U.S.C. sec. 8101 et seq., relating to compensation for work injuries sustained by Federal and District civilian employees.

Section 701 of title VII of the bill creates a right on the part of the District of Columbia to recover from third party tortfeasors for certain specified services and payments, and provides that, as to this right of recovery, the District of Columbia shall be subrogated to any right that the injured or diseased policeman or fireman has against the tortiously liable third party. This section also provides that the Commissioner may require the injured employee or his representative to assign to the District his claim against the negligent third party insofar as it relates to services and payments furnished by the District.

Section 702 makes provision for enforcement of the right of recovery authorized in section 701. The District of Columbia may (1) intervene or join in any action for damages brought by or on behalf of the policeman or fireman, or (2) if no such action is taken by the policeman or fireman within six months after treatment is furnished or incurred, the District of Columbia, either alone or in conjunction with the policeman or fireman, may institute action in court against the responsible third party. This section also provides that any government employee appearing as a party or witness in the preparation for trial or trial of any such action shall be deemed to be in an active duty status while so appearing.

Section 703 provides in subsection (a) that, in a claim or action for damages asserted or maintained by a policeman or fireman, or his representatives, against the tortiously liable third party, the District of Columbia shall have a lien against any recovery to the extent of the reasonable value of the services and treatment furnished or incurred or wage payments paid or to be paid. In order to make the lien right effective, however, the District is required, under section 703 (b), to file with the Recorder of Deeds of the District of Columbia a written notice containing information concerning the accident or incident, and to mail to the person alleged to be liable to the policeman or fireman, a copy of such notice. Where an insurance carrier is involved and the name of the carrier is ascertained, a copy of such notice shall also be mailed by the District to such carrier. Subsection (c) of section 703 makes provision for enforcement of such lien rights by the District of Columbia whenever a third person, after notice, makes payment to the injured policeman or fireman, or his representative, without first paying to the District the amount of its lien or so much thereof as can be satisfied out of any moneys due. Section 703 (d) imposes a duty upon a policeman or fireman, or his attorney or personal representative, to ascertain and pay the District the amount of its lien whenever such policeman or fireman or someone on his behalf receives moneys or other property as the result of a settlement with or a recovery against a liable third person. This subsection further authorizes the District to take appropriate action to recover the amount of its lien, by way of counterclaim, setoff, attachment, or otherwise, whenever a policeman or fireman or his representative fails or refuses to make such payment.

The District of Columbia Council is authorized under section 704 to promulgate rules and regulations necessary to implement the provisions of the bill. Specifically, such regulations must provide (1) for determination and establishment of the reasonable value of care and treatment furnished a policeman or fireman by the Board of Police and Fire Surgeons or paid by the District of Columbia to others for care and treatment of the policeman or fireman, and (2) procedures for distributing proceeds from recoveries and settlements obtained by the policeman or fireman or by the District. A proviso to this section provides that out of any settlement or recovery the policeman or fireman or his legal and personal representatives will receive or retain not less than one-fifth of the net amount remaining after all legal expenses, such as court costs, legal fees, and attorneys' fees, have been deducted.

Section 705 authorizes the Commissioner, under appropriate regulations, to (1) compromise, settle, or release any claims which the District has by virtue of title VII, or (2) waive any such claim in whole or in part, if it is determined that collection thereof would cause undue hardship to the injured policeman or fireman, or to his dependents or survivors.

Section 706 makes clear that the provisions of title VII shall not impair the right of the policeman or fireman himself to recover damages other than the cost of medical and hospital care and wages based upon leave of absence with pay. Section 707 is intended to prevent retroactive application of the provisions of the bill.

Section 708 contains definitions of the terms "Commissioner" and "person". Section 709 authorizes appropriations to carry out the purposes of title VII, including sums needed for the advancement of costs and expenses in court proceedings.

Experience has shown that the expenses of the District of Columbia involved in the care and treatment of injured policemen and firemen have been, in several cases, quite substantial, and each year a great many dollars of such costs are not recovered. The principle of seeking payment from negligent third parties has been recognized by the Congress in a number of statutes, among them the Federal Employees' Compensation Act (now codified to subchapter I of chapter 81 of title 5, United States Code), the Railroad Unemployment Insurance Act, and the Longshoremen's and Harbor Workers' Compensation Act. The provisions of title VII are patterned after those of the Act approved September 25, 1962 (76 Stat. 593; 42 U.S.C. sec. 2651 et seq.), providing for the recovery from tortiously liable third persons of the cost of hospital and medical care and treatment furnished by the United States. Title VII is intended to further supplement the right of recovery and extends this principle to what is probably the sole remaining group of government employees not affected by present statutes. Enactment of title VII of the proposed legislation will not result in any additional costs to the District of Columbia and it is believed that its provisions will prove to be of considerable benefit to local revenues.

TITLE VIII—AUTHORIZATION OF APPROPRIATIONS

Title VIII of the bill provides, in twenty-six separate sections, substantive legislation for certain limitations, legislative provisions, and activities which heretofore have been authorized only by language contained in various District of Columbia appropriation acts. District appropriation acts prior to 1962 carried an individual listing of departments, and specific appropriations and limitations were shown for each of these departments. The District of Columbia Appropriation Act, 1962 (75 Stat. 560) consolidated or eliminated many of these individual items and categories, and added a new general provision, section 15, which carried over into fiscal year 1962 the limitations and legislative provisions contained in the 1961 Appropriation Act. All subsequent appropriation acts for the District of Columbia, including the Act for the fiscal year ending June 30, 1971, have contained a similar section 15 provision.

Section 801 of title VIII authorizes the expenditure, within the limits of specified annual appropriations, of funds by the Commissioner of the District of Columbia, the Chairman of the District of Columbia Council, the Superintendent of Schools, and the Presidents of the Federal City College, Washington Technical Institute, and District of Columbia Teachers College, on their respective certificates, in connection with matters of a confidential nature which each deems necessary in overseeing, as the case may be, the operations of the District government, the public school system, and the respective educational institutions with which they are charged.

Section 802 provides a basis in permanent law for appropriation of funds to be expended by the Commissioner to meet conditions caused by emergencies such as riot, pestilence, public insanitary conditions, flood, fire, storm, and similar disasters.

Section 803 authorizes the Commissioner, under regulations prescribed by the District of Columbia Council, to provide for the payment of funeral and burial services for deceased indigent residents of the District and for children and adults under the care of District institutions. Such persons include children and adults residing at various District welfare institutions, prisoners incarcerated in penal and correctional institutions, and patients in hospitals, for whom the responsibility of disposal at public expense may and often does fall upon the District government.

While there is statutory authority for the cremation of indigents and for the burial of recipients of public assistance, in general the responsibility of furnishing most burial services is authorized only by language appearing in appropriation Acts. Enactment of section 803 would provide the requisite authority for furnishing funeral and burial services, and under the authority to prescribe regulations would afford the flexibility needed to establish standards of eligibility and adequate administrative procedures.

Section 804 provides substantive law authorizing the Chief of Police of the Metropolitan Police Department, with the approval of the Commissioner and within the limits of appropriations, to expend funds for the prevention and detection of crime. This section authorizes such expenditures under the certificate of the Chief of Police. Security, one of the essential elements for successful investigations in the detection and prevention of crime, obviously could not be

maintained if the Chief of Police were required to submit itemized vouchers for expenditures from the fund and the information thereon were accessible to persons outside the Department. The fund is subject to audit by the District's Office of Municipal Audits and past audits indicate that the present internal controls for the expenditure of these funds are adequate.

Section 805 provides substantive law authorizing the payment of expenses for attendance by members of the Metropolitan Police Department at pistol matches, including entrance fees, without loss of pay or time. The Commissioner believes that it is in the interest of efficiency that the Metropolitan Police Department develop the skill of marksmanship in its police officers, and encourage and maintain that skill by means of participation in competitive matches.

Section 806 authorizes the Commissioner to make provision and payment for the furnishing of fire prevention and fire protection services to District institutions and facilities located in the neighboring jurisdictions outside the District of Columbia.

Section 807 provides a permanent, substantive basis in law for the furnishing of financial assistance by way of cash gratuities to indigent patients in need thereof at Glenn Dale Hospital located in the State of Maryland. The funds provided are to be used by the patients primarily to purchase small, personal grooming aids. Glenn Dale Hospital is an institution devoted to the treatment of tuberculosis and other chronic diseases, and the period of hospitalization is usually lengthy. Many of the patients admitted are destitute, and monies available from charitable organizations or private sources have not fully supplied the total needs of such indigent patients. The annual appropriation, limited in amount as it is, has nevertheless been very helpful in meeting personal welfare needs of the patients, and in contributing to their morale, treatment, and rehabilitation.

Section 808 authorizes the Commissioner to enter into contracts with and to make payments to institutions under sectarian control for the care of patients, women, and children who are a responsibility of the District of Columbia. This authority is necessary to overcome the effect of a provision first contained in the District of Columbia Appropriation Act for the fiscal year ending June 30, 1897, under the heading "Board of Children's Guardians" (29 Stat. 393, 411) and repeated in the Appropriation Act for the fiscal year ending June 30, 1898 (29 Stat. 665, 683). The provisions in these Acts, among other things, declared it to be the policy of the Government of the United States to make no appropriation of money or property for the purpose of founding, maintaining, or aiding by payment for services, expenses, or otherwise, any church or religious denomination, or any institution or society which is under sectarian or ecclesiastical control.

Notwithstanding the prohibition in the 1897 and 1898 Appropriation Acts, the Congress from time to time has appropriated funds for the care of patients in institutions under sectarian control and for the care and maintenance of women and children in such institutions. By its annual appropriation of funds for such purposes, the Congress has recognized the existence of a need which can be met only by utilizing such institutions, but has not enacted permanent legislation authorizing such appropriations. The Commissioner strongly believes that the availability of care afforded by sectarian institutions should continue and that the Congress should authorize the appropriation of funds to provide such care.

Section 809 authorizes the Commissioner, pursuant to regulations prescribed by the District of Columbia Council, to make payment of stipends to patients and residents employed in institutions of or under programs sponsored by the District of Columbia. The section further provides that payment of such stipends shall not confer employee status on the affected persons. Utilization of the services, in useful and productive activities, of patients and residents of District health and welfare institutions is of mutual benefit. To the persons rendering such services, there is provided remuneration and physical therapy which aids in their rehabilitation and enhances the possibilities of their successful readjustment to non-institutional living. The District Government, on the other hand, secures the use of necessary and valuable services, conserves manpower, and is enabled to release to the community better-trained and motivated citizens.

Section 810 of title VIII authorizes the Commissioner to furnish, pursuant to regulations prescribed by the District of Columbia Council, subsistence, living quarters, and laundry to certain persons who, although not employees of the District of Columbia, are permitted to work in facilities of the District Government for the purpose of securing training and experience in their future voca-

tions. Under the authority of annual appropriations, a considerable number of persons work in facilities of the Government of the District of Columbia under an arrangement whereby, in exchange for their services in fields of activity in which they desire to secure training and experience, they are given subsistence in lieu of salary. The proposed section 810 of the bill will operate in conjunction with, but will not supersede, the provisions of sections 5351 through 5356 of title 5 of the United States Code authorizing the utilization of student-employees, such as a student nurse, medical or dental intern, resident-in-training, student dietician, student physical therapist, and student occupational therapist in District hospitals, clinics, and laboratories. The Health Services Administration, the Social Services Administration, and the Department of Corrections all have a need for the services of persons seeking training and experience in their future vocations. Such persons, having completed, or in the course of completing, their academic studies in the field in which they intend to specialize, can, under supervision, provide services beneficial to the District of Columbia. At the same time, the District Government, with its great variety of needs, is in a position to furnish these students with the training and experience they seek.

Section 811 of the bill amends section 3(h) of the Act approved August 11, 1950 (D.C. Code, sec. 6-1203(h)), to provide that when, authorized by the Commissioner, appropriations available to the District of Columbia may be used to match financial contributions made by any department or agency of the United States to the government of the District for the purchase of civil defense equipment and supplies. The statute under which the District's Office of Civil Defense was established, authorizing said Office to "utilize the services, equipment, supplies, and facilities of existing agencies of the District", contemplates that assistance in the matter of supplies might be extended to the Office of Civil Defense by other District agencies. This is standard practice in the States. In the opinion of the Comptroller General of the United States the wording of the Office of Civil Defense appropriation language is such that it should cover all expenses necessary and other funds of the District may not be used to supplement civil defense activities. The amendment proposed by section 811 will allow the Commissioner to authorize expenditure of funds of other District departments for matching purposes for items approved by any Federal agency or department for civil defense equipment and supplies.

Section 812 makes appropriations available for snow and ice control. For many years, District of Columbia appropriation acts have included, in one form or another, a provision allowing the utilization for snow and ice control of appropriations for activities presently embraced within the scope of the Department of Highways and Traffic and the Department of Sanitary Engineering. The history of this provision indicates that it was inserted in the appropriation acts to eliminate any question as to whether the funds appropriated for these activities could be made available for snow and ice control. Accordingly, the Commissioner recommends the enactment of legislation specifically authorizing this action.

Section 813 establishes a permanent construction services working fund. The need for the District Government for advances of funds appropriated for construction projects for the initial planning stages thereof was first recognized by the Congress in the District of Columbia Appropriation Act, 1925 (43 Stat. 541) wherein a percentage of such appropriations was authorized for planning purposes.

In order to provide adequately for the financial requirements of the District Government in connection with the preliminary planning, survey, architectural, engineering, and other work related to public building construction projects and repair and improvement projects provided for in appropriations for the various District departments, a working fund is necessary. Such a fund provides flexibility in the application of available funds to all of the projects involved; a means by which these services may be performed for various District departments and the cost thereof charged to the proper appropriation or fund; and a source of funds for financing advance planning. The Commissioner considers it desirable to make such fund available to pay for initial planning services performed under contract. This will provide additional flexibility in the use of available funds, and uniformity in the method of recording and reporting costs, without loss of over-all financial control. It will also provide permanent authority for entering into contracts for these services.

Section 814 provides substantive law for the acquisition, by gift, dedication, exchange, purchase, or condemnation, of land or easements therein for the Washington Aqueduct. There is a continuing need for authority by officials of the Corps of Engineers to acquire land for purposes related to the supply of water to the District of Columbia. The Commissioner believes it to be desirable that a basis in permanent law be sought for such acquisitions to meet future needs.

Section 815 authorizes the Commissioner to provide for the payment to persons other than Officers and members of the Metropolitan Police Department and officials and employees of District institutions, of rewards, in amounts discretionary with the Commissioner and upon such conditions as he may impose, for the capture, or for information leading to the apprehension, of fugitives from District of Columbia penal, correctional, and welfare institutions and of conditional release and parole violators. The authority which the Commissioner seeks under the terms of this section of the bill is similar in purpose to the discretionary authority possessed by the Attorney General of the United States pursuant to § 3059 of title 18, United States Code, to pay rewards for the capture of persons charged with violation of the criminal laws of the United States.

Section 816 authorizes the Commissioner to furnish suitable clothing and monetary payments, in an amount not in excess of \$100, to persons released from District of Columbia penal and correctional institutions. The authority provided by the proposed section 816 is identical with that provided the Attorney General of the United States under § 4281 of title 18, United States Code, with respect to Federal prisoners.

Critical to the success of a released prisoner in re-establishing himself in the free community is the period immediately after discharge and until he can become gainfully employed. Much effort and considerable investment is made during the prisoner's confinement in providing education and training to equip him with the tools of a lawful livelihood. To release many such persons to the community with little or no funds to sustain them during the period of readjustment aborts the considerable rehabilitative efforts that have been provided. The Commissioner believes that from a correctional as well as a rehabilitative viewpoint the furnishing of discharge gratuities is worthwhile, and that authority for these activities should be continued by a permanent provision of law.

Section 817 provides that compensation payable to personnel employed in the summer school program of the public school system may be charged to the appropriation for the fiscal year in which the pay periods end. The so-called Anti-deficiency Act (§ 3679 of the Revised Statutes) which was made applicable to the District of Columbia by the Act approved July 1, 1902 (D.C. Code, § 47-106), *inter alia*, prohibits "payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law." Enactment of section 817 will provide a basis for the continuation of procedures of the public schools, now authorized by annual appropriation acts, which greatly simplify the pay roll and accounting records.

Section 818 authorizes the Board of Education to accept on a loan basis, and to maintain and provide appropriate insurance coverage on passenger motor vehicles used in the driver education program of the public schools.

Section 819 amends the Act approved May 17, 1928 (D.C. Code, §§ 36-501, 502) to provide permanent authority for the assessment against appropriations of the District of Columbia of administrative expenses incurred by the Department of Labor in enforcing within the District applicable provisions of the Longshoremen's and Harbor Workers' Compensation Act. Workmen's compensation laws are not administered by any agency of the District of Columbia. Administration of the program and disbursement of necessary funds with respect to employment in the District is vested in the Bureau of Employees' Compensation, United States Department of Labor. Reimbursement for expenditures attributable to administrative operations in the District is accomplished by a transfer of funds from District appropriations to the Department of Labor under the authority of annual appropriation acts. Section 819 will provide the requisite statutory authority for the transfer of such funds.

Subsection (a) of section 820 amends the second sentence of section 1 of the Act approved February 28, 1898, as amended (D. C. Code, § 47-1001) to eliminate the requirement that an annual notice of sale and the delinquent tax list of real property in the District to be sold for nonpayment of taxes shall be advertised in both a morning and evening newspaper, and provides, in lieu thereof, for publication of such notice and tax list in only one daily newspaper of general

circulation published in the District. As a matter of fact, publication of the notice of sale and delinquent tax list has, since 1934, been made in one daily newspaper, rather than two, pursuant to a proviso which first appeared in the District Appropriation Act for the fiscal year ending June 30, 1935 (46 Stat. 846).

The Commissioner is of the view that publication of the notice of sale and tax list in one daily newspaper, together with the present requirement that notice be given in the regular issues of two additional daily papers that such a list has been so published, should provide sufficient coverage of and publicity for an ensuing tax sale as well as afford affected property owners and other interested parties with adequate notice thereof. In view of the obvious economies to be secured by advertising in only one newspaper, and the further fact that the Congress has provided temporary authority for such limited advertising for the past thirty-four years, the Commissioner urges favorable consideration of subsection (a) of section 820.

Subsection (b) amends section 7 of the Act of February 28, 1898, as amended (D. C. Code, § 47-1008), to authorize the Commissioner to fix annually a charge for each lot or piece of property advertised in the delinquent tax list and to deposit the amounts so received to such fund of the District as the Commissioner may in his discretion determine.

Subsection (c) amends the first sentence of section 5 of the Act approved June 11, 1878 (D. C. Code, § 7-601) to eliminate the requirement of advertising in New York, Philadelphia, and Baltimore newspapers, of highway, sewer, and public works repair and construction projects whenever the cost thereof exceeds \$5,000. Under the proposed amendment, such advertising in the newspapers of other cities will be ordered only in those instances which are specifically approved by the Commissioner. Language to obviate the necessity of advertising in out-of-town newspapers first appeared as a proviso in the District Appropriation Act for the fiscal year ending June 30, 1933 (47 Stat. 349) and similar language has been included in all subsequent appropriation acts enacted for the District. The cost of advertising in non-local newspapers is excessively expensive and wider and better coverage of pending construction projects can be obtained through notices in trade journals at no cost to the District. The Commissioner, therefore, recommends enactment of subsection (c) to make permanent his authority to permit out-of-town advertising only when the need therefor is specifically demonstrated.

The fourth subsection consolidates and makes permanent several provisions of law which heretofore have appeared in various appropriation acts. Subsection (d) makes appropriations available to the Commissioner for general advertising authorized and required by law and, additionally, authorizes the Commissioner to publish notices of public hearings, orders, regulations, amendments, tax and school notices, and similar matters of public interest in the District of Columbia Register and, except as otherwise provided by law, in such newspapers, legal periodicals, trade journals, and other printed media as he considers necessary. The flexible authority provided by this subsection will enable the Commissioner to continue his present policies of giving widespread dissemination, coverage, and publicity to matters affecting the public interest as well as the interests of the District government and which are essential to the effective daily operations of a modern municipality.

Section 821 authorizes the purchase of malpractice insurance to indemnify physicians, dentists, osteopaths, and nurses employed in hospitals, clinics, and other medical facilities of the District, for any judgment of damages that may be awarded against them.

Section 822 establishes a revolving fund in the Treasury, without fiscal year limitation, to be known as the "Federal City College Student Emergency Loan Fund". The fund is to be used for the purpose of providing emergency loans to students of the Federal City College under standards prescribed by the Board of Higher Education with the approval of the Commissioner. The fund shall be available for payment of expenses related to the issuance and collection of such loans. Subsection (b) of section 822 provides that any otherwise valid note or written agreement executed by a minor to secure an emergency loan shall create a binding obligation.

Section 823 establishes a revolving fund in the Treasury, without fiscal year limitation, to be known as the "Federal City College Bookstore Fund", for the purposes of maintaining a bookstore at the College to purchase and sell textbooks

to students. The books are to be sold at such prices as the Board of Higher Education determines necessary to approximate the cost thereof to the District of Columbia, including related administrative and overhead costs. All receipts from the sale of books and services are to be deposited in the fund so established.

Section 824 authorizes the Presidents of the Federal City College, Washington Technical Institute, District of Columbia Teachers College, and the Superintendent of Schools to expend such funds as may be appropriated for the purposes of conducting official ceremonial, representational, and graduation activities of the kind usually associated with the programs of educational institutions.

Section 825 authorizes the Board of Education to provide subsistence to and transportation for severely handicapped children attending special education classes and schools in the public school system of the District of Columbia. Because of the nature of the physical and mental handicaps of atypical pupils attending special programs and facilities, it is vitally necessary if these children are to secure an education that they receive subsistence and transportation assistance.

Section 826 authorizes appropriations to carry out the purposes of title VIII and the amendments to other laws made by title VIII.

EXPLANATION OF POINT OF ORDER ITEMS FISCAL YEAR 1972 DISTRICT OF COLUMBIA APPROPRIATIONS BILL

AIA SECTION 801—CONFIDENTIAL FUNDS

This provision provides confidential funds for the Mayor (\$2,500), City Council Chairman (\$2,500), Superintendent of Schools (\$1,000), and Presidents of Federal City College, Washington Technical Institute, and D.C. Teachers College (\$1,000 each). The provision allows the above named officials to make expenditures within the authorized appropriations without such expenditures being subject to audit. If the provision is eliminated, the officials will lose the applicable appropriations and the flexibility to expend funds for confidential purposes. The total appropriation associated with these funds is \$9,000.

AIA SECTION 802—EMERGENCY EXPENSES

The provision allows the Mayor to make expenditures for public emergencies, such as riot, flood, and storm, without following the regulations requiring advertising for the purchase of goods. Thus, it provides an exemption to the requirements of 28 Stat. 33 in times of emergencies. While the elimination of the provision will not result in the loss of special appropriations, it will severely limit the chief executive officer's flexibility in dealing with public emergencies. The provision is found in the General Provisions of the appropriations act, which have been carried forward since Fiscal Year 1961.

AIA SECTION 803—FUNERAL AND BURIAL EXPENSES

The District Government now has statutory authority only for the cremation of indigents (34 Stat. 123, which established the District of Columbia crematorium) and for the burial of indigent recipients of public assistance (76 Stat. 917; and 3-213, D.C. Code, Supp. IV). The provision in the appropriations bill allows the District Government to provide for burial of indigents at public expense even if they are not public assistance recipients. This authority is considered necessary because relatives of indigents or children who are wards of the city may not be able to pay burial expenses, but they do object to having the deceased cremated. Also the District Government, as a matter of policy, does not cremate children who die while wards of the city. No loss of funds is associated with deletion of this provision.

AIA SECTION 804—CHIEF OF POLICE'S CONFIDENTIAL FUND

This provision allows the Chief of Police to make expenditures for the prevention and investigation of crime with only his certificate as voucher. These expenditures are thus not subjected to audit. These funds are used primarily in financing undercover agents, especially those engaged in drug abuse work. If

these expenditures were subjected to audit, the secrecy of these operations would be lost, and the effectiveness of the undercover agents would be seriously reduced. Such action might place the lives of the agents in jeopardy.

The Fiscal Year 1972 budget requests that this fund be increased from \$100,000 to \$200,000. The Police Department maintains that these funds would not be lost if the provision were deleted; rather they would have to be subjected to normal auditing procedures. The language eliminating the requirement for audit first appeared in the 1908 Appropriations Act (34 Stat. 1143).

AIA SECTION 805—EXPENSES OF PISTOL MATCHES

This provision allows the Police Department to pay tuition, entrance fees, travel, and subsistence costs of members of the Police Department who participate in specialized police training classes and pistol matches. It also allows the police officers to participate in these activities without loss of pay. An appropriation for a pistol team first appeared in the 1940 Appropriations Act (54 Stat. 321).

The Police Department has stated that participation in pistol matches builds expertise in the Department, as well as improving officer morale. About \$1,500 is used for this purpose each year.

AIA SECTION 806—FIRE PROTECTION SERVICES FOR INSTITUTIONS OUTSIDE THE DISTRICT OF COLUMBIA

This provision authorizes the District Government to make provisions and payment for the furnishing of fire prevention and fire protection for D.C. institutions that are outside the District of Columbia. This provision now applies specifically to Glenn Dale Hospital. A sum of \$1,200 per year is now being paid to the Glenn Dale Volunteer Fire Association. These funds are used to help defray the costs of special services and equipment provided by the Volunteer Fire Association for the protection of Glenn Dale. These funds would be lost if the item were deleted. More importantly, the hospital would be left with inadequate fire protection unless the institution itself found the funds to provide needed personnel and equipment. This provision first appeared in the 1957 Appropriations Act.

AIA SECTION 807—GRATUITIES TO PATIENTS

This provision authorizes the District of Columbia Commissioner to furnish cash gratuities to needy patients at Glenn Dale Hospital. The sum of \$1,000 is appropriated for this purpose. The money is used primarily to allow patients to purchase small, personal grooming aids—such as toothbrushes, and combs. Many of the patients are indigent, and these monies have met a real need. The appropriation would be lost if the item of language was deleted. This provision first appeared in the 1955 Appropriations Act.

AIA SECTION 808—CARE OF PATIENTS IN SECTARIAN INSTITUTIONS

This provision grants the Commissioner authority to enter into contracts with institutions under sectarian control and to make payments to such institutions for the care of indigent patients in hospitals and maintenance of women and children who are the responsibility of the District of Columbia. This authority is needed to obtain an exemption from 29 Stat. 393, 411, which specifically prohibits payments to sectarian institutions. The District Government has been using the services of sectarian institutions for years. Loss of authority to do so would severely restrict the District's ability to provide proper care for the groups involved because of the shortage of adequate nonsectarian facilities. Sectarian hospitals participate in the Medical Charities program, and other sectarian institutions provide care for children who are wards of the city. No loss of money would be involved with the deletion of the point of order items; flexibility would be reduced drastically, however.

AIA SECTION 809—STIPENDS FOR PATIENTS

This provision authorizes the Commissioner to provide for the payment of stipends to patients and residents employed in District Government institutions or under District programs as an aid to their rehabilitation and training. The

provision does not confer employee status on the patients so employed. Glenn Dale Hospital, St. Elizabeth's Hospital, D.C. General Hospital, and other institutions use convalescent patients to perform certain activities; this arrangement is considered to be of mutual benefit to the patients and to the District of Columbia.

AIA SECTION 810—BENEFITS FURNISHED WORKERS IN DISTRICT FACILITIES

This provision authorizes the Commissioner to provide workers in certain facilities with subsistence, living quarters, and laundry in lieu of salaries. The provision covers persons who cannot be strictly considered employees of the District Government. These persons typically work in medical facilities or in correctional institutions to secure training and experience in future vocations. In many cases, they are students who are affiliated with various educational institutions and who train in D.C. facilities. This provision does not confer employee status on the persons covered.

Other persons work in District facilities under the authority of 61 Stat. 727, which excludes from the Classification Act student nurses, medical and dental interns, student dieticians, and other similar groups. Persons covered by this act do have status as employees. The provision being sought in the Administrative Improvements Act of 1971 is thus needed to cover nonemployee groups. No loss of funds is associated with deletion of this provision. However, it would probably cost more for the District to maintain these personnel if required to pay full stipends.

AIA SECTION 811—CIVIL DEFENSE MATCHING FUNDS

This provision authorizes the Commissioner to use any available appropriations as matching funds for Federal grants associated with civil defense activities. It first appeared in the 1954 Appropriations Act. Without the provisions, only funds specifically designated for the Office of Civil Defense can be used to match Federal funds. The item of language in the Appropriations Act has allowed other Departments to use funds to obtain matching grants from the Federal Government. For example, in 1959 the Department of Highways and Traffic received from the Federal Government half the cost of special communications equipment expressly needed for civil defense purposes. The deletion of this item of language would not result in the loss of specific funds but would restrict the District Government's ability to use any available appropriations as matching funds. Thus it might tend to cut down on overall expenditures for Civil Defense.

AIA SECTION 812—SNOW AND ICE REMOVAL

This provision gives the Commissioner the authority to use funds from the Department of Highways and Traffic and the Department of Sanitary Engineering (now Environmental Services) for snow and ice control activities without going through formal reprogramming procedures. While a certain sum is now appropriated specifically for snow and ice removal, this sum can be supplemented, under the item of language provision, with funds from Highways and Traffic and Sanitary Engineering.

Deletion of the item of language would not result in a loss of funds, but it would mean that the Commissioner would have to initiate formal reprogramming procedures to get additional funds from Highways and Traffic appropriations. It would eliminate the use of Sanitary Engineering monies since reprogramming cannot be made between appropriation accounts.

The Fiscal Year 1972 budget contains a request for \$1 million for snow and ice removal. The same amount was appropriated in Fiscal Year 1970, but about \$1.2 million was required to pay for this activity. Thus the provision supplies needed flexibility in obtaining funds for snow and ice removal.

AIA SECTION 813—CONSTRUCTION SERVICES WORKING FUND

Contained in each annual appropriations act since 1924 is language which provides for construction services amounts to be based upon a certain portion of an appropriation for capital improvements. This percentage has been periodically revised upward. This language is contained in the 1961 Act and is carried forward and amended in the General Provisions, Section 14. This provision also

authorizes the establishment of a working fund account for construction services. This account is not subject to fiscal year limitations. Costs for planning work carried on by the Department and other expenses are reimbursed to the account from appropriated and Federal grant funds.

No substantive authority exists for the working fund account.

D.C. Code 1-306 does establish the function of "construction services" as a responsibility of the Municipal Architect which has been reorganized to the Department of General Services. D.C. Code 9-220 authorizes a public works program for the District of Columbia.

The Administrative Improvements Act would authorize a working fund and would authorize construction services in an amount not limited by a percentage of the appropriation for the entire capital project.

Deletion of the provision would not result in a loss of funds, inasmuch as construction services is an authorized function and a necessary part of the public works program authorized in the D.C. Code. It would result in considerable loss of flexibility.

AIA SECTION 814—ACQUISITION OF SUPPLEMENTAL LAND FOR THE WASHINGTON AQUEDUCT

Contained in the appropriations acts since 1949 and carried forward in the General Provisions, is language which authorizes the Washington Aqueduct to acquire land if needed to straighten boundary lines or prevent the encroachment of private property to the facilities of the Aqueduct.

D.C. Code 16-612 authorizes the Commissioner and agencies of the Federal Government to acquire land in excess of need only if they are authorized by law to acquire real estate. However, there is no general authority for the Corps of Engineers to acquire land for the Washington Aqueduct. Each project is expressly authorized by Congress.

Deletion of the provision would eliminate general authority of the Aqueduct to purchase real estate. The impact would not be severe inasmuch as purchases are rare.

AIA SECTION 815—REWARDS FOR FUGITIVES

The language contained in the 1961 Act and carried forward by the General Provisions authorizes rewards for identifying, pursuing and recapturing fugitives from D.C. institutions and conditional release and parole violators.

There is sufficient authority for District Government employees to pursue and capture criminals. The statutory authority exercised by penal, correctional, and welfare institutions of the District over the care, custody, discipline, and control of persons committed thereto includes concurrent authority to take such measures and to expend such funds as are necessary to carry out the obligation of returning to custody those who escape from confinement.

There is also sufficient authority for the retaking of prisoners who violate the terms of their parole or conditional release. Section 24-205 of the D.C. Code provides for the Board of Parole to issue a warrant for such retaking, and for its execution.

Thirdly, there is authority for the apprehension and return to custody of a youth offender who has been conditionally released from the D.C. Youth Center. Section 18-5020 of the U.S. Code provides for issuance of a warrant and its execution.

In sum, authority is sufficient for appropriations for District of Columbia activities in connection with the return of escapees and parole violators. Additional authority is necessary for the payment of rewards to persons other than those affiliated with the D.C. Government whose efforts facilitate the capture of such persons, and such authority is requested in the AIA. Deletion of this language in the appropriations act would eliminate such expenditures. \$75 was expended for this purpose in Fiscal Year 1971.

AIA SECTION 816—CASH GRATUITIES AND CLOTHING TO BE FURNISHED TO RELEASED PRISONERS

Contained in the 1961 Act and carried forward by the General Provisions is language providing for clothing and a cash amount not to exceed \$30 to be furnished released prisoners. The provision for the cash amount is revised upward to \$75 in the Public Safety appropriation.

Authority for such payments to "a person convicted under the laws of the United States" is contained in USC 18-4281. There is no specific authority for the Commissioner to furnish such a payment to released prisoners. The Administrative Improvements Act would provide such specific authority.

Deletion might eliminate such payments if it is determined that the authority contained in the U.S. Code is insufficient. \$23,809 was expended in Fiscal Year 1971 for this purpose.

AID SECTION 817—COMPENSATION TO PERSONNEL EMPLOYED IN THE SUMMER SCHOOL PROGRAM

Contained in the 1961 Act and carried forward by the General Provisions is language allowing compensation payable to personnel of the summer school program to be charged to the appropriation for the fiscal year in which the pay periods end. This authorizes an exception to the Anti-Deficiency Act requirement that prohibits payments of monies for any purpose in advance of appropriations made for such purpose unless such obligation is authorized by law.

There is no other authority for this practice.

Deletion of the provision would mean that the pay periods would have to be charged to different appropriations, and that payroll and accounting record keeping would be more complicated than is presently the case.

AIA SECTION 818—ACCEPTANCE OF DRIVER EDUCATION CARS AND PROVISION OF INSURANCE

This language is necessary because of a decision of the Comptroller General that the restrictions contained in the U.S. Code respecting the purchase of motor vehicles is applicable to vehicles obtained through gift and loan, as well as through purchase. The U.S. Code authorizes acquisition of vehicles only when specifically authorized in an appropriations act.

Owing to the basic authority in the U.S. Code, this language is not subject to point of order. Deletion of the language would mean that the Schools could not accept the loan of vehicles for the driver education program.

With respect to the provision of insurance, there is no basic authority for the purchase of insurance for such vehicles other than the language of the appropriations act. Therefore this item is included in the Administrative Improvements Act.

AIA SECTION 819—WORKMEN'S COMPENSATION

Contained in the 1961 Act and carried forward by the General Provisions is language authorizing administrative expenses to be transferred to the Labor Department for Administration of the D.C. Workmen's Compensation program. \$479,000 is requested for this purpose in Fiscal Year 1972.

There is no other authority for this transfer of funds.

Title 36, Section 501, 502 of the D.C. Code (Act of May 17, 1928, 45 Stat. 600) extended the Longshoremen's and Harbor Workers Compensation Act "to the injury or death of an employee or an employer carrying on any employment in the District of Columbia . . ."

The Second Deficiency Act of 1928 (Public Law 70-563, 45 Stat. 886, enacted May 29, 1928) included administrative expenses for the workmen's compensation program (the Employee's Compensation Commission, A Federal Agency). It also included a requirement that a certain portion of the administrative expenses be chargeable to the District of Columbia. Thereafter the amount required for administration of the workmen's compensation program in the District of Columbia has been appropriated in the D.C. budget and the funds transferred to the Department of Labor.

Section 819 would provide an interim measure pending enactment of a comprehensive Workmen's Compensation Program for the District of Columbia. Such a program is proposed in H.R. 10236, now pending in the House District Committee.

AIA SECTION 820—ADVERTISING PROVISIONS

There are several language items contained in the 1961 Act which pertain to advertising. Each of these is annually carried forward in the General Provisions.

D.C. Code 47-1001 requires the advertising of an annual notice of sale and the delinquent tax list of real property in two newspapers. Since 1934, language

in the appropriations act has limited such publication to only one newspaper of general circulation.

The D. C. Code 7-601 requires advertising major sewer and highway repair and construction projects in New York, Philadelphia and Baltimore. Since 1933, language in the appropriations act has limited such publication in out-of-town newspapers to only those cases specifically approved by the Commissioner.

A third provision in the appropriations acts relating to advertising provides authority for general advertising such as notice of public hearings, and publication of various other notices. The purpose of this provision is to clarify and consolidate various requirements for advertising which are contained in statutory law and to provide greater flexibility to the Commissioner in the dissemination of public information.

Finally, language of the appropriations act authorizes the cost of advertising to be reimbursed by a charge to be fixed annually by the Commissioner. This item amends statutory law—D.C. Code 47-1008 authorizes a charge to the property advertised but at a rate of 50¢ per lot. Since 1958, the charge has been determined by the Commissioner based upon the authority of the appropriation language.

These items would be subject to point of order inasmuch as they authorize or direct procedures different from statutory law.

Deletion of these provisions would not involve loss of funds for advertising inasmuch as the requirements are specifically authorized by law. It would involve increased costs due to increased advertising to meet the requirements contained in the D.C. Code. It would also mean that reimbursement of costs would be limited.

AIA SECTION 821—PURCHASE OF MALPRACTICE INSURANCE

A proposed language item in the Fiscal Year 1972 bill would authorize the purchase of malpractice insurance for medical personnel employed by the District Government. A recent court decision determined that District employed medical personnel were not covered by the Federal Tort Claims Act. Pending the approval of a D.C. Tort Claims Act, there is no authority to indemnify medical personnel for any judgment of damages that may be awarded against them.

AIA SECTION 822—FEDERAL CITY COLLEGE STUDENT EMERGENCY LOAN FUND

A proposed language item in the Fiscal Year 1972 bill would authorize a revolving fund for providing emergency loans to students at Federal City College. \$40,000 is requested in Fiscal Year 1972.

AIA SECTION 823—FEDERAL CITY COLLEGE BOOKSTORE FUND

A proposed language item in the Fiscal Year 1972 bill would authorize a revolving fund for maintaining a bookstore at the College to purchase and sell textbooks to students, \$350,000 is requested in Fiscal Year 1972.

AIA SECTION 824—REPRESENTATIONAL FUNDS

A proposed language item in the Fiscal Year 1972 bill would authorize funds to be expended by the Presidents of the Federal City College, Washington Technical Institute, D.C. Teachers College and the Superintendent of Public Schools, for the purposes of conducting official ceremonial, representational, and graduation activities of the kind usually associated with educational institutions. Requested funds in Fiscal Year 1972 total \$10,000 for all institutions.

AIA SECTION 825—PROVISION OF SUBSISTENCE SUPPLIES FOR SEVERELY HANDICAPPED CHILDREN

Contained in the 1961 Appropriations Act and carried forward in the General Provisions is an item of language authorizing expenditures for subsistence supplies for pupils attending D.C. schools for crippled children. The funds are primarily used to provide a hot lunch on regular school days to the children enrolled in Sharpe Health School. For this and transportation of handicapped children, approximately \$500,000 is requested for Fiscal Year 1972.

There is no statutory authority for this expenditure.

Deletion of the provision would eliminate this assistance to the children.

AIA SECTION 826—PROVISION OF TRANSPORTATION FOR SEVERELY HANDICAPPED CHILDREN

Contained in the 1961 Appropriations Act and carried forward in the General Provisions is language authorizing expenditures for the transportation of severely handicapped children to schools or classes established for them.

There is no statutory authority for this expenditure.

Deletion of the provision would eliminate this service to the children.

LANGUAGE ITEMS NOT INCLUDED IN THE ADMINISTRATIVE IMPROVEMENTS ACT
EXCEPTION TO THE PROHIBITION ON DUAL COMPENSATION

Contained in each annual appropriation act under the Education appropriation is language authorizing an exception to the prohibition against dual compensation (5 U.S.C. 5533 (c)). This exception is for compensation received by public school teachers for employment in a civilian office during the period of July 1 to August 31. The provision enables a teacher, whose contract expires on June 30 of each year, to be employed in a summer job in an office of the Federal Government or Congress.

Deletion of this provision would disallow this exception.

Statutory authority for this item is requested in Title VI of the proposed D.C. Educational Personnel Act of 1971 (S. 1998) now pending in the Senate District Committee.

TRANSFER OF APPROPRIATIONS BETWEEN THE DEPARTMENT OF SANITARY ENGINEERING AND THE WASHINGTON AQUEDUCT

Contained in the 1961 Act and carried forward in the General Provisions is language which authorizes the transfer of appropriations for operating expenses and capital outlay between the Department of Sanitary Engineering and the Washington Aqueduct upon the mutual agreement of the Commissioner and the Secretary of the Army. This language permits transfer of funds without requesting a formal reprogramming of appropriations. Deletion of the language would eliminate this possibility. The AIA must be amended to include this language item.

AUTHORITY TO ENTER INTO CONTRACTS FOR PROJECTS TO BE UNDERTAKEN AS FEDERAL AID PROJECTS UNDER THE PROVISIONS OF THE FEDERAL AID HIGHWAY ACT; AUTHORITY TO UNDERTAKE CONSTRUCTION OF PROJECTS AUTHORIZED UNDER THE FEDERAL AID HIGHWAY ACT PENDING REIMBURSEMENT BY THE FEDERAL HIGHWAY ADMINISTRATION

Contained in the 1961 Act and carried forward in the General Provisions, this language authorizes the Department of Highways and Traffic to obligate construction contracts in excess of the D.C. funds appropriated for the project. In letting contracts for such construction, an obligation must be recorded for the full cost of the contract and the appropriation is subsequently reimbursed by the Federal Government as work progresses. Deletion of the language would impair the highway program inasmuch as the Department would be required to comply with the Anti-Deficiency Act and would not be able to obligate funds above the authorized appropriation. The AIA must be amended to include this language item.

92D CONGRESS
1ST SESSION

S. 2409

IN THE SENATE OF THE UNITED STATES

AUGUST 3, 1971

Mr. MATHIAS introduced the following bill; which was read twice and referred to the Committee on the District of Columbia

A BILL

To facilitate the amendment of the governing instruments of certain charitable trusts and corporations subject to the jurisdiction of the District of Columbia, in order to conform to the requirements of section 508 of the Internal Revenue Code of 1954, as amended by the Tax Reform Act of 1969.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That title 21 of the District of Columbia Code is amended
4 by adding the following chapter:

II—O

1 **“Chapter 18.—CHARITABLE AND SPLIT-INTEREST**
2 **TRUSTS**

“Sec.

“21-1801. Charitable and split-interest trusts.

3 **“§ 21-1801. Charitable and split-interest trusts**

4 “(a) Notwithstanding any provision to the contrary in
5 the governing instrument or under any law applicable to the
6 District of Columbia (except as provided in subsection (d)
7 of this section), the governing instrument of any trust which
8 is treated during a particular year as a private foundation
9 described in section 509 of the Internal Revenue Code of
10 1954 (including any nonexempt charitable trust described
11 in section 4947 (a) (1) of the Code which is treated as a
12 private foundation) and the governing instrument of any
13 nonexempt split-interest trust described in section 4947 (a)
14 (2) of the Code (but only to the extent that section 508 (e)
15 of the Code is applicable to such nonexempt split-interest
16 trust) shall be deemed during such particular year to con-
17 tain all of the following provisions:

18 “(1) The trust shall not engage in any act of self-
19 dealing which is taxable under section 4941 of the
20 Code.

21 “(2) The trust shall make distribution at such time
22 and in such manner as not to subject it to tax under
23 section 4942 of the Code.

1 “(3) The trust shall not retain any excess business
2 holdings which would subject it to tax under section
3 4943 of the Code.

4 “(4) The trust shall not make any investments
5 which would subject it to tax under section 4944 of the
6 Code.

7 “(5) The trust shall not make any taxable ex-
8 penditures which would subject it to tax under section
9 4945 of the Code.

10 With respect to any such trust created prior to January 1,
11 1970, subsection (a) shall apply only for its taxable years
12 beginning on or after January 1, 1972.

13 “(b) Notwithstanding any provision to the contrary in
14 the governing instrument, the trustee or trustees of any
15 trust described in subsection (a), other than a trust described
16 in section 4947 (a) (2) of the Code, may, without applica-
17 tion to any court, amend the governing instrument expressly
18 to include the provisions required by section 508 (e) of the
19 Code by executing a written amendment to the trust and
20 delivering a copy thereof, by certified mail, to each named
21 beneficiary, if any.

22 “(c) Notwithstanding any provision to the contrary in
23 the governing instrument, the trustee or trustees of any trust
24 described in section 4947 (a) (2) of the Code to which
25 subsection (a) is applicable may, without application to any

1 court, amend the governing instrument expressly to include
2 the provisions required by section 508 (e) of the Code by
3 executing a written amendment to the trust and delivering a
4 copy thereof, by certified mail, to each named beneficiary,
5 if any: *Provided, however,* That the trustee or trustees shall
6 first obtain the written consent of the creator or creators of
7 such trust if then living and competent to give such consent.

8 “(d) The provisions of subsection (a) shall not apply
9 to any trust to the extent that a court of competent jurisdic-
10 tion shall determine that such application would be contrary
11 to the terms of the governing instrument and that the same
12 may not properly be amended to conform with subsec-
13 tion (a).

14 “(e) For purposes of this section, the term ‘trust’
15 includes (i) any trust created by will of a resident of the
16 District of Columbia admitted to probate in the District of
17 Columbia, (ii) any trust created by a resident of the District
18 of Columbia and executed in the District of Columbia, (iii)
19 any trust of which the trustee or a cotrustee is a bank or trust
20 company doing business in the District of Columbia, (iv)
21 any trust of which a majority of the trustees are resident in
22 the District of Columbia, (v) any trust of real property
23 located in the District of Columbia, or (vi) any trust the
24 governing instrument of which provides that it is governed
25 by the laws of the District of Columbia.

5

1 “(f) All references in this section to the ‘Internal
2 Revenue Code of 1954’ or to the ‘Code’ are to the Internal
3 Revenue Code of 1954 and corresponding provisions of any
4 subsequent Federal tax laws.

5 “(g) In the case of a private foundation other than a
6 trust, see section —.”

7 SEC. 2 (a) Notwithstanding any provision to the con-
8 trary in the governing instrument or under any law appli-
9 cable to the District of Columbia (except as provided in
10 subsection (c) of this section), the governing instrument
11 of any corporation organized under the laws of the District
12 of Columbia or any Act of Congress applicable to the District
13 of Columbia which is treated during a particular year as a
14 private foundation described in section 509 of the Code shall
15 be deemed during such particular year to contain the follow-
16 ing provisions:

17 (1) The corporation shall not engage in any act
18 of self-dealing which is taxable under section 4941 of
19 the Code.

20 (2) The corporation shall make distributions at
21 such time and in such manner as not to subject it to
22 tax under section 4942 of the Code.

23 (3) The corporation shall not retain any excess
24 business holdings which would subject it to tax under
25 section 4943 of the Code.

1 (4) The corporation shall not make any invest-
2 ments which would subject it to tax under section 4944
3 of the Code.

4 (5) The corporation shall not make any taxable
5 expenditures which would subject it to tax under sec-
6 tion 4945 of the Code.

7 With respect to any such corporation organized prior to
8 January 1, 1970, subsection (a) shall apply only for its
9 taxable years beginning on or after January 1, 1972.

10 (b) The governing instrument of any corporation de-
11 scribed in subsection (a) may be amended, in the manner
12 provided by law for amendment of such governing instru-
13 ment, expressly to include the provisions required by section
14 508 (e) of the Code.—

15 (c) The provisions of subsection (a) shall not apply
16 to any corporation to the extent that its governing instru-
17 ment is amended, in the manner provided by law for amend-
18 ment of such governing instrument, expressly to exclude
19 the application of subsection (a).

20 (d) For purposes of this section, the term “corpora-
21 tion” includes an association (other than an association
22 treated as a trust described in section 21-1801).

23 (e) All references in this section to the “Internal
24 Revenue Code of 1954” or to the “Code” are to the Internal

1 Revenue Code of 1954 and corresponding provisions of any
2 subsequent Federal tax laws.

3 (f) In the case of a private foundation other than a
4 corporation, see section 21-1801.

5 SEC. 3. Except as otherwise provided herein, the pro-
6 visions of this Act shall take effect commencing with tax-
7 able years of trusts and corporations beginning on or after
8 January 1, 1970.

THE DISTRICT OF COLUMBIA,
Washington, D.C., October 27, 1971.

HON. THOMAS F. EAGLETON,
*Chairman, Committee on the District of Columbia,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: The Commissioner of the District of Columbia has for report S. 2409, a bill "To facilitate the amendment of the governing instruments of certain charitable trusts and corporations subject to the jurisdiction of the District of Columbia, in order to conform to the requirements of section 508 of the Internal Revenue Code of 1954, as added by the Tax Reform Act of 1969."

The Tax Reform Act of 1969 (Public Law 91-172) made a number of changes with respect to the treatment for tax purposes of private foundations and other charitable corporations and trusts. Among those changes is a requirement that charitable trusts and corporations include in their governing instruments certain provisions specified in the 1969 Act, including provisions that the trust or corporation will distribute its income for "exempt" purposes on a reasonably current basis and will refrain from certain actions such as engaging in "self-dealing" transactions, retaining excess business holdings, making investments which jeopardize exempt purposes, and expending funds for lobbying. The Tax Reform Act specifies that charitable trusts and corporations must alter their governing instruments in the prescribed manner by December 31, 1971, or lose their right to full deductions for charitable distributions or their exemption from the Federal income tax.

Subsequent to the enactment of the Tax Reform Act of 1969, the Internal Revenue Service published a Temporary Regulation declaring that the requirements for the governing instruments of charitable trusts and corporations could be met through the enactment of a statute which provides that such governing instruments are deemed to contain all of the provisions required by the Tax Reform Act of 1969. S. 2409 would make such a declaration with respect to trusts in the District of Columbia. Absent the enactment of the bill, many charitable trusts and corporations operating in the District would find it necessary to institute separate court proceedings to amend their individual governing instruments in conformity with the requirements of the 1969 Act. In addition to eliminating the need for numerous legal actions, enactment of S. 2409 would prevent any confusion with respect to legitimacy, from a tax standpoint, of the activities of charitable trusts and corporations operating in the District of Columbia.

The provisions of S. 2409 would apply to those trusts (a) created by will of a resident of the District and admitted to probate in the District; (b) created by a resident of the District and executed in the District; (c) of which the trustee or a co-trustee is a bank or trust company doing business in the District; (d) of which a majority of the trustees are resident in the District; (e) involving real property located in the District; or (f) the governing instrument of which provides that it is governed by the laws of the District of Columbia. The bill also applies to any corporation organized under the laws of the District of Columbia which is treated as a private foundation under the Internal Revenue Code.

It does not appear that the enactment of S. 2409 will result in any additional costs to the District of Columbia Government.

The Commissioner of the District of Columbia has no objection to the enactment of S. 2409. Since the bill relates specifically to the operations of organizations subject to the Internal Revenue Code, the Commissioner suggests that the Committee may also wish to seek the views of the Secretary of the Treasury.

Sincerely yours,

GRAHAM W. WATT,
Assistant to the Commissioner.
For: WALTER E. WASHINGTON,
Commissioner.

92^d CONGRESS
1ST SESSION

H. R. 10383

IN THE SENATE OF THE UNITED STATES

OCTOBER 13, 1971

Read twice and referred to the Committee on the District of Columbia

AN ACT

To enable professional individuals and firms in the District of Columbia to obtain the benefits of corporate organization, and to make corresponding changes in the District of Columbia Income and Franchise Tax Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act shall be known and may be cited as the
4 "District of Columbia Professional Corporation Act".

5

DEFINITIONS

6 SEC. 2. As used in this Act, unless the context other-
7 wise requires:

8 (a) The term "professional corporation" means a corpo-
9 ration organized under this Act solely for the specific pur-

1 poses provided under this Act, and which has as its share-
2 holders only individuals who themselves are duly licensed
3 to render the same professional service as the corporation.

4 (b) The term "professional service" means any type
5 of personal service to the public which may be lawfully
6 rendered only pursuant to a license and which by law, cus-
7 tom, standards of professional conduct or practice in the
8 District of Columbia, before the effective date of this Act,
9 could not be rendered by a corporation, including without
10 limitation the services performed by certified public account-
11 ants, attorneys, architects, practitioners of the healing arts,
12 dentists, optometrists, podiatrists, and professional engineers.

13 (c) The term "license" or "licensed" refers to a license,
14 certification, certificate, or registration, or other legal au-
15 thorization required by law as a condition precedent to the
16 rendering of professional service within the District of
17 Columbia.

18 (d) The term "Council" means the District of Columbia
19 Council or the agent or agents designated by it to perform
20 any function vested in the Council by this Act.

21 (e) The term "Commissioner" means the Commis-
22 sioner of the District of Columbia or his designated agent.

23

EXEMPTION

24 SEC. 3. This Act shall not apply to any corporation
25 now in existence or hereafter organized which may lawfully
26 render professional services other than pursuant to this Act,

3

1 nor shall anything herein contained alter or affect any exist-
2 ing or future right or privilege permitting or not prohibiting
3 performance of professional services through the use of any
4 form of business organization. Any corporation organized
5 under the District of Columbia Business Corporation Act
6 (D.C. Code, sec. 29-901 et seq.) may be brought within
7 the provisions of this Act by complying with the provisions
8 of this Act and filing amended or restated articles of incorpo-
9 ration meeting the requirements of section 6 of this Act.

10

CONSTRUCTION OF ACT

11 SEC. 4. The provisions of this Act shall not be construed
12 as repealing, modifying, or restricting the applicable pro-
13 visions of law relating to corporations, or regulating the
14 several professions covered by this Act, except insofar
15 as such laws conflict with the provisions of this Act. Except
16 as otherwise provided by this Act, the provisions of the
17 District of Columbia Business Corporation Act shall be ap-
18 plicable to any professional corporation organized under
19 this Act.

20

PURPOSE; POWERS

21 SEC. 5. (a) A professional corporation may be orga-
22 nized solely to render professional services through its share-
23 holders, directors, officers, employees, or agents who are
24 themselves duly licensed to render the particular service,
25 and to render service ancillary thereto. A professional cor-
26 poration may charge for such services, may collect such

1 charges, and may compensate those who render such serv-
2 ice. A professional corporation may employ persons who
3 are not licensed, but such persons shall not perform pro-
4 fessional services; and no license shall be required of any
5 person who is employed by a professional corporation to
6 perform services for which no license is otherwise required.

7 (b) No professional corporation may do any act which
8 is prohibited to an individual licensed to render the profes-
9 sional service for which the corporation is organized.

10 (c) Notwithstanding any provision of this Act, a pro-
11 fessional corporation may—

12 (i) invest its funds in real estate, mortgages, stocks,
13 bonds, or other type of investment;

14 (ii) own real estate or personal property; and

15 (iii) enter into partnership and other agreements
16 with individuals (who may be shareholders, directors,
17 employees, or agents of the professional corporation),
18 partnerships, or professional corporations rendering the
19 same type of professional services within or without
20 the District of Columbia, to the same extent that an
21 individual licensed to render the same professional serv-
22 ice may enter into such partnership or other agreements
23 pursuant to law, rules, regulations, or standards of pro-
24 fessional conduct of the profession practiced through the
25 professional corporation.

1 organized, except that if a professional corporation has only
2 one shareholder, the secretary of the corporation need not be
3 licensed to perform (and may not perform if not so licensed)
4 such professional services. As used in this section, the term
5 "officer" shall mean chairman of the board, president, vice
6 president, treasurer, and secretary. Nothing in this Act shall
7 require a shareholder or incorporator of a professional cor-
8 poration to have a present or future employment relation-
9 ship with the corporation or actively to participate in any
10 capacity in the production of income of, or performance of
11 professional service by, such corporation.

12

CORPORATE NAME

13 SEC. 9. The corporate name shall contain the words
14 "professional corporation", or the abbreviation "P.C.", or
15 the word "chartered", and shall not contain the word "com-
16 pany", "incorporated", "corporation", or "limited", or an
17 abbreviation of one of such words. A professional corpora-
18 tion shall render professional services and exercise its au-
19 thorized powers under its corporate name.

20

PROXY

21 SEC. 10. No shareholder of a professional corporation
22 shall enter into a voting trust, proxy, or any other arrange-
23 ment vesting another person (other than another share-
24 holder of the same corporation) with the authority to exer-
25 cise the voting power of any or all of his shares, and any
26 such voting trust, proxy, or other arrangement shall be void.

1 PROFESSIONAL RELATIONSHIP; LIABILITIES

2 SEC. 11. (a) The provisions of this Act shall not be
3 construed to alter or affect the professional relationship be-
4 tween an individual furnishing professional services and an
5 individual receiving such service, either with respect to
6 liability arising out of such professional service or the con-
7 fidential relationship, if any, between the individual render-
8 ing, and the individual receiving such professional service.
9 An individual shall be personally liable and accountable only
10 for any negligent or wrongful acts or misconduct committed
11 by him, or by any individual under his supervision and con-
12 trol in the rendering of professional service on behalf of a
13 corporation organized under this Act. No individual shall be
14 so personally liable and accountable merely because he is a
15 director, officer, or manager of the professional corporation.

16 (b) The corporation shall be liable up to the full value
17 of its assets for any negligent or wrongful acts or miscon-
18 duct committed by any of its officers, shareholders, direc-
19 tors, agents, or employees in their rendering of professional
20 services on behalf of the corporation. Except as otherwise
21 provided in this section, the liabilities of a professional cor-
22 poration and its shareholders shall be governed by the Dis-
23 trict of Columbia Business Corporation Act.

24 TRANSFER OF SHARES

25 SEC. 12. (a) Shares in a professional corporation may be
26 transferred only to an individual who is eligible under this

1 Act to be a shareholder of such corporation, or to such pro-
2 fessional corporation, or may devolve by operation of law
3 upon the personal representative or estate of a deceased or
4 legally incompetent shareholder. The articles of incorpora-
5 tion, bylaws, or an agreement among its shareholders may
6 provide that any such transfer shall be subject to the express
7 approval of all, or of any lesser proportion of the remaining
8 shareholders of the corporation, and may provide for the
9 manner in which such consent shall be given. Any transfer
10 made in violation of this section shall be void.

11 (b) A professional corporation may reacquire its own
12 shares through purchase or redemption, and may cancel such
13 shares if at least one share remains issued and outstanding,
14 except when it is insolvent or the purchase or redemption
15 would render it insolvent.

16 (c) The provisions of the District of Columbia Securi-
17 ties Act (D.C. Code, sec. 2-2401, et seq.), and of the
18 Securities Act of 1933, shall not apply to the issuance or
19 transfer of securities of a professional corporation. Every
20 certificate for shares of a professional corporation shall con-
21 tain on its face the following legend: "The ownership and
22 transfer of these shares and the rights and obligations of
23 shareholders are subject to the limitations of the District of
24 Columbia Professional Corporation Act."

25 (d) In the event that shares of a professional corpora-

1 tion are attached for the individual debts of a shareholder, or
2 are executed upon under any pledge or hypothecation there-
3 of, the sole right of the creditor with respect to such shares
4 shall be to obtain their redemption by such professional cor-
5 poration within sixty days after serving written demand for
6 redemption upon such corporation. The redemption price for
7 such shares shall be (1) the amount to which the share-
8 holder is entitled upon voluntary redemption of his shares
9 by the provisions of the articles of incorporations, bylaws, or
10 an agreement among its shareholders, or if there are no such
11 provisions, (2) the book value of such shares at the end
12 of the month immediately preceding the date of such de-
13 mand, determined under generally accepted accounting
14 methods consistent with the method of accounting used by
15 the corporation for Federal income tax purposes, by an inde-
16 pendent certified public accountant selected by the corpora-
17 tion, but paid by such creditor, for the purpose.

18 MERGER OR CONSOLIDATION

19 SEC. 13. A professional corporation may merge or con-
20 solidate only with another domestic professional corporation,
21 and only if both corporations are organized to render the
22 same professional services or professional services which,
23 although not the same, could otherwise be rendered by a
24 single professional corporation.

1 FOREIGN PROFESSIONAL CORPORATIONS

2 SEC. 14. Notwithstanding any other provision of this
3 Act, a foreign professional corporation licensed in a juris-
4 diction other than the District of Columbia to perform a
5 professional service of the type defined in section 2 (b) of
6 this Act, may apply for and obtain a certificate of authority
7 to render such professional service in the District of Columbia
8 under the following terms and conditions:

9 (a) The articles of incorporation shall meet the require-
10 ments of section 6 of this Act, and shall state the address
11 of its registered office in the District of Columbia and the
12 name of its registered agent in the District of Columbia.

13 (b) The name of the foreign professional corporation
14 shall meet the requirements of section 9 of this Act and
15 shall conform to any ethical standards applicable to the
16 rendering of professional service in the District of Columbia.

17 (c) The powers of any foreign professional corpora-
18 tion admitted under this section shall not exceed the powers
19 permitted to domestic professional corporations under sec-
20 tion 5 of this Act.

21 (d) Any foreign professional corporation seeking ad-
22 mission to the District under the provisions of this section
23 shall have at least one director or officer as resident agent
24 for its registered office in the District. Additionally, such
25 resident agent and any other shareholder, director, officer,
26 employee, or agent who renders professional services within

1 the District on behalf of the foreign professional corporation
2 shall be licensed to render professional service in the District
3 of Columbia.

4 (e) An annual report shall be filed in accordance with
5 the requirements of section 19 of this Act.

6 (f) No certificate of authority shall be granted to a
7 professional corporation incorporated in a jurisdiction which
8 does not permit reciprocal admission of professional corpora-
9 tions incorporated under the laws of the District of Columbia.

10 **DISQUALIFIED PROFESSIONAL**

11 **SEC. 15.** If any individual rendering professional serv-
12 ices on behalf of a professional corporation assumes a public
13 office which prohibits his rendering of the professional serv-
14 ices, or for any other reason is disqualified by law to render
15 the professional services, he immediately shall sever all em-
16 ployment relationship in which he shares in the corporation's
17 profits attributable to professional services rendered after
18 such assumption of office or other disqualification. For the
19 purposes of section 16 of this Act, he shall be referred to as a
20 "disqualified shareholder".

21 **STOCK OF DISQUALIFIED, DECEASED, LEGALLY**

22 **INCOMPETENT SHAREHOLDER**

23 **SEC. 16.** (a) Subject to the limitations of this section,
24 a disqualified shareholder and personal representatives,
25 legatees, or heirs of a deceased or legally incompetent share-
26 holder may continue to own shares of a professional corpo-

1 ration but shall not be permitted to participate in any deci-
2 sions concerning the rendering of professional services by
3 the corporation. The articles of incorporation, bylaws, or an
4 agreement among the shareholders of a professional corpo-
5 ration may provide, consistent with the provisions of this
6 section, for the disposition of shares of a disqualified, de-
7 ceased, or legally incompetent shareholder.

8 (b) The articles of incorporation, bylaws, or an agree-
9 ment among shareholders may provide that, within ninety
10 days (or any earlier date) after the date a shareholder be-
11 comes a disqualified shareholder, the disqualified shareholder
12 shall sell and surrender, and the corporation or any individ-
13 uals qualified to be shareholders shall purchase and receive,
14 his shares of stock of the corporation. In the absence of any
15 such provision, the disqualified shareholder shall sell and
16 surrender, and the corporation shall purchase and receive,
17 his shares of stock of the corporation within thirty days after
18 the date he becomes a disqualified shareholder. Unless other-
19 wise provided by the articles of incorporation, bylaws, or an
20 agreement among the shareholders, payment for the shares
21 of stock purchased pursuant to the provisions of this subsec-
22 tion shall be made in full no later than six months after the
23 expiration of the period by which the purchase must be made.

24 (c) The articles of incorporation, bylaws, or an agree-
25 ment among shareholders may provide that, within one year

1 (or any earlier date) after the date of death of a shareholder,
2 his personal representative, legatees, or heirs shall sell and
3 surrender, and the corporation or any individuals qualified
4 to be shareholders shall purchase and receive, the shares of
5 stock of the corporation owned by the deceased shareholder.
6 In the absence of any such provision, the personal repre-
7 sentatives, legatees, or heirs shall sell and surrender, and the
8 corporation shall purchase and receive, the shares of stock
9 of the corporation within one hundred and eighty days after
10 the date of death of the shareholder. Unless otherwise pro-
11 vided by the articles of incorporation, bylaws, or an agree-
12 ment among the shareholders, payment for the shares of stock
13 purchased pursuant to the provision of this subsection shall
14 be made in full no later than one year after the date of
15 death of the shareholder.

16 **REDEMPTION PRICE**

17 **SEC. 17.** In the event the articles of incorporation, by-
18 laws or an agreement among the shareholders, do not fix the
19 price at which the corporation or its shareholders may pur-
20 chase the shares of a disqualified, deceased, legally incompe-
21 tent, retired, or expelled shareholder, or does not provide a
22 method of determining such price, then the price for such
23 shares shall be the book value of such shares on the last day
24 of the month immediately preceding the disqualification,

1 death, adjudication of incompetence, retirement or expulsion
2 of the shareholder, determined under generally accepted ac-
3 counting methods, consistent with the method of accounting
4 used by the corporation for Federal income tax purposes,
5 by an independent certified public accountant employed by
6 the corporation for the purpose.

7 **PERPETUAL EXISTENCE; DISSOLUTION**

8 **SEC. 18.** A professional corporation shall have perpetual
9 existence, except that whenever all shareholders of a pro-
10 fessional corporation cease at any time for any reason to be
11 licensed to perform the professional services for which the
12 corporation was organized, the professional corporation shall
13 be treated as converted into a corporation organized under
14 the District of Columbia Business Corporation Act. Unless
15 the holders of all of the outstanding shares of the corporation
16 unanimously amend the articles of incorporation to adopt
17 purposes consistent with the District of Columbia Business
18 Corporation Act within sixty days after the date on which
19 the last shareholder of the corporation ceased to be licensed
20 to perform those professional services, the dissolution of the
21 corporation shall be deemed to have been authorized by the
22 act of the corporation and any shareholder may at any time
23 thereafter file with the Commissioner, on behalf of the cor-
24 poration, a statement of intent to dissolve.

1 ANNUAL REPORT

2 SEC. 19. The annual reports of a professional corpora-
3 tion shall meet the requirements of the District of Columbia
4 Business Corporation Act and, in addition, shall set forth—

5 (a) the names and addresses, including street and
6 number, if any, of all shareholders of the corporation;
7 and

8 (b) a statement that each shareholder, director,
9 and officer of the corporation is currently licensed to
10 render a professional service for which the corporation
11 is organized.

12 NONCOMPLIANCE; PENALTIES

13 SEC. 20. The failure of a professional corporation to
14 comply, or to require compliance with any provision of this
15 Act, shall be a ground for the involuntary dissolution of such
16 corporation. Any person, including a corporation, who vio-
17 lates any provision of this Act or who fails to comply
18 with any provision thereof, for which violation or failure no
19 penalty is provided therein or elsewhere in the laws of the
20 District of Columbia, shall be deemed guilty of a misde-
21 meanor and upon conviction thereof by a court of competent
22 jurisdiction shall be fined not more than \$500 for each
23 violation or failure.

16

1 AMENDMENT TO THE DISTRICT OF COLUMBIA INCOME AND
2 FRANCHISE TAX ACT OF 1947

3 SEC. 21. The second sentence of section 1 of title VIII
4 of the District of Columbia Income and Franchise Tax Act
5 of 1947 (D.C. Code, sec. 47-1547) is amended to read as
6 follows: "The words 'unincorporated business' do not in-
7 clude any trade or business which by law, customs, or ethics
8 cannot be incorporated, any trade, business, or profession
9 which can be incorporated only under the District of Colum-
10 bia Professional Corporation Act, or any trade or business
11 in which more than 80 per centum of the gross income is
12 derived from the personal services actually rendered by the
13 individual or members of the partnership or other entity
14 in the conducting or carrying on of any trade or business
15 and in which capital is not a material income-producing
16 factor."

Passed the House of Representatives October 12, 1971.

Attest:

W. PAT JENNINGS,

Clerk.

THE DISTRICT OF COLUMBIA,
Washington, D.C., October 27, 1971.

HON. THOMAS F. EAGLETON,
Chairman, Committee on the District of Columbia,
Washington, D.C.

DEAR SENATOR EAGLETON: The Commissioner of the District of Columbia has for report H.R. 10383, a bill "To enable professional individuals and firms in the District of Columbia to obtain the benefits of corporate organization, and to make corresponding changes in the District of Columbia Income and Franchise Tax Act", as passed by the House of Representatives on October 12, 1971.

The major purpose of H.R. 10383 is to authorize individuals rendering professional services which, under existing law, custom, or standards of professional conduct or practice, may not be rendered through a corporate structure, including without limitation, services performed by certified public accountants, attorneys, architects, physicians, dentists, optometrists, podiatrists, and professional engineers, to join in the formation of a corporation.

Other pertinent provisions of the bill provide for: the purposes and powers of a professional corporation; procedures for incorporation; qualifications for shareholders, directors, and officers; continued liabilities in professional relationships; transfer and redemption of shares; and related corporate matters. It should be noted that the District of Columbia is the sole remaining jurisdiction which is without a law enabling the formation of professional corporations.

Section 21 of H.R. 10383 amends the second sentence of section 1 of title VIII of the District of Columbia Income and Franchise Tax Act of 1947 so as to remove from the taxation provisions applicable to unincorporated businesses "any trade, business, or profession which can be incorporated only under the District of Columbia Professional Corporation Act".

The Commissioner is opposed to the enactment of section 21 of H.R. 10383. Under present law any trade or business which by law, custom, or ethics cannot be incorporated is exempt from payment of the unincorporated franchise tax. Since H.R. 10383 would permit these businesses and professions to incorporate, it would logically follow that the exemption from the unincorporated business tax should be eliminated and that henceforth all businesses which did not choose to incorporate would be subject to taxation. However, section 21 of the bill would amend the exemption language of title VIII of the Income and Franchise Tax Act of 1947 to include any trade, business, or profession which can be incorporated only under the proposed bill. Thus, despite the fact that the original basis for the exemption would no longer exist, the exemption would be retained. The Commissioner does not believe that the retention of this exemption can be justified when the sole reason for the exemption, in the first place, is removed by the terms of the bill, nor can he discern any reason why presently exempt businesses and professions which utilize the District of Columbia as a source of income should not be liable to pay the unincorporated business tax as all other unincorporated businesses are required. Accordingly, the Commissioner recommends that section 21 of H.R. 10383 be eliminated.

As a technical matter, the Commissioner suggests the delegation of subsection (d) of section 2 of the bill since the term "Council" does not appear in any other section of H.R. 10383.

Subject to the foregoing recommendations, the Commissioner of the District of Columbia favors the enactment of H.R. 10383.

Sincerely yours,

GRAHAM W. WATT,
Assistant to the Commissioner.
FOR WALTER E. WASHINGTON,
Commissioner.

Senator STEVENSON. Our first witness is Mr. Paul Freeze, Director of the Water Resources Division of the Department of Environmental Services.

Good morning, Mr. Freeze.

STATEMENT OF PAUL FREEZE, DIRECTOR, WATER RESOURCES DIVISION, DEPARTMENT OF ENVIRONMENTAL SERVICES, DISTRICT OF COLUMBIA GOVERNMENT

Mr. FREEZE. Good morning.

Mr. James P. Alexander, Director of Environmental Services, was not able to attend this morning and I am presenting his statement.

We appreciate the opportunity to appear before you, sir.

Senator STEVENSON. We are grateful to you, Mr. Freeze, and if you have a statement, you can either place it in the record and summarize or read it as you see fit. We do have a rather long list of witnesses this morning and you might prefer to summarize it.

Mr. FREEZE. It is brief, so I will read it.

I am here today to urge the enactment of legislation which, under existing law, is a prerequisite to the construction of any water supply reservoir which will benefit the District of Columbia, that is to say, legislation which will authorize the District of Columbia to contract to pay to the United States its equitable shares of the non-Federal water storage costs of any reservoirs authorized by Congress for construction on the Potomac River or any of its tributaries.

In April 1961, the Corps of Engineers submitted a report on the North Branch, Potomac River, recommending construction of a reservoir on the North Branch above Bloomington, Md.

The purposes of the project were to provide for immediate and future municipal and industrial water supply, flood control, water quality control, and recreation.

Washington would be a beneficiary of supplemental water provided by the reservoir. The Bloomington Reservoir project was authorized in the Flood Control Act of 1962 (Public Law 87-874, 87th Cong., 2d sess.).

It was only recently placed under construction. However, actual construction of this project was delayed because of the requirements of section 301(b) of the Water Supply Act of 1958, as amended, that there be contractual agreements by State or local interests to pay to the United States the costs of providing water supply storage for present demands.

This bill will enable the District to enter into contracts for the payment of its fair share of such costs, and passage of this bill will help prevent such delays in construction of future projects approved by Congress.

Extremely low river flows in the summer and early fall of 1966 and periodic threats of a repetition of the 1966 conditions, have placed an urgency on all our efforts to bring to fruition as quickly as possible plans for supplementing our supplies from the Potomac, for our situation is one of crisis.

Thus, the bill before you today, Mr. Chairman, would authorize the District to contract to pay the United States its fair share of the costs for water supply storage, not only in the authorized Bloomington project, but also in any other reservoirs which may be authorized by Congress for construction on the Potomac River or any of its tributaries.

Over the years since authorization of the Bloomington project, the Corps of Engineers lent considerable help in getting various agencies of Maryland, Virginia, West Virginia, and the District of Columbia together to try to work out methods by which the non-Federal costs of Bloomington could be allocated equitably.

Little progress was made, however, until the State of Maryland attempted to develop and quantify costs to initial users, and passed legislation in the spring of 1969, to create the Maryland Potomac Water Authority as an instrument for contracting with the Federal Government for the initial, non-Federal cost of Bloomington.

Early in October 1968, the Department of Water Resources of that State approached the District relative to seeking an agreement whereby ways of handling the District's fair share of the initial Bloomington cost might be worked out with the authority.

The District welcomed this opportunity and the bill before you today reflects our joint efforts.

The bill does not spell out the basis on which the District's equitable share will be allocated. However, we are in substantial agreement as to the approach and there is no reason to believe we cannot work out the minor elements remaining.

I might add, Mr. Chairman, that the bill before you authorizes the District to contract for its fair share of other reservoirs in the Potomac Basin authorized by Congress.

Thus, should Sixes Bridge and/or Verona become authorized, the District, under the bill, would be able to negotiate for the payment of its equitable share of the non-Federal portions of the costs of those reservoirs either directly with the United States or with the party which may be or become responsible for the payment to the United States of all such costs.

Mr. Chairman, this is a brief statement of events leading up to the District's submission to the President of the U.S. Senate of the proposed legislation before you and additional comments thereon.

I am sure you have a copy of that submittal for your record and for greater details you may wish to refer to it.

In closing, Mr. Chairman, we urge your favorable consideration of the bill before you, and your recommendation that the Congress grant the District the authorizations requested.

Thank you.

Senator STEVENSON. Thank you, Mr. Freeze.

This would authorize the District to contract for the non-Federal share of the cost of the reservoir; is that correct?

Mr. FREEZE. Yes, sir.

Senator STEVENSON. So the Congress would still retain some residual control over these contracts through the appropriations process of the Federal share; is that right?

Mr. FREEZE. Yes, sir.

Senator STEVENSON. How long a period of time do these contracts run? How long a period of time is authorized for them?

Mr. FREEZE. The bill, as I understand it, would authorize as long as these contracts would be in effect. The contract for the Bloomington dam is expected to be completed in 1977.

The contracts, of course, have not yet been drawn for the other two dams because they have not been authorized. But this would be a continuing authorization.

Senator STEVENSON. And the District would then be authorized also to enter into contracts adjoining the jurisdictions. It would not be only with the Federal Government—is that correct?

Mr. FREEZE. That is correct.

Senator STEVENSON. I thank you once again, Mr. Freeze.

We will try to move on this legislation expeditiously.

I have a letter from former Governor of Maryland J. Millard Tawes, which I order printed in the record at this time.

(The letter follows:)

DEPARTMENT OF NATURAL RESOURCES,
STATE OFFICE BUILDING,
Annapolis, Md., July 1, 1971.

Senator THOMAS F. EAGLETON,
Chairman, Senate District Committee,
New Senate Office Building, Washington, D.C.

DEAR SENATOR EAGLETON: On March 24, 1971, S. 1362 was read and referred to the Committee on the District of Columbia. This bill authorizes the Commissioner of the District of Columbia to contract, within an amount specified in a District of Columbia Appropriation Act, with the United States, any State in the Potomac River Basin, any agency or political subdivision thereof, and any other competent State or local authority, for the District of Columbia's equitable share of the non-Federal costs of any reservoir authorized by the Congress in the Potomac River Basin.

The Bloomington Reservoir, on the North Branch of the Potomac River, has been authorized by the Congress and initial funds for construction have been appropriated. The Maryland Potomac Water Authority was created by an act of the Maryland General Assembly in 1969, and authorized to contract with the United States for the costs of initial water supply in the Bloomington Reservoir. S. 1362 would authorize the District of Columbia to pay its equitable share of these costs by entering into a contract directly with the United States or with the Maryland Potomac Water Authority.

The District of Columbia supports S. 1362 and, to my knowledge, there is no opposition to this bill. I would appreciate early consideration of S. 1362 by your committee as it would enable the Maryland Potomac Water Authority and the District of Columbia to proceed to develop agreeable cost sharing arrangements.

Sincerely yours,

J. MILLARD TAWES,
Secretary.

Our next witness is Mr. Dana Wallace, the Deputy Director of the Department of Highways and Traffic.

Good morning, Mr. Wallace. I see your statement is fairly short. You, too, could enter it into the record or summarize it.

STATEMENT OF DANA WALLACE, DEPUTY DIRECTOR, DEPARTMENT OF HIGHWAYS AND TRAFFIC ON S. 1367

Mr. WALLACE. Since it is so short, Mr. Chairman, I would prefer to read it if it meets with your approval.

Senator STEVENSON. You may do so.

Mr. WALLACE. Mr. Chairman, I am appearing in behalf of Mr. T. F. Airis, Director of the Department of Highways and Traffic, on S. 1367, a bill to authorize the Commissioner of the District of Columbia to lease airspace above and below freeway rights-of-way within the District of Columbia.

Mr. Chairman, as you know, there has already been considerable detailed testimony by District officials in support of similar legislation dating back to 1967.

(Namely, former Engineer Commissioner, Brig. Gen. Robert E. Mathe, and the Director of the Department of Highways and Traffic, Mr. T. F. Airis, on S. 1245, on July 27, 1967; and Mr. R. D. Wallace, Deputy Director of Highways and Traffic, on H.R. 12507, on October 26, 1967).

MR. WALLACE. The District government, including this Department, has consistently and strongly supported the enactment of air rights legislation to permit development and use of space over and under freeways in the District of Columbia.

Currently, the District has authority to enter into leases and agreements for private and public use of airspace above and below streets and alleys under the jurisdiction of the Commissioner (District of Columbia Public Space Utilization Act).

Where freeway air rights development is desirable, the District is limited in authority to special authorizing legislation such as enacted for air rights development over the Ninth Street Expressway in the Southwest, or with the Federal Government as with the new Labor Department building over the Center Leg Freeway, or with the Redevelopment Land Agency as with the proposed housing project over the Center Leg Freeway between H and K Streets NW., within the boundaries of Northwest No. 1 Redevelopment Area.

There are, of course, other locations over freeways in the District where, if properly controlled, the use of air rights can lead to a more efficient and esthetic utilization of urban space and would go far toward the orderly planning and development of this urban area.

As you know, many cities have already successfully utilized air rights for residential, commercial, and public purposes. Certainly, authority for the District to develop air rights over freeways would help us to provide solutions for, and be responsive to, some of the objections to freeway projects within the city that have been raised by our citizenry; namely, displacement of families and businesses, esthetics, and separation of neighborhoods.

Right now, we especially want air rights legislation for freeways in order to bring to fruition one project in particular. This project is located in Southeast Washington where a portion of the Southeast Freeway, between Seventh and Eighth Streets was redesigned after construction was underway to provide a structure on columns in lieu of a retained fill in order that the area beneath the structure could be developed.

This Department engaged a consultant to study the potential for air rights and it was found to be both feasible and practicable to develop beneath the freeway at this location for private and/or public use.

There has since been public demand for such development but we cannot proceed with it until we have the authority.

Mr. Chairman, current air rights projects, that is, those projects where we have been able to proceed with development are progressing reasonably well. I will, if you desire, bring the committee up to date on progress, otherwise this will conclude my brief remarks.

Senator STEVENSON. Are there any provisions in the legislation which require the District to consult with agencies of the Federal Government?

Mr. WALLACE. Yes, sir; any air rights development must, of course, be approved by the National Capital Planning Commission. It is also subject to review and approval by the Fine Arts Commission.

In addition, there is a provision in the bill for zoning wherein air rights would not be applicable to the existing zoning laws in the area but would be subject to hearings and the establishment of proper zoning requirements.

Senator STEVENSON. Is the requirement one of consultation and not approval by the Federal agencies you mentioned?

Mr. WALLACE. I don't quite understand your question, sir.

Senator STEVENSON. In your answer, you said that the legislation would require prior consultation, not approval—is that correct? You mentioned the Fine Arts Commission.

Mr. WALLACE. Any development would be subject to review by the Fine Arts Commission.

Senator STEVENSON. So it would require approval?

Mr. WALLACE. Yes.

Senator STEVENSON. Is any priority given to public uses as opposed to private uses of air rights?

Mr. WALLACE. Established in the proposed legislation is the order of priority and the first order of priorities would be for municipal uses without limitation, next for public housing, third, for Federal use, and so forth on down the line. Private development would be last on the list.

Senator STEVENSON. Does S. 1367 give the District any authority to sell air rights or is it more limited authority than that?

Mr. ROBINSON. No, sir, Mr. Chairman. The bill provides only for leases and the revocable permits. There is no provision for the sale. The District would retain title.

Senator STEVENSON. You have brought some photographs with you, Mr. Wallace. We will enter those into the record.

(The photographs follow:)

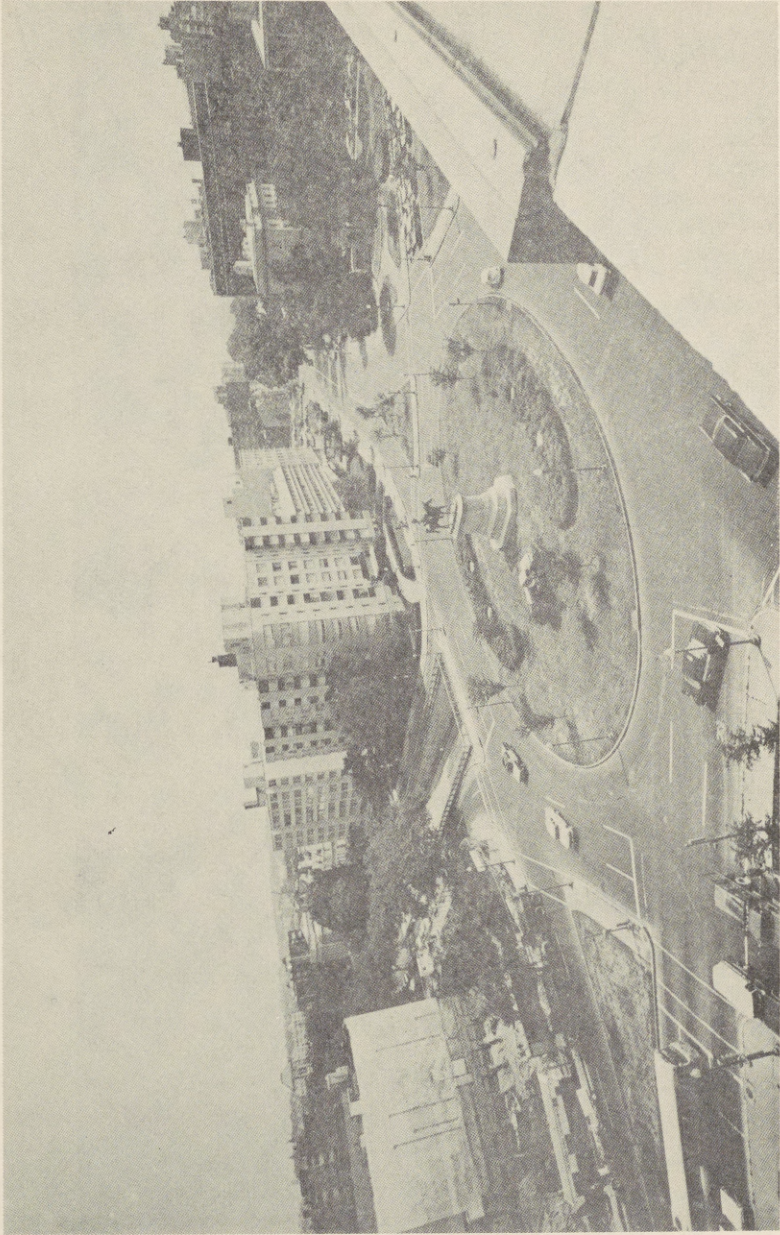


Figure 1. SCOTT CIRCLE, N. W.

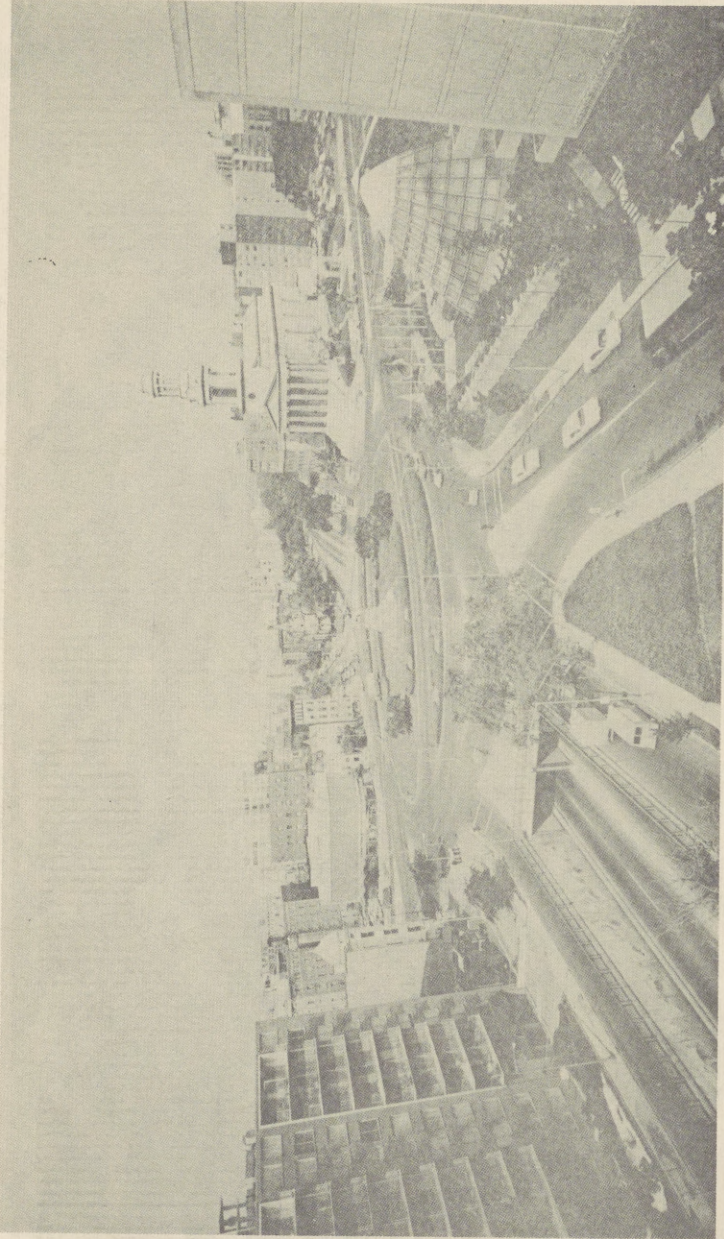


Figure 2. THOMAS CIRCLE, N. W.

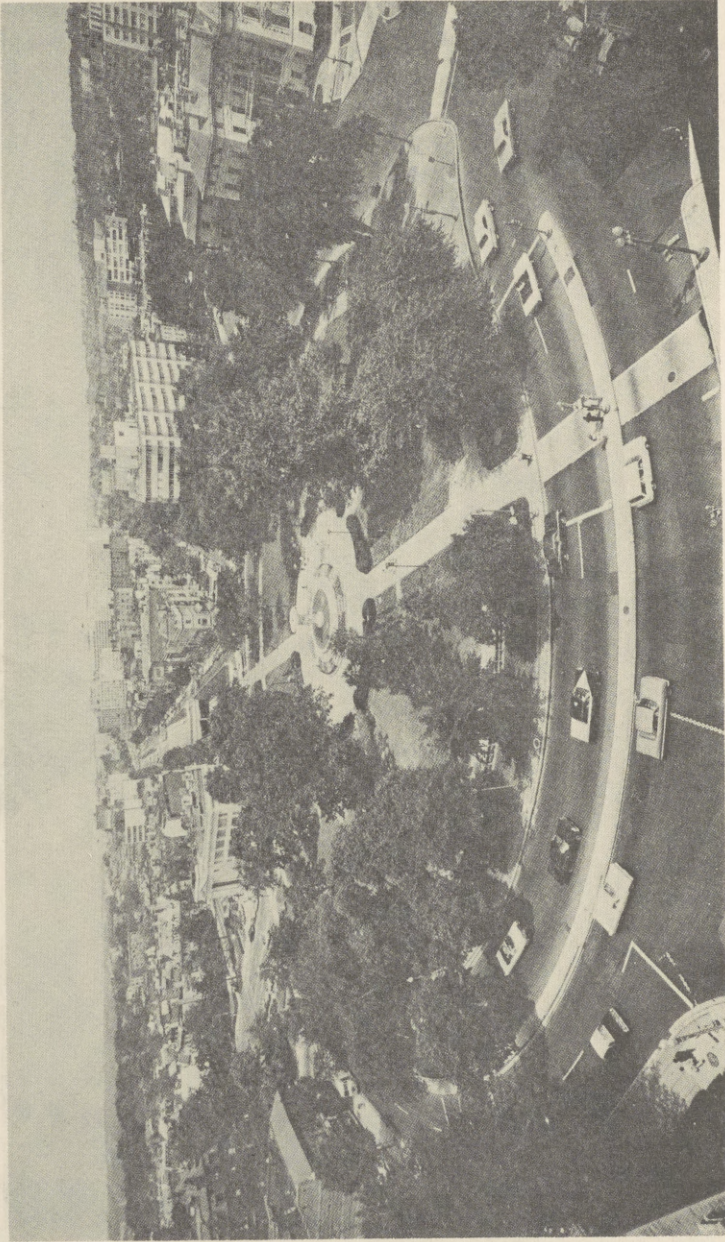


Figure 3. DUPONT CIRCLE, N. W.

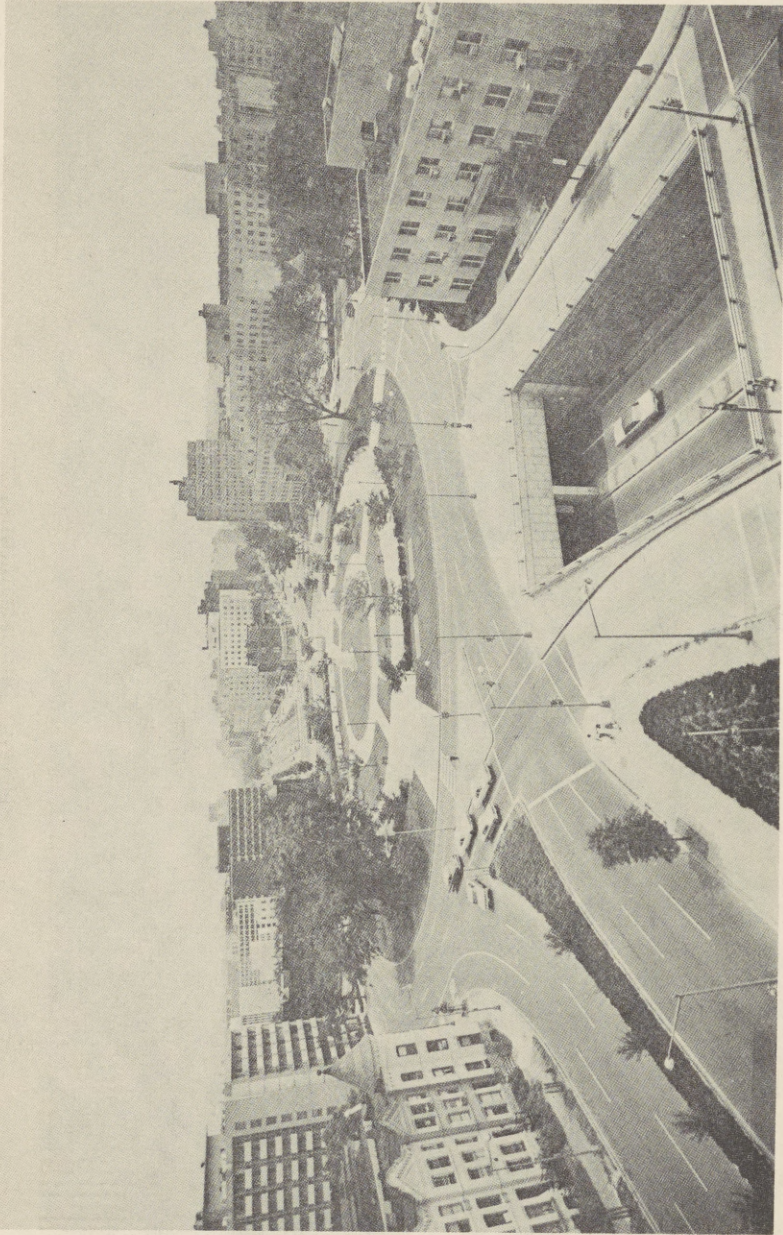


Figure 4. WASHINGTON CIRCLE, N. W.

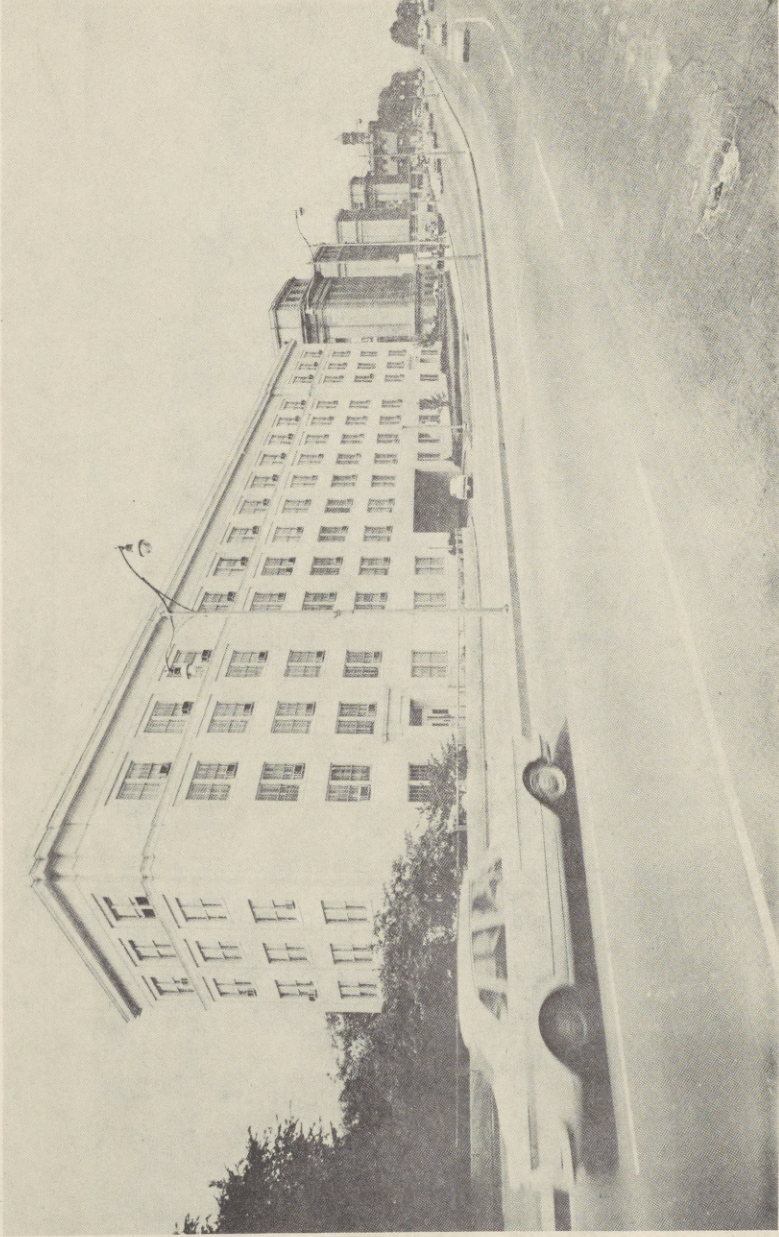


Figure 5. LIBERTY LOAN BUILDING
(Ramp entrance on 14th Street, N. W.)

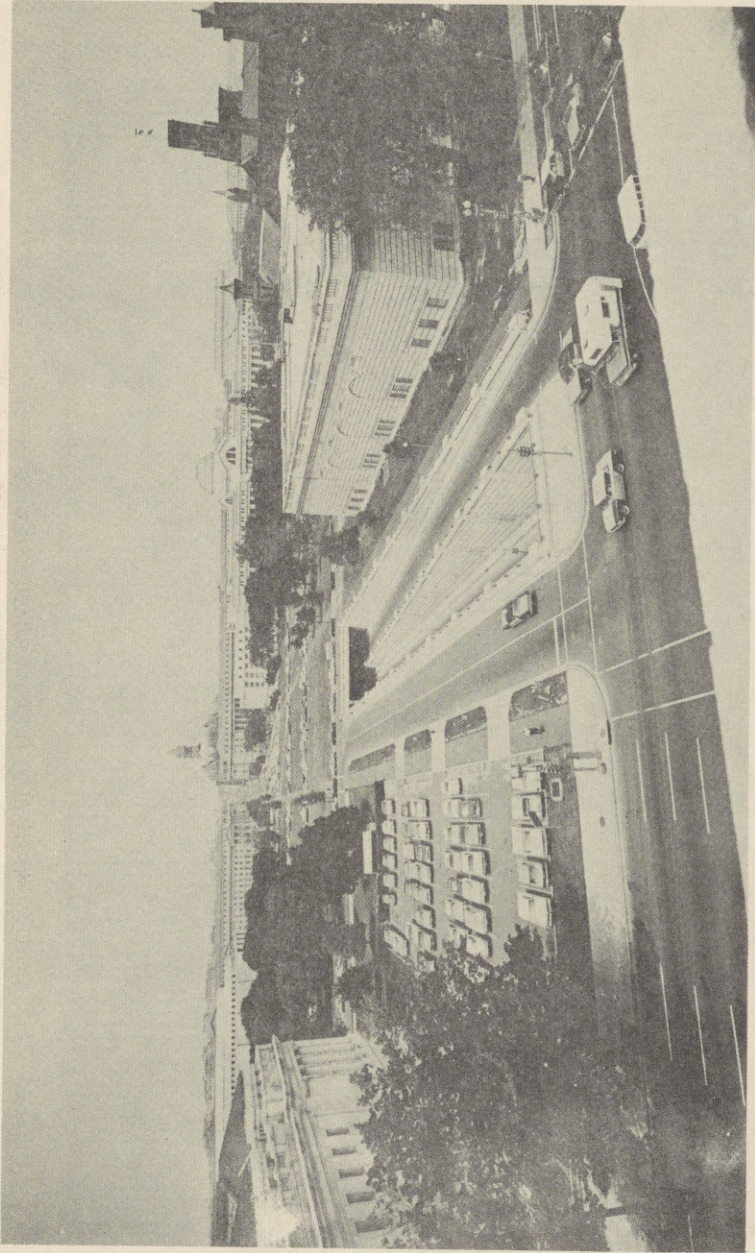


Figure 6. 12TH STREET EXPRESSWAY UNDER THE
GREAT MALL

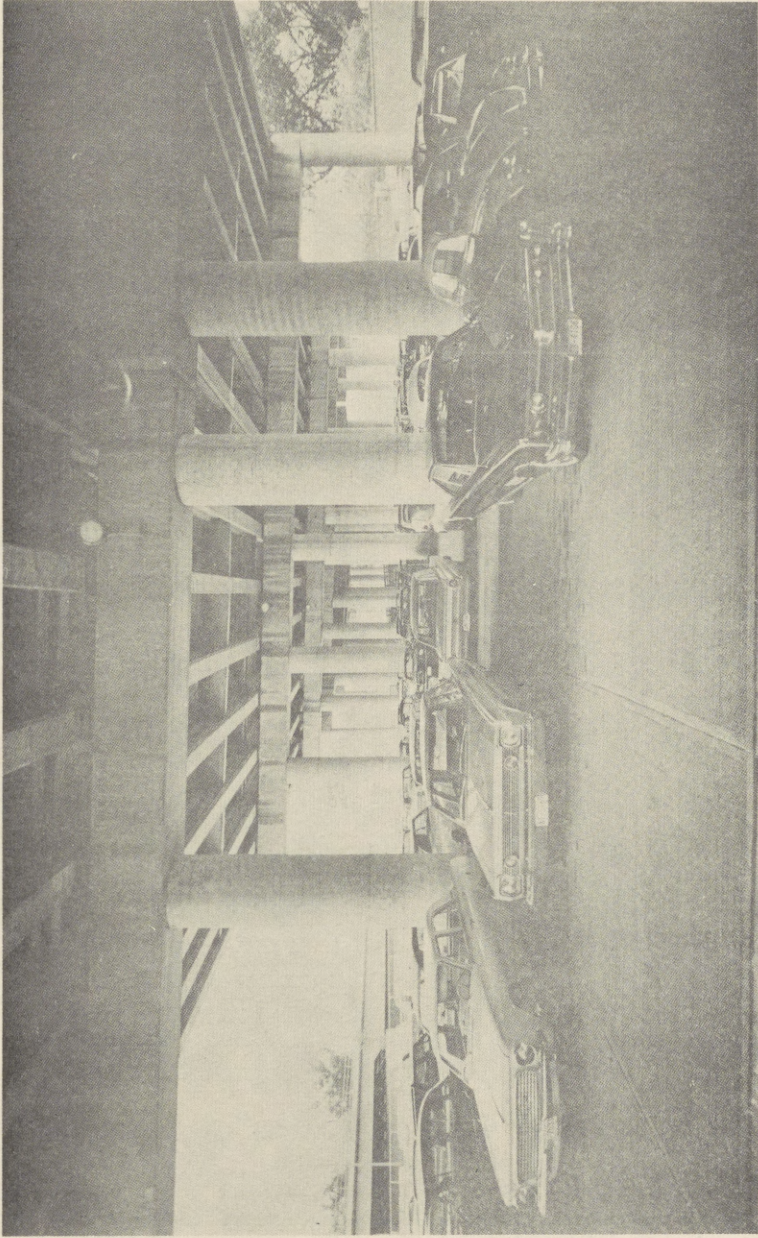


Figure 7. AIR RIGHTS USAGE FOR VEHICULAR PARKING UNDER THE SOUTHWEST FREEWAY

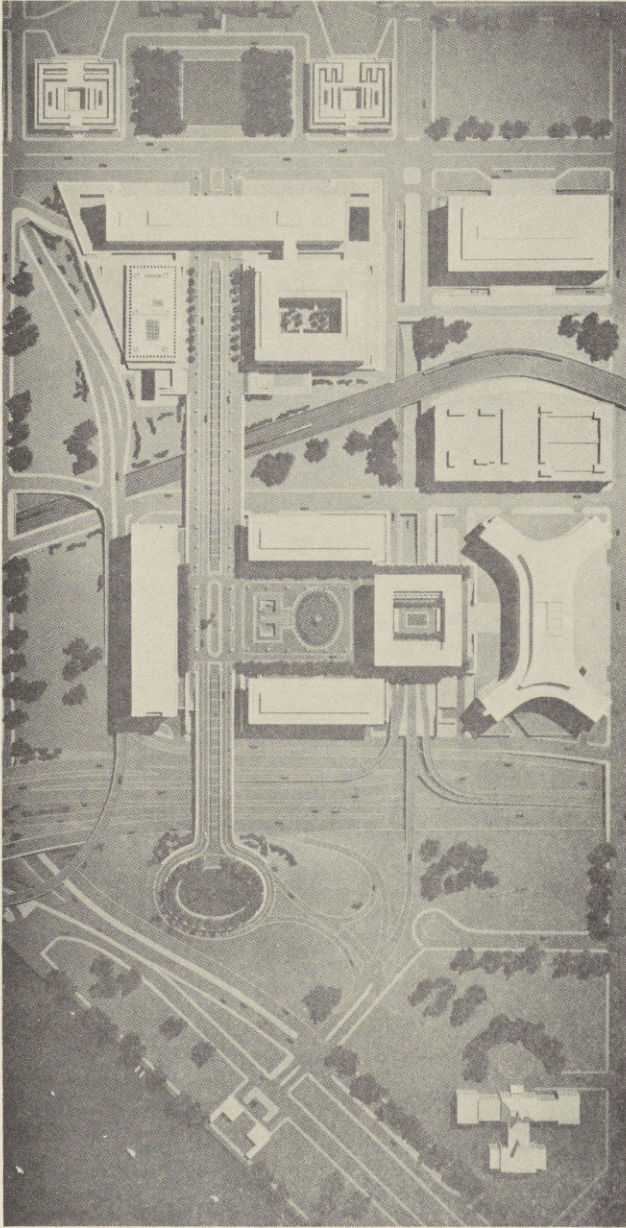


Figure 8. MODEL OF ENTIRE 10TH STREET MALL AREA IN SOUTHWEST WASHINGTON, D. C.
SHOWING THE L'ENFANT PLAZA HOTEL-OFFICE BUILDING OVER THE 9TH STREET
EXPRESSWAY

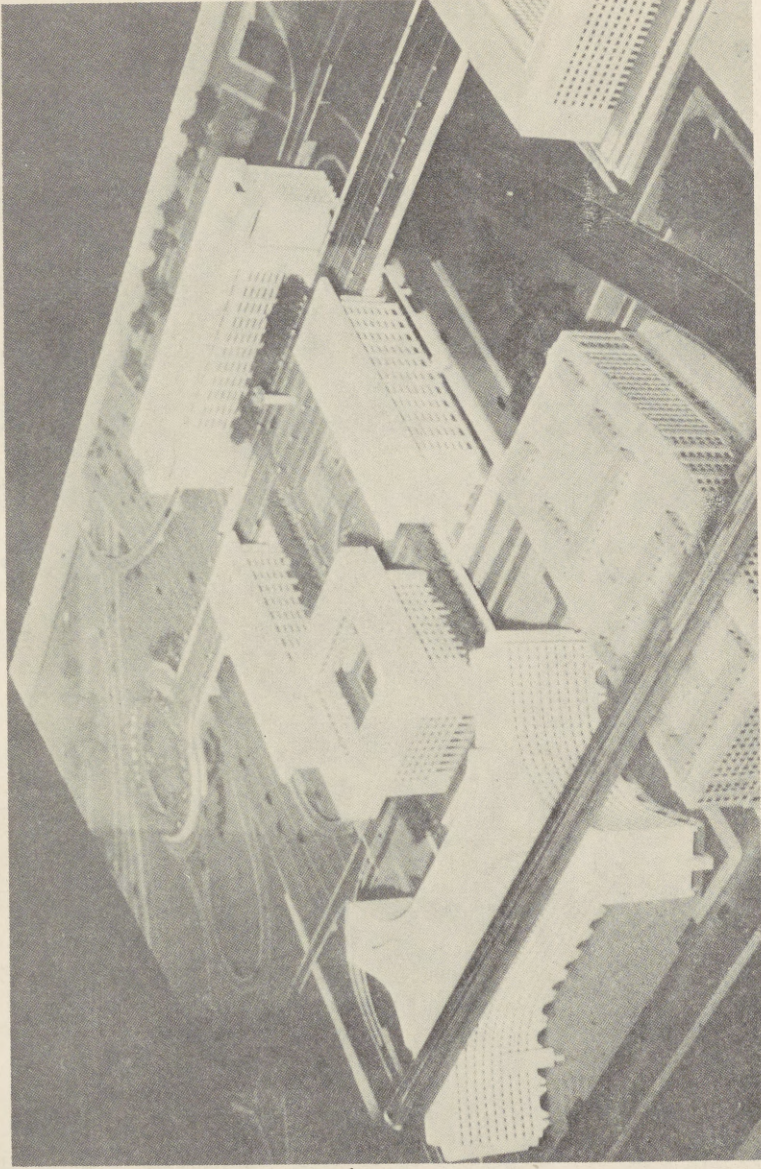


Figure 9. MODEL OF L'ENFANT PLAZA HOTEL-OFFICE BUILDING OVER 9TH STREET EXPRESSWAY LOOKING SOUTHWEST

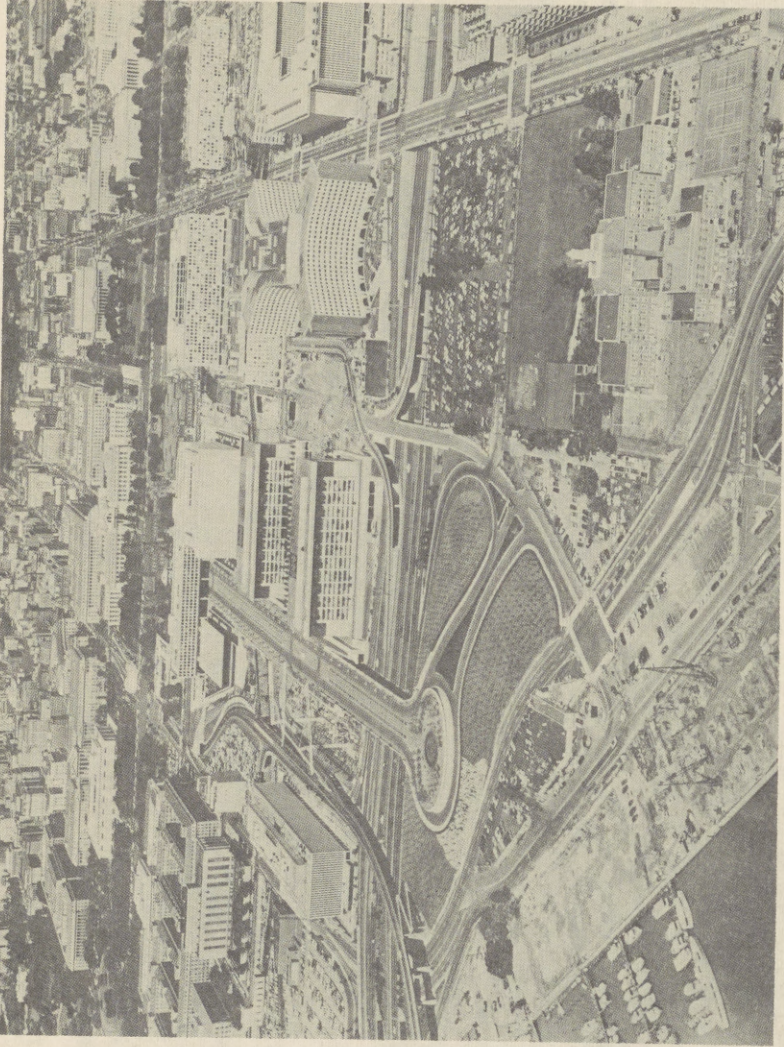


Figure 10. CURRENT STATUS OF CONSTRUCTION IN THE 10TH STREET MALL AREA, WITH MAINE AVENUE, S. W. IN THE FOREGROUND

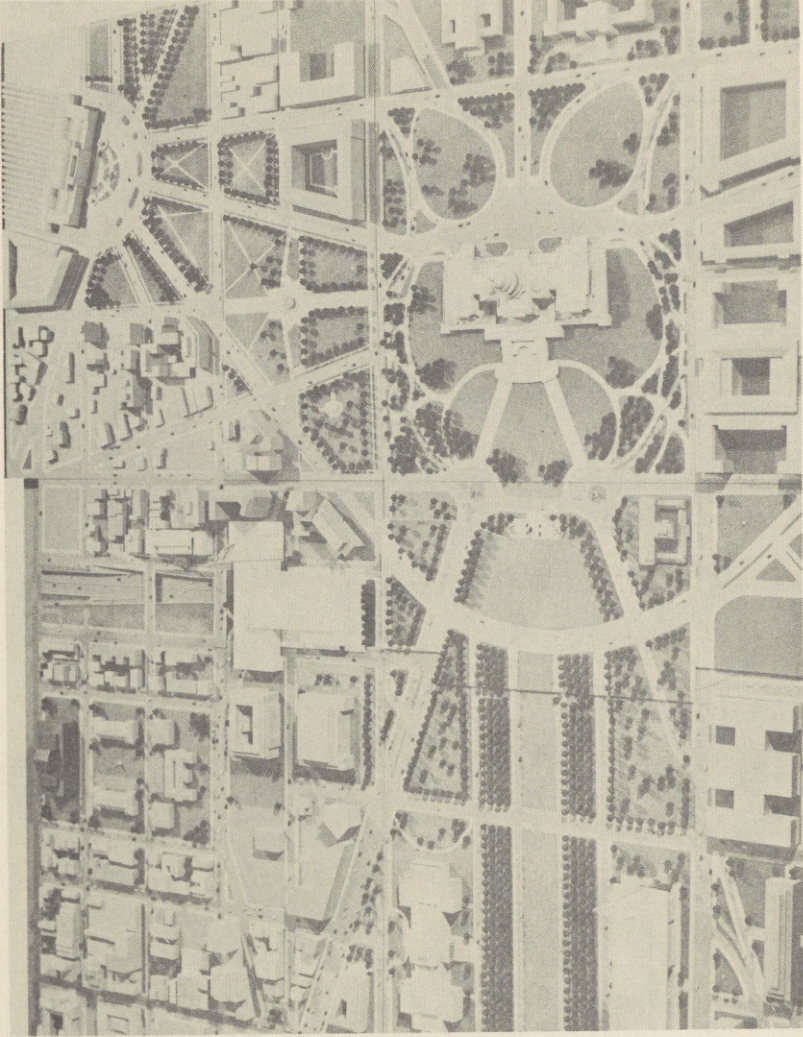


Figure 11. MODEL OF I-95 CENTER LEG INNER LOOP UNDER MALL WITH CEREMONIAL LOUISIANA AVENUE AND THE REFLECTING POOL

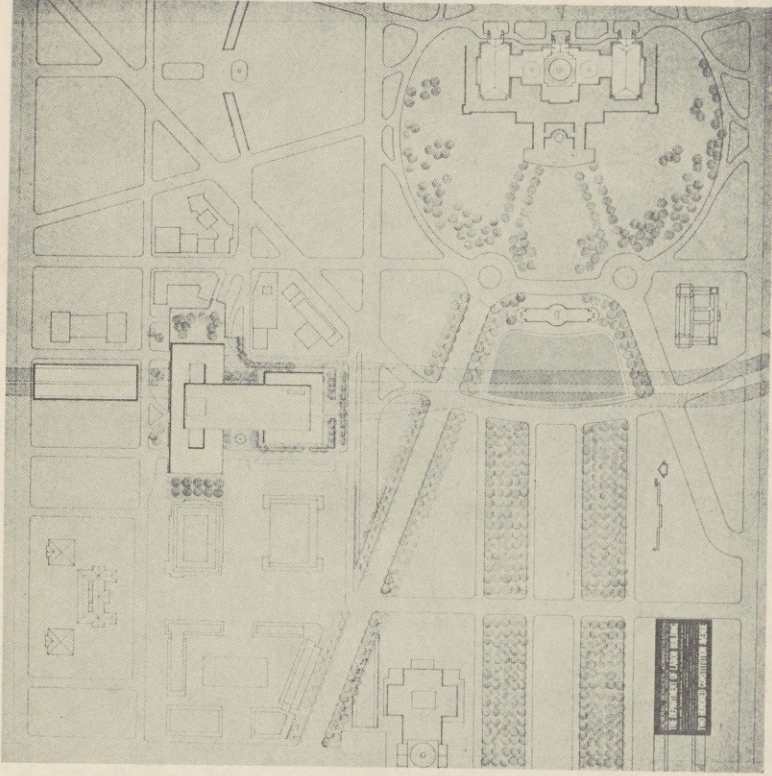


Figure 12. SCHEMATIC VIEW - LABOR DEPARTMENT BUILDING - UNDERGROUND
FREeway AND REFLECTING POOL

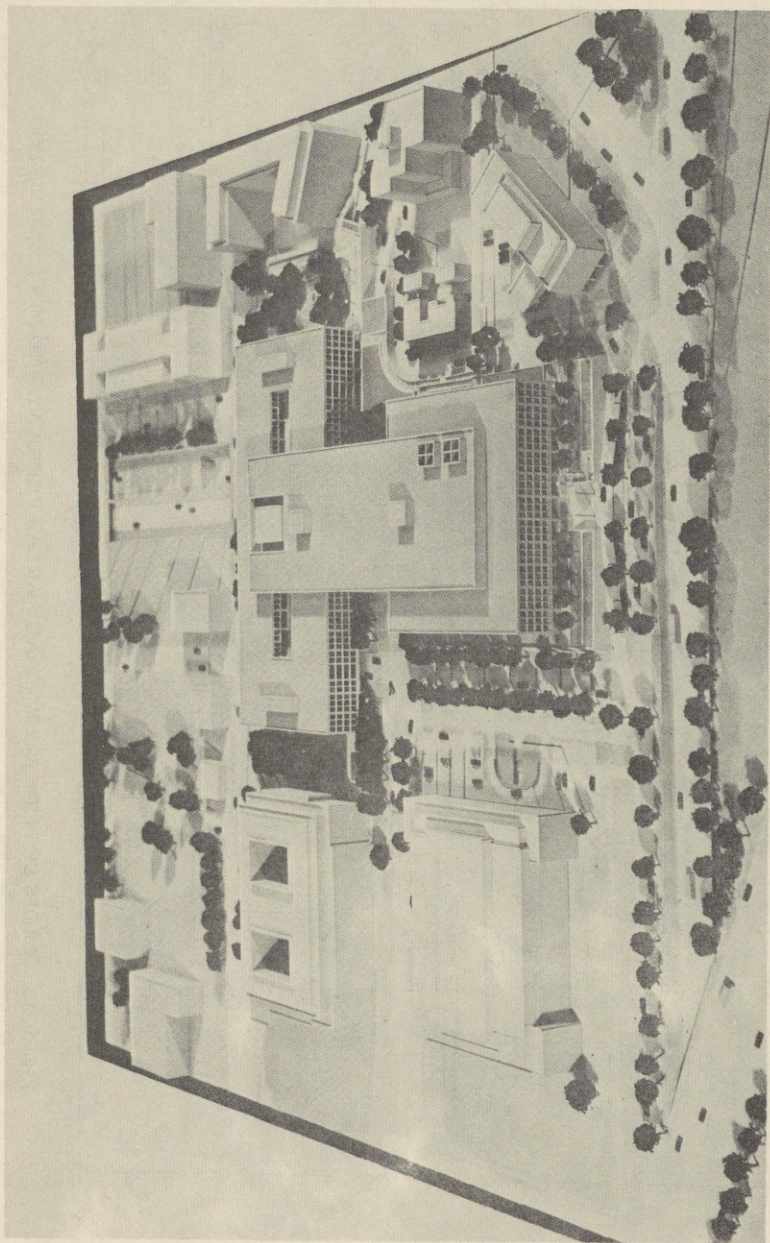


Figure 14. CLOSE UP VIEW OF LABOR DEPARTMENT BUILDING, MODEL SHOWING VENTILATION SHAFTS IN ROOF

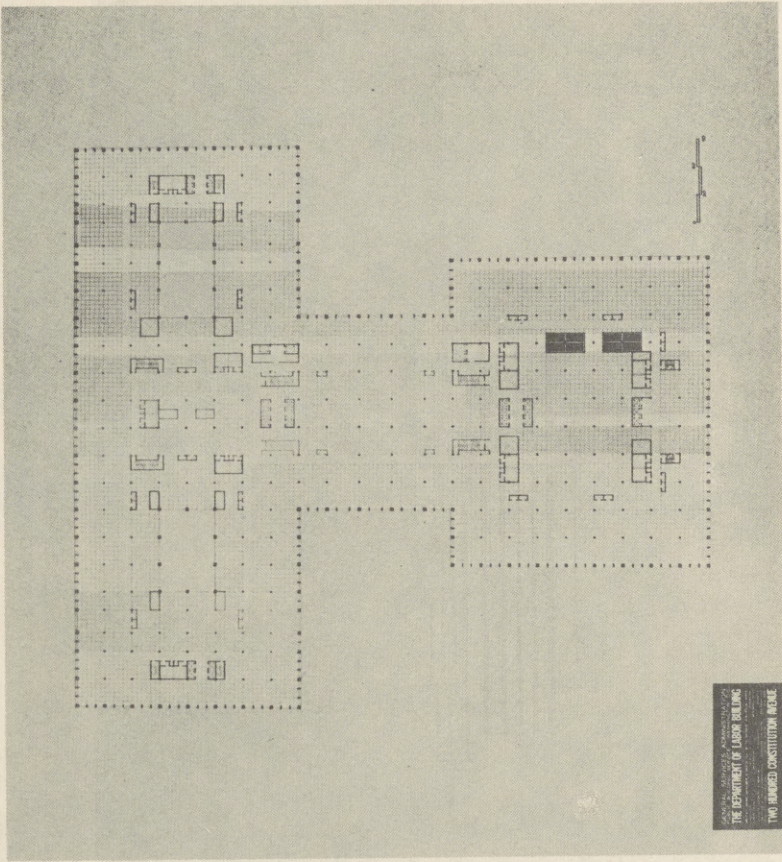


Figure 15. PLAN VIEW - LABOR DEPARTMENT BUILDING INDICATING FREEWAY LAYOUT IN SUB-STRUCTURE

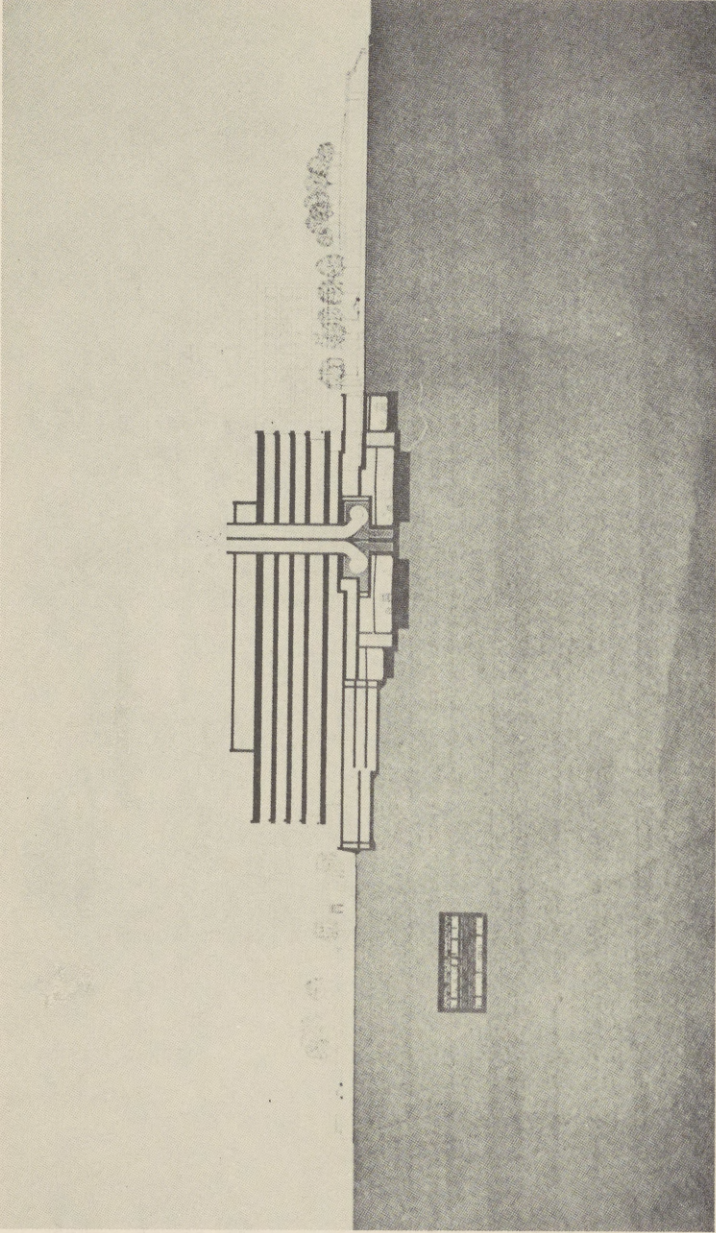


Figure 16. CROSS SECTION - LABOR DEPARTMENT BUILDING SHOWING BLOWER AND AIR DUCT SYSTEM

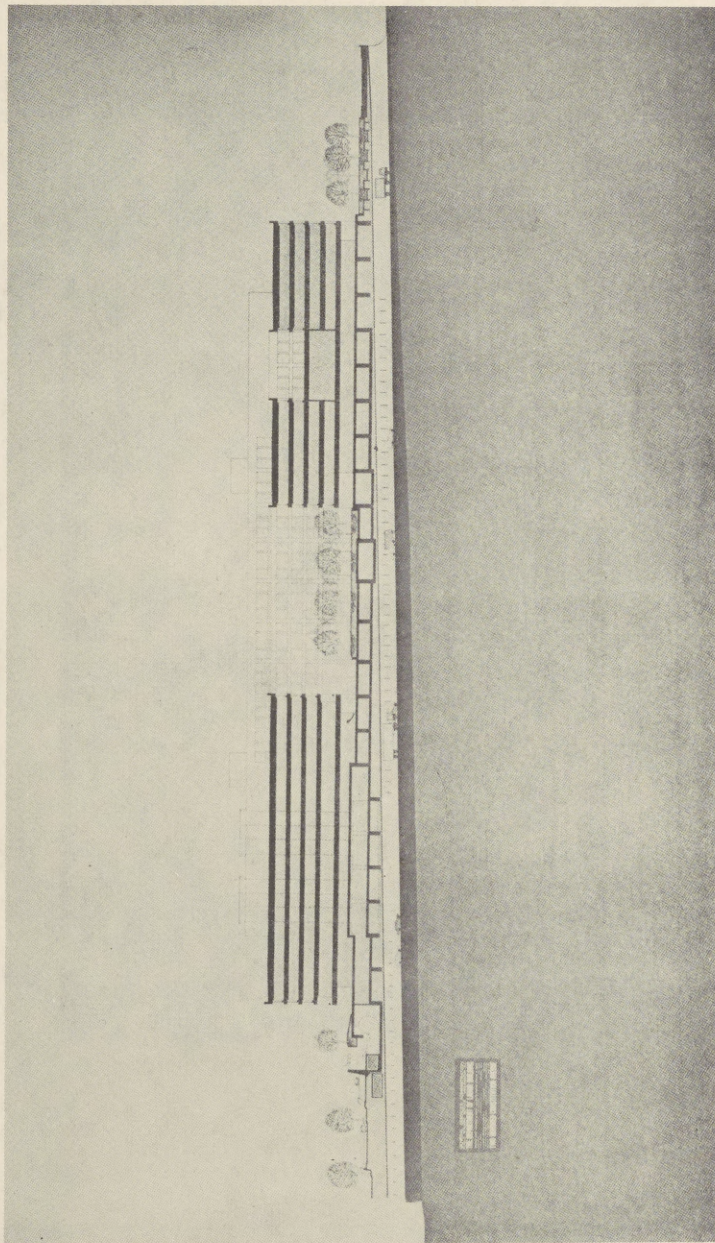


Figure 17. LONGITUDINAL SECTION OF LABOR DEPARTMENT BUILDING
SHOWING CENTER LEG TUNNEL IN SUB-STRUCTURE

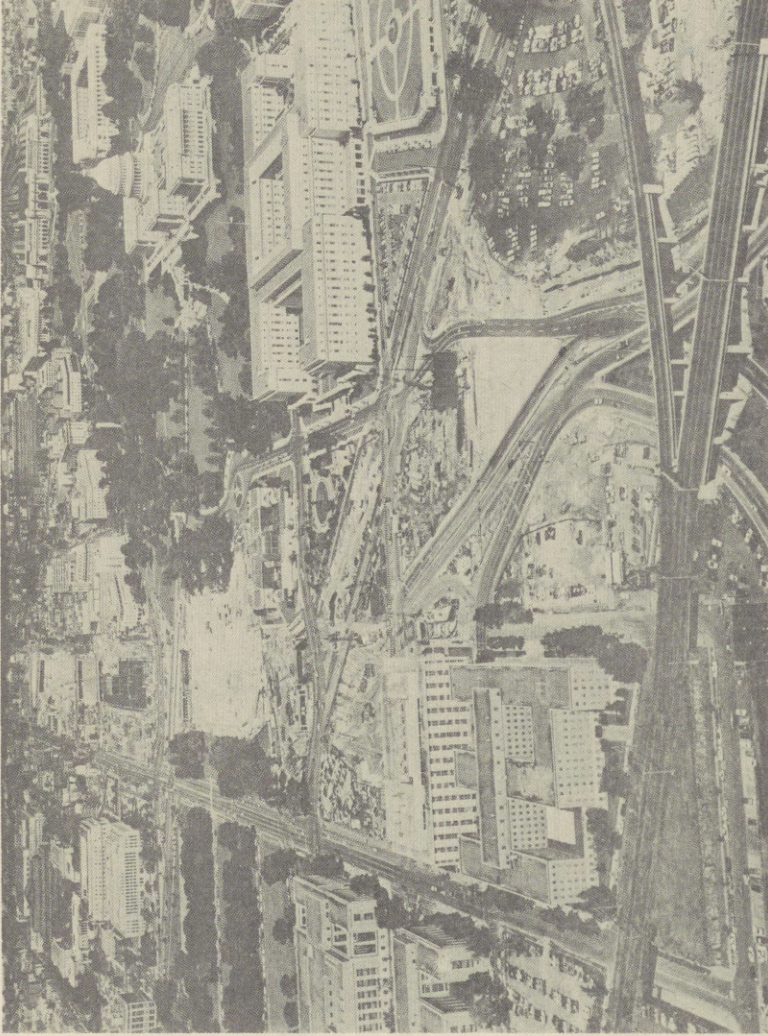


Figure 18. CURRENT STATUS OF CONSTRUCTION ON THE CENTER LEG FREEWAY PROJECT FROM A POINT SOUTH OF THE SOUTHWEST FREEWAY

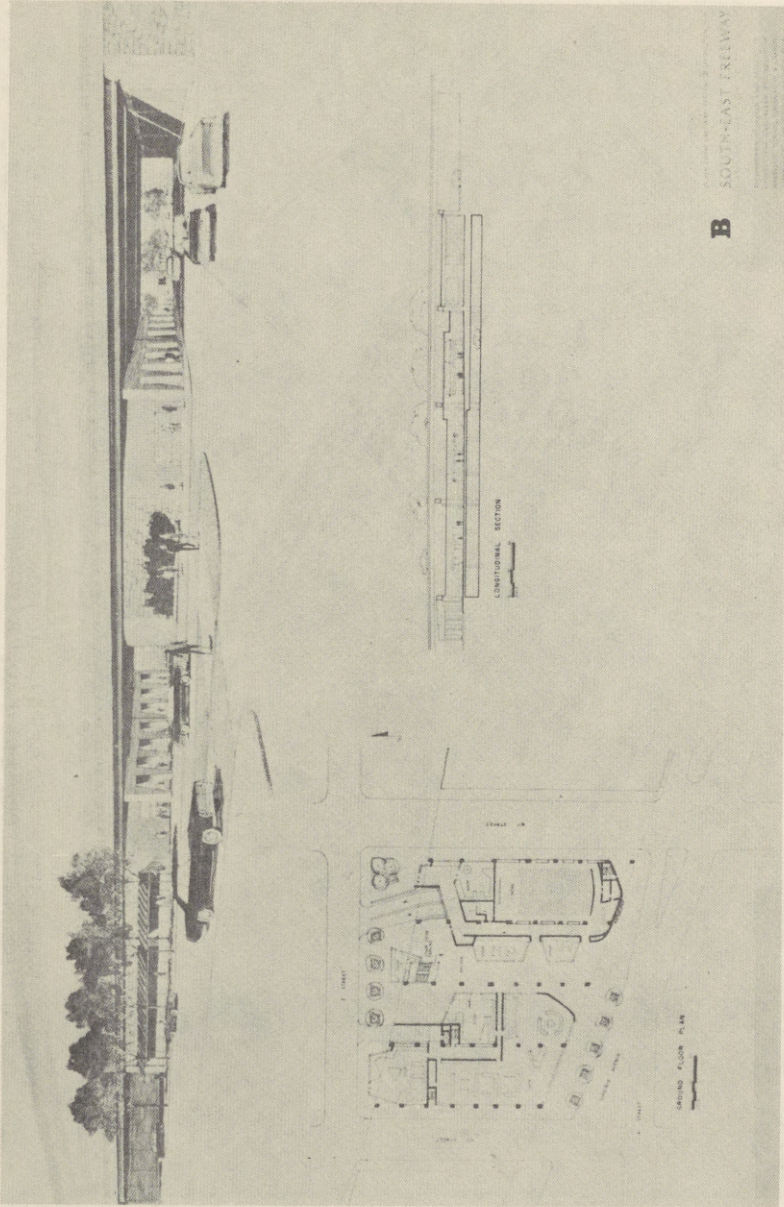


Figure 19. RENDERING OF SUGGESTED AIR RIGHTS USE UNDER SOUTHEAST FREEWAY BETWEEN 7TH AND 8TH STREETS, S. E.

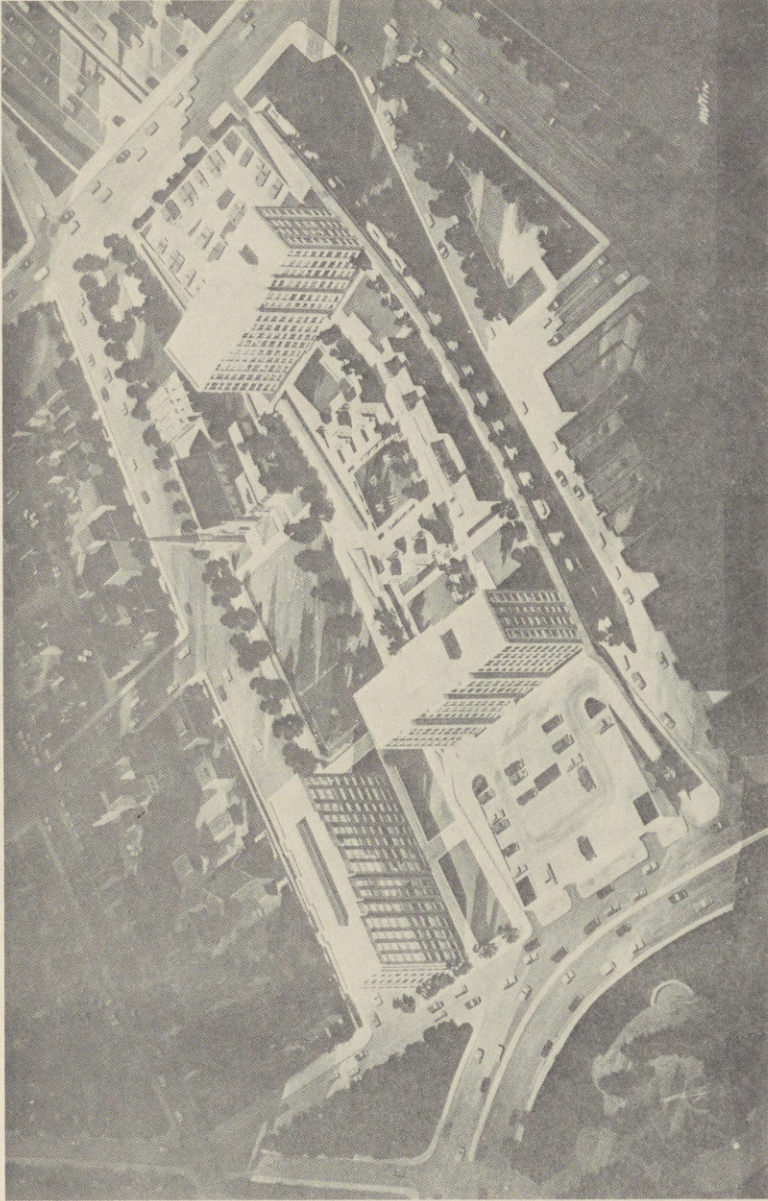


Figure 20. PROPOSED REPLACEMENT HOUSING PROJECT OVER THE CENTER LEG OF THE INNER LOOP FREEWAY

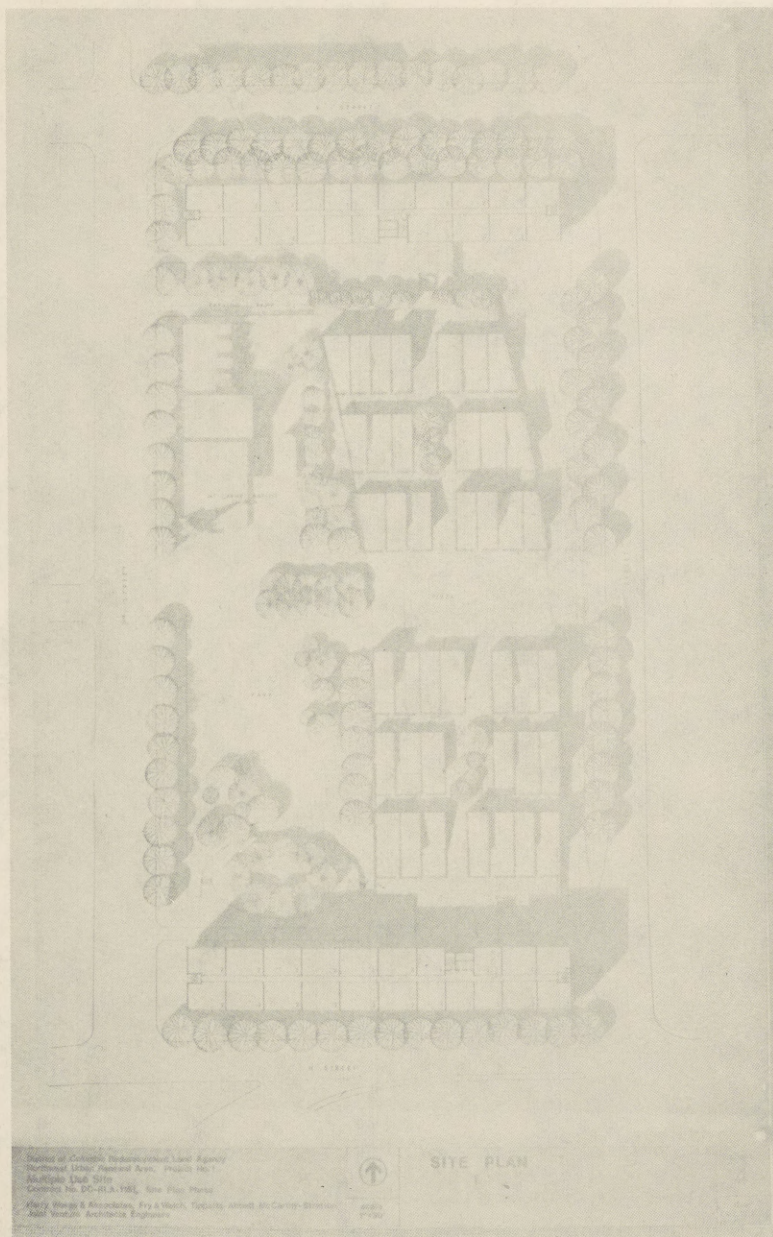


Figure 21. APPROVED CONCEPT OF HOUSING PROJECT OVER THE CENTER LEG OF THE INNER LOOP FREEWAY -- PLAN VIEW.

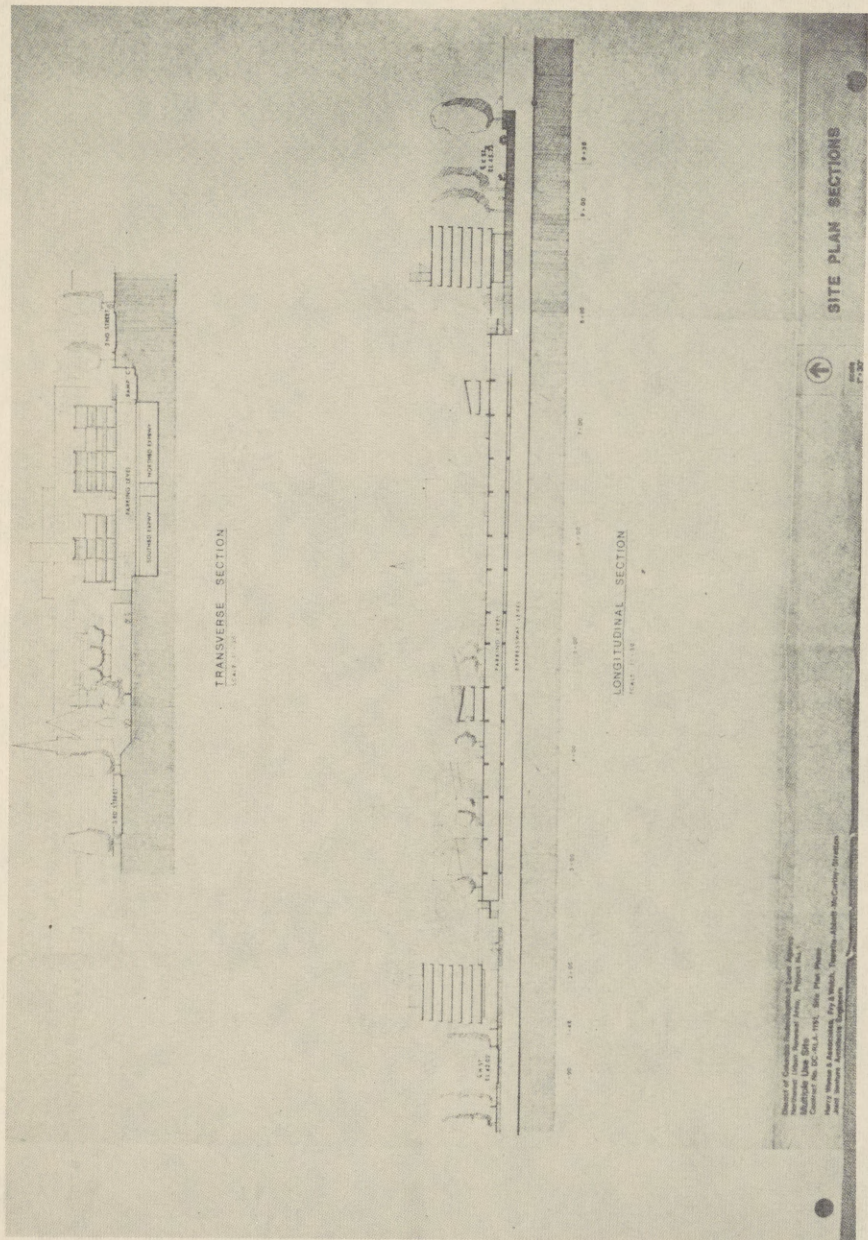


Figure 22. APPROVED CONCEPT OF HOUSING PROJECT OVER THE CENTER LEG OF THE INNER LOOP FREEWAY -- SECTIONAL VIEW.

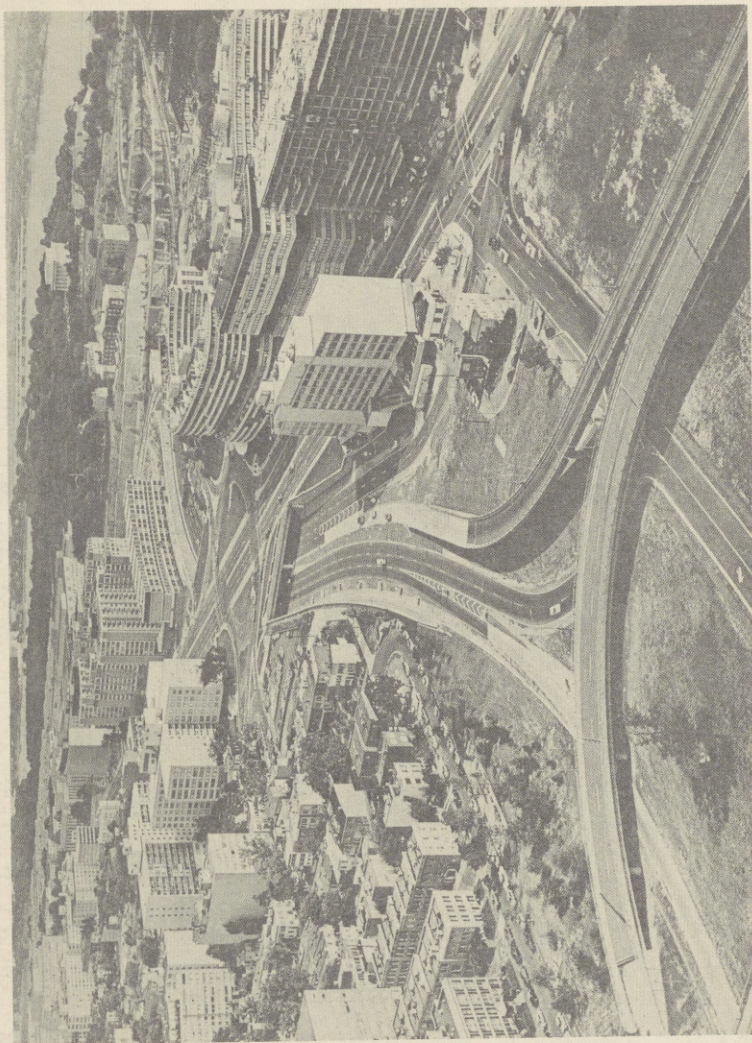


Figure 23. AIR OBLIQUE PHOTOGRAPH OF THE POTOMAC RIVER FREEWAY, THE VIRGINIA AVENUE GRADE SEPARATION, AND THE ADJACENT WATERGATE AND COLUMBIA PLAZA APARTMENTS AIR RIGHTS TREATMENT

Senator STEVENSON. Thank you very much, Mr. Wallace.
We will move as expeditiously as we can on S. 1367.

The next witness is Mr. William Robinson of the Office of the Corporation Counsel.

**STATEMENT OF WILLIAM A. ROBINSON, ASSISTANT CORPORATION
COUNSEL, DISTRICT OF COLUMBIA ON S. 1367**

Mr. ROBINSON. Thank you, Mr. Chairman.

The Tax Reform Act of 1969 (Public Law 91-172), among other things, directed that certain charitable corporations and trusts and private foundations amend their governing instruments by December 31, 1971, to include certain provisions specified in such act or face the loss of their present exemption from Federal income taxes.

These provisions are, of course, applicable to all charitable and split-interest trusts created in the District of Columbia.

In order to prevent the filing of a multiplicity of actions in court to alter or amend the governing instruments of the affected trusts a regulation of the Internal Revenue Service issued subsequent to passage of the Tax Reform Act provides that a statute enacted by the legislature of the State to the effect that all such governing instruments are deemed to contain the necessary provisions needed to conform with the requirements of the act will be sufficient.

S. 2409, provides the requisite declaration with respect to trusts in the District of Columbia.

The enactment of S. 2409, will not result in any additional costs to the District of Columbia Government. Its provisions will also be applicable to those charitable trusts whose trustees are officials of agencies or departments of the District government. Accordingly, the Commissioner has no objection to the enactment of S. 2409.

Senator STEVENSON. Mr. Robinson, you are also appearing in support of S. 2204; is that correct?

Mr. ROBINSON. S. 2204 is a District-sponsored bill.

Senator STEVENSON. Do you have a statement on that bill, too?

Mr. ROBINSON. Yes, Mr. Chairman.

Senator STEVENSON. We will now proceed with it.

**STATEMENT OF WILLIAM A. ROBINSON, ASSISTANT CORPORATION
COUNSEL; ACCOMPANIED BY JOSEPH HALEY, OFFICE OF PLAN-
NING AND MANAGEMENT; JANICE MACKINNON, OFFICE OF
BUDGET AND PROGRAM ANALYSIS; AND ORLANDO CACIOLA, ACT-
ING DISTRICT OF COLUMBIA PROCUREMENT OFFICER, ON S. 2204**

Mr. ROBINSON. Mr. Chairman, the Commissioner of the District of Columbia urges the favorable consideration by this committee of S. 2204. The bill, which may be cited as the "District of Columbia Administrative Improvements Act," is designed to increase the efficiency of, promote economies, and effect improvements in the operations of the District Government.

S. 2204, contains eight titles. In brief, title I authorizes the establishment in the Treasury of the United States of a general working capital fund for the District, without fiscal year limitation, to be used

for the financing of inventories, services, common-use equipment, centralization of services, and related purposes, and should result in a closer control of assets and inventories. Title I authorizes the Commissioner to replace existing working capital funds of the District, as he may see fit.

Title II of S. 2204, authorizes the Commissioner to negotiate contracts for the collection and disposal of solid wastes and refuse, including garbage, ashes, and sewage sludge, for periods not exceeding 20 years.

Under present law, waste disposal contracts are limited to periods not in excess of 5 years. In order to meet needs generated by the increasing demands for the disposal of the wastes of an urban area, it is essential that the District be authorized to negotiate contracts, separately or jointly with other jurisdictions, on a long-term basis to allow amortization of the substantial costs involved in the acquisition, construction, and equipping of the required facilities.

I need not say, Mr. Chairman, that this problem which title II of the bill is designed to solve is one which is occurring with increasing frequency and severity in most of the metropolitan areas of the country, and the Commissioner believes it is highly desirable that that authority to enter into long-term contracts be granted.

Title III authorizes the Commissioner to contract for the furnishing of supplies and services to District departments and agencies for periods not exceeding 3 years, to replace the present 1-year contracting authority.

Authority to execute long-term agreements is expected to result in increased benefits and savings to the District. I wish to point out to the committee that the authority sought under both title II and title III would be subject to the availability of funds through annual appropriations by the Congress.

Under title IV of the bill, the Commissioner is authorized to enter into joint contracts for supplies and services on behalf of the District government and as agent for other political divisions in the National Capital region.

The region includes municipal and county governments in the surrounding metropolitan area. It is believed that a joint contracting program will result in savings by virtue of lower prices effected through larger quantity prices and savings in administrative and clerical costs by elimination of duplicate functions.

Joint contracting authority of the type proposed by title IV has long been supported by the Metropolitan Washington Council of Governments and affords an example of the working together of local governments to solve mutual problems.

Title V amends a number of statutes covering a variety of activities and functions, which are specifically required by law to be audited on a quarterly, annual, or individual basis, to require only that such accounts be audited in the same manner as other accounts of the District government.

Audits of the accounts of the specified departments and activities at the frequencies presently required are not, in view of improved accounting controls and procedures, now essential and in some instances are impractical. The Commissioner recommends, therefore, that the intervals between audits be lengthened thereby enabling such

audits to be made on a regular periodic basis which is more realistically related to needs, in lieu of the present requirements which dictate that these audits, whether or not needed and whether or not there are practices which need closer scrutiny must be done on a quarterly, monthly, or annual basis.

The Commissioner would be authorized under title VI of the bill to accept and utilize the services of volunteers who wish, as a public service, to serve as members of various boards and commissions and to perform in a variety of activities involving relationships with the public and community-oriented programs.

Present law, with certain exceptions, prohibits the District from accepting the services of uncompensated volunteers. Among other things, title VI authorizes the Commissioner to make payment of honoraria to such volunteers, compensate them for expenses incurred in connection with their activities, and treat volunteers as employees of the District with respect to damage claims, payment of compensation benefits for injuries or death sustained in the performance of official duties, and the operation of motor vehicles.

With the exception of those three items, volunteers would not be considered or treated as District employees.

Title VII provides the District of Columbia a right of recovery from negligently liable third parties of the cost of medical and hospital expenses, and treatment and salary payments furnished or paid by the District to injured policemen and firemen, in like manner as the District recovers such costs or is subrogated to the claims of all other District employees.

The expenses of the District of Columbia involved in the care and treatment of policemen and firemen injured by third party tortfeasors have been, in some cases, extensive, and each year, much of these costs are not recovered. The right of recovery authorized by title VII is similar to that afforded under several acts of Congress and extends this principle to which is probably the sole remaining group of Government employees not affected by present statutes.

Title VIII of the bill provides, in 26 separate sections, substantive legislation for a variety of programs and activities now carried out by the District government, which are authorized only by language contained in District appropriation acts. In the absence of specific statutory authority, all such programs and activities are subject to the raising of a "point of order" against their continuation. It is essential, therefore, that substantive legislation be provided in order that these vital programs not be curtailed.

In addition to the items specified in title VIII, the Commissioner is requesting substantive authority for two programs which were inadvertently omitted in his original submission of the proposed legislation.

One such program authorizes the Commissioner to enter into contracts in connection with Federal aid highway projects, and the other authorizes the Commissioner to contract with and make payment to contractors and others for ongoing highway construction projects, subject to subsequent reimbursement by the Federal Government or other parties.

This would enable the continuation of a project to its completion and obviate the necessity of annual negotiation of the necessary contracts.

Proposed language to provide such authority is contained in the Commissioner's report on S. 2204, and I suggest that these additional sections be numbered as section 826 and section 827, respectively, and that the present section 826 be renumbered as section 828.

The purposes of S. 2204 are set out in greater detail in the justification and summary furnished by the Commissioner with his letter of transmittal of April 20, 1971.

We are prepared to furnish the committee with such other explanatory material as may be needed in the consideration of S. 2204.

Mr. Chairman, I am accompanied, with respect to this bill, by other officials of the District government who are available to answer any questions you may have with respect to the various titles of the bill.

Senator STEVENSON. Could you tell us a little bit more about the provisions in title VIII dealing with confidential funds?

The section is headed "Confidential Funds." Can you tell us a little more about what those funds are and what is intended by this legislation?

Mr. ROBINSON. Mr. Chairman, I would like to point out as a preface to these remarks that, with very few exceptions, all of the items included within title VIII are already being performed by the District government and have been authorized by appropriation acts, some going back for as long as 30 or 40 years. There has been no substantive authority granted for any of them, however, and that is what the Commissioner is seeking in S. 2204.

Incidentally, we are asking that there be included in the record an explanation of the various point-of-order items included in title VIII.

Senator STEVENSON. The committee has been furnished with that material, which was inserted earlier in the record.

Mr. ROBINSON. These confidential funds are appropriated to the Mayor, to the City Council Chairman, the Superintendent of Schools, and the presidents of the various educational institutions: Federal City, Washington Technical Institute, and District of Columbia Teachers College. These are in varying amounts.

Basically, the authorization would permit these officials to expend these amounts on their certificates, meaning they would not be held accountable for a detailed accounting of the expenditures, nor would they have to submit itemized vouchers as to when, where, and how the funds were spent.

If the provision is eliminated, the officials will lose the appropriations and the flexibility to expend the funds for confidential purposes.

The practice of granting to officials a certain amount of money to be spent for various official purposes is a rather widespread practice not only in the District of Columbia but in other State governments.

Basically, it is because of the demands of their office they are required to conduct certain ceremonial functions, to have official functions, receptions, and so forth. Without the appropriation authority, they would be required to expend these funds out of their personal funds.

So, it is for this purpose that the District is asking for authority to continue a practice which has been, as I have indicated, of long standing.

Senator STEVENSON. No accounting is required of these officials for the use of the funds?

Mr. ROBINSON. No specific individual accounting is required.

Of course, there are general accounting controls and the amount is limited to a specified figure. In the case of the Mayor, it is \$2,500 per year.

Senator STEVENSON. Mr. Robinson, I think it might be helpful to the committee to get a statement for the record as to why the officials should not be held accountable for the use of these funds. It does not sound to me like it would cause them any great inconvenience to keep a careful record of the use of all such funds. Maybe it is a matter of administrative practice that such records would be kept.

Is there any reason why there should not be a careful accounting for the use of all such funds?

Mr. ROBINSON. A detailed submission of vouchers to support the expenditure of the funds would limit the flexibility needed for officials to engage in functions which are really a part of and go with the office.

I think it goes without question that an official who is required as a part of his duties to entertain—to make public appearances—should be granted some amount of money to carry out his responsibilities so there would not be a personal burden upon him as a result of the duties connected with the performance of the office.

There is also another confidential fund relating to the Police Department which for obvious reasons should not be audited in detail because it involves the expenditure of funds for the apprehension of criminals and is an effective law enforcement tool.

But we will submit for the record a statement as to why we believe the present practice should be continued.

Senator STEVENSON. I am not questioning the desirability of providing funds for reasonable expenses. I am only questioning the apparent intention here of dispensing without any accountability for the use of those funds.

I would think the officials would have to keep records anyway for income tax purposes. I can see how detailed audits might reasonably be dispensed with, but I don't see offhand why there should not be an accounting by the officials for their use of all of the funds.

If you would rather not go into it any further now, I think a statement of further explanation on that particular point would be helpful to the committee, not so much on the uses of the funds and the amounts but the question of the accountability for their use.

(The information follows:)

THE DISTRICT OF COLUMBIA,
Washington, D.C., November 5, 1971.

HON. ADLAI E. STEVENSON III,
Chairman, Business, Commerce, and Judiciary Subcommittee, Committee on the District of Columbia, U.S. Senate, Washington, D.C.

DEAR SENATOR STEVENSON: At the hearing of September 28, 1971, on S. 2204 and H.R. 10383, you requested additional information on two aspects of the bills.

With respect to section 801 of S. 2204, you requested a statement as to the accountability by certain District officials of funds received under annual ap-

appropriation acts for official expenses. These funds are authorized annually in a limited amount for the Commissioner, the Chairman of the District of Columbia Council, the Superintendent of Schools, the Presidents of the District's Institutions of higher learning, and the Chief of Police. Inasmuch as the only existing authority for expenditure of such funds is contained in language in annual appropriation acts, these items are subject to a "point of order" objection and possible deletion from the appropriations act. Section 801 of S. 2204 would provide permanent statutory authority for such expenditures while maintaining Congressional control over the amount of funds available to be spent in this manner since the provision states that the specified officials "are hereby authorized to provide for the expenditure, *within the limits of specified annual appropriations*, of funds for such purposes as they may respectively deem necessary" (emphasis added).

Appropriations language providing a limited amount of monies for expenditure solely upon the certificate of the former Board of Commissioners first appeared in the District's Appropriations Act for 1931 as follows: "Provided, That the certificate of the Commissioners shall be sufficient voucher for the expenditure not to exceed \$1,000, for such investigations as they may deem necessary."

In the Appropriations Act for 1937 the word "purpose" was substituted for "investigations", presumably in order to give the Commissioners more flexibility. In the appropriations bill for the 1972 fiscal year, a total of \$9,000 is requested for the officials listed above to expend in this manner.

The significance of the appropriation language and section 801 of S. 2204 is that the Commissioner and other top level officials of the District Government are provided authority to expend monies for purposes not otherwise authorized by public law. All proposed expenditures by the District of Columbia Government are required to be pre-audited by the Department of Finance and Revenue. Through the pre-audit procedure, it is determined whether or not an expenditure is a legally authorized expenditure, i.e., whether the purpose is legally authorized and whether the proper requirements for public expenditure have been met. There exist an extensive and complicated series of laws, Federal and District procurement and other regulations, and decisions of the Comptroller General which must be complied with if the expenditure is to be approved.

The Commissioner and selected top level officials, to operate effectively, must have a limited amount of funds available for which their certificate will be sufficient voucher for an expenditure and thus not subject the expenditure to pre-audit. This kind of authorization provides the officials with essential flexibility so that the funds may be expended for purposes of investigation or entertainment, or for governmental functions of a confidential nature, when an expenditure for some specific purpose may not be authorized in basic law, or when the timing or means of purchase make it important for effective operations that normal procurement procedures not be followed.

I wish to point out particularly that although these expenditures are not subject to pre-audit, the officials involved are held strictly accountable for the funds. Each annual appropriation act limits the amount of monies which may be expended solely on the basis of an official's certificate. Separate limitations in the District's accounting system are established for these funds so that when a voucher is prepared for such an expenditure, it is charged to the specific limitation on the respective fund. Regular accounting reports relating obligations and disbursements are prepared daily by the Accounting Division of the Department of Finance and Revenue and transmitted to each District agency. In addition, this appropriation limitation appears as a separate item on the Financial Plan and Status Reports issued each month. These computerized reports compare planned expenditures phased over the fiscal year with actual expenditures to date in order to provide a continuing look at the status of an account, to avoid possible deficiencies in the appropriations, and to maintain the limit established by the Congress in the appropriations act.

Thus the funds authorized for expenditure upon the certificate of the Commissioner or other designated official are fully and closely accounted for. The critical point, which I again emphasize, is that this authority, presently contained only in appropriations acts, provides important flexibility to the Commissioner and others for effectively carrying out their duties and responsibilities. Accordingly, it is important that a permanent statutory basis be secured for these expenditures which have been approved on an annual basis since 1931. Enactment of Section 801 of S. 2204 will provide this basis and will remove the possibility of a "point of order" objection to the appropriation language.

In connection with H.R. 10383, the proposed "District of Columbia Professional Corporation Act", you requested a listing of other jurisdictions which impose a tax on unincorporated businesses in a manner analogous to that of the District of Columbia. A review of the statutes of other jurisdictions confirms the statement made at the hearing that the State and City of New York are the only other jurisdictions with analogous laws. While the State of New York exempts professions in similar manner as existing District law, the Unincorporated Business Tax Law of New York City was amended in 1971 and made specifically applicable to professional organizations, effective June of 1971.

I hope that these comments will be useful to your Subcommittee in the further consideration of S. 2204 and H.R. 10383.

Sincerely yours,

GRAHAM W. WATT,
Assistant to the Commissioner.

Getting back to the problem of waste disposal, and I know from experience in my own State how serious the problem can be if cities and municipalities have these problems.

The District of Columbia now has authority to enter into 5-year contracts for the disposal of solid wastes.

Mr. ROBINSON. That is correct.

Senator STEVENSON. How are these wastes disposed of under the contract?

Mr. ROBINSON. Mr. Freeze, who is with the Department of Environmental Services, was here a short while ago but I believe he has now gone.

The District, of course, is faced with the problem of disposing of wastes. Either this year or last year the District Government was before this committee to request the transfer of land in Prince William County, Va., in order to meet this problem and it involved the transfer of various parcels of land between the two jurisdictions in order that a land fill be used in that State to meet the problem.

Among some of the proposals are the use of mines in Appalachia to dump and transfer the material, the use of barges to dispose of the materials, and the use of railroads to transport it away from the District.

As you know, the District facilities for disposal of solid waste are rather limited, and it is believed that a 20-year contract, at least 20 years, would be necessary in order—

Senator STEVENSON. You mentioned mines? Does that include strip mines?

Mr. ROBINSON. That is under consideration.

Railroads and truck facilities are being utilized under the 5-year authority for this purpose. However, it is not meeting the increased demands.

Senator STEVENSON. I asked the question partly as a matter of curiosity. We are experimenting in Illinois with the use of such waste to reclaim strip mines, and with some success.

All sorts of problems are raised and there is a serious cost problem at the moment—partly the cost of transportation. You seem to offer a very interesting potential for reclaiming the lands which have been ravaged which at the moment in my State are now deprived of any real use or any productivity and taken off the tax rolls and are wasted and at a time, of course, when the potential public uses for these lands are mounting very rapidly.

We hope the possibility of using wastes in cooperation with other jurisdictions to claim strip mine lands might be explored by the District.

On the question of volunteers, certainly on its face it sounds reasonable, but what do you do about the employee who volunteers his services to the District of Columbia in his free time?

Does he get compensated twice?

Mr. ROBINSON. I don't think so, Mr. Chairman. In fact, I am quite certain that volunteer duty on the part of an employee would not be subject to compensation.

I might also point out in connection with this title of the bill that it is not intended to replace positions authorized by law. These so-called volunteers would be filling positions or performing activities for which there are no classified positions.

They would not be in replacement of positions either authorized by law or filled by District employees.

Senator STEVENSON. Are you also testifying on H.R. 10383?

Mr. ROBINSON. Yes, sir.

Senator STEVENSON. Why don't we proceed to that bill?

STATEMENT OF WILLIAM A. ROBINSON, ASSISTANT CORPORATION COUNSEL; ACCOMPANIED BY WALTER THOMPSON, ASSISTANT DIRECTOR FOR TAX ADMINISTRATION, DEPARTMENT OF FINANCE AND REVENUE, ON H.R. 10383

Mr. ROBINSON. We are pleased to appear to present the views of the Commissioner of the District of Columbia on H.R. 10383, the proposed "District of Columbia Professional Corporation Act," as passed by the House of Representatives on October 12, 1971.

H.R. 10383 authorizes individuals rendering professional services in the District which, under existing law, custom, or standards of professional conduct may not be rendered through a corporate structure, including services performed by certified public accountants, attorneys, architects, physicians, dentists, optometrists, podiatrists, and engineers, to join in the formation of a corporation.

Among the desirable features of the bill are provisions which made applicable the District of Columbia Business Corporation Act to any professional corporation organized under authority of the bill to retain the applicability of existing licensing requirements for individuals rendering professional services through a corporation; and continue the personal liability of an incorporator for his negligent or wrongful acts and the confidential relationship between a professional and his client or patient.

The Commissioner favors generally the objectives of H.R. 10383 and believes that its enactment would provide a worthwhile addition to existing law. Although the provisions of enabling statutes in the States vary in detail, it is to be noted that the District of Columbia is the sole remaining jurisdiction which is without a law permitting the formation of professional corporations.

Section 21 of H.R. 10383 amends the second sentence of section 1 of title VIII of the District of Columbia Income and Franchise Tax Act of 1947 so as to remove from the taxation provisions applicable to

unincorporated businesses "any trade, business, or profession which can be incorporated only under the District of Columbia Professional Corporation Act."

The Commissioner is opposed to the enactment of section 21 of H.R. 10383. Under present law, any trade or business which by law, custom, or ethics cannot be incorporated is exempt from payment of the unincorporated franchise tax.

Since H.R. 10383 would permit these businesses and professions to incorporate, it would logically follow that the exemption from the unincorporated business tax should be eliminated and that henceforth all businesses which did not choose to incorporate would be subject to taxation. However, section 21 of the bill would amend the exemption language of title VIII of the Income and Franchise Tax Act of 1947 to include any trade, business, or profession which can be incorporated only under the proposed bill.

Thus, despite the fact that the original basis for the exemption would no longer exist, the exemption would be retained.

The Commissioner does not believe that the retention of this exemption can be justified when the sole reason for the exemption, in the first place, is removed by the terms of the bill, nor can he discern any reason why presently exempt businesses and professions which utilize the District of Columbia as a source of income should not be liable to pay the unincorporated business tax as all other unincorporated businesses are required. Accordingly, the Commissioner recommends that section 21 of H.R. 10383 be eliminated.

The Commissioner also suggests the deletion of subsection (d) of section 2 of the bill since no functions are assigned to the District of Columbia Council by the bill nor does the term "Council" appear in any other section of H.R. 10383.

Subject to these recommended changes, the Commissioner favors the enactment of H.R. 10383.

Senator STEVENSON. Do you know if the associations of professionals—the bar association, the medical association and the others—support this legislation? Have you had any objections from such associations representing the affected professions?

Mr. ROBINSON. It is my understanding that most, if not all, of the professions support H.R. 10383 as passed by the House and as it is now before the committee.

Senator STEVENSON. Do you know of any reason for excluding psychologists?

Mr. ROBINSON. I do not believe, Mr. Chairman, that they are excluded.

I believe that any business or profession which either by law or custom cannot be incorporated under existing practices or law would be included.

I don't believe they were mentioned in the list of professions which I just read off, but that was not an all-inclusive list.

It was simply an example of the type of professions which would be affected by the terms of the bill. The psychology bill was passed by the Congress only last year and perhaps inadvertently that profession was omitted.

Senator STEVENSON. Do you know what the practice is in other States? Do they remove the franchise tax exemption for the incorporated associations of professionals?

Mr. ROBINSON. I am not familiar with the details of the taxing provisions in the other States, Mr. Chairman. The unincorporated franchise tax act which applies to the District could perhaps be unique and not be a feature of the taxing provision of other States.

This is Mr. Walter Thompson of the Department of Finance and Revenue of the District of Columbia government. He may be able to shed a little light on the taxing provisions in other jurisdictions.

Mr. THOMPSON. I can only comment on New York State. It is my understanding that New York State has repealed the exemptions applicable to professions.

Senator STEVENSON. They repealed the exemptions but they are subject to the taxation?

Mr. THOMPSON. Yes, sir.

Senator STEVENSON. I don't offhand see what the rationale would be for exempting them from franchise taxation. I was a little curious about the practice in other jurisdictions.

Mr. THOMPSON. There are very few States that have an unincorporated business tax as such. If you would like, I could furnish a résumé of those States which do have an unincorporated business tax.¹

Senator STEVENSON. That would be very helpful.

Senator STEVENSON. Thank you very much, Mr. Robinson and Mr. Thompson.

Our next witnesses are Mr. William Corey and Mr. Roger Middlekauff of the District of Columbia Bar Association; Mr. Cornelius R. Milstead, chairman of the legislative committee of the Washington Chapter of AIA; Dr. Henry J. Heim, president of the District of Columbia Dental Society, and Mr. Marvin Korengold, president of the Medical Society of the District of Columbia, all here to testify on H.R. 10383.

Thank you, gentlemen, for appearing here this morning.

STATEMENTS OF WILLIAM S. COREY AND ROGER D. MIDDLEKAUFF, DISTRICT OF COLUMBIA BAR ASSOCIATION; CORNELIUS R. MILSTEAD, CHAIRMAN, LEGISLATIVE COMMITTEE, WASHINGTON METROPOLITAN CHAPTER OF AMERICAN INSTITUTE OF ARCHITECTS; DR. HENRY J. HEIM, PRESIDENT, DISTRICT OF COLUMBIA DENTAL SOCIETY; AND DR. MARVIN C. KORENGOLD, PRESIDENT, MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA, ON H.R. 10383

Mr. MIDDLEKAUFF. Thank you, Mr. Chairman.

I am appearing here with Mr. Corey on behalf of the District of Columbia Bar Association. With your permission we would like to address ourselves to the statement of the bar association and then ask each other member of the panel to introduce himself to present his brief statement.

¹ The information may be found in a letter from Graham Watt, assistant to the Commissioner of the District of Columbia to Senator Stevenson, dated November 5, 1971, which appears on p. 137.

Senator STEVENSON. That is fine.

You may proceed.

Mr. MIDDLEKAUFF. Also, with your permission, I would like to have our written statement incorporated into the transcript, with Mr. Corey providing a brief synopsis of our prepared statement.

Senator STEVENSON. It will be entered.

(The prepared statement of the Bar Association of the District of Columbia follows:)

PREPARED STATEMENT ON BEHALF OF THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA BY ROGER D. MIDDLEKAUFF AND WILLIAM S. COREY, ON H.R. 10383

Mr. Chairman: My name is Roger D. Middlekauff, and I am a practicing attorney in the District of Columbia and Chairman of the Subcommittee on Corporations and Business Organizations of the District of Columbia Bar Association. William S. Corey, Chairman of the Tax Committee of the Bar Association and I were designated by the Bar Association to testify on its behalf before you this morning regarding H.R. 10383, the proposed District of Columbia Professional Corporation Act.

In this statement we will first review the advantages which accrue to a professional having available to him the authority to incorporate. Then, we will review the highlights of the proposed act and the tax considerations with respect to incorporation of professionals. In this regard, we would like to mention that the proposed Act is the work of many of the District's outstanding attorneys, who drew upon the best provisions of similar acts in the other states, and submitted it to the House District Committee for its consideration. We are all beneficiaries of the extraordinary efforts of those many esteemed attorneys who volunteered their energies and talents. Mr. Corey and myself are privileged to be chosen to appear on behalf of the Bar Association to submit to you these comments.

I. ADVANTAGES OF A CORPORATE STRUCTURE

Professionals are now authorized to incorporate in every state of these United States. Through the encouragement of the doctors, dentists, lawyers, architects, accountants, engineers and other professionals, all the 50 state legislative bodies adopted legislation authorizing their incorporation. Prior to this authorization, professionals had to resort to partnerships as their vehicles of combination. In a number of respects, partnerships, as compared to corporations, are ungainly and complicated.

Several basic attributes of professional corporations give them value over a partnership structure.* A corporation has a greater degree of centralization of management. A corporation limits the liability of a stockholder when an officer of the corporation properly acts within the authority given him by the Board of Directors. (However, in a professional corporation the professional still bears the responsibility for his own malpractice.) A professional corporation has perpetual existence; whereas, a partnership comes to an end upon the death of any partner. Finally, a professional corporation has greater flexibility with respect to transfer of interest than does a partnership.

As a general matter, the laws regarding corporations are much more clearly defined than as to the partnerships. The guidelines for corporate activities, responsibilities, and relationships are well-known. Partnership agreements by necessity become long and cumbersome because the partners are unable to resort to the large body of statutory and case law which define the corporate concept.

I would like to emphasize that the proposed Act does not require professionals to incorporate. It simply provides them with the opportunity to incorporate and defines the structure which results from that incorporation. We believe that professionals should be given the privilege now accorded all businessmen, the right to incorporate.

*These attributes are elaborated further in "Factors That Go Into Decision of Whether To Operate as a Professional Corporation" G. E. Ray, The Journal of Taxation, 130-32 (March 1971).

II. A REVIEW OF THE HIGHLIGHTS OF H.R. 10383

Sections 2 through 20 describe the details of the corporate process as follows:

2. Defines the general coverage of the Act. Shareholders are limited to those who are licensed to render the same professional service as the corporation. Permits incorporation for those who were previously unable to do so.

3. Makes it clear that professionals are not required to incorporate.

4. Sets forth the inter-relationships between the Act, the existing rules governing the professions, and the D.C. Business Corporation Act.

5. Provides that the major activity of a professional corporation will be the rendering of professional services. However, the professional corporation may employ non-professionals, may invest its surplus funds, and may enter into partnership agreements with individuals or firms in the District of Columbia and other jurisdictions.

6. The form of articles of incorporation differs somewhat from the requirements of the Business Corporation Act. One or more persons may incorporate, provided that they are duly licensed.

7. In order to avoid artificialities and to afford flexibility in the management of small professional corporations, the number of directors may be one or more.

8. Shareholders, officers and directors of professional corporations must be licensed professionals, but shareholders need not be active. Thus, retired or disabled partners can continue to have an interest in the firm.

9. The names permitted to be used by professional corporations will distinguish them from commercial businesses. The corporate name shall contain the words "Professional Corporation", the abbreviation "P.C.", or the word "Chartered."

10. This section, and sections 12, 13, 15, 16, and 17, establish control relationships within the professional corporation which recognize that professional corporations are close corporations which must have great latitude in placing restrictions on the transfer and voting of shares.

11. Establishes that corporate identity will not protect the individual professional from liability for his own malpractice, and will not diminish the confidentiality of the relationship between the professional and the client/patient. However, malpractice by one or more professionals in a professional corporation will not subject any other professional to personal liability. The professional corporation is liable up to the full value of its assets for negligent or wrongful acts of officers, shareholders, directors, agents in rendering professional services on behalf of the professional corporation.

12. Permits professional corporations to place restrictions on the transfer of shares. Recognizing that stock of professional corporations will be owned by professionals and cannot be made available to the public, the section also exempts the issuance and transfer of stock of professional corporations from the D.C. Securities law and from the Federal Securities Act of 1933. Subsection (d) is intended to minimize the disruptive effect of professional corporation shares falling into the hands of an individual creditor of a stockholder.

13. This section recognizes that the rendering of professional services in the District of Columbia should be conducted as a separate activity and not intermixed with other businesses. Out-of-state arrangements with other professionals are adequately provided for by section 5. This provision is consistent with most state laws, which would also prohibit mergers of domestic and foreign corporations. The section implicitly recognizes that a single professional corporation may conduct two or more professional activities (for example, architect-engineers) when such combinations are not prohibited by rules regulating the professions.

14. Foreign professional corporations licensed in a jurisdiction other than the District of Columbia may perform professional services in the District of Columbia if they meet certain requirements by obtaining a certificate of authority under this provision. A certificate of authority would be granted only if the foreign jurisdiction authorizes reciprocal admission rights.

15. If an individual is disqualified from rendering the professional services, he shall sever employment relationships with the professional corporation.

16. Provides for the sale or redemption of stock of a disqualified, deceased, or legally incompetent shareholder.

17. Unless the shareholders have previously agreed otherwise, the redemption price for shares of a disqualified, deceased, legally incompetent, retired or expelled shareholder shall be book value.

18. A professional corporation shall have perpetual existence, and provides an administrative procedure in the event professional services are no longer rendered.

19. An administrative requirement for the filing of an annual report with the D.C. Recorder of Deeds.

20. This section deals with penalties for failure to comply with the provisions of the Act.

Section 21 amends the District of Columbia Income and Franchise Tax Act of 1947 in order to maintain for unincorporated professional associations the unincorporated business tax exemption which these associations presently have under that Act.

III. DISTRICT OF COLUMBIA FEDERAL TAX CONSIDERATIONS

Much has been written and said regarding the Federal tax advantages of professional individuals operating in the corporate form. While there are a number of these tax advantages, probably the most significant advantages at the present time stem from the disparities in the Federal tax treatments of qualified retirement plans of corporate employees and of qualified retirement plans for self-employed individuals. Broadly speaking, the Federal income tax treatment of all such qualified plans consists of a deferral of the Federal income tax with respect to contributions made on behalf of employees, including self-employed individuals, until distribution of the employees' benefits and the deferral, for the same period, of the Federal income tax on the earnings from investment of all contributions made under the plan.

As indicated above the benefits under qualified retirement plans for self-employed individuals, or so-called "H.R. 10 plans", are not nearly so broad as those under corporate plans. One of the most significant differences concerns the maximum limitation on contributions on behalf of self-employed individuals who have a more than 10% interest in the business (so-called "owner-employees"). Under the Federal Internal Revenue Code such contributions are limited to the *lesser* of 10% of the individual's "earned income" from the business or \$2,500 per year. On the other hand, in the case of corporate retirement plans, contributions up to 25% of an employee's compensation are permitted where the employer has both a pension plan and a profit sharing plan and there is no ceiling on the dollar amount which may be contributed. Similarly, the benefits from voluntary additional contributions, i.e., the contributions by the employee or by self-employed individuals for which no deduction is allowable, are greater under corporate retirement plans. Specifically under corporate plans an employee may contribute up to 10% of his compensation without regard to the dollar amount thereof, with the result that such contributions will then accumulate tax-free income until the distribution of the employee's benefits upon his retirement. On the other hand, voluntary contributions by "owner-employees" are restricted to the *lesser* of 10% of earned income from the business or \$2,500 per year *and* may only be made if there are plan participants during the tax year other than "owner-employees" who are permitted to make voluntary contributions. In addition, there are requirements with respect to the qualification of plans which include self-employed individuals which are not imposed with respect to corporate plans and these are particularly onerous in the case of plans which include self-employed individuals who are "owner-employees."

Another benefit which is available to corporate employees which is not available to self-employed individuals is the opportunity to receive one's account entirely in the year of retirement and have a portion thereof taxed at capital gains rate. A lump-sum distribution to a self-employed individual is taxable ordinary income, subject to a special averaging rule in certain cases.

Lastly, the present Federal estate tax and gift tax exclusions available with respect to contributions to qualified retirement plans by corporate employers are not available with respect to contributions under H.R. 10 plans.

In addition to benefits relating to qualified retirement plans, corporate employees have available many other Federal income tax benefits which their self-employed counterparts do not enjoy. A corporate employer may provide group term life insurance coverage for its employees, tax-free, up to a maximum of \$50,000 coverage. In addition, corporate employers may, depending upon the coverage limitations of the particular local jurisdiction, provide additional group term life insurance coverage for its employees at a very nominal Federal tax cost.

Corporate employees may receive the benefit of payments from accident, health and sickness plans and from medical and dental reimbursements plans tax-free. At the same time the corporate employer is entitled to a deduction for the insurance premiums paid and for the medical and dental reimbursements, as the case may be.

Corporate employees are also eligible to exclude a portion of their salaries which are paid to them under so-called wage continuation or sick pay plans while they are away from work on account of personal injuries or sickness.

Corporate employers may pay death benefits to beneficiaries of their employees up to a maximum of \$5,000 without any tax resulting to the recipient. In addition, a corporate employer may make a non-deductible tax-free gift to the widow of a deceased employee in appropriate circumstances.

And finally, two fairly insignificant tax advantages might be mentioned. First, the first \$25,000 of a corporation's taxable income is subject to the 22% normal tax rate and the excess is presently subject to a 48% rate. Second, a corporation has a completely free choice of a fiscal year for Federal tax reporting purposes whereas a partnership must adopt the same taxable year as its partners.

We should like to point out that the President of the Bar Association of the District of Columbia, Herbert J. Miller, Jr., in a letter to the Chairman of the Senate District Committee dated April 18, 1971, emphasized that the Bar Association considers Section 2 of H.R. 3121, now section 21 of H.R. 10383, to be an essential part thereof and that the Bar Association will not support the proposed bill without this section. As noted above, Section 21 of H.R. 10383 preserves the presently existing exemption from the unincorporated business tax which is accorded to professional individuals. Representatives of the Bar Association have opposed previous attempts to repeal this exemption on essentially two grounds. First, both the States of Maryland and Virginia grant a credit to their residents for income taxes paid to another jurisdiction on income generated in that jurisdiction. The District unincorporated business tax does not qualify for this credit since it's a franchise tax rather than an income tax. Accordingly, the professional who resides in Maryland or Virginia and conducts his practice in the District would be subject to double tax on the net income for his practice. I might add that the District's Revenue Act in 1969 in proposed form contained a provision repealing this exemption, which was not contained in the Act as passed, which changed the label of the unincorporated business tax from a "franchise tax" to an "income tax." At that time, the Bar Association felt, and it still feels, that such a change is merely one of semantics and not of substance and that Maryland and Virginia would continue to deny the credit. Put simply, whatever the label, the unincorporated business tax is a tax on the privilege of doing business in the District.

Second, maintaining this exemption is necessary in order to avoid the imposition of what is really a "commuter" tax, or under recent parlance a "reciprocal income" tax, upon one group of individuals. Put another way, maintaining the exemption is necessary in order to avoid discrimination against professional individuals.

In this connection, we would like to emphasize that the D.C. Bar Association, in conditioning its endorsement of H.R. 10383 upon the retention of Section 21 thereof, is not trying to avoid District tax on nonresidents. (As you know, professionals who reside in the District are taxed on their professional earnings by the individual income tax.) In fact, the Board of Directors of the Bar Association, at a meeting held on June 8, 1971, endorsed the principle of a reciprocal income tax contained in Article I of H.R. 8392 which would impose the District income tax upon income earned within the District by all nonresidents of the District. Mr. Corey so testified on June 30, 1971 on behalf of the Bar Association before a subcommittee of the House District Committee. This tax would clearly be eligible under existing law for credit against the Maryland and Virginia income taxes. If the Congress approves the concept of a reciprocal income tax, the unincorporated business tax will be eliminated.

We would also like to mention specifically that the professionals who support H.R. 10383 and who want the right to incorporate will, upon incorporation, be voluntarily and knowingly subjecting themselves to the D.C. Corporate Franchise Tax. They will be in competition with their brethren who would be exempt as unincorporated businesses.

The professional who does not want to incorporate, will not appear before this subcommittee, and is probably the independent, sole practitioner, would be the

individual adversely affected if H.R. 10383 were enacted without Section 21. All the supporters of H.R. 10383 have conditioned their support on Section 21, and it is principally to protect those who do not want to incorporate, and did not ask for the right to incorporate.

If the sole practitioner found himself subject to an Unincorporated Business Franchise Tax, it would be a simple matter for him to move his office into Maryland and Virginia, along with the many other corporations, service organizations, and trade associations that have moved into the suburbs.

The professionals who want the right to incorporate are willing to pay for it, by assuming the obligation to pay the D.C. Corporate Franchise Tax.

V. CONCLUSION

In conclusion, on behalf of the Bar Association of the District of Columbia, Mr. Corey and I thank you for the opportunity to submit our views regarding the Professional Corporation Act. We consider this bill a matter of significant interest and benefit to the community and urge your support in prompt passage of this bill.

Mr. COREY. The District of Columbia Bar Association feels there are several corporate and tax advantages to be gained by the incorporation of a business and believes that professional persons in the District of Columbia should be afforded the same opportunity to incorporate as is afforded to other persons.

In this connection, we would emphasize that H.R. 10383 will permit but not compel professionals in the District to incorporate.

The District of Columbia is now the only jurisdiction without some form of corporate legislation.

Picking up on Mr. Robinson's point, we would like to emphasize that the District of Columbia Bar Association's support of H.R. 10383 is specifically conditioned upon the retention of section 21 thereof which maintains the existing exemption from the 6 percent District of Columbia unincorporated business tax for those professionals who do not choose to incorporate.

This tax has been held to be noncreditable against the Maryland and Virginia individual income taxes so that retention of the exemption is essential in order to avoid double taxation of those Maryland and Virginia professionals who practice in the District and choose not to incorporate.

Professionals who do incorporate themselves will be subjecting themselves to the 6 percent District of Columbia franchise tax.

Also, we would like to point out we do not believe there is any cost to the District of Columbia government as a result of the enactment of the bill.

To the contrary, and as indicated in the House report, the District will reap additional corporation fees, additional corporate income taxes, additional unemployment taxes, and additional insurance premium taxes upon the enactment of this legislation.

We will be happy to try to answer any questions that you may have after the completion of the other statements.

Senator STEVENSON. Proceed with the statements of the other witnesses.

Mr. MILSTEAD. I am Cornelius Milstead. I am chairman of the legislative committee of the Washington Metropolitan Chapter of the American Institute of Architects.

I have a prepared statement and I would request that it be entered into the record.

Senator STEVENSON. It will be entered.
 (The prepared statement of the Washington Metropolitan Chapter of the American Institute of Architects follows:)

PREPARED STATEMENT OF THE WASHINGTON METROPOLITAN CHAPTER OF THE AMERICAN INSTITUTE OF ARCHITECTS, INC., ON H.R. 10383

Gentlemen: My name is Cornelius R. Milstead and I am Chairman of the Legislation Committee of the Washington Metropolitan Chapter of The American Institute of Architects, Inc., a professional organization with a membership of some 650 registered architects living and practicing in the Washington Metropolitan Area.

The Washington Metropolitan Chapter of The American Institute of Architects wishes to go on record as supporting the concept of professional corporation as proposed in H.R. 10383, the "District of Columbia Professional Corporation Act." We have, however, one objection as it is presently written with regard to the practice of architecture. This objection we believe will not present any real obstacle to approval of the legislation and can be easily overcome by an addition to, or a revision of, the bill in its present form.

Our objection is referenced to Section 8, *QUALIFICATIONS OF SHAREHOLDER, DIRECTOR, AND OFFICER*, page 6 of the Bill. In reviewing the provisions of this section, with reference to the profession of architecture, our organization finds this portion of the bill to be too restrictive for emerging forms of practice. The bill, as presently worded, provides that, "no person shall be a shareholder, director or officer of a professional corporation or render service on its behalf unless he is an individual licensed to render a professional service for which the corporation is organized."

Thus, if a professional corporation were organized for the purpose of rendering services relating to the environmental design professions (architecture, engineering, landscape architecture, planning) landscape architects, and planners would not be able to share in the corporation since these fields of endeavor are not presently licensed in the District of Columbia, although they relate directly to the services which may be rendered by a professional corporation formed by architects and professional engineers. Furthermore, the bill as presently worded, would preclude architects and engineers from bringing into the management structure of the firms such disciplines as interior designers and specification writers not required to be licensed, but important to the practice of architecture and engineering, and properly included in the light of current trends to expand the capabilities of architectural practice in the provision of comprehensive services.

A distinction should be made between the services rendered by environmental design professionals and those rendered by other professions covered by this bill. Lawyers, doctors, and accountants all render services relating to their particular profession to meet the needs of particular clients or patients. In the area of environmental design, however, there is, quite properly, a significant overlap amongst various disciplines to provide proper services for any given project. This, as previously stated, has led to the formation of partnerships between architects and engineers (and others), and now wherever such a corporate form is allowed, formation of professional corporations of architects and engineers (and others) has become prevalent.

The National Council of Architectural Registration Boards—a national clearing house for the state boards of architecture with a primary mission to standardize architectural licensing laws and facilitate interstate practice—has prepared legislative guidelines to be utilized by various states in the hope of achieving standardization. In these guidelines, NCARB has recommendations relating to corporate firm practice which indicate that a minimum of two-thirds of the directors of a corporation should be licensed professionals (architects, engineers or other design professionals). This would ensure protection of the public health, safety and welfare by keeping legal control of the firms in the hands of licensed persons, while permitting a minority of the management to be in the ancillary categories mentioned earlier.

Our recommended approach to amending the present wording of H.R. 10383 might be found in the professional corporation bill presented in Virginia in 1970. In that bill there is a specific provision for architects and engineers which

states that they may form a professional corporation if not less than two-thirds of the stock thereof is issued to such licensed professionals. It is quite explicit that this applies only to architects and professional engineers (and land surveyors, a statutory profession in Virginia, but not in the District of Columbia) and not to any of the other professions covered under the professional corporate statute. At no time, under the Virginia law, may a professional corporation organized by architects and professional engineers have more than one-third of its shares held by a person who is not licensed to practice. This approach would solve the problem we raise, allowing other than licensed professionals to participate in the management of the firm. We request that the bill for the District of Columbia be amended accordingly.

With reference to the foregoing, it is understood by our organization that the bill under consideration does not preclude the formation of corporations composed of architects and professional engineers, or members of other environmental design professions who may become licensed in the future. The House District Committee Report on this bill points this out in their analysis of Section 13, wherein it is stated that: "The section implicitly recognized that a single professional corporation may conduct two or more professional activities when such combinations are not prohibited by rules regulating the profession."

Our only other comment on this bill concerns Section 21, *AMENDMENT TO THE DISTRICT OF COLUMBIA INCOME AND FRANCHISE TAX ACT OF 1947* on page 16, as written. If this portion of the bill is deleted or amended in any way to include or require the payment of income and franchise tax by unincorporated professional firms, our support of H.R. 10383 shall be considered to be withdrawn.

In conclusion: We are in favor of a professional corporation act, but believe it should recognize that the practice of architecture, involving, as it does, the overlapping of disciplines, differs greatly from the practice of other professions. We request your favorable consideration of the foregoing amendment to H.R. 10383, and again urge retention of the included amendment to the Income and Franchise Tax Act of 1947.

Mr. MILSTEAD. The American Institute of Architects wishes to go on record as supporting H.R. 10383 as it is generally written. However, we have one change that we would request. We would like to have section 8-A amended to allow for what we might call minority shareholders in any professional corporation formed of architects and engineers.

This has been done in the Virginia law, which we might use now as a model, for one-third of the shareholders of any professional corporation be minority shareholders, to be nonlicensed professionals.

Our support of this bill is with the understanding that nothing in the bill prevents or prohibits the formation of incorporation of architects and professional engineers.

Quite often, architects and engineers form partnerships or companies within the city, but it is our understanding that the interpretation of this bill would allow for such corporations to be formed of architects and engineers.

Our only other comment is, as our statements point out, we would withdraw our support of this bill if section 21 is deleted or amended in any way to require unincorporated professionals in the District of Columbia to pay the income and franchise tax.

I will be glad to answer any questions.

Senator STEVENSON. Would you explain your reservations about the minority shareholder provisions? They may be explained in the statement which I regret to say I have not read.

Mr. MILSTEAD. It is explained in the statement.

Basically, the architects in the professions is made up of many overlapping disciplines. Landscape architects, at the moment, are not registered, or specification writers are not licensed or registered, yet they could form a part of an architectural-engineering corporation, and we feel they should have an opportunity to take part in the management structure of the corporation.

This is probably peculiar to the architectural provision.

Senator STEVENSON. What is the provision in the bill that concerns you?

Mr. MILSTEAD. The provision states in the bill that "No person shall be a shareholder, director, or officer of a professional corporation or render service on its behalf unless he is an individual licensed to render a professional service for which the corporation is organized."

Senator STEVENSON. Who might that provision exclude?

Mr. MILSTEAD. It might exclude landscape architects, planners, interior designers, and specification writers who are not presently licensed or registered in the District of Columbia.

Senator STEVENSON. Dr. Heim?

Dr. HEIM. Mr. Chairman, I am Henry J. Heim. I am chairman of the District Dental Society.

I thank you for the opportunity to present this statement in support of H.R. 10383, the District of Columbia Professional Corporation Act.

The executive committee of our society has gone on record unanimously in support of H.R. 10383, and our general membership has expressed its support for the bill.

The members of our profession practicing dentistry in the District of Columbia have long sought enabling legislation along the lines of that now adopted in the 50 States of the Union, to permit the organization of professional corporations.

While not all of our members may elect to incorporate under the bill, if enacted, they are uniform in their belief that the option to incorporate should be extended to dentists and other professionals in the District of Columbia.

You should know that our membership has been concerned lest the enactment of enabling legislation might subject dentists not electing to incorporate to the District of Columbia unincorporated business tax. On this point, we are pleased to note that section 2 of H.R. 10383 would preserve the present exemption from the unincorporated business tax for those dentists and other professionals not electing to incorporate under the proposed legislation.

We trust that section 21 of the Senate bill will remain intact. We would much prefer no bill to a bill that did not contain the exemption. We say this for the reason that our colleagues in the dental society now practicing in the District of Columbia and choosing not to incorporate under the proposed legislation, would then be subject to the unincorporated business tax.

While dentists residing and practicing in the District would be entitled to a credit for payment of the unincorporated business tax on their personal income tax returns, those members of our society residing outside the District would be subjected to a tax for which they would receive no credit in Maryland or Virginia.

We are deeply concerned at the decreasing number of dentists practicing within the District of Columbia. In our dental society, we have seen a reduction of dues income of approximately one-third over just the past 5 years.

Confirming our observations, the July 7 edition of the Washington Post published an editorial, "Knowing Our City," which said in part:

* * * you may be curious about the health needs in your part of town. It may be useful to know that in the dental field, for example, the city is expected to have manpower shortages three times as large in 1980 as now, and that physicians and nurses, too, will still be in great demand.

Maryland and Virginia have enacted legislation enabling professionals to incorporate, and we have already noted some dentists moving to those jurisdictions in order to conduct their practices in corporate form.

Unless the District gets similar legislation, the trend to move dental practices out of the District will undoubtedly accelerate.

Most certainly, if H.R. 10383 is enacted without the exemption now contained in section 2 of the House bill, there will be an even greater exodus of dentists from the District, particularly among those dentists now practicing in the District but living in Virginia and Maryland.

Such a move will be their only recourse to avoid the unincorporated business tax where they do not choose to incorporate.

Therefore, Mr. Chairman, on behalf of the membership of our dental society, I urge you and your colleagues on the subcommittee to report H.R. 10383 favorably and without change in section 2.

I thank you.

Senator STEVENSON. Thank you.

Dr. KORENGOLD. I am Marvin Korengold. I am a physician. I appear today as president of the Medical Society of the District of Columbia.

I share the views of my colleagues here with reference to section 21 for the basic reasons that have been given.

Physicians in this area face a little special type of problem, a little different in some ways than the people giving testimony. We are asked to develop new kinds of health delivery systems. The concepts being promoted throughout the country and even hopefully promoted here in the country is just impossible without corporate structure. It is just not possible.

We have plans afoot in our society to develop a health maintenance organization encompassing the entire organization of some 1,600 members, but without the possibility of incorporation, we just cannot go ahead. There is no way we can do this.

From the standpoint of fulfilling the requests by HEW and other areas of government to improve health care delivery systems, this being one major concept, we are just stymied; we cannot move.

Further, of greater importance is the fact that we have a brain drain going into the suburbs which is just amazing. There are so many advantages to the doctor to practice in Virginia or Maryland without this particular provision that they are provided—the advantage of free parking, the advantage of ease of access, the advantage of the ease of obtaining employees. All this makes practice in Maryland and Virginia most desirable.

The fact that they have laws that permit incorporation is just one added feature. The fact that those who choose not to incorporate in Maryland and Virginia are not obligated in any way to pay a franchise tax is just another important aspect.

From our point of view as physicians we feel it is terribly important that we join the rest of the 50 States with the opportunity to incorporate, and that those of us who choose not to should not be penalized for this and those who choose to incorporate be responsible to the letter of the law.

From the standpoint of health maintenance organizations, this is something which affects the city very deeply and our ability to deliver care. We would strongly urge your consideration in the matter.

I ask that my prepared statement be made a part of the record. Senator STEVENSON. It is so ordered.

(The prepared statement referred to follows:)

PREPARED STATEMENT OF THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA

Mr. Chairman, my name is Dr. Marvin C. Korengold. I am a physician. I appear today as President of the Medical Society of the District of Columbia. The Medical Society of the District of Columbia, which has a membership of 2600 physicians who practice in this metropolitan area, supports the enactment of H.R. 10383, a Bill to enable professional individuals and groups to incorporate in the District of Columbia. The endorsement of the Society is based on the proviso that, Section 2, "Amendment of the D.C. Income and Franchise Tax Act of 1947," remains a part of this Bill.

The need for such legislation is supported by the fact that all states except Wyoming and the District of Columbia have laws permitting the formation of corporations by physicians and other professionals. We believe the reasons for our support of this Bill are sound. Paramount is the fact that it will encourage the formation of new group practices and Health Maintenance Organizations. This will serve to improve the distribution and availability of medical services to the people of the District of Columbia. The formation of such corporations will permit the use of modern business practices. It would facilitate the admission of new physicians, and their withdrawal if necessary, from a practicing group. It would greatly aid in (1) preserving the permanence of such organizations in the event of either the death or withdrawal of a member, (2) the procurement of scientific equipment and facilities, and (3) the establishment of benefits for all employees (nonmedical and paramedical).

Such a bill will eliminate discrimination against physicians and other professional groups who, as opposed to employees and executives of both large and small organizations, have been denied the benefits of group life, disability, health insurance, and retirement plans, in addition to limitations on business liability. In our opinion these benefits can be obtained under this Bill without altering the personal and professional relationship of physicians to patients.

Finally, although some physicians will prefer to remain in either solo or partnership practice, it is believed that because of the attendant merits of professional corporations, those professional persons desiring to incorporate should, under law, have this right of choice. That law should in no way disturb the practices of non-incorporating physicians. The Medical Society of the District of Columbia, therefore, wishes to recommend enactment of H.R. 10383 as introduced. Thank you.

Senator STEVENSON. Dr. Korengold, how do you feel about the suggestion of Mr. Milstead that unlicensed professionals be permitted to become shareholders in these incorporated associations of professionals?

Dr. KORENGOLD. Speaking as a physician and for the medical society, I would feel that it should be restricted to people who are licensed and responsible within the profession for which they are licensed.

I am not aware of specific problems of architects and engineers and cannot really comment on that.

From the standpoint of physicians' incorporation, I would feel very strongly that this be limited to licensed physicians in the District.

Senator STEVENSON. Would you echo those sentiments, Dr. Heim?

Dr. HEIM. Yes; I would, Mr. Chairman.

To open it up to unlicensed people would be inviting some problems and I would pretty much echo what Dr. Korengold has stated.

Senator STEVENSON. Mr. Corey?

Mr. COREY. We would agree with Dr. Korengold and Dr. Heim.

Senator STEVENSON. I wonder if the problems to which you addressed yourself, Mr. Milstead, are not unique. I suspect that it might be difficult to draw up a law which required that the members of such incorporations be licensed in all cases except certain cases. It might be difficult to draw the line and find a place in which to draw the line.

It sounds a little, on the basis of what we have heard this morning, as if the circumstances to which you alluded—the role of interior designers, landscape architects, and others—may be unique.

It might be very difficult to draw up legislation that would identify those unique operations and somehow exclude from the licensing requirements of the law.

If you have any suggestions as to how such a line might be drawn, we would be glad to have them.

It looks to me like it might be difficult to draw.

You can give it some further thought. For that matter, all of the witnesses who care to submit further suggestions later on may do so. The committee would be glad to have them.

Mr. MILSTEAD. The Virginia Professional Corporation Act provides for this, as does Colorado and, I believe, New York. But I would have to check.

Senator STEVENSON. That would be very helpful to us to have the benefit of the experience and practices in other jurisdictions.

I can see that the question of the exemptions, which I did not understand altogether at first, is of concern to you. I think it would be helpful if we could learn more about the practices in other jurisdictions.

Mr. MIDDLEKAUFF. I think this tax is a very unusual form of tax in the District of Columbia. Also, since the District of Columbia is enclosed between Maryland and Virginia, two States which supply a great deal of professionals that carry on a practice in the District of Columbia, that this further makes the District of Columbia a unique situation.

Senator STEVENSON. Do Maryland and Virginia retain the exemption for the unincorporated associations of professions?

Mr. MIDDLEKAUFF. Neither one retains it. Since neither Maryland nor Virginia has such a tax, they do not allow for a credit for such a tax on the personal income tax return of any individual who resides in either of those States. So we have a very, very unique situation in the District of Columbia which we feel can only be dealt with by allowing exemptions to continue. This will protect the sole practitioner or any other professional in the District of Columbia who does not desire to incorporate.

Mr. COREY. Mr. Chairman, we went into quite a lengthy discussion in our statement. We think if the bill passed without section 21 in it

the sole practitioner would have to leave the District. He would have to incorporate or move out.

Senator STEVENSON. Apparently you do not feel in the case of the incorporated associations that it would be an incentive to not incorporate. There are other incentives that flow from it.

Mr. COREY. It would be the normal two-tier structure. There would be taxation at the corporate level and then taxation at the shareholder level as to any dividends that would be paid out. As to compensation paid to shareholder employees—there would be deduction for the corporate franchise tax benefits.

Mr. MILSTEAD. There are other benefits that we feel may outweigh the added burden of assuming a corporate income tax for those professionals who do incorporate.

Senator STEVENSON. Is one of those benefits a corporate limitation of liability?

Mr. MIDDLEKAUFF. That is not a principal consideration. I think the principal considerations are continuity of operation, a more simple structure, let us say.

The corporate structure is more easily identified than a partnership structure and it allows for participation through stock rights which is more difficult to handle in partnership situations.

Mr. COREY. I think Mr. Thompson said New York repealed its exemptions from the New York State or city business. New York City has a tax on commuters, anyhow. The District of Columbia is not trying to get out of a creditable tax.

We support the provisions of the revenue bill pending in the House which would impose a reciprocal income tax which would clearly be a creditable tax. Unfortunately, that appears to have been killed by a one-vote majority in the House subcommittee but I think New York City is a little different situation than the District.

If you did not have the unincorporated business tax, you get hit with a commuter tax anyway. You do not have that here.

Senator STEVENSON. Would you be concerned about the tax if it were creditable in Maryland or Virginia.

Mr. COREY. I think the bar association has taken a position previously on attempts of the District of Columbia government to repeal the tax generally and we would not be opposed to the tax if it were a creditable tax.

In one bill the District of Columbia government submitted they changed the label to call it an income tax but we don't really think that is of substance.

Maryland would continue to consider it as a tax on the privilege of doing business and not an income tax.

Senator STEVENSON. Thank you very much, gentlemen, and we will welcome any further suggestions that you can give us on these particular points or for that matter on any points.

Mr. COREY, you will continue now for a moment on S. 2409.

Do you have a prepared statement?

Mr. COREY. Yes, Mr. Chairman, and I would request that our written statement be inserted into the record.

Senator STEVENSON. It will be entered in the record.

(The prepared statement follows:)

PREPARED STATEMENT ON BEHALF OF THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA BY WILLIAM S. COREY, ON S. 2409

Mr. Chairman, my name is William S. Corey, and I am a practicing attorney in the District of Columbia and Chairman of the Taxation Committee of the District of Columbia Bar Association.

The District of Columbia Bar Association strongly endorses the passage of S. 2409 and urges that it be considered favorably by your Subcommittee at the earliest possible date so that it may be enacted into law prior to January 1, 1972.

In brief, the purpose of S. 2409 and its companion bill, H.R. 8172, is to facilitate the amendment of the governing instruments of certain charitable trusts and corporations in the District of Columbia in order to comply with the requirements of the Tax Reform Act of 1969. Passage of this bill will eliminate a potential severe strain upon the courts of the District of Columbia.

The Tax Reform Act provides that certain charitable trusts and corporations organized before 1970 which are treated as "private foundations" within the meaning of the Federal Internal Revenue Code will lose their right to full deductions for charitable distributions or will lose their exemption from Federal income tax unless certain provisions required by the Internal Revenue Code are included in their governing instruments by December 31, 1971. The governing instruments of trusts created and corporations organized after 1969 must contain the required provisions upon their creation or organization.

The necessary governing provisions would, in effect, require the charitable trust or corporation to distribute income for its exempt purposes on a reasonably current basis and to refrain from certain actions which Congress deemed to be inconsistent with tax-exempt status—namely, engaging in "self-dealing" transactions, retaining excess business holdings, making investments which jeopardize exempt purposes, and expending funds for lobbying and other proscribed activities.

The United States Internal Revenue Service has published a Temporary Regulation that recognizes as the equivalent of an actual amendment of a governing instrument of a charitable trust or corporation the enactment by the applicable jurisdiction of a statute which treats the required provisions as being contained in the trust's or corporation's governing instrument. S. 2409 would treat the required provisions as being contained in the governing instruments of charitable trusts subject to the jurisdiction of the District of Columbia in a manner described in the bill and in the governing instruments of corporations which are private foundations and are organized under any law of the District of Columbia or under any special Act of Congress applicable to the District of Columbia. We understand that the District Government has written the House District Committee that it has no objection to the companion bill, H.R. 9172. The Internal Revenue Service reviewed the bill in draft form and has rendered its informal opinion that the provisions of said bill, if enacted, will satisfy the requirements of the Internal Revenue Code. A copy of that opinion is attached hereto.

I would like to point out that the bill expressly provides that its provisions will not be applicable to the extent that a charitable trust obtains a court determination that its governing instrument can not be amended as described above or a private foundation amends its charter to expressly exclude application of this bill. While we doubt that any charitable trust or corporation will wish to make the provisions of this bill inapplicable, since to do so will reduce the amounts available for charitable purposes, we believe that provisions permitting trusts and corporations to make the bill inapplicable will avoid any possible objection to the bill on the ground of impairing contractual obligations. On the other hand, the bill authorizes the trustees of charitable trusts and charitable corporations which are deemed to be private foundations to expressly amend the terms of their governing instruments to comply with the requirements of the Internal Revenue Code if they so choose.

If the bill is not enacted prior to January 1, 1972, most, if not all, trusts with charitable beneficiaries and some charitable corporations will each be required to institute separate court proceedings to amend their individual charters to include the required provisions. The numerous law suits filed for this purpose would burden the court dockets in the District of Columbia and delay trials of important criminal and civil cases. In addition, the charities would be forced to incur legal fees and court costs which would reduce the amount of funds dis-

tributable for charitable purposes in the District of Columbia. Enactment of this legislation before January 1, 1972 will free the courts from burdensome litigation and will protect assets donated for charitable purposes, and will thereby carry out the intent of Congress in the Tax Reform Act to ensure that the funds of entities granted tax benefits are totally devoted to charitable purposes.

At latest count, the legislatures of at least 37 states have enacted legislation intended to comply with these requirements of the Federal Internal Revenue Code. The neighboring jurisdictions of Maryland and Virginia have both enacted such legislation.

Insofar as we can tell, under existing legislation applicable to the District of Columbia, passage of this bill will not have any revenue effect upon the District. On the other hand, the District will incur substantial expense on account of resulting court actions if the bill is not passed before the adjournment of this session of the Congress.

In conclusion, on behalf of the Bar Association of the District of Columbia, I would like to thank you for the opportunity to appear here today to submit our views regarding S. 2409. We consider this bill to be a matter of great importance within the District of Columbia and urge your support in passage of this bill prior to December 31, 1971 in order to avoid the voluminous amount of litigation which will otherwise result. I will be happy to try to answer any questions which you may have regarding the bill.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, D.C. April 23, 1971.

Mr. WILLIAM S. COREY,
Chairman, Taxation Committee, The Bar Association of the District of Columbia,
Washington, D.C.

DEAR Mr. COREY: This is in reply to your letter of April 6, 1971 written on behalf of The Bar Association of the District of Columbia in which you request an advisory opinion that a proposed draft bill to amend the District of Columbia Code will, if enacted, effectively amend the governing instruments of private foundations and certain charitable and split interest trusts to meet the requirements of section 508(e) of the Internal Revenue Code of 1954. Enclosed with your letter was a copy of the draft bill which was approved by the Board of Directors of the D.C. Bar Association on April 2, 1971.

We are unable to issue a formal ruling at this time and will only be able to do so after the proposed bill has been enacted by the United States Congress and an additional request is made thereafter for a formal ruling. Therefore, the opinion set forth herein should be considered as informal and advisory in nature and shall not be considered as binding so as to preclude a subsequent determination in this matter.

We have reviewed the proposed draft bill which has been submitted to us, and it is our informal opinion that the provisions of said bill, if enacted, would satisfy the requirements of section 508(e)(1) (A) and (B) of the Internal Revenue Code of 1954 with respect to private foundations under section 509, charitable trusts under section 4947(a)(1), and split interest trusts under section 4947(a)(2), to the extent applicable, in the District of Columbia, except as may be otherwise provided by decree of a court of competent jurisdiction.

After this legislation has been enacted, we will be happy to consider a request for a formal ruling.

Very truly yours,

LINDER HAMBLÉN,
Director, Miscellaneous and
Special Provisions Tax Division.

**STATEMENT OF WILLIAM S. COREY, BAR ASSOCIATION OF THE
DISTRICT OF COLUMBIA, ON S. 2409**

Mr. COREY. To save time, I think Mr. Robinson has adequately summarized the purpose of S. 2409.

I might add that the Internal Revenue Service reviewed this bill in draft form and rendered us an informal written opinion that the

provisions of the bill, if enacted, would comply with the requirements of the Internal Revenue Code.

A copy of that opinion is attached to our written statement.

I would also like to emphasize the time problems to which you alluded at the beginning of the hearing. If the bill is not enacted prior to January 1, 1972, most, if not all, trusts with charitable beneficiaries and some charitable corporations will each be required to institute separate court proceedings to amend their individual charter to include these required provisions.

Numerous lawsuits filed for this purpose would burden the court dockets in the District of Columbia and delay trials of important criminal and civil cases.

In addition the various charities would be forced to incur court fees and court costs which would reduce the amount of funds that could be distributed in the District of Columbia.

Enactment of this legislation before January 1, 1972, will free the courts from burdensome litigation and will protect assets donated for charitable purposes and will thereby carry out the intent of Congress in the Tax Reform Act to insure that the funds of entities granted tax benefits are devoted to charitable purposes.

At latest count, the legislatures of at least 37 States have enacted legislation intended to comply with these requirements of the Internal Revenue Code, and the neighboring jurisdictions of Maryland and Virginia both enacted such statutes.

Insofar as we can tell, under existing legislation applicable to the District of Columbia passage of this bill will not have any revenue effect upon the District. I believe Mr. Robinson also so stated in his testimony.

I would add, though, that the District will incur substantial expense on account of these resulting court actions if the bill is not passed before the adjournment of this session of the Congress.

In conclusion, I would like to thank you on behalf of the District of Columbia Bar Association for the opportunity to testify today on S. 2409.

We consider this bill to be a matter of great importance within the District and urge your support and passage of it prior to January 1, 1972.

If you have any questions on this bill, we would be happy to try to answer them.

Senator STEVENSON. Is the legislation to which you referred in other jurisdictions in substantially the same form as S. 2409?

Mr. COREY. No; not really. The temporary regulation to which Mr. Robinson referred gave States really two choices as to the type of legislation.

One would be an absolute requirement that the charity distribute income on a current basis and not engage in a prohibited transaction.

The other approach which we have adopted is that the governing instruments would be deemed to include the provisions that are required by the Internal Revenue Code.

We adopted this approach as a result of informal discussions which we had with the District of Columbia government. They preferred this approach and they would not be forced to go into court and en-

force the prohibition if the prohibition type of approach had been taken.

Senator STEVENSON. What is the need for going into court? Can't these organizations, without litigation in the usual corporate procedures, make the necessary changes?

Mr. COREY. Most private foundations which are corporations could do exactly what you say.

The main trouble relates to charitable trusts, in wills of people who died before 1965 or in inter vivos trusts which are not amendable. That is the real problem.

Senator STEVENSON. Can a legislature retroactively change the provisions of those wills?

Mr. COREY. To avoid that possibility—the legislation has savings provisions where if, for some reason we do not know, people would not want the legislation to apply, they can go back into court and have it not apply. But it would be simpler that way since so few people would not want the provisions to apply because of the loss of Federal tax deductions.

Senator STEVENSON. I thank you again very much, Mr. Corey. I don't anticipate any difficulty in moving ahead rapidly on S. 2409.

Mr. COREY. Thank you, Mr. Chairman.

Senator STEVENSON. The next witness is Mr. Francis J. Lyons, chairman of the fiduciary section of the District of Columbia Bankers Association.

STATEMENT OF FRANCIS J. LYONS, FIDUCIARY SECTION, DISTRICT OF COLUMBIA BANKERS ASSOCIATION, ON S. 2409

Mr. LYONS. Mr. Chairman, Mr. Corey pretty much summarized the need for the legislation outlined in S. 2409.

I am here on behalf of the fiduciary section of the District of Columbia Bankers Association which are the banks that exercise trust powers in the District.

We fully support the legislation. It is designed to solve a legislation problem or legislative requirement by legislative solution.

There are in the banks, themselves, here in the District well over 500 of these trusts which would be affected and which would have to be amended by judicial proceedings if this type of legislation were not adopted.

In addition, there are many, many trusts administered by private individuals. I don't know exactly how many there are, but there is a substantial number.

As Mr. Corey pointed out, similar legislation has been adopted in some 37 States and to my knowledge, the remaining States have also had this type of legislation in process.

I don't think there is anything further that I can add to Mr. Corey's statement, other than again, to impress upon yourself and the committee that we do have a deadline by the end of this year to accomplish the purpose of the bill.

Senator STEVENSON. Thank you, Mr. Lyons, for appearing here this morning and also for a lengthy and carefully constructed prepared statement which we will enter into the record.

Mr. LYONS. Thank you, Mr. Chairman.
(The prepared statement follows:)

PREPARED STATEMENT OF FRANCIS J. LYONS ON BEHALF OF THE FIDUCIARIES SECTION OF THE DISTRICT OF COLUMBIA BANKERS ASSOCIATION, ON S. 2409

My name is Francis J. Lyons and I appear on behalf of the Fiduciaries Section, District of Columbia Bankers Association, in support of S. 2409.

The purpose of the bill is to facilitate the amendment of the governing instruments of certain trusts and corporations with charitable beneficiaries which are subject to the jurisdiction of the District of Columbia and which are treated as "private foundations" for Federal tax purposes, in order to conform to the requirements of section 508(e) of the Federal Internal Revenue Code, as amended by the Tax Reform Act of 1969. This is accomplished by amending Title 21 of the D.C. Code to add a new chapter relating to charitable and split-interest trusts, and by adding a provision relating to charitable corporations, providing in effect that certain provisions required by the Internal Revenue Code are deemed to be included in the governing instruments of the trusts and corporations affected. Technical explanation of S. 2409, previously submitted to the District Committee, is attached hereto.

The definition of "private foundations" in 509(a) of the Internal Revenue Code covers a broad range of trusts and corporations which are organized and operated for religious, charitable, scientific, literary and educational purposes. The Tax Reform Act of 1969 imposes a variety of excise taxes and penalties on such private foundations for self-dealing, retaining excess business holdings, investing amounts so as to jeopardize the charitable purpose, making certain improper expenditures and failing to distribute income currently. In addition, the Tax Reform Act amended the Internal Revenue Code to provide that a private foundation will not be exempt from Federal income tax unless its governing instrument specifically requires compliance with the above-mentioned requirements and prohibitions of the law, namely, that income be distributed currently, that the trust or corporation not engage in any act of self-dealing that it not retain any excess business holdings, that it not make investments which jeopardize the charitable purpose of the organization and that it not make improper expenditures.

The Tax Reform Act further provides that charitable trusts and corporations organized before 1970 which are treated as "private foundations" must, in order to preserve their tax exemption, have their governing instruments amended to include the required provisions by December 31, 1971.

In Temp. Reg. Sec. 13.8 (35 Fed. Reg. 7300 [May 9, 1970]), the Internal Revenue Service ruled that a statute which treats the required provisions as contained in the foundation's governing instrument will satisfy the Tax Reform Act requirement as to governing instruments. (Sec. 508 of the Internal Revenue Code). By letter dated April 22, 1971 (copy attached), the Revenue Service ruled that the provisions of S. 2409, if enacted by December 31, 1971, will effectively amend the governing instruments of private foundations and certain charitable and split-interest trusts to meet the requirements of section 508(e) of the Internal Revenue Code.

Most charitable corporations, and some trusts where the grantor is living and the instrument so permits, will be able to amend their by-laws or governing instruments to comply with the provisions of the Act. However, the only recourse open to the trustees of charitable trusts where the grantors are deceased and those charitable corporations whose governing instruments do not permit amendment would be to seek equitable relief in the courts permitting the conforming amendments, which court action must at least be initiated prior to December 31, 1971.

In view of the position of the Internal Revenue Service in accepting legislative relief in lieu of court determination, affected parties throughout the United States have sought appropriate legislation in the various state legislatures. To date, at least 35 states (including Maryland, Virginia, New York, Georgia, Texas and Tennessee) have adopted the legislation to conform the governing instru-

ments of the charitable trusts and charitable corporations to the requirement of the 1969 Tax Reform Act. A list of states which have enacted bills similar to S. 2409 is attached.

The need for S. 2409 arises from the fact that it is not sufficient for a charitable corporation or trust to operate in compliance with the Tax Reform Act of 1969. The tax exemption will be denied to it unless its governing instrument specifically requires such compliance.

If this bill is not enacted, most, if not all, trusts with charitable beneficiaries and some charitable corporations will be each required to institute separate court proceedings to amend their individual charters to include these same provisions. The Trust Departments of the city's banks have estimated that approximately 400 separate actions would have to be prepared and filed before December 31, 1971. No estimate is available for nonbank trustees. These numerous law suits would burden court dockets in the District of Columbia and delay trials of important criminal and civil cases.

In addition, the charities would be forced to incur legal fees and court costs which would reduce the amount of funds distributable for charitable purposes in the District of Columbia. In the case of relatively small charitable trusts, the legal fees for such litigation might well exhaust one year's income or more which otherwise would be used for charitable purposes. The beneficiaries of many of the trusts involved are local institutions such as the Children's Hospital, the Red Cross, Georgetown University, George Washington University, American University, Howard University, Catholic University, and many, many other similar charitable and educational institutions, as well as religious organizations and their affiliates.

Enactment of this statute will free the courts from much burdensome litigation and protect assets donated for charitable purposes, and will thereby carry out the intent of Congress in the Tax Reform Act to ensure that funds of entities granted tax benefits are totally devoted to charitable purposes.

S. 2409 is a wholly meritorious bill which would allow literally hundreds of charitable organizations in the District of Columbia to comply with the provisions of the 1969 Tax Reform Act without the expense and court congestion which would follow if the governing instrument of each such charity had to be amended through separate judicial proceedings. Accordingly, it is respectfully requested that this bill be approved and enacted by December 31, 1971.

STATES WHICH HAVE ENACTED LEGISLATION TO CONFORM GOVERNING INSTRUMENTS
OF CHARITABLE TRUSTS AND CORPORATIONS TO THE REQUIREMENTS OF THE TAX
REFORM ACT OF 1969

(As of August 24, 1971)

Alabama	Nebraska
Alaska	Nevada
Arkansas	New Hampshire
Colorado	New York
Connecticut	North Carolina
Delaware	North Dakota
Florida	Oklahoma
Georgia	Rhode Island
Hawaii	South Carolina
Illinois	Tennessee
Indiana	Texas
Iowa	Utah
Kansas	Vermont
Maine	Virginia
Maryland	Washington
Massachusetts	West Virginia
Minnesota	Wisconsin
Missouri	

TECHNICAL EXPLANATION

Reasons for the bill.—Section 508(e) of the Internal Revenue Code of 1954, added by the Tax Reform Act of 1969 (P.L. 91-172), denies exemption from federal income tax to any charitable¹ corporation which is a “private foundation” (as defined in sec. 509) unless its governing instrument contains provisions requiring the organization to act or refrain from acting so as to avoid imposition of taxes under §§ 4941-4945 of the Code. Pursuant to secs. 508(e) and 642(c) (6) of the Code, nonexempt charitable trusts described in sec. 4947(a) (1) will be denied the right to take deductions under sec. 642(c) for charitable distributions unless their governing instruments contain the same provisions. Certain of these provisions must also appear in the governing instruments of nonexempt “split-interest” trusts described in sec. 4947(a) (2), with respect to all or part of the amounts in trust, or else such trusts will be denied the right to take sec. 642(c) deductions for distributions to charitable beneficiaries.²

The Internal Revenue Service has published a Temporary Regulation (Temp. Reg. § 13.8, 35 Fed. Reg. 7300 (May 9, 1970)) that recognizes as the equivalent of actual amendment of governing instruments the enactment of a statute which treats the required provisions as contained in the foundation's governing instrument. If such a statute is not timely enacted in the District of Columbia, many, if not all, existing trusts with charitable beneficiaries (no matter how long in existence) would have to institute separate court proceedings to include the provisions required by sec. 508(e), since the trustees of such trusts, generally speaking, lack authority to make the necessary conforming changes in the trust instrument.³ Furthermore, even though charitable corporations treated as private foundations in many instances may be able to amend their charters to include the required provisions, some corporate trustees might by inadvertence fail to make timely charter amendments required by sec. 508(e)—which is merely one of the numerous and complex new requirements imposed on charities by the Tax Reform Act—and thus jeopardizing the charitable assets of the corporation. To avoid imposing the burden of numerous law suits on the District of Columbia court system, and to preserve charitable assets, this legislation is desirable and necessary.

General explanation of bill.—Section 1 of this bill applies to a trust, whether created before or after the bill's effective date, if the trust (i) is described in sec. 509(a) as a private foundation; (ii) is a nonexempt charitable trust described in sec. 4947(a) (1) and treated as a private foundation; or (ii) is a nonexempt “split-interest” trust described in sec. 4947(a) (2), to the extent treated as a private foundation by sec. 4947. The term “trust” includes those trusts enumerated in subsection (c) of Section 1 of the bill.

Section 2 of this bill applies to corporations organized (whether before or after the effective date) under any law of the District of Columbia (including but not limited to the District of Columbia Nonprofit Corporation Act) or under any special Act of Congress applicable to the District of Columbia, if the corporation is described in sec. 509(a) as a private foundation. The term “corporation” includes an association (other than a trust), if it is described in sec. 509(a) of the Code as a private foundation.

The bill treats the governing instruments of such corporations and of nonexempt charitable trusts described in sec. 4947(a) (1) as including each of the following requirements: (1) to refrain from engaging in any act of self-dealing which is subject to tax under sec. 4941; (2) to make distributions at such time and in such manner as not to subject the organization to tax under sec. 4942; (3) to refrain from retaining any excess business holdings which would subject the organization to tax under sec. 4943; (4) to refrain from making any investments which would subject the organization to tax under sec. 4944; and (5) to refrain

¹ The term “charitable” is used herein as a shorthand reference to the charitable, educational, religious, scientific, etc., purposes enumerated in sec. 501(c) (3) or sec. 642(c) of the Code, as the case may be.

² In addition, charitable deductions are not allowed for gifts or bequests to a private foundation (corporation or trust) which has not included the required provisions in its governing instrument. See secs. 508(d) (2) and 170(f) (1).

³ The directors or trustees of some charitable organizations other than trusts may also lack authority to amend the governing instrument except through judicial proceedings.

from making any taxable expenditures which would subject the organization to tax under sec. 4945.⁴ In the case of a "split-interest" trust described in sec. 4947(a)(2), such provisions will be deemed included in the governing instrument only to the extent required by secs. 4947 and 508(e).⁵ The enumerated provisions, to the extent deemed included in the governing instruments of foundations, are not intended to require any foundation (corporation or trust) to take or refrain from any action which would give rise to tax liability under secs. 4941-4945 of the Code but for the "savings provisions" in sec. 101(1) of the Tax Reform Act of 1969, inasmuch as the latter section provides that sec. 508(e) of the Code shall not apply to require inclusion in governing instruments of any provisions inconsistent with said savings clauses.

The bill authorizes charitable corporations and the trustees of charitable trusts deemed to be private foundations to make such amendments (in the manner provided by the bill) as may be necessary to bring the organization into conformity with the requirements of sec. 508(e).⁶ This authorization is added for the benefit of any foundation which may wish to comply with the language of sec. 508(e) by expressly amending the terms of the applicable governing instrument.⁷

The bill also provides that the enumerated provisions (in whole or in part) shall not be deemed included in the governing instrument of a trust treated as a private foundation to the extent that a court of competent jurisdiction shall determine that including such provisions would be contrary to the terms of the governing instrument and that the instrument may not properly be amended to conform with the new requirements. A charitable corporation treated as a private foundation may avoid application of the enumerated provisions by amending its governing instrument, in the manner provided by law for amendment, expressly to exclude application of this bill (in whole or in part).⁸ It is not considered

⁴ The bill affects the governing instruments of both inter vivos and testamentary trusts, to the extent such trusts are treated as private foundations. In the case of an inter vivos trust which is initially revocable but subsequently becomes irrevocable and is then treated as a private foundation, the required provisions (to the extent applicable) are deemed included in the trust's governing instrument as of the date it becomes irrevocable and first is treated as a private foundation. In the case of a testamentary trust, the required provisions (to the extent applicable) are deemed included in the trust governing instrument when such trust is created on the testator's death.

On expiration of the noncharitable interests of a "split-interest" trust described in sec. 4947(a)(2), all the provisions required by sec. 508 in the case of a nonexempt charitable trust described in sec. 4947(a)(1) are deemed included in the trust's governing instrument if the trust is then treated as a private foundation.

⁵ Since pursuant to sec. 4947 some of the foundation rules set forth in secs. 4941-4945 of the Code are not applicable to split-interest trusts, the governing instruments of such trusts must contain the sec. 508(e) requirements and prohibitions only to the extent that the substantive rules of secs. 4941-4945 are applicable to such trusts. For example, the distribution requirement of sec. 4942 would not apply to a split-interest trust with non-charitable income beneficiaries and a charitable remainder, and therefore the governing instrument (prior to expiration of the income interests) need not contain a provision requiring the trust to make distributions at such time and in such manner as not to subject it to tax under sec. 4942. To the extent that sec. 4947(a)(2) does not apply with respect to certain amounts in or payable under a split-interest trust (for example, amounts transferred in trust before May 27, 1969) sec. 508(e) and this bill do not apply to require inclusion of any of the new foundation provisions.

⁶ In the case of a "split-interest" trust described in sec. 4947(a)(2), which includes non-charitable interests and may include an interest reserved or retained by the creator or creators, the trustee or trustees must obtain the written consent of all creators of such trust then living and competent. If no creators of the trust are then living and competent, the trustee or trustees may amend the governing instrument, without application to any court, by executing a written amendment and delivering a copy thereof, by certified mail, to each named beneficiary (charitable or noncharitable), if any.

⁷ The amendment authorization in the bill is not intended to call into question any action properly taken by a foundation prior to enactment of this bill to conform its governing instrument to the requirements of sec. 508 of the Code, either pursuant to provisions in its governing instrument authorizing amendment thereof or pursuant to a judicial proceeding.

⁸ The authorization in the bill permitting a corporation expressly to exclude application of the enumerated provisions by amendment is not intended to prohibit such a charitable corporation from seeking a judicial determination that such application would be contrary to the terms of the governing instrument and that the same may not properly be so amended, and any such judicial determination shall have the same effect as if the corporation had, to the same extent, expressly excluded application of this bill by amendment without obtaining any judicial determination.

likely that any private foundation would elect to avoid amendment of its governing instrument pursuant to this bill to the extent that such avoidance would result in loss of tax exemption.⁹

Effective date.—This bill applies to private foundations created or organized either before or after the enactment date, commencing with taxable years of trusts and corporations beginning on or after January 1, 1970, except that in the case of foundations created or organized prior to January 1, 1970, this bill applies only for taxable years of such foundations beginning on or after January 1, 1972.

AREN'T, FOX, KINTNER & KAHN,
FEDERAL BAR BUILDING,
Washington, D.C. November 8, 1971.

Re Statement on S. 2409, regarding limitations on District of Columbia foundations and certain charitable trusts.

Senator THOMAS F. EAGLETON,
Chairman, Committee on the District of Columbia, United States Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR EAGLETON: The Shriners Hospitals for Crippled Children, Chicago, Illinois is interested in S. 2409 because of the opportunity it provides to facilitate amendments to certain trust instruments of charitable remainder trusts and obtain the appropriate federal tax deduction on the basis of the reformed instrument. Shriners Hospitals is hopeful the Senate District Committee would conform the provisions of S. 2409 to H.R. 11489 by adding to S. 2409 what is proposed Sec. 21-1801(d) of H.R. 11489. Proposed Sec. 21-1801(d) is aimed at facilitating amendments to certain trust instruments in order to permit the creator or contributor to the trust to claim a charitable contribution deduction for federal income, estate or gift taxes, whichever is applicable. In effect, it authorizes the trustee or trustees of an unqualified charitable remainder trust to join with the beneficiaries and amend the governing instrument to conform the instrument to the requirements of Sec. 664 of the Internal Revenue Code.

For a number of different reasons, there are times when a charitable trust or corporation cannot carry out its specified charitable purposes and, accordingly, must seek court assistance to formulate new or related purposes for the general benefit of the public. Like most jurisdictions, the District of Columbia courts apply the common law rules of the "cy pres" doctrine to assure that a charitable trust or corporation fulfills its general charitable purposes. In this connection, if charitable purposes would be frustrated or thwarted, the courts, in the exercise of equity jurisdiction, may reform governing instruments of charitable trusts for this purpose. Under the Tax Reform Act of 1969, the Congress altered the charitable deduction and exemption treatment of certain partially charitable trusts to require their governing instrument to contain particular limitations and mechanical rules for the pay-out of income to private beneficiaries and to assure preservation of corpus to public charities. Internal Revenue Code Sec. 664, creating the concept of charitable remainder annuity trusts or charitable remainder unitrusts, was effective for inter vivos trusts created on or after August 1, 1969, and for testamentary trusts created on or after January 1, 1970. Under ordinary circumstances, a charitable remainder trust which was improperly drafted after the effective date of Section 664 would cost the donor a charitable deduction (either income, estate or gift tax) for his gift or bequest and, in the case of the testamentary dispositions, reduce the amount of funds eventually available to public charities, such as Shriners Hospitals for Crippled Children.

The Treasury Department promulgated regulations which, subject to certain effective date rules, permit unqualified charitable remainder trusts to be amended to conform their instruments to the provisions of Sec. 664 of the Internal Revenue Code.* The amendment to conform the charitable remainder trust to a

⁹ Pursuant to sec. 508(e)(2), a private foundation organized before Jan. 1, 1970, will retain exempt status after the termination of timely initiated judicial proceedings resulting in a finding that the governing instrument cannot properly be amended to comply with sec. 508(e)(1). However, pursuant to sec. 508(d)(2)(A), gifts or bequests to the foundation would not be deductible as to taxable years of the foundation beginning on or after Jan. 1, 1972.

* Prop. Regs. § 1.663-1(f), 35 Fed. Reg. 12469 (Aug. 5, 1970). Prop. Regs. § 1.664-1(g), 36 Fed. Reg. 18667 (Sept. 18, 1971).

qualified (and deductible) type of trust may be done without resort to judicial proceedings if the instrument permits it. In the case of trusts created under wills, instruments which do not permit amendments, the ordinary course to pursue would be to have the executors or trustees file a court action, with the consent of the beneficiaries, and seek the necessary conforming amendment through a judicial proceeding.

In order to conserve the assets held in an unqualified charitable remainder trust, and foreclose any question on the legal rules which govern amendments to testamentary and other unamendable trust instruments, proposed D.C. Code Title 21-1801(d) of H.R. 11489 permits the trustee and all parties in interest to the unqualified trust to amend its instrument to contain all the rules and limitations of Sec. 664 of the Internal Revenue Code without resort to judicial proceedings; this facilitates obtaining the charitable deduction for the grantor or testator, subject, of course, to the effective date rules of applicable Internal Revenue Code and regulations. By permitting all parties in interest to amend the instruments for this purpose, District of Columbia court dockets will be kept clear of amendatory litigation and the trusts (and the public charitable beneficiaries) will avoid costly legal fees which would have been incurred were a judicial proceeding required.

An example of the operation of the new provision would be as follows: Suppose a District of Columbia resident executed a will on June 14, 1971 and died July 4, 1971. In his will he created a charitable remainder trust which provides that all the income from the trust shall be paid to his wife until her death, and upon her death the corpus (i.e., remainder) is paid over to Shriners Hospitals. Because the testator failed to create a qualified trust described in Sec. 664 of the Internal Revenue Code, he is not entitled to an estate tax deduction for the present value of the charitable remainder. To be eligible for a deduction under present Treasury Department regulations, the trustee, the decedent's wife, and Shriners Hospitals would have to obtain counsel who would file an action in D.C. Superior Court asking that the court amend the instrument to conform the testamentary trust to the requirements of Sec. 664 of the Internal Revenue Code and applicable regulations. Enactment of proposed Title 21-1801(d) of H.R. 11489 would avoid the litigation since it authorizes the trustee and the beneficiaries to amend the testamentary trust without resort to court action and thereby obtain the federal estate tax deduction (subject to the effective date rules). Although we are not a party to litigation in the District of Columbia at the present time, there are "amendment" suits pending in Maryland and Montana of which Shriners Hospitals are a party. If the Congress enacts proposed Sec. 21-1801(d), it can act as a model for all fifty states and foreclose this type of litigation. Of course, if a beneficiary did not want to join in an amendment, the authorization contained in Sec. 21-1801(d) would not permit amendments for purposes of his objections. If an income beneficiary died prior to considering the possibility of amendments for federal tax purposes, the trust could still be amended for the benefit of the remaining income beneficiaries. In the case of unborn or unascertainable income beneficiaries, a guardian could be appointed by a court of competent jurisdiction which could then ratify the agreement reached between the parties in interest.

I suggest, in addition to the explanation contained in the House report (Report No. 92-610), an explanation of the provision consistent with this letter and/or the attached statement.

Very truly yours,

WILLIAM J. LEHRFELD.

Enclosure.

TECHNICAL EXPLANATION TO AMENDMENT TO LAST LINE OF SEC. 21-1801(D)

Prior to its amendment by the Tax Reform Act of 1969, the Internal Revenue Code permitted an individual to make an indirect charitable contribution to public charities by transferring property to a trust and providing that the trust income was to be paid to private persons (e.g., a wife, a wife and children) for a period of time (e.g., their lifetime) with the remainder of the property to go to a public charity. In the ordinary case, a charitable contribution deduction was allowed for the value of the remainder interest given to charity. The amount of the deduction was based upon the present value of the remainder interest determined by using the actuarial life expectancy tables and an assumed interest rate of 3½% as the

projected rate of return of the property in trust. The revenue problem was that a taxpayer was entitled to receive a charitable contribution deduction for a gift to charity of remainder interest in trust substantially in excess of the amount the charity would ultimately receive. This was the case because the assumptions used in calculating the value of the remainder interest bore little relation to the actual investment policies of the trust. For example, the trust assets could be invested in high income, high risk assets. This enhanced the value of the income interest benefiting the private party but decreased the value of the charity's remainder interest. This factor, however, was not taken into account in computing the amount of the charitable contribution deduction.

Under Sec. 2055(e) and Sec. 664 of the Code, as amended by the Tax Reform Act of 1969, there are limitations on the allowance of a charitable contribution deduction for a charitable gift of a remainder interest. In general, a deduction is allowed for a charitable gift of a remainder interest in trust where there is a non-charitable income beneficiary if the trust is either a charitable remainder annuity trust or a charitable remainder unitrust described in Sec. 664 of the Code. These general limitations are provided so that the amount received by the charity will be consistent with the charitable deduction allowed to the donor upon the creation of the trust, either during his lifetime or by will. This result occurs under these two limitations because they remove the flexibility of prior law whereby it was possible to favor the private income beneficiary over the charitable remainder beneficiary by means of manipulating the trust's investments. Under the new law, the amounts received each year by the income beneficiary, generally, will have to be either a stated dollar amount ("annuity trust") or a fixed percentage of the annual value of the trust property ("unitrust").

Lifetime transfers after July 31, 1969 had to be in the proper form for the deduction to be allowed. These provisions regarding the charitable contribution deduction for estates took effect with respect to decedents dying after December 31, 1969. There were certain transitional rules for wills in effect on October 9, 1969, which related to or are for the benefit of these decedents dying before December 31, 1972. Unfortunately, the limited scope of the transitional rules has caused a number of instances where an individual or an estate may be deprived of the deduction for the charitable remainder in trust because the trust instrument or the decedent's will did not contain the proper form. The mistake of the decedent, either because of his own draftsmanship or that of his uninformed lawyer, causes both the income beneficiary and the remainder beneficiary to suffer due to the taxes which will have to be paid unless the trust is reformed. In many jurisdictions, a court of equity may, but not necessarily would, permit the trustee, the income beneficiaries and the remainder beneficiary to join together to amend the terms of the trust to conform to the requirements of the Internal Revenue Code. Whether or not any instrument could be conformed to the requirements of the Internal Revenue Code, thereby assuring the charitable deduction, may depend, in part, on the intention of the testator in drafting the various terms contained within the governing instrument. This amendment would authorize all of the interested parties to amend the trust's governing instrument solely for charitable deduction purposes without resort to a court and the ensuing litigation and inherent problems of construction of the instrument.

In general, every income beneficiary and every charitable remainder beneficiary with the trustees, would have to unanimously agree to these conforming changes to effect a change under this provision. The creator of the trust, if living, need not join in the amendment to the trust to conform it to the federal tax requirements. If a private beneficiary is deceased at the time of the proposed amendment, then the other beneficiaries would not be precluded from amending so long as the remaining living beneficiaries joined in the agreement. In the case of any private beneficiary who is not capable of giving consent, for whatever reason (including a child in esse), the trustee would have to apply to a court of competent jurisdiction for the appointment of a guardian ad litem. The guardian would then be entitled to examine the proposed amendment, and its ramifications, and be able to join in the agreement if he believes it is in the best interests of his beneficiary, subject, of course, to ratification of the guardian's action by the court. Agreement by the guardian would be treated as the agreement by the named beneficiary.

If the beneficiaries cannot agree among themselves as to the proper rate of return ("unitrust") or stated dollar sum ("annuity trust") which would be equitable in light of the increase due to the federal estate savings, or one of the

beneficiaries does not wish to forego the opportunity to invade corpus (contrary to the provisions of Sec. 664), the remaining beneficiaries would not be precluded under this provision from filing an action in a court of competent jurisdiction to place the trust under the equity jurisdiction of the court for a determination of the arguable issues and the application, if required, of the cy pres doctrine. The amendment is solely for the purpose of authorizing all interested parties to join together and conform their charitable remainder trust to the requirements of the Internal Revenue Code and possibly increase the corpus of such trust due to the allowance of a contribution deduction without recourse to the courts. If a trust is already subject to the jurisdiction of a court, through probate proceedings or otherwise, then the court may permit the parties to conform the governing instrument under its supervision for this purpose under this amendment.

DISTRICT OF COLUMBIA INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS,
Washington, D.C., November 4, 1971.

HON. THOMAS F. EAGLETON,
Chairman, Senate District Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR EAGLETON: The District of Columbia Institute of Certified Public Accountants supports the position encouraged by the Internal Revenue Service for the enactment of state laws which comply with U.S. Internal Revenue Code Sections 508(d) and (e). The aforementioned Sections 508(d) and (e) added by the Tax Reform Act of 1969 (P.L. 91-172) provide that certain charitable trusts and corporations which are treated as "private foundations" will lose their exemption from federal income tax as well as their right to full dedication for charitable contributions unless their governing instruments (i.e. corporate charter or trust indenture) include, by December 31, 1971 certain limitation on their activities. On May 9, 1970, the Internal Revenue Service issued Temporary Regulation 13.8 (35 Fed. Reg. 7300) which states that a statute which deems the requisite provisions to be contained in the foundations' governing instruments will satisfy the governing instrument rule of 508(d) and (e). Provision which facilitate compliance under Regulation 13.8 are included in H.R. 10790. We encourage the passage of H.R. 10790 (which is essentially H.R. 9172, an earlier Bill, with an amendment to cover Internal Revenue Code Section 664 Charitable Remainder Trusts) in order to avoid burdensome litigation and to ensure that assets donated to tax exempt entities will be used for charitable purposes.

I would further urge that your Committee and Congress act expeditiously because Section 508(e) requires compliance with the governing instrument rule by December 31, 1971.

As of August 24, 1971, the following states have enacted legislation to conform governing instruments of charitable trusts and corporations to requirements of Tax Reform Act of 1969:

Alabama	Kansas	Oklahoma
Alaska	Maine	Rhode Island
Arkansas	Maryland	South Carolina
Colorado	Massachusetts	Tennessee
Connecticut	Minnesota	Texas
Delaware	Missouri	Utah
Florida	Nebraska	Vermont
Georgia	Nevada	Virginia
Hawaii	New Hampshire	Washington
Illinois	New York	West Virginia
Indiana	North Carolina	Wisconsin
Iowa	North Dakota	

Respectfully submitted,

ROBERT B. VAN ARSDALE,
President.

Senator STEVENSON. Our next witness is Mr. Revan Tranter, Deputy Director of the Metropolitan Council of Governments.

STATEMENT OF REVAN A. F. TRANTER, DEPUTY EXECUTIVE DIRECTOR, METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS, ON S. 2204

Mr. TRANTER. Mr. Chairman, I appreciate your courtesy in scheduling me as a witness at this late stage.

As you know, the Metropolitan Council of Governments is the regional planning coordinating and developing agency of the major local governments of the major Capital region.

For some time our purchasing office of this Council which consisted of the chief procurement officer of each government has been attempting to limit joint efforts in the purchasing of services and supplies.

Encouragement has recently come from a very successful endeavor conducted on a subregional basis by the regions of northern Virginia.

The committee believes if the purchasing power of the whole metropolitan area were harnessed very substantial savings would result.

Title IV of S. 2204 now before you would aid matters somewhat by permitting the District of Columbia to purchase on behalf of other local governments when properly requested.

After due reflection the Corporation Counsel's Office, the Office of Planning and Management, the Department of General Services and the Council of Governments have agreed the positions of all of the local governments concerned and of their taxpayers would be strengthened if the District were, in so many words, not only able to permit other governments to join its contracts and bids but also when advantageous to join in theirs.

The Council of Governments is therefore submitting a proposed amendment to S. 2204, which would have that effect.

It would then enable all of the local governments of the metropolitan area and District and suburban areas to share the responsibility of acting as principal bidding or contracting agents without losing the purchasing power represented by the city.

S. 2204, as presently written, concerning any responsibility would have to rest on the District government while conversely the District could not take advantage of prices obtained by suburban governments.

The Board of Directors of the Council of Governments has strongly endorsed the concept of cooperative purchasing, and I am sure it is the hope of all of our local governments that your subcommittee will find it possible to support this proposed modification of the administrative improvements bill.

Senator STEVENSON. Mr. Tranter, I can certainly sympathize with your desire to see more joint contracts for the purchase of services and supplies as a means of economizing but I am not sure I understand the modification which you are suggesting.

Does the Congress have the authority to enable other local governments in this whole metropolitan area to enter into these joint arrangements or to make one or another of the participating governments the agency for all?

What is our authority—in this case of Virginia and Maryland?

Mr. TRANTER. The other local governments have such ability. If today the District of Columbia were legally able, which it is not, to join

in a favorable bidding or contracting arrangement of say Fairfax County, Va., Fairfax can permit that to happen legally today.

The District could not legally do so. The proposed amendment enables that to happen.

Senator STEVENSON. The proposed amendment permits the District to act as an agency; is that correct?

Mr. TRANTER. No, sir; the proposed amendment permits any other jurisdiction to be an agent for the District government.

As written, it permits only the other way around. That is to say, for the District to be the contracting agency and this would give more flexibility.

Senator STEVENSON. Mr. Robinson, you are still here.

What is the position of the District on this proposed modification?

Can you tell us?

Mr. ROBINSON. The District government has carefully considered the proposed amendment by the Council of Governments. We believe it would be a worthwhile addition to the law. It would provide more flexibility in the joint procurement program and accordingly the District government would support such a change.

Senator STEVENSON. Thank you.

I thank you, Mr. Tranter.

We will try to move ahead rapidly and favorably consider S. 2204.

At this point I order a copy of the proposed amendment printed in the record.

(The proposed amendment follows:)

PROPOSED AMENDMENT TO S. 2204 "DISTRICT OF COLUMBIA ADMINISTRATIVE IMPROVEMENT ACT"

Title IV would be amended to read as follows:

TITLE IV—JOINT BID REQUESTS AND CONTRACTS

Sec. 401. "The Commissioner of the District of Columbia is authorized and empowered either to include in bid requests or contracts for the procurement of supplies and services for the government of the District of Columbia the requirements for like supplies and services of any political subdivision in the National Capital Region, or to have included, from time to time, all or any part of the procurement needs of the government of the District of Columbia for supplies and services in the bid requests or contracts of any political subdivision within the National Capital Region. In either case, the Commissioner shall determine that the political subdivision requesting or agreeing to participation in the bid request or procurement contract has agreed to obligate itself to perform all liabilities or obligations relating to its portion of the procurement and possesses the legal authority to procure or have procured such supplies and services in such manner; and further, that any such political subdivision in whose contract the District of Columbia joins has obligated itself in such contract to comply with all applicable elements of law pertaining to fair employment practices and other similar provisions of Federal or District of Columbia law. The District of Columbia shall be authorized to participate in such joint procurement bid requests or contracts only upon the agreement by all the parties involved in the bid request or procurement contract that they will pay or agree to pay their fair share of the procurement costs which are attributable to the operation of the joint procurement program."

(Sec. 402 would remain unchanged.)

The next witness is Vincent A. DeForest of the Afro-American Bicentennial Corp.

STATEMENT OF VINCENT A. DEFOREST, PRESIDENT, AFRO-
AMERICAN BICENTENNIAL CORP., ON S. 1367

Mr. DeForest. Thank you, Mr. Chairman.

I understand we did come in a little late and I appreciate the opportunity to present our statement.

Senator STEVENSON. We thank you for coming.

Mr. DeForest. My name is Vincent A. DeForest and I am president of the Afro-American Bicentennial Corp., a nonprofit corporation designed to promote minority participation and emphasis of minority culture in the 1976 bicentennial commemoration.

Our corporation has particular interest in seeing that this celebration includes not mere fireworks and brass bands, but living monuments to the continuing American Revolution in the way of improved housing, community development, education, and a number of other critical areas affecting the ways in which people work and live.

I appear here today on behalf of the Afro-American Bicentennial Corp., as well as a number of other community organizations in Washington, D.C., whose emphasis is community development and improvement.

We support S. 1367 to the extent that it can be used to cure a harm already done. However, we have one serious reservation—that this bill not be used as an excuse for further freeway construction and the damage to communities that freeway construction causes.

Much has already been said and much public opposition voiced to freeway construction. Without repeating all of the arguments against it, let me merely say that experience in living with existing freeways has proved the validity of the arguments of its most stringent critics.

Although a freeway is not built for and does not serve the particular community it passes through, it causes untold harm and damage to those communities.

A previous homogenous neighborhood and community suddenly finds itself divided by a "Berlin Wall." Not only does the construction itself displace people, but it divides the remaining community with a barrier or chasm that is not easily breached.

We believe that before any other freeway construction be undertaken that a detailed study be made of its effects on the community and on human resources to the same extent that studies are now being undertaken to protect a natural environment. Although a natural environment is of recognized benefit, certainly human resources are deserving of equal consideration and protection.

A recent study that has not yet been released to the public, performed by the D.C. Human Resources staff, demonstrates that there is a gross disparity of nutritional standards of families of comparable background, income, and education who happen to live on different sides of the freeway wall. According to the study, this disparity is attributable to the presence and access to markets and stores.

Without convenient access to stores, eating habits appreciably change and what might have been three or four weekly trips to an accessible and conveniently located store becomes only a weekend chore. With a difference in buying habits comes a difference in nutritional standards.

This study might appear somewhat removed from the freeway issue, yet it is the position of our organization that the outstanding feature of this bill is that it enables some use of freeway space to rectify a condition created by the freeway.

Consistent with that position is our contention that the number one priority in the lease of freeway space is service to the particular community that the freeway has damaged, not to necessarily provide increased revenue to the city or access for district or Federal building, which seldom make a positive or constructive addition to a community environment.

Thus, we would change the priorities in section 4 of the bill to provide that wherever the freeway passes through a residential or partially residential community that the freeway space be devoted first and foremost in service to that community by providing "bridges" for community use across the freeway gulf.

The present bill would allow for such use, although its priorities seem to favor first, public building; second, low-cost housing; third, Federal building use; fourth, nonprofit use; and last, any other use. It may just be because of particular community needs that a profit use such as a supermarket or other kinds of shops with a pedestrian mall might be the most urgent community need.

If the bill contains such a priority of devotion of this space to community needs, the commissioner and those responsible for leasing the space might be able to consider a variety of uses commensurate with the needs of the individual community.

One freeway use has already been suggested and precedent laid for service to the community. There is a proposal now pending before the D.C. budget for funds for the construction of a health clinic under the Southeast Freeway.

Not only must the service provided by the space be a benefit to the community, but the particular architecture and layout must be designed to reunite a community ruptured by the freeway presence.

In short, we support S. 1367 and are anxious to go on record as favoring this bill insofar as it is designed and will be used to heal the wounds created by the freeway and not as a promotional gimmick for further freeway construction.

Senator STEVENSON. The attachment to your prepared statement will be incorporated into the record at this point.

(The attachment follows:)

ATTACHMENT

SEED

South East Economic Development (729 8th Street, S.E.)

SUCCESS, INC.

Southeast United Community Corporation, Enrichment Social Services, Inc.

UAAC

United Afro-American Culture Group
Friendship House Association

Capitol Hill Action Group
 Capitol East Housing Council
 Capitol East Community Organization
 Capitol East Businessmen Association
 Southeast Enrichment Center
 Southeast Merchants for Better Community
 Capitol Hill Citizens for Better Education
 Service Area Council (SAC-5)
 D.C. Library Committee
 Community Assistance, Inc.
 Federal City College (Community Resources Development)
 City-Wide Tenants Union
 Capitol Hill Group Ministry
 Southeast Businessmen Association

Senator STEVENSON. Thank you, Mr. DeForest. We welcome and will consider carefully any specific suggestions that you might like to offer for changes in the bill.

It does establish certain priorities—the first and foremost being municipal uses which I would assume would include the bridges you referred to.

I personally would have some reservations about raising to a higher priority private development, though that might include the grocery stores and other facilities that a community needs but it could work at cross-purposes, too, in those communities.

I am just not sure in my own mind how the bill could be improved to put your mind at rest. If you have specific suggestions as to how we might do that, as I say, we would gladly consider them.

Mr. DeFOREST. I am speaking for the 180 other community organizations that are also involved in this statement. We have proposed plans for the Southeast Freeway, particularly as to what kind of various uses this particular site can be developed for, so I would like to submit those as part of the testimony today.

Senator STEVENSON. We would be glad to have them. We will keep the record open for them.

(The information follows:)

AFRO-AMERICAN BICENTENNIAL CORP.,
 Washington, D.C., October 28, 1971.

Re S. 1367, D.C. Freeway Airspace Utilization Act.

GENE E. GODLEY, Esq.,

General Counsel, Senate District Committee, New Senate Office Building, Washington, D.C.

DEAR MR. GODLEY: At the conclusion of my testimony today, the Chairman, Senator Stevenson, invited our suggestion for an amendment to S. 1367 in order to achieve our primary interest and purpose of utilizing freeway space to the benefit of the community which has been damaged by the freeway presence and who least benefit from the freeway use. In that regard, we are enclosing a proposed amendment to Section 4 of the Bill.

Senator Stevenson also gave us permission to supplement our testimony by providing sketches of proposed freeway use in the Southeast Freeway. Enclosed also are Exhibits 1 through 3 demonstrating a proposed use. We direct your attention to the fact that these sketch proposals are consistent with the District Government's proposal for the Southeast Expressway development as contained in the testimony and drawings on the same Bill submitted by R. D. Wallace, Deputy Director, Department of Highways and Traffic, District of Columbia Government (see in particular Figure 19 of Wallace's testimony exhibit).

Thank you for your courtesy and attention in receiving our testimony and in allowing this additional information to be submitted.

Respectfully yours,

VINCENT DE FOREST,
President, Afro-American Bicentennial Corporation.

Enclosure.

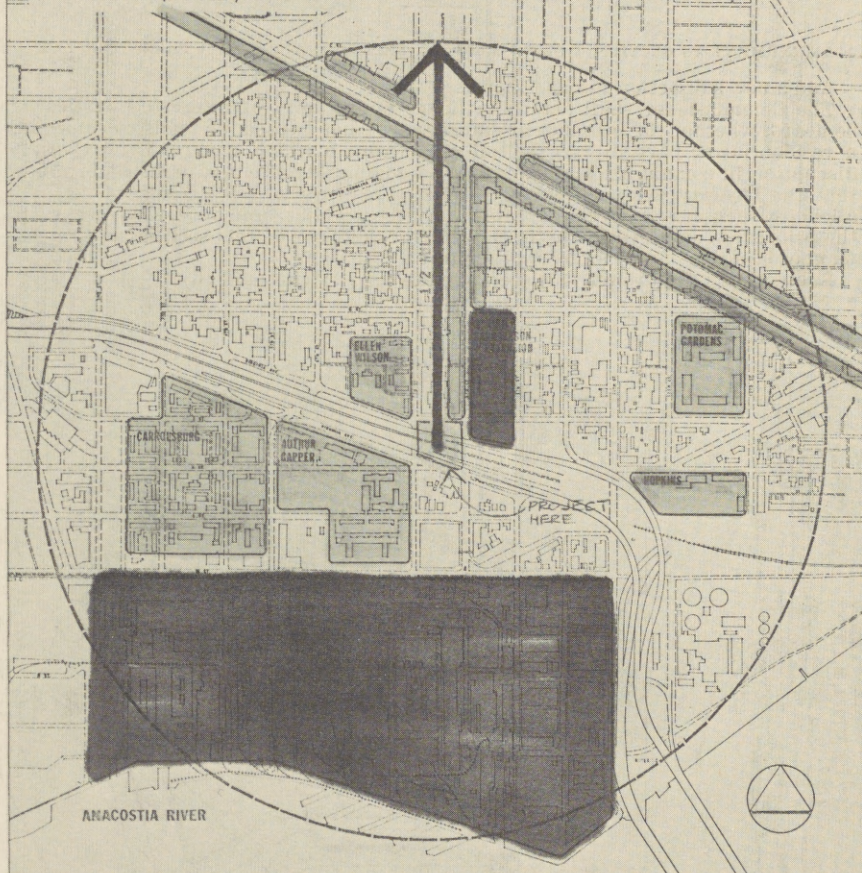
AMENDMENT TO SECTION 4 OF S. 1367, D.C. FREEWAY AIRSPACE UTILIZATION ACT

Add a new subsection (1) as follows:

The Commissioner shall determine, after opportunity of interested parties to be heard, whether the presence of such freeway has caused, or tends to cause, in a residential or partially residential area through which the freeway passes, a disruption in community homogeneity and community life, and if he determines that the freeway has such effect, he shall use or lease such freeway space to alleviate such effects to the maximum degree possible, and in accordance with the priorities contained in subsection (2) through (6) of this section, and in the manner best serving the affected community.

Subsection (1) through (5), redesignate as (2) through (6).

Study of Southeast Freeway Area
 1/2 Mile Radius From Proposed
 Project Site (Between 7th and 8th
 Streets, N.E.)






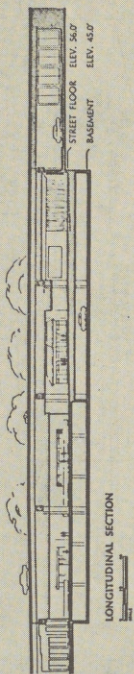
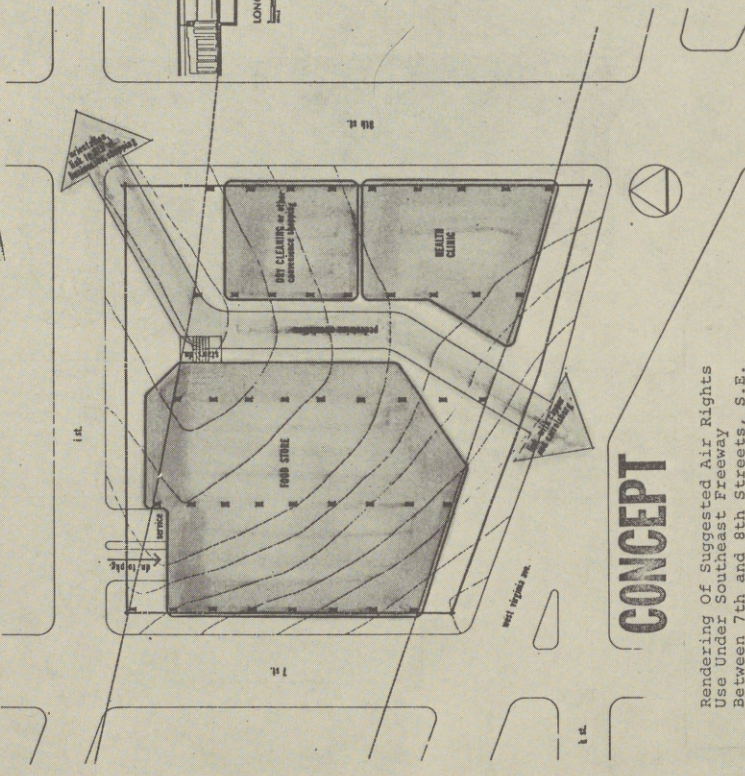
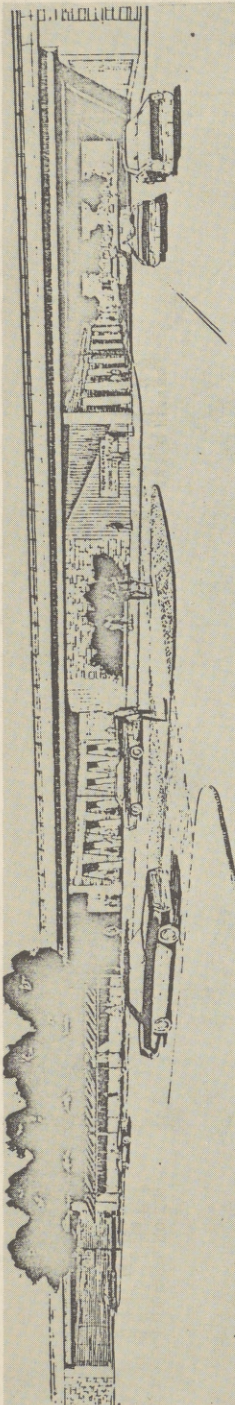
SOUTHEAST FREEWAY

A PROPOSAL FOR AN AIR-RIGHTS
 STRUCTURE BY THE AFRO-AMERICAN
 BICENTENNIAL CORPORATION

1" = 200'

LEGEND

-  PUBLIC HOUSING
-  MILITARY-OWNED PROPERTY
-  COMMERCIAL



9. SCHEME B — COMMERCIAL
INNER LOOP FREEWAY SYSTEM, WASHINGTON, D.C.
SOUTHEAST FREEWAY
UNDER-STRUCTURE STUDY 7th to 8th STREETS

RICHARDSON, GORDON AND ASSOCIATES
Consulting Engineers, Philadelphia
HARBESON, HOUGH, LIVINGSTON & LARSON
Consulting Architects, Philadelphia

CONCEPT

Rendering Of Suggested Air Rights
Use Under Southeast Freeway
Between 7th and 8th Streets, S.E.

Senator STEVENSON. Would the bill prohibit the uses you have in mind?

Mr. DeFOREST. It is just the priority stated in the bill. It seems to favor our definition. We would be No. 5, I think, on the priority list that the District bill has set forth. We feel that more consideration should be given to the community in reference to what kinds of facilities should be put under or above the freeway. That possibly a study should be made prior to any decision on the use of the freeway spaces and that the community would then become involved in that process.

Senator STEVENSON. That would be up to the District to do that.

Mr. DeFOREST. That is right.

Senator STEVENSON. I certainly share your concerns and would not want to support any legislation that would be inconsistent with the interests of all of the communities affected by the use of freeway air rights.

So, I hope you will send us specific suggestions and any additional information you want to submit on the bill.

Thank you, Mr. DeForest.

That concludes the list of witnesses.

The subcommittee will endeavor to move ahead rapidly on action on all of the bills about which we have heard this morning.

The committee is now adjourned.

(Whereupon, at 11:50, a.m., the subcommittee was adjourned, subject to call of the chair.)

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