SENATE—*Friday, January 24, 1969*

(Legislative day of Friday, January 10, 1969)

The Senate met at 12 meridian, on the expiration of the recess, and was called to order by the Vice President.

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Almighty God, unto whom all hearts are open, all desires known, and from whom no secrets are hid: cleanse the thoughts of our hearts by the inspiration of Thy holy spirit, that we may perfectly love Thee and worthily magnify Thy holy name.

Accept, O Lord, this day the love of our hearts, the thoughts of our minds, the speech of our lips, and the service of our hands that when evening comes we may have the knowledge of some good work completed, duty faithfully fulfilled, and the serenity of soul which is Thy gift to those who follow Thee in spirit and in truth.

In Thy holy name. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Thursday, January 23, 1969, be approved.

The VICE PRESIDENT. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States submitting nominations were communicated to the Senate by Mr. Geisler, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session,

The VICE PRESIDENT laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Foreign Relations.

(For nominations this day received, see the end of Senate proceedings.)

EXECUTIVE SESSION

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of executive business, for the purpose of considering nominations on the calendar.

There being no objection, the Senate proceeded to the consideration of executive business.

The VICE PRESIDENT. The nominations on the Executive Calendar will be stated.

U.S. AIR FORCE

The assistant legislative clerk proceeded to read sundry nominations in the U.S. Air Force.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The VICE PRESIDENT. Without objection, the nominations are considered and confirmed en bloc.

U.S. ARMY

The assistant legislative clerk proceeded to read sundry nominations in the U.S. Army.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The VICE PRESIDENT. Without objection, the nominations are considered and confirmed en bloc.

U.S. NAVY

The assistant legislative clerk proceeded to read sundry nominations in the U.S. Navy.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The VICE PRESIDENT. Without objection, the nominations are considered and confirmed en bloc.

NOMINATIONS PLACED ON THE SECRETARY'S DESK—AIR FORCE, ARMY, AND NAVY

The assistant legislative clerk proceeded to read sundry nominations in the Air Force, the Army, and the Navy, which had been placed on the Secretary's desk.

The VICE PRESIDENT. Without objection, the nominations are considered and confirmed en bloc.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The VICE PRESIDENT. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. KENNEDY. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

CLARK CLIFFORD—AMERICA'S FUTURE

Mr. SYMINGTON. Mr. President, an article by Henry Gemmill in today's Wall Street Journal, "Henry Kissinger Looms as Dominant Adviser in Foreign Policy Field," includes the following:

> When Clark Clifford became Lyndon Johnson's Secretary of Defense, he was clearly identified as a powerful Presidential crony and a mighty Vietnam hawk. Then, as he grappled with facts of the war, he found his own mind changing; he became the ardent peace-seeker who swayed the President slowly and partially, while suffering erosion of his intimacy with the President.

After less than a year as Secretary of Defense, Mr. Clifford has now retired, in typical quiet fashion, to private life.

Some day, when the truth is written about this period in our history, the contribution of this superb public servant will become known; and it will be clear that no citizen of recent years has made a greater contribution to the welfare of his country.

Clifford not only had the vision, but also the courage, to work to bring this tragic war to an end; and the recent commencement of substantive talks in Paris would seem a fitting reward for his efforts.

It is my belief that he would have also had the wisdom and the courage to choose only those weapons systems actually necessary for the security of the well-being of this Nation.

Those of us who know him, know also that he would have been sure to satisfy himself that the threats presented as justification for the tens of billions of dollars needed for certain new weapons systems were real threats; and his subsequent decisions would have made more dollars available to handle those problems at home which must be faced in many fields if the well-being of our Nation is to continue.

Mr. KENNEDY. Mr. President, will the Senator yield?

Mr. SYMINGTON. I yield.

Mr. KENNEDY. Mr. President, I wish to associate myself with the comments of the distinguished Senator from Missouri.

I know of the great respect that President John Kennedy had for the distinguished former Secretary of Defense, Mr. Clark Clifford. Mr. Clifford was charged with the responsibility, in 1960, for making recommendations to President Kennedy with regard to the transition from President Eisenhower's administration to that of President Kennedy.

I share the confidence and respect that President Kennedy had for Mr. Clifford. All the members of our family have enjoyed a very warm personal relationship with the Secretary. Not only is he respected as an individual, but I believe that all Americans realize that he has served our country with great distinction and great credit.

As one who at times has expressed reservations about policy, and who also has made some suggestions, together with many other people, about trying to seek a just and lasting peace in Southeast Asia, I believe Secretary Clifford has worked in a most extraordinary way toward peace, and I think all America is in his debt.

I commend the Senator from Missouri in bringing this matter to the attention of the Senate, and once again, let me say that I wish to associate myself with them.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. SYMINGTON. I am glad to yield to the distinguished majority leader; but

before doing so, I thank the able assistant majority leader for his kind and constructive remarks about the accomplishments of a great public servant.

I know Mr. Clifford will be especially grateful for the remarks of the assistant majority leader because of the former's devotion to President Kennedy and because of the stature the assistant majority leader has in this body and in the country.

I yield to the able majority leader.

Mr. MANSFIELD. Mr. President, I wish to join the assistant majority leader in extolling the record made by Secretary of Defense Clark Clifford during the months that he occupied that most prestigious, difficult, and demanding office.

I think I can speak on a firsthand basis and say that Secretary Clifford had a great deal to do in keeping the war in Vietnam from expanding into Cambodia, Laos, and perhaps North Vietnam; that he conducted the affairs of his office with distinction, dignity, and understanding; and that, in my opinion, despite the short duration of his tenure, he will go down as one of the great Secretaries of Defense.

I commend the Senator from Missouri for the statement he has made this morning.

Mr. SYMINGTON. I thank the able majority leader and know that Mr. Clifford, who has left the service of his Government, will be very grateful that these leaders of the Senate have expressed their approval of his tenure of office in this fashion.

Mr. President, I note an editorial in the Washington Star of this afternoon, entitled "Clifford's Valediction." The first paragraph of that editorial reads as follows:

There is a three-course dinner for thought in Clark Clifford's first and final "posture" statement on the Pentagon's view of the world military situation. The interest is compounded by the Soviet offer for disarmament negotiations that greeted the Nixon administration as it assumed office.

The last paragraph of the editorial reads:

Both nations need relief from the economic burden of another upward spiral of the arms race. The world needs some lifting of the oppressive nuclear cloud that presently covers its horizon. This period of change and of renewed beginning may be the best opportunity for real progress.

Mr. President, all thoughtful Americans would agree with those observations. I ask unanimous consent that the editorial in question be inserted in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

CLIFFORD'S VALEDICTION

There is a three-course dinner for thought in Clark Clifford's first and final "posture" statement on the Pentagon's view of the world military situation. The interest is compounded by the Soviet offer for disarmament negotiations that greeted the Nixon administration as it assumed office.

By the end of 1969, Clifford said, the U.S. missile superiority will have eroded. The Soviets will have caught up. Both sides will have more than 1,000 ICBMs, ready to fire from protected, underground shelters. In addition, he said, the USSR is "moving vigorously" to catch the United States in sea-based missiles.

It was not Clifford's purpose to throw a scare into the American public with his revelation that the missile gap is closing.

The outgoing secretary's point was that the United States and Russia both have a hard choice to make. They must either move into a new and limitless round of arms development. Or they can try to negotiate a limit to the costly and deadly madness.

The Soviets have greeted the new administration with an offer to talk about all aspects of disarmament, including intercontinental missiles and anti-missile systems. "When the Nixon government is ready to sit down at the negotiating table, we are ready," a Kremlin spokesman said.

There should be no delay. The first order of business should be the prompt ratification of the non-proliferation treaty. And as soon as it can possibly be arranged, the United States should press, with all appropriate caution, for full-scale arms talks with the Soviets.

Both nations need relief from the economic burden of another upward spiral of the arms race. The world needs some lifting of the oppressive nuclear cloud that presently covers its horizon. This period of change and of renewed beginning may be the best opportunity for real progress.

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. KENNEDY. Mr. President, I ask unanimous consent that a brief period be allowed for the transaction of routine morning business today, with a limitation of 3 minutes on statements therein.

The VICE PRESIDENT. Without objection, it is so ordered.

LET US HOPE FOR THE BEST

Mr. YOUNG of Ohio. Mr. President, obviously President Nixon made a mistake in nominating Gov. Walter Hickel of Alaska to be Secretary of the Interior. Secretary Hickel would probably have been confirmed without question had he been nominated to almost any other Cabinet post, for example, Secretary of Transportation or Secretary of Commerce. Also, President Nixon's appointment of Henry Cabot Lodge to leadership in the peace discussions proceeding in Paris, replacing Averell Harriman, appeared somewhat startling. Lodge, as U.S. Ambassador to Saigon, was an outspoken exponent of bringing in hundreds of thousands of more men of our Armed Forces in addition to the hundreds of thousands already there. Furthermore, he has all along favored escalation and more bombing of north Vietnam and even favored bombing the populated cities of Haiphong and Hanoi.

Ambassador Lodge throughout recent years has invariably catered to Vice President Ky and has, in fact, yielded deference and devotion to this tinhorn, self-appointed air marshal of the South Vietnam Air Force and has been subservient to him at all times throughout recent years—in fact, recent months. I talked personally with Vice President Ky during my 3-week factfinding visit in South Vietnam, Thailand, and Laos. I take a dim view of this fellow who said Adolf Hitler was his hero. Except for our CIA and Armed Forces in Vietnam, he would not hold his present office.

Apparently, Averell Harriman who is a great diplomat and an accomplished negotiator was very close to achieving a ceasefire and an armistice in Vietnam and had accomplished an agreement that the National Liberation Front of South Vietnam, whose soldiers are termed the VC, was to have full representation at the peace conference table in Paris the same as the present Saigon militarist regime. The arrangement finally agreed to was that the NLF, or VC, the United States, the Saigon militarist government representatives and the Hanoi delegates were to be seated around the huge round table which would be unmarked by symbols. Preliminary negotiations, quarrels, Ky's denunciation of Defense Secretary Clark Clifford, Ky's insulting remarks when he left Paris in a huff suggesting the United States get out of Vietnam—all are now behind us due to Ambassador Harriman's patience and diplomacy.

In that regard, Mr. President, Clark Clifford was a great Secretary of Defense. I join with my colleagues who a few minutes ago lauded his fine record as Secretary of Defense—a record he established in a short period of time in that high office.

Mr. President, in the short time that Clark Clifford served as Secretary of Defense he made a fine record.

Delegates of Hanoi, Saigon, the VC or National Liberation Front and the United States are now ready to negotiate on substantive matters and to bring an end to the fighting, bombing, and terrorism in Vietnam and achieve an armistice and cease-fire.

Unless Ambassador Lodge has drastically changed his expressed views made in recent months, there is reason now to fear the worst—that instead of deescalating the war and halting the bombing both north and south of the 17th parallel the war will proceed more bitterly. Let us hope that Henry Cabot Lodge has changed his tune and outlook. Otherwise his appointment appears to be a catastrophe.

Also, let us hold our judgments in reserve regarding the appointments of Representative Melvin R. Laird as Secretary of Defense, and David Packard as Under Secretary of Defense. I voted in favor of their confirmation in the Committee on Armed Services and in the Senate.

Unfortunately, but very definitely, these two men appear to be exponents of all the policies favored by the huge military-industrial complex against which President Eisenhower warned the American people in his final statement to the American people before leaving the White House.

Secretary of Defense Melvin R. Laird has been an outstanding Representative in the Congress. He is personable and tactful, a man of integrity and achievement in private and public life. Also, he is extremely knowledgeable. Let us hope, therefore, that as Secretary of Defense he will at all times manifest his determination in dealing with the generals of our Joint Chiefs of Staff to uphold the

sacred principles written in the Constitution of the United States that in our Nation civilian authority must always be supreme over the military and over military authority.

COMMITTEE MEETING DURING SENATE SESSION

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Subcommittee on Constitutional Amendments of the Committee on the Judiciary be permitted to meet during the session of the Senate today.

The VICE PRESIDENT. Without objection, it is so ordered.

AMBASSADOR HENRY CABOT LODGE

Mr. SCOTT. Mr. President, I have known Ambassador and former Senator Henry Cabot Lodge for more than 20 years, and I would like to observe that his services in the Armed Forces with the Tank Corps in North Africa, his services in the Senate, and his services as an Ambassador have been marked by distinction and by loyalty to the administration which he served without respect to party.

While it is legitimate that men may dissent regarding the policies to be pursued in Asia, I think it remains clear that Ambassador Lodge loyally and faithfully carried out the policies of the Johnson administration. By being asked to return from his post as Ambassador to West Germany to take an important and leading part in the Paris talks, which we hope will lead to peaceful solutions, Ambassador Lodge can be expected once more to loyally and faithfully carry out the policies of the Nixon administration. These policies may in some areas agree and in some areas disagree with the policies of the Johnson administration regarding the Asian war. But whatever happens I am sure we have in Ambassador Lodge a most distinguished, a highly competent, and much-respected public servant.

ORDER OF BUSINESS

Mr. PROXMIRE. Mr. President, I ask unanimous consent that I may be permitted to proceed for 10 minutes in the morning hour.

The VICE PRESIDENT. Without objection, it is so ordered.

NIXON ECONOMIC ADVICE OFF TO A GOOD START

Mr. PROXMIRE. Mr. President, one of the favorite guessing games around the country these days revolves around the question of what kind of economic policy the new Nixon administration will pursue. Will it act swiftly and decisively to stem inflation? Will it put a high priority on continued economic growth? How sensitive will it be to an increase in unemployment? And, how decisively will it act to stop such an increase if it begins to grow? Assuming inflation continues and unemployment also begins to develop, which problem will receive the principal attention?

Every Member of Congress knows that these could be the big political questions as well as the major economic questions for this administration and for the country in the next few years.

For this reason the views of Chairman Paul McCracken, of the Council of Economic Advisers, and President Nixon's principal economic adviser, take on special importance.

Mr. McCracken and his Council, together with the rest of the Nixon administration's first economic team, will come before the Joint Economic Committee next month for a number of days of comprehensive interrogation.

This morning's New York Times provides an interesting preview of the kind of economic advice Mr. McCracken will be giving President Nixon. The Times interrogated Mr. McCracken at length and publishes excerpts from its interrogation in today's edition.

Frankly, I was impressed by the responses of Chairman McCracken. It is clear that he will counsel a moderate and thoughtful approach to our economic problems. He opposes sudden, drastic action by the Government to counteract changes in statistical series that may be temporary. He favors a gradual approach that will bring price inflation under control without stemming economic growth and without a substantial increase in unemployment.

Of course, this general intention of Mr. McCracken may not be the policy President Nixon chooses to follow. And if he does follow it, the execution may be inept.

But, on the basis of this interview, it is my conclusion, Mr. President, that Chairman McCracken and the new President may be off to a good economic start.

Certainly all of us wish them well. The well-being of all Americans as well as the national strength and power of this country depend on our economic success.

I ask unanimous consent that the article in this morning's New York Times reporting the McCracken interview be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

McCRACKEN HAILS ECONOMY'S TREND—CALLS SURPLUS IN JOHNSON'S FINAL BUDGET RIGHT MOVE TO HELP CONTROL INFLATION

(By Eileen Shanahan)

WASHINGTON, January 23.—The man who will head President Nixon's Council of Economic Advisors believes that the basic economic policy of the Government—after some serious mistakes—has been left heading in the right direction by the Johnson Administration.

Paul W. McCracken, who will officially become council chairman as soon as his nomination is approved by the Senate, expressed this view in an interview with staff members of The New York Times.

The interview took place in the Washington office of the Times on Jan. 9. Mr. McCracken last Tuesday authorized the publication of his remarks.

Although the interview took place before the publication of President Johnson's final budget which projected a surplus of $3.4-billion, Mr. McCracken cited a surplus of about that size as the proper one for the budget in the coming fiscal year.

Mr. McCracken said that such a budget surplus was the right policy to begin bringing inflation under control if it was coupled with the proper degree of credit restraint on the part of the Federal Reserve System.

Mr. McCracken described the proper Federal Reserve posture as a "lesser rate of monetary expansion" than prevailed in 1968, but "not contraction."

He said that monetary policy appeared to be on this course but that he was not certain it could be kept there and that the situation must be watched.

Even if the Federal Reserve were to pursue what he believed to be wrong policies, he does not believe it should be denied its traditional independence from Administration control, Mr. McCracken said. At least, he added, this is what he has believed in recent years.

Mr. McCracken, who served as a member of the Council of Economic Advisers from 1956 to 1959 and has just left an economics professorship at the University of Michigan, said that his views on this issue "shift a bit, depending upon whether I am an academic or in Washington."

"Back in the mid-fifties," he said, "I began to think that the Federal Reserve ought to be under the Administration. As I look back over the last 10 years, I find the mistakes have not been inherent in the organizational structure.

"The Administration and the Federal Reserve, I think, have to be in close communication. They have to be in a position to explain what they are doing, and the Administration has to be in a position to explain what it thinks ought to be done."

KEY PROBLEMS GIVEN

Mr. McCracken said that he believed the most important economic problems before the nation were bringing inflation under control without causing unacceptably high levels of unemployment, bringing the balance of international payments more securely into surplus and "bringing the disadvantaged groups into the mainstream of national life."

He warned, however, against what he called "economic hypochondriacs"—Government officials with excessive concern over every small "wiggle" in the business statistics, and attempts to offset such small trends. That kind of policy, he said, can produce a "careening course" for the economy.

On other issues, Mr. McCracken said:

"Interest rates do not have to be so high as they are now, although he sees forces in the economy that will tend to keep them somewhat higher than their long-term historical levels. Among these forces are the enormous demand for capital from the housing industry to support a needed level of home construction of one and three-quarter million to two million annually in the near future.

"President Kennedy's proposal to give the President authority to change tax rates with narrow limits—for purposes of stimulating or restraining the economy—is politically impractical. But he finds interesting an idea recently put forth by his colleague-to-be on the council, Herbert Stein, that the President should annually recommend a tax surcharge, which might be either negative or positive and Congress should then review and act on the recommendation."

Mr. McCracken sees the period ahead as a difficult one for economic policy, in part because he thinks it is harder to cope with inflation than with the underemployment that the Democrats faced when they came into office in 1961.

He said, in fact, that he believes there may be some sort of "malevolent law" that puts Republicans in power at times "when it is hard to be a hero."

INTERVIEW EXCERPTS

Q. How do you feel about the particular visibility of the council during the Johnson

Administration, namely its confrontations with industry on pricing situations?

A. I think it might be as well to see less of that. I have never been persuaded myself of the anti-inflationary productivity per man hour of high-level people spending their time on telephones.

Q. You are not sure of the value of the private arm-twisting then, as well as the public denunciations?

A. I realize at times you get drawn into these things. But in general I think high-level man hours might better be spent on matters more fundamental to the problem. It is very easy when you see a price or wage adjustment to say that the people who made those decisions are responsible for the inflation—without raising the question as to what created the environment which produced those decisions.

Q. What do you think of the wage-price guideposts?

A. The difficulty is that when you start really to need the guideposts, then you are not sure what the arithmetic is. Take this past year. The price level has gone up 4 to 5 per cent. Should Washington say wage rates now ought to go up 8 per cent, 5 per cent, 5 per cent for the price rise and 3 per cent for real? But nobody will say that.

[President Johnson's] Cabinet Committee on Price Stability suggested rolling it back part way, taking account of just part of the price increase. But what does this mean to a specific union or a specific company?

CHIEF ECONOMIC PROBLEMS

Q. What do you view as the chief economic problems that you should assign top priority to as you come to Washington?

A. One is the problem of how you cool down this inflationary economy without at the same time tripping off unacceptably high levels of unemployment. In other words, if the only thing we want to do is cool off the inflation, it could be done. But our social tolerances on unemployment are narrow.

Q. Is there a tolerable level of unemployment?

A. I think the tolerable level is probably zero. That is, so long as there is unemployment, this is going to be an issue because there is unfinished business here. On the other hand, I don't think there is any steady-state relationship between the price level and unemployment.

I do find myself impressed, however, with this—that [from 1958] to about 1965, the rise in the price level was minimal and we got some decline in unemployment. But after 1965, the successive reductions in unemployment per point rise of the cost of living index have been rather small.

Q. That suggests that you begin getting real inflation when you begin getting below 4 per cent unemployment.

A. Our experience this time would suggest that somewhere in that zone, price-cost pressures intensify.

Q. We are now at the lowest point of unemployment since the Korean war, 3.3 per cent. Doesn't that give you some room to let it rise a little bit without causing some grave social problem and a huge political outcry?

A. I am no expert in the political dimensions of these matters. I suspect if the unemployment rate rose from 3.3 per cent up toward 4, there would be political flak. At the same time, the inflationary situation has become rather serious in this country.

Getting back to your original question, another problem is the external problem, the balance of payments. The overheated domestic economy has also played a major role in the deterioration of our external payments.

You look at the relationship between the rate of increase in imports and the rate of increase in gross national product and you will find that at about the 5 to 6 per cent rate of increase for the gross national product, which is, roughly a kind of noninflationary rate, you get about the same rate of increase in imports. But you let the rate of increase in G.N.P. go up to 8 to 10 per cent and the "normal" relationship is to have imports rising at the rate of 15 to 18 per cent per year.

There is no mystery about it, of course. In a large economy where imports are fairly small, if you overheat the domestic economy, the spillover of demand creates a high leverage on imports.

FURTHER FISCAL ACTIONS

The third major problem is, of course, the whole continuing problem of bringing the disadvantaged groups in the population more into the mainstream of national life.

Q. Do you favor any further fiscal or monetary actions at this time to cope with inflation and excessive demand, or should we be patient?

A. I would say that, looking at 1968, monetary policy clearly has been too expansionist particularly after the tax increase. We presumably took the fiscal [tax] action to try to cool off the economy and then the turn in monetary policy tended to neutralize this.

Q. Are we now seeing a classic pattern of swinging back too sharply to restrain, policies that could throw the economy into reverse?

A. That is a key question. It must be watched.

Q. It could be, you say?

A. It could be, but that has not yet developed.

Q. What would be the signs that would tell you—early—that there had been too sharp a swing toward tightness?

A. Well, certainly one would be the rate of monetary and bank credit expansion.

Q. Do you mean if it dropped to zero or something like that?

A. That would be too severe.

Q. Have you seen any signs, as yet, that the Federal Reserve is tending to throw us into reverse?

A. No, and I am sure this is not their intention.

Q. On inflation. Let's assume that the Federal Reserve continues a policy of moderate expansion in money and credit—though less than we had for so long—and assume the budget is in balance, which it is. Would you expect that combination alone to cool inflation off?

A. Yes, I would.

Q. And presumably without and abrupt rise in the unemployment rate?

A. I think without an abrupt rise. At least, I would be hopeful that we could effect a fairly smooth transition. This is a sticky thing.

BALANCED BUDGET

It is tempting to say we shall cool down inflation without any rise in unemployment. And, obviously, so long as there are people unemployed we have unfinished business here. But I think we cannot confidently say that we can deal with this inflationary problem without affecting unemployment.

Q. You suggest that the present budgetary and emerging monetary policy looks pretty good. Am I right in assuming that barring a major change in the war situation, a balanced budget should be continued in fiscal '70?

A. Yes.

Q. What about a surplus, and, if so, of what size for '70?

A. When I say a balanced budget, obviously I don't mean one with a zero surplus. I am talking about expenditures being essentially covered by revenues. But I don't see any reason in this context to go deliberately for a huge surplus.

Q. You are really talking about a zero range surplus—from a deficit of $2-billion to a surplus of $2-billion?

A. Something like that, if we were just dealing with the domestic problem. But we have the international payments matter, and there you start getting into things that have symbolic importance. For that reason, I would like to move the zone up to a surplus of $2-billion, or something like that.

The international problem is pertinent on the large surplus, too. Theoretically, at least, if you run a large surplus, you are liable to find yourself with fairly low interest rates. But low interest rates could produce trouble.

Q. A capital outflow?

A. Yes. Of course, if we had some kind of serious decline in the stock market, you could have the same problem.

Q. Because of what?

A. Because there have been substantial foreign purchases of stocks. This is why the apparently improved balance-of-payments situation is a heavily cosmetic situation. If this improvement were occurring because we were improving our trade balance, then one could be more sanguine.

Q. If the policies now in effect work as you expect them to, and the cooling-off process occurs, shouldn't the trade balance improve, too?

A. It ought to.

Q. What should be the objective on the balance of payments?

A. I think there would be a great therapy to be had from our running a surplus for a while. It doesn't have to be a large one. It would be very helpful if we could demonstrate that if it is necessary, we can run a surplus.

Q. For a year or two.

A. Yes.

Q. Beyond that, do you share the widely held view that a deficit of the order of $1-billion, after you have achieved this demonstration effect, is probably tolerable?

A. Probably.

THE RIGHT POSTURE

Q. Granted that you think inflation is an urgent problem, do you envision any need for action early in the new Administration? You suggested before we were rather in the right posture now.

A. We are getting on the right course now. If we can keep the revenue-producing capacity of the tax system in close line with Government expenditures and if we can stay on a course of lesser rates of monetary expansion—not contraction, but lesser rates of expansion—I think then we ought to be able to work ourselves out of this inflation.

Q. If you found, later on, that the fiscal and monetary actions already taken are on the way to causing an excessive slowdown in the economy, what steps should be taken then?

A. Well, I never have been impressed with the quick turnaround capability of economic policy instruments. Therefore, it is important not to get into a situation where you have to try to pull that off. The trouble is, if you try to pull it off, what you are apt to have is an over-correction the other way. Then you will start getting the policy itself producing a careening course for the economy. As I survey history, I find myself increasingly impressed with the proportion of economic instability that can be attributed to the erratic course of policy.

Q. The logical deduction from what you're saying is that you just shouldn't get too nervous over small squiggles in economic activity.

A. That is probably a good way to put it. We have been to some extent, I think, economic hypochondriacs. You get a wiggle in a statistic, statistically within the error of tolerance of the data, and everyone runs to get the thermometer.

Q. Is it not possible to argue that the past eight years of uninterrupted prosperity—a record the Nixon Administration is going to find hard to beat—may have resulted from the willingness to move fast against any sign of economic illness?

A. You are not going to get any speeches from me that the last eight years have been all bad. It has been, in many ways, a very remarkable performance. There isn't any question about that.

Now there have been a couple of major factors which have been helpful. Some of the major changes in defense spending came at a time that helped keep the economic expansion going. And while the disinflation of the late fifties was overdone, I would very much rather have come in as chairman of the council in 1961 than now, when we have become concerned about inflation.

IMPACT OF TRUCE

In fact, I think there is some kind of malevolent law about the rhythm of political life that puts some of us here when it is hard to be a hero.

Q. What about the impact of an end to the Vietnam war? Would you address yourself to the opportunities and dangers of that?

A. Well, of course, they are fundamentally opportunities. As one looks at our experience in other transition periods. I don't see why we need to be very apprehensive about what might happen in the interlude. The transition problem is far less, relative to the size of the whole economy, than in the post-Korean period. Of course, the jobs that are curtailed may be in one state and the expanding industries across the country. You have a problem of meshing these two.

Q. If the current rate of inflation is too much, what is the tolerable level?

A. I think we have to feel our way along here. We don't really have much experience in trying to cool an economy in orderly fashion. We slammed on the brakes in 1957, but, of course, we got substantial slack in the economy. I wouldn't attach a figure as to what our objective ought to be at any point in time, any more than I would really attach a figure as to what our objective ought to be for unemployment. In both cases, we want them as low as possible.

But over the next two or three years, we certainly ought to be slowing down significantly the rate of price inflation so that we don't get the increases factored into wage and price decisions.

Q. To do that, you'd have to cut the recent rate of inflation in half, at least?

A. I suspect so, yes.

HUMAN RIGHTS: LET US LOOK FORWARD

Mr. PROXMIRE. Mr. President, on April 22 of last year, the Secretary General of the United Nations gave an eloquent speech in Teheran in which he emphasized the important bearing that the human rights conventions have on the life of mankind. In this speech he reminded us that violence breeds violence and fear is self-generating. This is a simple truth which we should all consider.

Today, Mr. President, we live in an era where violence and fear and mistrust can grow to the most dangerous proportions if allowed to do so. Increased tensions among nations and the resulting international arms race are striking examples of this terrible tendency. Every day the stakes grow higher as the peoples of the world find ever more deadly ways of waging war.

Mr. President, we have the opportunity now, in this Chamber, to make a simple yet vitally important statement to the world, that we as a nation are concerned about the welfare of all peoples, by ratifying the human rights conventions. The conventions highlight issues which are as important to our domestic welfare and physical security as they are idealistic and humane. We have the opportunity at this time to do this much to combat fear, mistrust, and suspicion.

When we consider our children, Mr. President, and the generations yet to come, this opportunity becomes a solemn obligation.

The human rights conventions await our ratification. They have been waiting on the Senate of the United States for almost 20 years.

NELSON SPEECH, NEW YORK TIMES EDITORIAL HIGHLIGHT SIGNIFICANCE OF HICKEL NOMINATION

Mr. PROXMIRE. Mr. President, among the statements, editorials, and speeches over the confirmation of Gov. Walter J. Hickel for Secretary of the Interior, two stand out. They do so because of their penetrating insights into the real significance of that nomination and its broader meaning for the country and, indeed, for posterity.

I refer to the speech which my colleague from Wisconsin, Mr. NELSON, delivered in the Senate yesterday, and the editorial in the New York Times this morning. They complement each other in both thought and depth of understanding.

They point out that what is at stake is the environment in which human beings live. As my colleague said:

> World-renowned ecologists, biologists, naturalists, and scientists are alarmed by the rapidly accelerating deterioration of our environment.

And the New York Times editorialized, in a reference to a warning given by the Sierra Club:

> In the United States alone oxygen-producing greenery is being paved over at the rate of a million acres a year. The oceans have become the dumping grounds for a half-million substances which may destroy the plankton essential to photosynthesis. And new factories, homes, autos and jet airplanes have multiplied the rate at which oxygen is replaced by carbon dioxide and carbon monoxide.

Senator NELSON warned that no matter should concern us more than the environment in which we live. As he said:

> In the long pull, no other matter before us is as important. We hope we might banish the bomb, wipe out poverty, and achieve peace in the world, but that will avail us little if we so degrade our environment that living in it is hardly worthwhile.

Mr. President, I urge that those who read the RECORD should return to ponder the eloquent statement of my colleague yesterday and to consider the significance of the New York Times editorial today.

I ask unanimous consent that the latter be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

TINKERING WITH NATURE'S ORDER

The Senate did the expected in confirming Walter J. Hickel yesterday, but it also placed the new Secretary of the Interior on warning that he will be closely scrutinized in the conduct of his office. The sixteen votes cast against him included those of virtually every Democratic Senator with a national following. These leaders of the opposition are aware, if Mr. Hickel is not, that conservation is now a powerful political force and that the public expects strong, constructive leadership to protect mankind's threatened environment.

Warnings about the dangers to the environment multiply on every side. An eminent New York scientist testified at a hearing in Madison, Wis., last week that pollution of the environment by DDT has reached the level of "great worldwide damage." The evidence has become overwhelming that effective pesticides of much lower general toxicity are now available and that use of DDT should be outlawed.

An even grimmer warning comes from the Sierra Club, which points out that in the United States alone oxygen-producing greenery is being paved over at the rate of a million acres a year. The oceans have become the dumping grounds for a half-million substances that may destroy the plankton essential to photosynthesis. And new factories, homes, autos and jet airplanes have multiplied the rate at which oxygen is replaced by carbon dioxide and carbon monoxide.

"Tinkering with the natural order of things is a dangerous business," the Sierra Club warns, adding that if "we should so alter our environment that we rid it of ingredients we need for life, then we will merely pass the way of other life forms that have become extinct for one reason or another."

Twenty scientists and conservationists appointed have flashed yet another danger signal. In their report they declare that man's survival in a world worth living in is in jeopardy.

The Nixon task force urges him to appoint a Presidential Special Assistant for Environmental Affairs, thus providing a focal point for responsibility in a badly fragmented field. It also recommends that the President's Council on Recreation and Natural Beauty be reconstituted as the Council on Environment, with a new special assistant as its executive secretary. The report asks that antipollution programs be made effective through adequate financing, which they have not thus far received; that the role of industry and state and local governments be strengthened and that new regional approaches be developed.

It is time to stop playing Russian roulette with man's destiny in an environment he can debase or radically alter—often with irreparable damage.

EXECUTIVE COMMUNICATIONS, ETC.

The VICE PRESIDENT laid before the Senate the following letters, which were referred as indicated:

REPORTS ON REAPPORTIONMENT OF AN APPROPRIATION

A letter from the Director, Bureau of the Budget, Executive Office of the President, reporting, pursuant to law, that the appropriation to the Department of Health, Education, and Welfare for "Grants to States for medical assistance" for the fiscal year 1969, has been apportioned on a basis which indicates the necessity for a supplemental estimate of appropriation; to the Committee on Appropriations.

A letter from the Director, Bureau of the Budget, Executive Office of the President, reporting, pursuant to law, that the appropriation to the Department of the Interior for "Resources management," Bureau of Indian Affairs, for the fiscal year 1969, has been apportioned on a basis which indicates a need for a supplemental estimate of appropriation; to the Committee on Appropriations.

A letter from the Director, Bureau of the Budget, Executive Office of the President, reporting, pursuant to law, that the appropriation to the Department of Health, Education, and Welfare for "Grants to States for Maintenance Payments" for the fiscal year 1969, has been apportioned on a basis which indicates the necessity for a supplemental estimate of appropriation; to the Committee on Appropriations.

A letter from the Director, Bureau of the Budget, Executive Office of the President, reporting, pursuant to law, that the appropriations in the Department of Health, Education, and Welfare, to meet certain pay increases, for the fiscal year 1969, have been apportioned on a basis which indicates a necessity for supplemental estimates of appropriations; to the Committee on Appropriations.

A letter from the Director, Bureau of the Budget, Executive Office of the President, reporting, pursuant to law, that the appropriation for the Department of Agriculture for "Forest protection and utilization," Forest Service, for the fiscal year 1969, has been apportioned on a basis indicating a need for a supplemental estimate of appropriations; to the Committee on Appropriations.

APPROVAL OF LOAN TO M. & A. ELECTRIC POWER COOPERATIVE, POPLAR BLUFF, MO.

A letter from the Administrator, U.S. Department of Agriculture, Rural Electrification Administration, transmitting, pursuant to law, information on the approval of a loan to the M. & A. Electric Power Cooperative of Poplar Bluff, Mo., for the financing of certain transmission facilities (with an accompanying paper); to the Committee on Appropriations.

PROPOSED UNIFORM ALLOWANCES TO CERTAIN PERSONS

A letter from the Secretary of the Navy, transmitting a draft of proposed legislation to amend title 37, United States Code, to provide for the payment of uniform allowances to certain persons originally appointed, temporarily or permanently, as commissioned or warrant officers in a regular component of the Armed Forces (with an accompanying paper); to the Committee on Armed Services.

PROPOSED INCREASE IN NUMBER OF FLAG OFFICERS WHO MAY SERVE ON CERTAIN SELECTION BOARDS

A letter from the Secretary of the Navy, transmitting in a draft of proposed legislation to authorize an increase in the number of flag officers who may serve on certain selection boards in the Navy, and in the number of officers of the Naval Reserve and Marine Corps Reserve who are eligible to serve on selection boards considering Reserves for promotion (with an accompanying paper); to the Committee on Armed Services.

PROPOSED TRANSFER OF SUBMARINE "DRUM" TO U.S.S. "ALABAMA" BATTLESHIP COMMISSION

A letter from the Assistant Secretary of the Navy (Installations and Logistics), transmitting, pursuant to law, a notice of the proposed transfer of the submarine *Drum* to the U.S.S. *Alabama* Battleship Commission; to the Committee on Armed Services.

REPORTS OF EXPORT-IMPORT BANK OF THE UNITED STATES

A letter from the Secretary, Export-Import Bank of the United States, reporting, pursuant to law, the amount of Export-Import Bank insurance and guarantees issued in November 1968 in connection with United States exports to Yugoslavia; to the Committee on Banking and Currency.

A letter from the Secretary, Export-Import Bank of the United States, transmitting, pursuant to law, a report of the actions taken by the Bank under the act during the quarter ending December 31, 1968 (with an accompanying report); to the Committee on Banking and Currency.

INTERNATIONAL DECADE OF OCEAN EXPLORATION

A letter from the Executive Office of the President, National Council on Marine Resources and Engineering Development, Committee on Marine Research Education and Facilities, for the information of the Senate, a proposed plan for implementation of the program involving increased utilization of research submersibles; to the Committee on Commerce.

PROPOSED AMENDMENT OF UNIFORM TIME ACT

A letter from the Secretary of Transportation, transmitting a draft of proposed legislation to amend the Uniform Time Act to allow an option in the adoption of advanced time in certain cases (with an accompanying paper); to the Committee on Commerce.

PROPOSED AMENDMENT OF FEDERAL TRADE COMMISSION ACT

A letter from the Chairman, Federal Trade Commission, transmitting a draft of proposed legislation to amend the Federal Trade Commission Act, as amended, by providing for temporary injunctions or restraining orders for certain violations of that act (with an accompanying paper); to the Committee on Commerce.

AMENDMENTS TO REGULATION GOVERNING NUMBERING OF UNDOCUMENTED VESSELS

A letter from the Secretary of Transportation, transmitting a certified copy of the amendments to the regulations governing the numbering of undocumented vessels (primarily recreational craft), promulgated by the Commandant, U.S. Coast Guard (with an accompanying paper); to the Committee on Commerce.

PROPOSED REGULATION OF HOURS OF EMPLOYMENT AND SAFEGUARDING THE HEALTH OF FEMALE EMPLOYEES IN THE DISTRICT OF COLUMBIA

A letter from the Assistant to the Commissioner, Executive Office, government of the District of Columbia, transmitting a draft proposed legislation to amend the Act entitled "An act to regulate the hours of employment and safeguard the health of female employees in the District of Columbia," approved February 24, 1914 (with an accompanying paper); to the Committee on the District of Columbia.

PROPOSED REGULATION OF EMPLOYMENT OF MINORS IN THE DISTRICT OF COLUMBIA

A letter from the Assistant to the Commissioner, Executive Office, government of the District of Columbia, transmitting a draft proposed legislation to amend the Act entitled "An act to regulate the employment of minors in the District of Columbia," approved May 29, 1928 (with an accompanying paper); to the Committee on the District of Columbia.

REPORT OF THE SECRETARY OF THE TREASURY

A letter from the Secretary of the Treasury, transmitting, pursuant to law, a report on the combined statement of receipts, expenditures and balances of the U.S. Government for the fiscal year ended June 30, 1968 (with an accompanying report); to the Committee on Finance.

CONGRESSIONAL FINANCIAL EFFECTIVENESS

A letter from the Secretary of the Treasury, transmitting a notice of intention to submit for the information of the Congress, a paper entitled "Congressional Financial Effectiveness"; to the Committee on Finance.

REPORT OF U.S. TARIFF COMMISSION

A letter from the Chairman, U.S. Tariff Commission, transmitting, pursuant to law, a report of the Commission for the fiscal year ended June 30, 1968 (with an accompanying report); to the Committee on Finance.

PROPOSED MEDICAL COST CONTROL ACT OF 1969

A letter from the Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation to amend the Social Security Act to provide for the determination of drug costs under the medicare, medicaid, and child health programs, and for other purposes (with an accompanying paper); to the Committee on Finance.

UNITED STATES-MEXICO COMMISSION FOR BORDER DEVELOPMENT AND FRIENDSHIP

A letter from the Chairman, U.S. Section, United States-Mexico Commission for Border Development and Friendship, transmitting a draft of proposed legislation to establish the United States Section of the United States-Mexico Commission for Border Development and Friendship, and for other purposes (with accompanying papers); to the Committee on Foreign Relations.

REPORT OF GENERAL SERVICES ADMINISTRATION

A letter from the Administrator, General Services Administration, transmitting, pursuant to law, a report of the Administration for the fiscal year ended June 30, 1968 (with an accompanying report); to the Committee on Government Operations.

REPORTS OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the review of financing of community facilities by the Department of Housing and Urban Development, dated January 17, 1969 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the need for improvements in the automated central payroll system of the Department of Health, Education, and Welfare, dated January 17, 1969 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the review of Washington international audit activities of the Agency for International Development, dated January 17, 1969 (with an accompanying report); to the Committee on Government Operations.

PROPOSED JOINT FUNDING SIMPLIFICATION ACT OF 1969

A letter from the Director, Bureau of the Budget, Executive Office of the President, transmitting a draft of proposed legislation to provide temporary authority to expedite procedures for consideration and approval of projects drawing upon more than one Federal assistance program, to simplify requirements for the operation of those projects, and for other purposes (with an accompanying paper); to the Committee on Government Operations.

REPORT OF ACTIVITIES IN THE DESALTING OF SEA AND BRACKISH WATERS

A letter from the Secretary of the Interior, reporting, pursuant to law, on the summary of 1968 activities in the desalting of sea and brackish waters, together with recommendations for future legislation; to the Committee on Interior and Insular Affairs.

PROPOSED CONCESSION CONTRACT, GLEN CANYON NATIONAL RECREATION AREA, ARIZONA AND UTAH

A letter from the Acting Deputy Assistant Secretary of the Interior, transmitting a copy of a proposed concession contract in the Glen Canyon National Recreation Area, Arizona and Utah (with accompanying papers); to the Committee on Interior and Insular Affairs.

REPORT OF ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

A letter from the Chairman, Administrative Conference of the United States, transmitting, pursuant to law, an interim report

of the Conference, dated January 15, 1969 (with an accompanying report); to the Committee on the Judiciary.

REPORT OF THE SECRETARY OF THE INTERIOR ON EMPLOYEE CLAIMS

A letter from the Secretary of the Interior, transmitting, pursuant to law, a report covering all employee claims of the Department in the fiscal year 1968 (with an accompanying report); to the Committee on the Judiciary.

REPORT OF COMPTROLLER GENERAL OF THE UNITED STATES CONCERNING CLAIM OF THE AMERICAN JOURNAL OF NURSING

A letter from the Acting Comptroller General of the United States, transmitting, pursuant to law, his report and recommendation concerning the claim of the American Journal of Nursing, New York, N.Y., against the United States (with an accompanying report); to the Committee on the Judiciary.

REPORT OF SUBVERSIVE ACTIVITIES CONTROL BOARD

A letter from the Chairman, Subversive Activities Control Board, transmitting, pursuant to law, a report of the Board covering the 6-month period ended December 31, 1968 (with an accompanying report); to the Committee on the Judiciary.

REPORT ON AUDIT OF ACCOUNTS OF THE FUTURE FARMERS OF AMERICA

A letter from the chairman, board of directors, Future Farmers of America, transmitting, pursuant to law, a report on the audit of their accounts as of June 30, 1968 (with an accompanying report); to the Committee on the Judiciary.

PROPOSED SETTLEMENT OF TORT CLAIMS ARISING IN FOREIGN COUNTRIES

A letter from the Comptroller General of the United States, transmitting a draft of proposed legislation to authorize the Comptroller General of the United States to administratively settle tort claims arising in foreign countries (with an accompanying paper); to the Committee on the Judiciary.

PROPOSED CONTINUATION OF PROGRAMS AUTHORIZED UNDER ECONOMIC OPPORTUNITY ACT OF 1964

A letter from the Acting Director, Office of Economic Opportunity, transmitting a draft of proposed legislation to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964 (with accompanying papers); to the Committee on Labor and Public Welfare.

DRUG INFORMATION AND CONSUMER PROTECTION AMENDMENTS OF 1969

A letter from the Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation to protect the public health by amending the Federal Food, Drug, and Cosmetic Act to provide for a U.S. Compendium of Drugs; to provide for a uniform system of coding for the identification of prescription drugs and provide for related label information; to provide for records and reports on experience with respect to articles subject to the act, for improved factory inspection authority, and for authority to require production of evidence; to assure the safety, reliability, and effectiveness of medical devices; and for other purposes (with accompanying papers); to the Committee on Labor and Public Welfare.

PROPOSED MEDICAL LIBRARY AND HEALTH COMMUNICATIONS ASSISTANCE AMENDMENTS OF 1969

A letter from the Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation to amend the Public Health Service Act to improve the provisions relating to assistance to medical libraries and related facilities in the field of health communications, and for other purposes (with an accompanying paper); to the Committee on Labor and Public Welfare.

PROPOSED EDUCATION AMENDMENTS OF 1969

A letter from the Secretary, Department of Health, Education, and Welfare, transmitting a draft of proposed legislation to extend and improve programs of assistance for education and for other purposes (with accompanying papers); to the Committee on Labor and Public Welfare.

PROPOSED COMMUNITY HEALTH SERVICES AND COMPREHENSIVE HEALTH PLANNING AMENDMENTS OF 1960

A letter from the Secretary of Health, Education, and Welfare, transmitting a draft of proposed legislation to amend the Public Health Service Act and related laws to extend and improve the provisions relating to comprehensive health planning and public health services, the construction of hospitals and other medical facilities, and the construction and operation of mental health and mental retardation facilities, to assist in the development of group practice plans providing comprehensive health care, to assist in providing safe drinking water, to improve the provisions relating to advisory councils, and for other purposes (with accompanying papers); to the Committee on Labor and Public Welfare.

REPORT OF CIVIL SERVICE COMMISSION ON POSITIONS IN GRADES GS–18, GS–17, AND GS–16

A letter from the Chairman, U.S. Civil Service Commission, transmitting, pursuant to law, a report on Commission employees in grades GS–18, GS–17, and GS–16 (with an accompanying report); to the Committee on Post Office and Civil Service.

REPORT ON HIGHWAY RELOCATION ASSISTANCE

A letter from the Secretary of Transportation, transmitting, pursuant to law, a report on highway relocation assistance, dated January 15, 1969 (with an accompanying report); to the Committee on Public Works.

PROPOSED NON-FEDERAL OPERATION OF SMALL BOAT HARBORS

A letter from the Secretary of the Army, transmitting a draft of proposed legislation to provide for non-Federal operation and maintenance of recreational small boat harbors constructed by the United States (with an accompanying paper); to the Committee on Public Works.

PROPOSED ENVIRONMENTAL HEALTH IMPROVEMENT AMENDMENTS OF 1969

A letter from the Secretary, Department of Health, Education, and Welfare, transmitting a draft of proposed legislation to extend the duration of the Solid Waste Disposal Act and the Clean Air Act, and for other purposes (with an accompanying paper); to the Committee on Public Works.

CIVIL WORKS PROJECTS OF THE CORPS OF ENGINEERS

A letter from the Secretary of the Army, transmitting a draft of proposed legislation to amend section 313 of the act approved October 27, 1965, as amended (82 Stat. 735) (with an accompanying paper); to the Committee on Public Works.

REPORT ON THE FEASIBILITY OF A MID-AMERICA CENTER, SMITHSONIAN INSTITUTION AT HOT SPRINGS, ARK.

A letter from the Secretary, Smithsonian Institution, transmitting a report on the feasibility of a Mid-America Center of the Smithsonian Institution to be situated at Hot Springs, Ark. (with an accompanying report); to the Committee on Rules and Administration.

BILLS AND JOINT RESOLUTION INTRODUCED

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. METCALF (for himself, Mr. AIKEN, Mr. DODD, Mr. HART, Mr. KENNEDY, Mr. MANSFIELD, Mr. MCGOVERN, Mr. NELSON, Mr. TYDINGS, Mr. YARBOROUGH, and Mr. YOUNG of Ohio):

S. 607 A bill to establish an independent agency to be known as the United States Office of Utility Consumers' Counsel to represent the interests of the Federal Government and the consumers of the Nation before Federal and State regulatory agencies with respect to matters pertaining to certain electric, gas, telephone, and telegraph utilities; to amend section 201 of the Federal Property and Administrative Services Act pertaining to proceedings before Federal and State regulatory agencies; to provide grants and other Federal assistance to State and local governments for the establishment and operation of utility consumers' counsels; to provide Federal grants to universities and other nonprofit organizations for the study and collection of information relating to utility consumer matters; to improve methods for obtaining and disseminating information with respect to the operations of utility companies of interest to the Federal Government and other consumers; and for other purposes; to the Committee on Government Operations.

(See the remarks of Mr. METCALF when he introduced the above bill, which appear under a separate heading.)

By Mr. PEARSON:

S. 608. A bill to create a temporary National Aviation Planning Commission in order to improve national planning in aviation; to the Committee on Commerce.

(See the remarks of Mr. PEARSON when he introduced the above bill, which appear under a separate heading.)

By Mr. DOLE:

S. 609. A bill for the relief of Dr. Mohamed Taher Ahmed Fouad; to the Committee on the Judiciary.

By Mr. HOLLAND:

S. 610. A bill for the relief of the Cuban Truck & Equipment Co., its heirs and assigns; to the Committee on the Judiciary.

By Mr. MATHIAS:

S. 611. A bill to regulate and foster commerce among the States by providing a system for the taxation of interstate commerce; to the Committee on Finance.

By Mr. PROXMIRE (for himself, Mr. MCGOVERN, Mr. MUNDT, Mr. NELSON, Mr. YOUNG of North Dakota, and Mr. CHURCH):

S. 612. A bill to regulate imports of milk and dairy products, and for other purposes; to the Committee on Agriculture and Forestry.

(See the remarks of Mr. PROXMIRE when he introduced the above bill, which appear under a separate heading.)

By Mr. PROXMIRE:

S. 613. A bill for the relief of Ramona Pacho;

S. 614. A bill for the relief of Francis Charles Miller (Franz Canto);

S. 615. A bill for the relief of Alexandros Marlis; and

S. 616. A bill for the relief of Robyn Mary Reimer; to the Committee on the Judiciary.

By Mr. TOWER:

S. 617. A bill for the relief of Ulrich Otten (also known as Heinz Erhardt Nass) and his wife Elke Otten; and

S. 618. A bill for the relief of Michael Wunderwald; to the Committee on the Judiciary.

By Mr. DOMINICK:

S. 619. A bill for the relief of CPO James G. Dole, U.S. Navy; and

S. 620. A bill for the relief of Richard Vigil; to the Committee on the Judiciary.

By Mr. NELSON:

S. 621. A bill to provide for the establishment of the Apostle Islands National Lakeshore in the State of Wisconsin, and for other purposes; to the Committee on Interior and Insular Affairs.

(See the remarks of Mr. NELSON when he introduced the above bill, which appear under a separate heading.)

By Mr. JORDAN of Idaho (for himself and Mr. CHURCH):

S. 622. A bill for the relief of certain individuals; to the Committee on the Judiciary.

(See the remarks of Mr. JORDAN of Idaho when he introduced the above bill, which appear under a separate heading.)

By Mr. ERVIN:

S. 623. A bill to provide procedures for calling constitutional conventions for proposing amendments to the Constitution of the United States, on application of the legislatures of two-thirds of the States, pursuant to article V of the Constitution; to the Committee on the Judiciary.

(See the remarks of Mr. ERVIN when he introduced the above bill, which appear under a separate heading.)

By Mr. JACKSON (for himself, Mr. TYDINGS, and Mr. NELSON):

S. 624. A bill to establish the Potomac National River in the States of Maryland, Virginia, and West Virginia, and for other purposes; to the Committee on Interior and Insular Affairs.

(See the remarks of Mr. JACKSON when he introduced the above bill, which appear under a separate heading.)

By Mr. BYRD of West Virginia:

S. 625. A bill to amend the Internal Revenue Code of 1954 to increase the amount of credit allowable for investment in property used to protect the health of miners; to the Committee on Finance.

By Mr. FONG:

S. 626. A bill for the relief of William Phillips;

S. 627. A bill for the relief of Melicio Ulep; and

S. 628. A bill for the relief of Koon Chew Ho; to the Committee on the Judiciary.

By Mr. BIBLE (for himself, Mr. JACKSON, Mr. ANDERSON, Mr. JORDAN of Idaho, Mr. MOSS, Mr. BURDICK, Mr. NELSON, Mr. MCGOVERN, Mr. ALLOTT, Mr. MANSFIELD, Mr. METCALF, Mr. STEVENS, Mr. CHURCH, Mr. HANSEN, Mr. FANNIN, and Mr. HOLLAND):

S.J. Res. 29. Joint resolution authorizing the Secretary of the Interior to provide for the commemoration of the 100th anniversary of the establishment of Yellowstone National Park, and for other purposes; to the Committee on the Judiciary.

(See the remarks of Mr. BIBLE when he introduced the above joint resolution, which appear under a separate heading.)

S. 607—INTRODUCTION OF BILL RELATING TO THE FACTS AND A VOICE FOR UTILITY CONSUMERS

Mr. METCALF. Mr. President, on behalf of the senior Senator from Vermont (Mr. AIKEN), the senior Senator from Connecticut (Mr. DODD), the senior Senator from Michigan (Mr. HART), the senior Senator from Massachusetts (Mr. KENNEDY), the senior Senator from Montana (Mr. MANSFIELD), the junior Senator from South Dakota (Mr. MCGOVERN), the junior Senator from Wisconsin (Mr. NELSON), the senior Senator from Maryland (Mr. TYDINGS), the senior Senator from Texas (Mr. YARBOROUGH), the senior Senator from Ohio (Mr. YOUNG), and myself, I introduce, for appropriate reference, the Intergovernmental Consumers' Counsel Act of 1969, a bill designed to modernize the regulation of the major electric, gas, telephone, and telegraph utilities.

This bill is designed to provide utility consumers with rights declared to be theirs in the Presidential consumer messages of 1962, 1964, and 1968—the right to be informed and the right to be heard. It would strengthen State regulation by providing regulators with information needed by them to carry out the large tasks assigned them by legislators. It would provide consumers with competent counsel before commissions and courts.

The bill has four principal objectives:

First. To require utilities to report to regulatory bodies information which is pertinent to regulation and to understanding of utility rates and procedures;

Second. To require the Federal Power Commission and the Federal Communications Commission to report this information to Congress and the public in a timely and convenient manner, using automatic data processing to the fullest extent possible;

Third. To establish, at the Federal, State, and local levels, offices of Utility Consumers' Council, to represent the interest of utility consumers before regulatory commissions and courts, and

Fourth. To establish a grant program to finance study of regulatory matters.

On February 6, 1968, I introduced a bill, S. 2933, almost identical to the legislation introduced today. My detailed statement on the legislation appears in the CONGRESSIONAL RECORD, volume 114, part 2, pages 2208 to 2213 of that date. On April 30, 1968, I placed in the RECORD comments on the bill which I had received from State regulatory officials and political scientists. These comments appear in the CONGRESSIONAL RECORD, volume 114, part 9, pages 10984 to 10988. Additional comment appears in the CONGRESSIONAL RECORD, volume 114, part 10, pages 12667 and 12668.

Mr. President, it is time for the Congress to recognize the fact that most regulation of our essential monopoly industries is mythical. The myth of regulation is perpetuated by the industries themselves, at the customers' expense, through their advertising and public relations programs. When regulation is actually attempted, the utilities' research, presentations, and consultants are financed from customer-paid operating expenses. The public pays. However, no provision is made, through either the tax or rate structure, for similar presentation of the public's case. The utilities do not want that, and their view prevails.

Nor indeed is the most basic information needed by regulators available on a uniform basis.

Ask any investor to name the single most important item of financial information about a company—

Said a New York Times article on January 6, 1969—

and he will probably reply that it is how much the company earns for each share of stock outstanding.

I invite any Member of this body to attempt to find a reference from any commission, State or Federal, or the well-stocked Library of Congress, or any other source, which will show, on a comparative basis, and for a recent year, this return on stockholders' equity for the natural gas and telephone industries. And I invite anyone to try to find a similar comparison of interest costs on long-term debt among the gas and telephone industries—or the electric utilities. To read utility trade literature, one would suppose those interest costs are up to around 7 percent. The president of Stone & Webster, a utility service corporation, wrote in the December 19, 1968, issue of Public Utilities Fortnightly, that "money costs are 6½ to 7 percent." Interest rates have been high recently. However, most utility debt carries a much lower service charge. For electric utilities the rates averages only 4 percent. Because of this low-debt service cost, the average return on common equity for electric utilities has risen steadily through the years until it is now at a record high of 12.8 percent. But Stone & Webster and the companies it represents talk about 7 percent; actual average costs are not available on a company-by-company basis; the presentations that would destroy utility myths are not made and the public which we, Mr. President, are supposed to represent, mutters and pays what the utilities bill them.

In recent days we have heard direct testimony on the myth of utility regulation. When Secretary Hickel was before the Senate Interior Committee I questioned him about regulation of Anchorage Natural Gas Corp., of which he had been board chairman prior to becoming Governor of Alaska 2 years ago. After studying the matter during our luncheon break he stated—as reported on page 235 of the hearings—that Anchorage Natural Gas "is not now, never has been under any State control. If any Governor or anyone else wanted even to help that company, I wouldn't know how, because we have no jurisdiction." The fact is that Anchorage Natural Gas Corp. was under regulation of the State public service commission when he was board chairman. It was under regulation of the commission when he was Governor. Alaska Interstate, the holding company of which Anchorage Natural Gas is a subsidiary, reported that regulatory responsibility to the Securities and Exchange Commission in 1966 and 1968. The Alaska Public Service Commission reported that regulatory responsibility to the Senate Subcommittee on Intergovernmental Relations. But the head of the regulated company was unaware of the regulation.

After he changed hats, served as Governor, and appointed to the regulatory commission members whose names he could not recall, he was still unaware of the fact that the company he had headed was under regulation by the State administration he had headed. No wonder the citizens of Anchorage, living about 60 miles from a great natural gas field, have been outrageously overcharged for natural gas by a company which earned 64 percent return on its stockholders' equity.

In State after State, the utilities dominate the State commissions that are supposed to regulate them.

The DPU (Department of Public Utilities) Overpowered by Companies, Neglected by State—Utilities Have Too Much Pull, Too Much Cash—

States the headline on Richard J. Connolly's article in the January 6, 1969, Boston Globe.

Regulatory agencies at all levels of government often become so close to the organizations they were created to police that they become ineffective—

The Globe said editorially 2 days later—

. . . The efficacy of the DPU is further limited by a lack of staff and sufficient funds to attract qualified professionals.

"Can the State Change Its Outdated System of Regulating Utilities?" is the headline over Irvin Becker's article in the January 12, 1969, Providence Journal. Mr. Becker documents how utilities in Rhode Island, Connecticut, Maine, and Massachusetts are earning well over the "allowed" rate of return. He reports "it is difficult to find a major rate-setting decision in the area since 1958"—11 years ago. He found the utility experts working for the utility companies, not for the public, and the university community—which used to furnish scholarship and leadership for the public in this field—unconcerned.

The Des Moines Register, which in its January 16, 1969, editorial referred to the legislation I am today introducing as "measured in dollars, the most important consumer protection bill being urged in Congress," told how the uniform disclosure provisions of my bill, along with the provision for consumer counsel, would greatly simplify the task of the Iowa Commission. John Millhone of the Register's editorial page staff reported that in Iowa's recent case concerning the makeup of a utility rate base the public "spent nearly four times more arguing for higher water bills than it spent arguing against them." This resulted from the usual practice of allowing utilities to include as operating expenses all rate case costs, while sharply limiting the amount of tax money available to finance the public's side of the case. Iowa, where the public was outspent only 4 to 1, is luckier than most States in this respect. I am personally familiar with cases where there was not a dollar of tax money available to fight massive customer-financed presentations by utilities. Experts made the public's presentation with assurances of payment from contributed funds later. The contributions did not come in. The experts received small recompense. Such situations do nothing to encourage the few public-minded utility experts to continue representation of the ratepayers' interests.

Mr. President, the public has the right to know how public service corporations spend the funds collected from ratepayers. This country has the technology to see that the information is provided.

Recently the Federal Power Commission proposed that electric and gas utilities report in detail their expenditures for professional fees—legal services, advertising, public relations, consulting and the like. The utilities ran to the Budget Bureau's Advisory Council on Federal Reports and complained that this reporting would be burdensome and costly. This was despite the fact that most utilities have sophisticated third-generation computer systems, and that utility trade literature is filled with accounts of modern information storage and retrieval systems which make reporting of such information simple.

I asked the chief accountant of a $100 million municipal electric system whether he would have any difficulty in reporting such expenditures in detail. He said that he would not, that it would cost nothing to report such expenditures, and that his computer equipment was only of the second generation.

The central point here is that utilities do not want to report some of their expenditures because, if they did, and the political or nonoperating nature of the expenditures became known, regulators might not allow these expenditures to be included in the operating expenses.

Utility corporations have special responsibilities because they have been granted special privilege by government. Indeed, utilities have more of the characteristics of government than they have of the free enterprise businesses with which they seek to identify. Utilities have boundaries, as States and nations do. They have the right of eminent domain, one of the most powerful rights of government. They are empowered to require public payments through rates, just as the State replenishes its funds through taxes. Like governments, and unlike private enterprise, the utilities do not go broke. They simply adjust the taxes—rates—or increase the debt.

Unlike government, though, utility corporations are not responsible to an electorate. Regulation is supposed to substitute for that absence of public control of a public service corporation. It is to make that regulation meaningful rather than mythical that my colleagues and I today introduce the Utility Consumers' Counsel Act of 1969.

This legislation comes within the jurisdiction of one of the principal committees of this body, the Committee on Government Operations. Our distinguished majority leader, who is a cosponsor of this legislation, pointed out earlier this month:

If the institutions of our government are to be at all responsive to the needs of our society and of the people, it is this Committee—the Committee on Government Operations—that will have the primary obligation to make them so.

The bill which we today introduce is indeed designed to make the institutions of our Government responsive to unmet needs and it is my hope that the committee will begin consideration of the bill at an early date.

Mr. President, I ask unanimous consent to insert in the RECORD immediately following these remarks the newspaper articles to which I have referred, and a more detailed description of the legislation and justification for it.

There being no objection, the matter referred to was ordered to be printed in the RECORD, as follows:

[From the Providence (R.I.) Sunday Journal, Jan. 12, 1969]

CAN THE STATE CHANGE ITS OUTDATED SYSTEM OF REGULATING UTILITIES?

(By Irwin Becker)

The election of Frank Licht as governor presents the state with a rare opportunity to overhaul its outdated utilities regulation system.

Mr. Licht made the subject of utilities one of his major campaign issues as he urged a three-member, non-partisan commission to replace the current administrator.

Despite the move toward reform, the central question remains: Can a regulatory agency on the state level cope with a problem that is regional and national in scope?

The local division of public utilities has said that it is understaffed, poorly paid and encumbered with *reviewing* the activities of more than 60 firms ranging in size from small taxi companies to large electric power complexes.

In the hodgepodge of hearings and decisions that crowd the agency's schedule, it is not unusual for more time to be spent on deciding whether to restore telephone service after bookie raids than in reviewing the accounts of the multi-million-dollar telephone company operations.

The system is further weakened by the advantage enjoyed by the large utilities which, with customer money, can afford the best talent to argue persuasively for higher rates that the public will have to pay.

COMPANIES STRONG

Many feel that the utilities division, as in many other states, is so poorly equipped that the utilities companies are able, in effect, to dictate the manner and the terms under which they are supposedly regulated.

"In many states, it is regulation of the customer, not of the utility," Sen. Lee Metcalf of Montana, a strong critic of the electric power industry, has argued in numerous speeches.

The status of the electric companies is central to any discussion of controlling the utilities and this is especially so in New England, where electric rates are the nation's highest.

Utility regulation consists basically of determining a reasonable profit for the risk-free, government protected industry. The exact amount differs in each case, but the Federal Power Commission and most state commissions have agreed that slightly more than a six per cent return is reasonable enough.

The FPC, when it computes the "overcharge" or "difference" earned by the power companies, uses the six per cent figure to establish a fair rate of return.

NOT ENFORCED

In 1967, the average rate of return set by the states was 6.14 per cent, which is a percentage based on a utility's plant investment and other economic factors.

But significantly, the states have not enforced their own profit limits and the major investor-owned electric companies earned an actual profit last year that averaged 7.44 per cent.

Some firms, operating in southern and western states, achieved a return on their investment of more than 15 per cent, which is higher than most competitive and risk corporations earn.

The difference between the established and actual returns or profits is only 1.30 per cent but the loss to customers runs into billions of dollars.

For example, a company that has a one-billion-dollar investment would get 10-million dollars less in revenues if its profit ratio dropped one per cent.

The Consumer Federation of America estimated that if the average cost for a kilowatt hour fell one-tenth of a cent this year, residential users would have saved 1.3-billion-dollars.

CEILING IGNORED

In New England, the regulatory gap is not as severe as in Texas, which has no utilities agency, but it is still a serious problem. Hardly any of the states in this region have initiated rate cases. The important issues of control of atomic energy and reliability of

electric power are decided out of view and control of the states.

It is difficult to find a major rate-setting decision in the area since 1958. For some reason, there were rate hearings throughout the region in the 1957–58 period. The last utility rate cases in Rhode Island, concerning New England Telephone & Telegraph Co. and Narragansett Electric, were in 1957.

During this lapse of state control, the power industry ignored the rate ceilings and compiled record profits.

In Massachusetts, the rate of return for Boston Edison was set at 5.7 per cent in 1958. According to the FPC, the Boston firm earned 7.75 per cent in 1966.

In Maine, the profit margin of the Central Maine Power Co. was established at 5.75 per cent. Its current income return is 6.56 per cent.

In Connecticut, the three power companies—Connecticut Light and Power, Hartford Electric Light and United Illuminating—earned an average return of nearly 7.40 per cent.

EIGHT PERCENT

In the Providence area, Blackstone Valley Electric and Newport Electric are making returns of close to eight per cent. The FPC calculated that if those two firms had been held to returns of six per cent their customers would have been saved an "overcharge" of about $600,000 in 1966.

Last year, in a review of corporate profits, the First National City Bank in New York estimated that all utilities have twice the return on their net worth than has the volatile transportation industry.

The electric companies offer several arguments in their defense. They claim the cost of money is constantly increasing, that they face competition from gas and oil interests, that they need high profits to attract investors and, that unlike municipal companies or federal projects, they pay a large amount of income taxes.

Further, the companies contend that the cost of electricity is decreasing all the time and they are making heavy investments in modern nuclear equipment so that the cost will go down even faster.

But industry critics maintain that the electric industry's contentions are phantom objections when they are viewed closely.

The cost of money argument is one instance. The industry contends that the cost of borrowing for investment is over six per cent and that this should be used to decide a fair rate of return.

The critics note that while the prime rate is now about six and a half per cent, what complaint did the industry have when the interest rates were half that 10 years ago. Would the utilities have reduced their profit margins to three per cent? They ask.

In addition, the cost of money is misleading, the critics observe. The real cost of money to a utility is the long-term interest it must pay on its bonded debt which comprises more than half its capitalization.

The latest annual FPC report states: "The average interest rate on the companies long-term debt reached a record high of four per cent in 1967." The report continues:

TAX MONEY CITED

"Much of the present debt capital of the stronger electric utilities was obtained in the 1946–56 decade when borrowing rates considerably below four per cent were prevalent."

On the question of competition, observers believe that the electric companies, the nation's largest industry in terms of value, has advantages over its rivals.

Because of excess profits, the critics assert, the electric firms can cut their prices, provide customer bonuses and absorb the loss without materially affecting their profits.

One of the electric companies' most potent arguments in terms of public relations has been their insistence that they are taxpayers like everyone else and that their tax money is vital to the operation of municipal governments.

The misunderstanding on electric company taxes is based on the confusion of who is paying the money—the utility or the customer.

Several favorable tax amendments in recent years have reduced the percentage of revenues the electric industry pays in federal taxes from 14.7 per cent in 1965 to 11.6 per cent in 1967. In many cases, the savings have not been passed on to customers.

Utilities include taxes in their operating expenses and these expenses are met by collecting the levy from customers. As Senator Metcalf has charged:

"Utilities are not taxpayers. They are tax collectors. When utility taxes are decreased, as they have been frequently, many utilities do not automatically reduce rates. They thus become tax keepers."

Dr. Horace M. Gray, emeritus professor of economics at the University of Illinois, quoted in the Congressional Record, maintains that the electric industry will profit from the recently imposed 10 per cent surtax.

PROFITS SEEN

He argues that the industry will have to pay $400,000 on the new charge but will probably collect twice that amount and pocket the difference.

Income and tax figures since the surtax went into effect are not available to affirm or contest the professor's remarks.

The cost of electricity to consumers has indeed gone down since World War I. The cost per kilowatt in 1967 dropped three cents to $2.31 but the average annual bill increased $5 to $120. That hike is attributed to the increased usage by each family.

The challenge of cheap federal power and the government's 2-million-dollar research investment in nuclear power has revolutionized power production. The electric industry is planning a huge outlay in the next 10 years to construct about 66 nuclear plants with a capacity of 51.5 million kilowatts.

Again, rush of the companies' into nuclear generation has riled the critics. They contend that the public paid for the development of the new power, but that the control over nuclear energy is being "handed over" to private industry.

Moreover, the critics charge that the cooperatives and the municipally owned companies, which provide 14 per cent of the power needs in New England, are being excluded from sharing equitably in the distribution and profits of the new energy source.

PROBLEMS LISTED

Thus the advent of nuclear power, the growing tendency toward regional mergers and the inability of the separate states to control the wealthy power companies cast a grave doubt over the efficacy of the proposed reorganization of utilities regulation in Rhode Island.

Dennis J. Roberts II, nephew of the former governor who is working on a utilities report for Governor Licht admits there are difficulties to overcome if a revamped system is to be effective.

He said the initial plan on reforming the utilities division included a three-member panel with overlapping terms filled with "apolitical" appointees.

The commission should be "judicial" in nature and have the use of experts, Mr. Roberts said. He said that there is sufficient legislation now for a utilities commission to carry on its work.

He added that "some thought has been given to regionalizing or setting up a compact." Mr. Roberts said there does not seem to be any liaison among the utility divisions in New England, many of which are dealing with different offshoots of the same companies.

The new commission, he asserted, should be aggressive in its regulatory mission. You can do quite a bit under the present law," he remarked, but very little had been done with the current setup.

"I don't think there has been a hearing of the (state's) own volition in 10 years. This is not a way to regulate utilities," he said.

He conceded, however, that a new regulatory system will run into the "very real problem" of money. "Good solid people would have to take a substantial cut in pay," he explained.

Another handicap is that utility experts are all working for the utility companies, and the universities do not have specialists who are concerned about the power monopolies.

Essentially, Mr. Roberts said, the state must settle the "question of priorities" and determine if it is "willing to spend the money" that would have to be taken from other programs.

COUNSEL URGED

Another attempt at reform is just getting started in Massachusetts, where the Consumers' Council has assailed the electric companies with overcharging Bay State residents a total of 41 million dollars last year.

The charge was made by Dr. Edward R. Willett, council chairman, who said the council would sponsor legislation assessing gas and electric companies for funds to study rate systems and make competitive bidding mandatory in certain contracts.

A council spokesman suggested that provisions of the FPC law allow an investigation of a region's utility problems if the state agencies in the area request a probe.

Another change the council favors is the appointment of a utilities counsel, who would work with the regulatory commission and represent the public in rate cases.

Maryland is the only state with a utilities counsel and efforts at the federal level to provide funds for the position have been defeated in Congress.

The Utility Consumer Counsel Bill, introduced by Senator Metcalf, required the reporting of additional financial information by the utilities, including stock ownership and stock option plans.

The bill would have made federal funds available for up to 75 per cent of the cost of establishing utility counsels in cities with more than 100,000 population and at state and national levels.

The legislation contained a provision to start a grant program for a continuing study of regulatory issues. The money for the new programs would have come from the utilities, which were to be taxed at the rate of one-tenth of one per cent of their operating revenues.

Senator Metcalf maintained it was fair for the utilities to pay for their own regulation since the government paid four-billion of the industry's annual 40 billion dollars in revenues.

[From the Des Moines (Iowa) Register, Jan. 16, 1969]

FOR BETTER UTILITY REGULATION

Measured in dollars, the most important consumer protection bill being urged in Congress is a proposal by Senator Lee Metcalf (Dem., Mont.) to modernize the regulation of rates charged by major electric, gas, telephone and telegraph utilities.

Metcalf, relying on Federal Power Commission statistics, said the common stock return of major electric utilities has risen from about 7 per cent prior to World War II, to 10 per cent in the postwar period, to 11 per cent in 1960 and exceeding 12 per cent for the first time in 1965.

He said state agencies cannot effectively regulate utility rates.

Metcalf's proposal would:

Require major, privately-owned utilities to report accounting and ownership information necessary for the effective regulation of their rates and for the public understanding of their operations.

Require the FPC and Federal Communications Commission to make this information public quickly and fully.

Establish at federal, state, and local levels, offices of utility consumers' counsel to represent the interests of utility customers before regulatory bodies.

Finance studies of utility regulation matters.

The federal government has an interest in the proposal as a customer of utility services, as well as a protector of business and residential users. Its annual utility bill runs to $4 billion, roughly one-tenth of the utilities' total revenue. Metcalf estimates that a 1 per cent reduction in this federal government utility bill would offset the $40 million cost of his bill. Of course, most of the savings he foresees would go to individuals and businesses.

The bill's disclosure provisions simply would require a utility to make easily available that information—plant costs, revenues, expenditures, cost of capital, etc.—which are necessary to fairly judge its return.

A recent report by a committee of the Investment Bankers Association shows why this is necessary. The report said that utility accounting practices show "a greater lack of comparability than at any time since 1933." This holds some advantages for a utility. A regulatory agency must go through the costly and difficult chore of untangling a utility's books if it undertakes a rate case. This is one reason why there are so few rate cases.

With standardized accounting procedures and data stored on computers, you could push a button and find out a utility's rate base and rate of return. The senator's suggestion for utility consumers' counsel would help assure that someone would push the button.

The proposal would not submit utilities to any rate controls which do not now theoretically exist. By reason of their monopoly positions and their captive business and residential customers, utilities long have been subject to public regulation. Metcalf is merely proposing that this theory be put into practice.

[From the Des Moines (Iowa) Register, Jan. 16, 1969]

IOWA OUTSPENT BY UTILITIES IN RATE BATTLES

(By John Millhone)

The out-gunned attempt by state agencies to regulate utility rates is well illustrated by the experience of the Iowa Commerce Commission. (See accompanying editorial.)

The Legislature in 1963 gave the commission regulatory authority over the rates charged by privately-owned utilities. Prior to that, rate regulation was left to municipalities, which had had little success in mustering the experts necessary to challenge rate levels.

In 1967, the Legislature increased the annual advance to the commission's utilities division from $350,000 to $450,000. The division is self-supporting, relying on end-of-the-year assessments against the regulated utilities. But this annual advance limits the size of its yearly budget.

The Legislature two years ago also authorized the spending of $50,000 to hire outside consultants in the commission's first and only major rate case. It challenged a rate increase by the Davenport Water Co., a subsidiary of the huge American Water Works Co.

MAKING A START

Iowa is making only an encouraging start in an uphill battle. The state thus far has spent some $96,000 on the Davenport case, according to commission executive secretary E. B. Storey. The company's estimated cost of preparing and presenting its case was $375,000.

The commission allowed this company expense in computing what was a fair return to the water company. In a simplified sense, then, the public, as business and residential water bill payers, spent nearly four times more arguing for higher water bills than it spent arguing against them.

This disparity is continuing now that Davenport Water has appealed the commission's order to the Scott County District Court and will continue if, as expected, the case goes to the Iowa Supreme Court.

An additional feature of this court appeal, as the issues presently are drawn, weighs in favor of the utility company.

In its order, the commission had to pick its way through a maze of questions as it decided for the first time how Iowa would measure a fair rate of return for a utility. Some of its judgments favored water bill payers; some favored the water company.

VALUES OF FACILITIES

The utility appealed the commission's order because in its principal decision, the commission chose original cost less depreciation, as the method of figuring the base value of the utility's facilities, rather than the "fair value" method which would have allowed higher rates and a higher return.

The company now is asking the court to upset this and other commission decisions which ran against it.

The cities of Davenport and Bettendorf, which intervened in the hearing, have resisted the company's appeal, but they have not entered arguments asking the court to reverse those commission decisions which ran against water users.

The amounts involved are not small.

The commission, for instance, allowed a 11.5 per cent return on the common stock equity of the company. At the hearing, its staff witness, after studying the operations of eight water utilities, testified that a fair return would be in the range of 9 to 10 per cent.

The staff argued that there was a deficiency of $600,000 in the reserve set aside for depreciation, because the company used unrealistically low depreciation schedules. The staff said this resulted in book value of the property higher than it should be, giving an inflated rate base for the company. The staff said the $600,000 should be subtracted from the property value, that is, the rate base.

SIDED WITH COMPANY

The commission allowed this depreciation reserve deficiency, although it urged the company to correct it.

In a myriad of other decisions, involving hundreds of thousands of dollars, the commission also sided with the company.

As the case now stands, these decisions, which if overturned would mean lower water bills for Davenport and Bettendorf business and residential users, are not being challenged.

The situation is analogous to a basketball game where the judgments of the referees are questioned. If a tape of the contest is replayed and one side can challenge all the calls which went against it, so should the other side.

This Iowa experience shows the potential value of the bill by Senator Lee Metcalf (Dem., Mont.) to modernize utility rate regulation. The uniform disclosure provisions of his bill would greatly simplify the task of the Iowa commission. His proposed utility consumer counsels would assure that in rate cases, the voice of the consumer is heard.

[From the Boston (Mass.) Globe, Jan. 8, 1969]

REGULATING THE REGULATOR

The Massachusetts Department of Public Utilities, by its manifest inability to regulate efficiently the agencies within its sphere, has called attention to its own need for regulation.

Years overdue is the announcement that the entire operations of the D.P.U. will be scrutinized by the House Committee on Government Regulations, whose chairman promises that the agency will be made to protect more effectively the interests of the consumer.

Today the D.P.U. commission will meet in executive session to discuss the recent power failures which affected 250,000 persons in 30 communities. Members of the House Committee will, however, be present. While the so-called open meeting law seems not to preclude the D.P.U. from meeting privately, sessions such as these should be open to the public.

A separate legislative probe into the speed with which the Boston Edison Co. responded to the two recent power blackouts will be conducted by the legislative commission studying the generation, distribution and cost of electricity. There is a larger question, too.

Regulatory agencies at all levels of government often become so close to the organizations they were created to police that they become at best ineffective. This is part of the problem in the functional paralysis of the D.P.U.

Also in question are the professional qualifications of the seven commissioners who administer the agency. The chairman, 61-year-old Helen Ross, occupies her position primarily because she was a long-term confidential secretary to ex-Gov. John Volpe. None of the others has any specialized training in the field of utilities.

The efficacy of the D.P.U. is further limited by a lack of staff and sufficient funds to attract qualified professionals. Moreover, lengthy Civil Service requirements—it sometimes takes one year to fill a job—are discouraging to applicants.

Chairman MacLean should assure that his legislative committee examines every facet of the D.P.U. and reshapes it into an effective agency with an adequate budget, which will truly place first the public interest.

[From the Boston (Mass.) Globe, Jan. 6, 1969]

DPU OVERPOWERED BY COMPANIES, NEGLECTED BY STATE—UTILITIES HAVE TOO MUCH PULL, TOO MUCH CASH

(By Richard J. Connolly)

Is the Massachusetts consumer adequately protected by his Public Utilities Department?

The question drew a smile from the career employee of the DPU. He had been around long enough to know the answer.

"The companies," he said, "have too many resources and too much influence with the commissioners.

"They all wears halos, although they are green around the edges at times," he said of the utilities.

The Massachusetts DPU, he explained, has neither the time nor resources to properly investigate the utilities, which prepare their cases with the consumers' dollars.

Few consumers have the time or confidence to appear before the DPU to oppose the utilities.

The magnitude of the electric industry alone and the extent of the power failures in the past week or so should show the inability of the DPU to keep close tabs on utility operations and delve into the cause of the blackouts without relying on the reports of the utilities.

The DPU's chief accountant, Harold F. Bertolucci, serves as a good example of the lack of sufficient personnel and the dedication of some DPU employees who are underpaid and overworked. He earns $11,752 annually, a figure he could double in private industry.

A DPU employee for 22 years, he is a registered public accountant, holds a Boston

University degree in accounting, a master's in both economics and law and is a member of the bar.

Bertolucci supervises the examination and audit of accounting returns and schedules filed by companies under the DPU's jurisdiction.

Among them:

Sixteen railroads, 10 street railways, six phone companies, 26 gas firms, 14 electric companies, 2599 motor carriers of property, 816 security brokers and investment trusts, 63 water companies, 78 motor bus lines, 40 municipal light plants, 530 regular route common carriers, 7013 irregular route common carriers and 7422 interstate licensed carriers.

He specializes in the systems of accounts used by all of those firms. He must be familiar with administrative law and with the type of equipment used by the utilities as well as their financing methods.

Bertolucci's duties are important to the protection of the consumer. He prepares drafts of decisions and rulings issued by the DPU concerning fiscal and rate cases.

TWO EMPLOYEES

With all this responsibility and with a primary function in the establishment of utility rate schedules, Bertolucci has only two employees in his office—another accountant and a woman who handles clerical work.

When the other man is in the field and the woman is sick or on vacation, Bertolucci must eat his lunch at his desk. He cannot go out because nobody is available to answer the telephone.

John W. Coughlin, who has been with the DPU for nearly 20 years, is director of the division of telephone and telegraph utilities. His task is to direct the investigation of complaints about telephone and telegraph service and to examine equipment to make sure it meets DPU requirements.

His job requires a thorough knowledge of laws and regulations relating to telephone and telegraph services, of rate structures and of the mechanical operation of telephone and telegraph equipment.

LACK OF YOUTH

Coughlin has no clerical help. He must write the division's letters. He must keep one inspector in the office each day to answer the telephone, handle complaints and assist with the office duties.

DPU Chairman Helen P. Ross also lacks clerical help. She shares a confidential secretary with six other commissioners and two lawyers. On a recent night, Miss Ross wrote 22 letters at home.

Staff and sufficient funds are needed. But the biggest deficiency is in youth. Much of the personnel is a product of the depression years. They have talent but are aging. Of six engineers, the youngest is 53.

The salary structure is unattractive. Even if young talent could be recruited (there is no recruitment program) Civil Service procedures discourage applicants.

"It may take a whole year to fill a job," one division head noted.

"If you try to fill the job temporarily, you're liable to get a politician who is worthless. If you get someone who can do a good job, he can get bumped by a veteran or a disabled veteran," he said.

"This department, like others in the state, is in real trouble," he continued. "Talented young men and women are not coming into state service because they can make more money in private industry."

Numbers are not the only answer. Because of the complexity of its task and the need to regulate highly technical industries, the DPU must have knowledgeable personnel.

The Massachusetts DPU, like other state regulatory agencies, has failed to use data processing methods, unlike the utility firms it is empowered to regulate.

Rate bases, income and rates of return are checked. But, in the opinion of one DPU official, the analysis of statistical data and comparisons are the exception. Not enough attention is paid to the cost of a utility's operation.

U.S. Sen. Lee Metcalf of Montana, long a critic of investor-owned utilities, which he refers to as the "I.O.U.'s", says that state regulatory commissions are one of the most important—yet most neglected—parts of government.

Metcalf has reminded state commissions that they must keep the public informed of utility operations and must protect the consumer who cannot purchase power, water or telephone service in the open market.

EXTRAVAGANCE?

"Commissions should probe into the financial figures of the utilities to find where the money goes, whether there is extravagance, whether the public is overcharged, whether the consumer's dollar is used for political purposes or endeavors which the consumer does not favor."

Sen. Metcalf has said of some regulatory commissions:

"Responsible for the protection of the public interest in many and diverse fields, but lacking the staff and funds with which to exercise their responsibility, some commissions are able to do little more than accept and approve what is put before them by the hundreds of companies under their jurisdiction.

"Thus most rate changes are initiated by the utilities and simply approved by the commissions, which are not equipped to inquire into the reasonableness of the rates. . . . Consumers are paying dearly for the regulation that protects and benefits the investor-owned utilities at the expense of their regulated customers."

In the opinion of Sen. Metcalf, the electric consumer, for example, is caught in a vicious circle.

"He cannot obtain adequate rate reductions because many regulatory commissions do not have the staff nor inclination to reduce rates, due to the political and propaganda activities of the utilities, which are designed to prevent adequate rate reductons," Metcalf said.

Past and present DPU commissioners in Massachusetts have not been especially active on Beacon Hill in efforts to obtain more money, power, and staff to do a better job.

Even if they were, they would encounter opposition, not openly, of course, from the most powerful lobby on The Hill—that of the private utilities.

By neglecting the DPU, by not giving it enough tax dollars to do an adequate job, by not demanding tip-top efficiency, the public has cheated itself as a taxpayer and consumer.

UTILITY CONSUMERS' COUNSEL ACT OF 1969

Mr. METCALF. Mr. President, the Utility Consumers' Counsel Act will not work hardship on any utility. It is designed to provide utility consumers the tools with which to obtain fair rates. It will also provide an opportunity for substantial savings by the Federal Government, which is the largest consumer of utility services in the country, paying annually a utility bill of some $4 billion. That is roughly one-tenth of the utilities' revenue.

The bill would authorize—in addition to whatever relatively small additional sums would be needed by the Federal Power Commission and the Federal Communications Commission—an annual appropriation equal to one-tenth of 1 percent—0.001—of the aggregate annual gross operating revenue of the major electric, gas, telephone, and telegraph utilities. Their revenue approximates $40 billion annually. Therefore, the current appropriation ceiling in the bill would be about $40 million.

As can readily be seen, a mere 1-percent reduction of the Federal Government's annual utility bill would save an amount equal to the authorized appropriation of $40 million.

The principal beneficiaries of the bill, however, would be the residential consumers and businesses which often have had no voice before the ratemaking commissions.

The bill would not apply to utilities that are owned or controlled by the customers they serve or by the public. Consumers ordinarily do not overcharge themselves. If a customer-owned system did increase rates unduly the customers have remedies—change the management or the policies. These remedies are not available to the customers of investor-owned utilities. Nor would the bill apply to the small investor-owned utilities. It would apply only to those IOU's with annual gross operating revenues of $1 million or more.

Four major points are covered by this proposed legislation:

1. UTILITY REPORTING

The computers and information storage and retrieval systems developed during recent years can vastly simplify and speed up what now are costly, time-consuming and cumbersome regulatory proceedings. It is presently impossible, in most cases, to determine from public records who owns utilities, who works for them, and where some of their money goes.

It is difficult to compare the performance of one utility with that of another. Utility accounting practices are "completely inadequate" and show "a greater lack of comparability than at any time since 1933," according to a committee of the Investment Bankers Association.

It is difficult, if not impossible, to evaluate the degree to which power company stock option plans dilute equity of ordinary stockholders and result in loss of capital available to the utility.

It is difficult, in some cases impossible, to find out the size and makeup of a utility's rate base, upon which earnings and thus rates are based. This situation is analogous to that of a taxpayer who could not find out the assessed value of his property. He would be indignant, and properly so.

Mr. President, the electric utility industry portrays itself as strictly regulated and closely watched. "Big Brother—the Federal Government—keeps a steady eye on the fishbowl called the electric utility industry," according to the January 22, 1968, issue of Electrical World. The Southern Co., an electric utility holding company, stated in its 1966 annual report that it and its subsidiaries "Are compelled to operate in a 'fish-bowl' with their every corporate activity subject to scrutiny by regulatory authorities." Industrial News Review, a canned editorial service financed in part by power companies, recently sent thousands of newspapers a free editorial stating that "A power company lives in a gigantic goldfish bowl, the size of the ter-

ritory it serves." A power company's every act, continued the editorial "is subject to public observation and local, State, or Federal regulation." The electric utilities have claimed, in national advertisements, that they "answer any question you may have quickly, without making a Federal case of it." I wish that were true. It is not true. There is no truth-in-utility-advertising law and none is here proposed, although a case could be made for such legislation.

The bill would correct at least some of the deficiencies in the utility reporting system, remove some of the opaque covering on the fishbowls. It would, in sum, simply require that the utilities do what they say they do about informing the public and regulatory bodies about themselves.

2. FEDERAL COMMISSION REPORTING

The bill would require the Federal Power Commission and Federal Communications Commission to make readily available to the public, on at least an annual basis, various information about each electric, gas, telephone, and telegraph utility. Some of the information is already reported by the utilities, but is not conveniently available to the public. Under this bill the Commissions would be authorized to prescribe regulations necessary to obtain the additional data.

The FPC has taken some good beginning steps in this regard. "Statistics of Electric Utilities in the United States, Privately Owned" includes the return on common stock equity of each major electric utility. The average return on common stock equity in 1967 was 12.8 percent, having risen from about 7 percent prior to World War II, to 10 percent in the postwar period, to 11 percent in 1960, and exceeding 12 percent, for the first time, in 1965.

The bill would require reporting of information on the components of each utility's rate base. The components of a rate base are all important. Revenue, and thus rates, are based on the value assigned the rate base.

In a majority of the States the method of rate base valuation is the depreciated original cost of the plant. In about a dozen States the fair value of the rate base is used. In addition, in some States various other items are included in the rate base—accumulated tax deferrals, allowance for working capital, construction work in progress, contributions in aid of construction, customers' advances, materials and supplies, plant acquisition, adjustments and plant held for future use.

In Vermont and Nevada, for example, the State commissions use the depreciated original cost rate base. The only other item included is an allowance for working capital, according to Senate Document 56, "State Utility Commissions," issued in 1967 by the Senate Subcommittee on Intergovernmental Relations.

In contrast, Mississippi, which uses the fair value rate base, permits allowance for working capital, construction work in progress, contributions in aid of construction, customers' advances, and material and supplies—although these amounts are reduced by accruals flowing from customers' payments—and appears to have included accumulated tax deferrals in the rate base as well.

Obviously, any given rate of return on a Mississippi-style rate base is going to produce substantially more revenue than the same rate of return would produce on a Vermont or Nevada rate base.

In some States regulators themselves, as well as the public, have difficulty finding out the actual value of the rate base. The bill would require that the major components of the rate base, and their dollar value, be reported. The bill would in no way diminish regulatory responsibilities of the State commissions or increase regulatory responsibilities of Federal Commissions in respect to rate base or any other matter. It would spread on the public record some basic information on which intelligent regulatory judgments can be based. As Commissioner Carver of the Federal Power Commission has observed:

> Firm regulation can succeed as well by concentration on the components of the rate base as on control of profits.

The makeup of a utility rate base is especially important in that whenever an additional item is included in it, the rate of return is decreased. If, for example, a utility has a $1 billion rate base and $96 million in net operating revenue annually, the rate of return would be 9.6 percent. If a regulatory commission can be persuaded that an additional $200 million should be included in the rate base, bringing the total to $1.2 billion, the $96 million in net operating revenue would represent a rate of return of only 8 percent.

When a utility can get the rate base increased, and the rate of return therefore decreased, it can better argue that its rates should not be decreased but, indeed, perhaps should be higher.

The economic importance of rate base components was illustrated by the FCC's September 14, 1967, modification of its July 5, 1967, decision in the American Telephone & Telegraph rate case. In its July decision the FCC found that a rate of return in the 7 to 7.5 percent range was reasonable for Bell's interstate operations. In its September modification the FCC reaffirmed its finding that a rate of return of 7 to 7.5 percent was reasonable. However, the Commission decided that construction work in progress—amounting to $544 million—should be included in the rate base. This modification permits Bell to earn annually an additional $40 million.

I will cite one other example, from my own State of Montana. The State regulatory commission, which is bound by statute to the fair value rate base concept, reported to the Senate Intergovernmental Relations Subcommittee that Montana Power Co. had an allowed rate of return of 5.33 percent. Montana Power actually has a rate of return of 10.66 percent, on a depreciated original cost rate base, and a return on common stock equity of 16.4 percent, according to the Federal Power Commission.

The bill would require annual publication of the difference between what each utility earns and what it would have earned at a 6-percent rate of return on a depreciated original cost rate base. The purpose of this requirement is to permit the Congress, regulators, and the public to make meaningful comparisons on a standard basis.

The rate or return allowed by State utility commissions averages about 6 percent—6.14 percent in the case of electric utilities, 6.32 percent in the case of gas utilities, 6.25 percent in the case of telephone and water utilities, according to the State commissions' reports to the Subcommittee on Intergovernmental Relations that are summarized in Senate Document 56, 90th Congress, first session. Some of those State commissions compute that rate of return on a fair value rate base and include various items in the rate base. But the majority of those commissions use a depreciated original cost rate base, as the Federal commissions do.

It is also pertinent here to point out that the Federal Power Commission, in granting hydroelectric power licenses, has long used a standard of 6-percent return on net investment. Although net investment and depreciated original cost rate base are not identical they are not far apart. In Docket R–297, the FPC concluded that the fair return on net investment should be one and one-half times the weighted average embedded cost of long-term debt, or 6 percent, whichever is higher. This formula adds a flexibility that would benefit a utility whose long-term debt costs are above the 4-percent average.

The bill would in no way change the earnings structure or the regulatory responsibilities. It would simply make conveniently available information upon which sound regulatory judgments can be based.

Officers and directors of utilities who are officers and directors of other corporations would have their corporate connections published annually, under the terms of the bill. In this connection I am reminded of a newspaper advertisement a few years ago by Guaranty Trust Co., of New York, on behalf of the investor-owned electric utilities, attacking consumers of public power. The ad did not mention that investor-owned companies are among the principal consumers of publicly generated power. The chairman of the board of Guaranty Trust was also board chairman of Duke Power Co. The bank's trustees included four officials of Consolidated Edison. One of the bank's directors was an official of Public Service Electric & Gas.

I believe information on such tieups should be readily available. I believe it would help the Federal Power Commission enforce section 305(b) of the Federal Power Act, which reads:

> It shall be unlawful for any person to hold the position of officer or director of more than one public utility or to hold the position of officer or director of a public utility and the position of officer or director of any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility, or officer or director of any company supplying electrical equipment to such public utility, unless the holding of such positions shall have been authorized by order of the Commission, upon due showing in form and manner prescribed

by the Commission, that neither public nor private interests will be adversely affected thereby.

The bill would require publication of information on utility stock option plans. Regulators and parties to rate cases could thus receive some indication of the amount of compensation realized by option beneficiaries. They could also determine the extent to which additional capital would have to be raised in order to compensate for capital foregone through sale of stock to optionees at below-market prices. The information would be sufficient also for ordinary stockholders to estimate how much their equity has been diluted through exercise of options by insiders.

The bill would provide for publication of the name and address of the beneficial owners of 1 percent or more of the stock in each utility. At present most utility stock is listed by street names; that is, investment firms. In the majority of electric utilities every single vote at the annual meetings and elections is cast by management, by proxy. If a stockholder or group of stockholders want to solicit votes for a nonmanagement candidate for the board of directors, or against a stock option plan, they are stymied. They cannot find out who the real owners are.

Certainly the real owners are not the home State folks whose pictures adorn utility advertisements, and whose total holdings are a tiny fraction of the total outstanding stock.

Nor can a city or small company find out who controls a big utility which seeks to purchase their local powerplant. The experience of the city fathers of Holyoke, Mass., in 1964, illustrates the problem. Holyoke Water Power Co., was trying to buy their municipal electric plant. City officials wanted to know who they were dealing with. One investment firm said it held Holyoke Water Power stock for 12 clients, including one in Switzerland, one in France, and a foreign bank. The firm would not provide further details. Merrill Lynch, Pierce, Fenner, & Smith, Inc., was less informative but more specific:

> Firm policy prevents us from divulging the names and addresses of clients for whom we are holding securities.

Said Merrill Lynch:

> The only way we may provide such information is upon receipt of a duly authorized and executed court order, spelling out the terms of the request.

This provision of the bill is sharply limited but of considerable importance. It will provide, in addition to the benefits previously mentioned, an opportunity to determine the extent to which control of the energy and communications industries are concentrated or diffused.

The entire regulatory system rests on the accounts. Our technology is now such that the data on which utility regulation is based, including the information which would be obtained under this bill, can be stored in data banks and readily printed out for regulators, the Congress, the public. Development of comprehensive computerized information systems are underway among utilities, the Federal Power Commission and the Federal Communications Commission. Only two State commissions, California and Wisconsin, make significant use of automatic data processing in the regulatory process. Were the FPC and FCC truly to become data banks their information could be of considerable value to understaffed, inadequately equipped State commissions.

I gather from the literature of the utility industries that the cost of developing comprehensive utility information systems is surprisingly small, providing the systems are properly planned. I believe the Federal commissions should move ahead faster in development of their computerized systems. The bill would authorize and direct the two commissions to make full use of automatic data processing, to the end that the information upon which rate adjustments can be made would be received in a timely and understandable manner.

Essential of course to sound regulation in this era is an integrated information program in which the utility can readily respond to what the regulatory commission asks, rather than simply report what the utility wants told. In line with announced industry policy to answer any question quickly a utility computer tape ought not to stutter if asked by a commission machine to print out the company's owners, optionees or overcharge.

3. UTILITY CONSUMER COUNSEL

The bill establishes as an independent agency a U.S. Office of Utility Consumers' Counsel. He and his staff would be empowered to represent the Federal Government and the public before Federal and State commissions and courts. The bill would transfer from the General Services Administration to the Office of Utility Consumers' Counsel responsibility for procurement of electric, gas, telephone, and telegraph service from investor-owned corporations whose annual revenues exceed $1 million.

The bill would make available to the States grants of up to 75 percent of the cost of State Officers of Utility Consumers' Counsel. This grant-in-aid program would also be available to local jurisdictions or combinations of jurisdictions with a total population of at least 100,000 persons.

Mr. President, most of us are familiar with the formidable presentations which utility companies can make before regulatory commissions, with their batteries of experts who are paid for by the customers through the rate structure. We are familiar too with the fact that the public viewpoint, the consumers' viewpoint, is not adequately presented.

I have been impressed by the editorials on this point, in State after State, during the past 2 years. Here are excerpts from some of them:

Said the Providence Journal:

> Time and again, Rhode Island consumers have seen how impressively the utility interests can mobilize its economists, engineers and accountants in a massive presentation of data to support a rate case. Too frequently, the public utilities administrator has all he can do simply to understand a case, let alone to act as arbiter between company and public interests. Too frequently, State administrators, knowing that company versions of its investment, income, depreciation, and expenses as rate base elements *should* be items of controversy, simply must pass over these items for lack of experts who can challenge the company.

The Oklahoma Corporation Commission has been investigated by a State senate committee, following revelation of cash gifts by a gas utility to members and staff of the commission. The Tulsa Tribune, commenting on the State investigation, noted a disturbing paradox:

> The commission has awesome powers to regulate transportation and utility rates, oil and gas production; but it has extremely limited means to obtain the information required for the just and equitable discharge of these powers.
>
> Confronted with batteries of corporation attorneys arguing for rate increases, the commission has had only the services of its underpaid, political-patronage staff.
>
> Ostensibly elected by the people—although the voters rarely have shown any interest in their selection—members of the commission have had to rely for campaign funds on those who have vested interests in decisions made by the commission. Yet this commision is cast in the role of prosecutor, judge and jury in cases vitally affecting the life of every Oklahoman.

In New York a "veil of secrecy"—in the words of the New York Times—was placed around the report on the Consolidated Edison Co. that was made for the city by a private consultant.

Said the Times:

> The long, dismal record of confrontations between the city and Con Ed shows that the company has invariably been able to persuade the (New York Public Service) Commission that its position is the right one.
>
> The P.S.C. has gone along with Con Ed mainly because it lacks the qualifications or the disposition to do anything else. Its four members—all Republicans—are undistinguished politicians who have been rewarded for their loyalty and long years of party service. They have no special expertise in the field of rate regulation and they cannot cope with the formidable and sophisticated appeals for increases made by Con Ed. On a few occasions they have found it politic to delay action, but in the long run they have always yielded.

A similar situation prevails in Arkansas, according to the Blytheville Courier News. Noting that the Arkansas Public Service Commission has not had a rate case before it in over 10 years, it said:

> This has been the old Arkansas way of doing things in relation to business in the state: the industry to be regulated (and it does not begin and end with utilities) has the strongest hand in regulation.
>
> In short, the consumer in Arkansas has not had the benefit of the protection due him under the law because of the obvious political influence brought to bear in state government, as such government relates to regulation.

In Massachusetts, a probe of utility rates, suggested by the distinguished junior Senator from Massachusetts, Mr. EDWARD KENNEDY, and the Massachusets Consumer Council, was heartily endorsed by the Boston Herald-Travler, the Boston Morning Globe, the North Adam Transcript, and the Malden News.

The Transcript noted that the Massachusetts Department of Public Utilities did not seem interested in the investigation. The Herald-Traveler observed that a full rate case would be out of the question with the DPU's present staff, which

included but three accountants assigned to checking the accuracy of financial statements filed by all the electric, gas, railway, bus, telephone, and telegraph companies in the State.

The common thread of editorial comment, except for that flowing from canned editorial factories financed by the utilities themselves, is that most State utility commissions are not doing their assigned job of protecting the public interest. In some cases they do not appear enthusiastic about doing their job. In other cases, they are simply not equipped to do it, having been given much to do by the State legislatures, and little to do with.

One of the three States that has a utility consumers' counsel is Maryland. There, in 1963, the counsel to the public service commission resigned after trying to regulate more than 200 utilities with a small budget and a staff dwarfed by row upon row of experts retained by the utilities. In 1967, the chairman of the Maryland Public Service Commission termed the office of people's counsel, which is what the office is called there, "absolutely indispensable to the successful operation of the public service commission law."

Under the terms of our bill a grant for an Office of Utility Consumers' Counsel could go to a State regulatory commission such as Maryland's. If, for some reason, the regulatory commission in a State did not want to be associated with the Utility Consumers' Counsel, another agency of the State, perhaps the attorney general's office could apply for the grant. If State officials decided not to participate in the program, or if there was interest in action before the legislature next convenes, local government or governments could apply for a grant, as long as the application represented at least 100,000 persons. And in any event, the U.S. Office of Utility Consumers' Counsel would be authorized to appear before commissions and courts, Federal and State, on behalf of the public as well as the Federal Government.

4. GRANTS FOR STUDIES OF UTILITY REGULATION

The bill authorizes grants to universities and nonprofit organizations for studies of utility regulation. The bill directs the Utility Consumers' Counsel to prepare model utility laws. Studies of regulatory laws leading to preparation of the model laws could be made through the grants to universities and nonprofit organizations.

These sections of the bill are designed to provide funds with no strings attached for needed studies of regulatory matters. From the time that Samuel Insull helped the Illinois Legislature write utility laws early in this century until modern-day utilities helped the Iowa Legislature write utility laws in 1963, the regulated industries have been much more concerned with utility legislation than the public has. No major foundation, and to the best of my knowledge no minor foundation, supports studies of utility regulation. What little academic attention is paid to regulation is all too frequently endowed by the utilities themselves, whether at the summer seminars for professors at the Foundation for Economic Education at Irvington-on-Hudson in New York, or at the Institute of Public Utilities at Michigan State University.

The Federal Government has all kinds of pamphlets and booklets designed to inform consumers about everything except of their largest expenses of all, utility bills. Consumer Information, published by the Superintendent of Documents, lists hundreds of publications available to the wise consumer. Only one—Typical Electric Bills—lists any utility charges, and it includes nothing at all about how the regulatory system works. Uncle Sam's consumer information program is as devoid of practical assistance for utility consumers as was the otherwise admirable Department of Agriculture Yearbook in 1965, "Consumers All."

I have seen a rather chilling movie, prepared by the power companies and financed unknowingly by their customers, which purports to show how we in Congress are stifling the utilities by voting a little money for Rural Electrification Administration loans. I have never seen or heard, though, of any movie or visual presentation which explains how the regulatory system actually works.

Therefore, it is my hope that through this bill universities and scholars can be encouraged to inquire into the state of the art of regulation. Remarkable changes are underway in both the communications and energy fields. The cost of moving a telephone message by high-capacity microwave relay towers is 1 percent of the cost, 30 years ago, of moving the message by conventional telephone line. Average costs of electricity per kilowatt-hour are trending steadily downward. During the past 10 years electric utilities, despite increasing profits, have had to collect less and less, in proportion to their earnings, for the Federal Government. As a percentage of revenue, Federal tax collections by power companies decreased from 14.7 percent in 1955 to 11.7 percent in 1965. The field for fruitful and needed research and study is broad.

Large utility companies have more political power than the Governor and legislature together in some States. The overcharges will continue, and will grow, unless national attention is focused on the problem and unless a program for removal of the overcharges is developed.

In my view the Intergovernmental Utility Consumers' Act provides a logical framework for removing overcharges and modernizing regulation. I commend the bill to my colleagues on both sides of the aisle, to my former colleagues in the House of Representatives, and to the administration.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 607) to establish an independent agency to be known as the United States Office of Utility Consumers' Counsel to represent the interests of the Federal Government and the consumers of the Nation before Federal and State regulatory agencies with respect to matters pertaining to certain electric, gas, telephone, and telegraph utilities; to amend section 201 of the Federal Property and Administrative Services Act pertaining to proceedings before Federal and State regulatory agencies; to provide grants and other Federal assistance to State and local governments for the establishment and operation of utility consumers' counsels; to provide Federal grants to universities and other nonprofit organizations for the study and collection of information relating to utility consumer matters; to improve methods for obtaining and disseminating information with respect to the operations of utility companies of interest to the Federal Government and other consumers; and for other purposes, introduced by Mr. METCALF (for himself and other Senators), was received, read twice by its title, referred to the Committee on Government Operations, and ordered to be printed in the RECORD, as follows:

S. 607

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 "Intergovernmental Utility Consumers' Counsel Act of 1969."

DEFINITIONS

SEC. 2. As used in this Act—

(a) The term "Federal agency" means any department, agency, or instrumentality, including any wholly owned Government corporation, of the executive branch of Government.

(b) The term "State" means any State of the United States, any territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or political subdivision, department, agency or instrumentality of any of them, but does not include the Panama Canal Zone.

(c) The term "utility" means any privately owned corporation (other than a cooperative) which (1) provides electric, gas, telephone, or telegraph service to the public, (2) has an annual gross operating revenue in excess of $1,000,000, and (3) is a public utility as defined in part II of the Federal Power Act, a natural gas company as defined in the Natural Gas Act, or a common carrier as defined in the Communications Act of 1934.

(d) The term "utility service" means any service provided for the public by a utility.

TITLE I—UTILITY CONSUMERS' COUNSEL

ESTABLISHMENT OF OFFICE

SEC. 101. (a) There is hereby established within the executive branch of the Government an independent agency to be known as the United States Office of Utility Consumers' Counsel (referred to hereinafter as the "Office"). The Office shall be headed by a Consumers' Counsel (referred to hereinafter as the "Counsel"), who shall be appointed for a term of five years by the President, by and with the advice and consent of the Senate, and who shall receive compensation at the rate provided for level two of the Executive Schedule.

(b) The Counsel may—

(1) promulgate such rules and regulations as may be required to carry out the functions of the Office; and

(2) delegate to any other officer or employee of the Office authority for the performance of any duty imposed, or the exercise of any power conferred, upon the Counsel by this Act, and any reference herein to the Counsel shall include his duly authorized delegate or delegates.

PERSONNEL AND POWERS OF THE OFFICE

SEC. 102. (a) The Counsel shall appoint and fix the compensation of such personnel as he determines to be required for the performance of the functions of the Office.

(b) In the performance of the functions of the Office, the Counsel is authorized—

(1) to obtain the service of experts and consultants in accordance with section 3109 of title 5 of the United States Code;

(2) to appoint such advisory committees as the Counsel may determine to be necessary or desirable for the effective performance of the functions of the Office;

(3) to designate representatives to serve on such committees as the Counsel may determine to be necessary or desirable to maintain effective liaison with Federal agencies and with departments, agencies, and instrumentalities of the States which are engaged in activities related to the functions of the Office; and

(4) to use the services, personnel, and facilities of Federal and State agencies, with their consent, with or without reimbursement therefor as determined by them.

(c) Upon request made by the Counsel, each Federal agency is authorized and directed—

(1) to make its services, personnel, and facilities available to the greatest practicable extent to the Office in the performance of its functions; and

(2) subject to provisions of law and regulations relating to the classification of information in the interest of national defense, to furnish to the Office such information, suggestions, estimates, and statistics as the Counsel may determine to be necessary or desirable for the performance of the functions of the Office.

REPRESENTATION OF PUBLIC INTEREST

SEC. 103. (a) Whenever there is pending in or before any Federal or State agency or court any investigation, hearing, or other proceeding which may, in the opinion of the Counsel, affect the economic interests of consumers of utility services within the United States, the Counsel may intervene and, pursuant to that agency's or court's rules of practice and procedure, may enter an appearance in that proceeding for the purpose of representing the interests of such consumers.

(b) Upon any such intervention, the Counsel shall present to the agency or court, subject to the rules of practice and procedure thereof, such evidence, briefs, and arguments as he shall determine to be necessary for the effective representation of the economic interests of such consumers. The Counsel or any other officer or employee of the Office designated by the Counsel for such purpose, shall be entitled to enter an appearance before any Federal agency without other compliance with any requirement for admission to practice before such agency for the purpose of representing the Office in any proceeding.

REPRESENTATION OF FEDERAL GOVERNMENT INTERESTS

SEC. 104. (a) The Counsel shall represent the interests of Federal agencies in proceedings before Federal and State regulatory agencies and courts relating to rates and tariffs, and in negotiations with utilities, for the procurement of utility services, except that the Secretary of Defense may from time to time, and unless the President shall otherwise direct, exempt the National Military Establishment from the provisions of this section whenever he determines such exemptions to be in the best interests of national security.

(b) The Counsel shall provide the services described in subsection (a) to agencies of any other branch of the Federal Government, mixed ownership corporations (as defined in the Government Corporation Control Act), or the District of Columbia, upon its request.

(c) The functions of the Administrator of General Services under section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, relating to representing Federal agencies in proceedings before Federal and State regulatory agencies, are transferred to the Counsel, insofar as such functions involve utilities as defined in this Act.

(d) All officers, employees, property, obligations, commitments, records and unexpended balances of appropriations, allocations, and other funds (available or to be made available) which are determined by the Director of the Bureau of the Budget to relate primarily to the functions transferred pursuant to paragraph (c) are transferred to the Office.

(e) Section 201(a)(4) of the Federal Property and Administrative Services Act of 1949 is amended by inserting before the semicolon at the end thereof a comma and the following: "except as provided in the Intergovernmental Utility Consumers' Counsel Act of 1968."

(f) Any action being carried out by the Administrator of General Services prior to the effective date of this section as part of the functions transferred to the Counsel under subsection (c) may be continued by the Counsel.

(g) This section shall become effective on the ninetieth day following the date of enactment of this Act.

PUBLIC INFORMATION AND REPORTS

SEC. 105. (a) The Counsel from time to time shall compile and disseminate to the public, through such publications and other means as he determines to be appropriate, such information as he considers to be necessary or desirable for the protection of the economic interests of consumers of utility services.

(b) In January of each year, the Counsel shall transmit to the Congress a report containing (1) a full and complete description of the activities of the Office during the preceding calendar year, (2) a discussion of matters currently affecting the economic interests of such consumers, and (3) his recommendations for the solution of any problems adversely affecting those interests.

(c) The Counsel shall transmit to the President from time to time such recommendations for proposed legislation as the Counsel may consider to be necessary or desirable for the adequate protection of the economic interests of such consumers.

GRANTS TO STATE AND LOCAL GOVERNMENTS

SEC. 106. (a) The Counsel is authorized to make grants to any State or local government, or combination of such governments, that serve a population of one hundred thousand or more persons, for up to 75 per centum of the cost of establishing and carrying out the functions of an Office of Utility Consumers' Counsel, providing such Consumers' Counsel is invested with essentially the same general powers and functions set forth in sections 101, 102, and 103 of this Act, except as such requirements may be waived by the Counsel.

(b) A grant authorized by subsection (a) of this section may be made on application to the Counsel at such time or times and containing such information as the Counsel may prescribe.

GRANTS TO NONPROFIT ORGANIZATIONS AND UNIVERSITIES

SEC. 107. The Counsel is authorized to make grants to colleges, universities, and other nonprofit organizations for the purpose of making studies and reports, and the collecting and dissemination of information, relating to Federal and State laws, regulations, and decisions affecting consumers in the fields of energy and communications.

TECHNICAL ASSISTANCE TO STATE AND LOCAL GOVERNMENT

SEC. 108. The Counsel may furnish technical advice and assistance, including information, on request to any State or local government, college, university or other nonprofit organization for the purpose of establishing and carrying out any program of utility consumer interest within the general purposes of this Act. The Counsel may accept payments, in whole or in part, for the costs of furnishing such assistance. All such payments shall be credited to the appropriation made for the purposes of this section.

REPORTING REQUIREMENTS

SEC. 109. A State, or local government office, college, university, or other nonprofit organization receiving a grant under this Act shall make reports and evaluations in such form, at such times, and containing such information concerning the status and application of Federal funds and the operation of the approved program or projects as the Counsel may require, and shall keep and make available such records as may be required by the Counsel for the verification of such reports and evaluations.

REVIEW AND AUDIT

SEC. 110. The Counsel and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of a grant recipient that are pertinent to the grant received.

TERMINATION OF GRANTS

SEC. 111. Whenever the Counsel, after giving reasonable notice and opportunity for hearing to a grant recipient under this Act, finds—

(1) that the program or project for which such grant was made has been so changed that it no longer complies with the provisions of this Act; or

(2) that in the operation of the program or project there is failure to comply substantially with any such provision:

the Counsel shall notify such recipient of his findings and no further payments may be made to such recipient by the Counsel until he is satisfied that such noncompliance has been, or will promptly be, corrected. However, the Counsel may authorize the continuance of payments with respect to any projects pursuant to this Act which are being carried out by such recipient and which are not involved in the noncompliance.

MODEL LAWS

SEC. 112. The Counsel shall make a full and complete investigation and study for the purpose of—

(1) preparing a comparison and analysis of State and Federal laws regulating utilities; and

(2) preparing model laws and recommendations for regulation of such utilities.

The results of such investigation and study shall be reported to the President, the Congress, and the Governor of each State as soon as practicable.

APPROPRIATIONS AUTHORIZED

SEC. 113. There are authorized to be appropriated annually for the purposes of this title an amount equal to one-tenth of 1 per centum of the aggregate annual gross operating revenues of all utilities.

SAVING PROVISION

SEC. 114. Nothing contained in the Act shall be construed to alter, modify, or impair any other provision of law, or to prevent or impair the administration or enforcement of any other provision of law, except as specifically amended or to the extent that it is inconsistent with this Act.

TITLE II—PUBLIC INFORMATION WITH RESPECT TO CERTAIN UTILITIES

SEC. 201. (a) The Federal Power Commission with respect to utilities subject to its jurisdiction and the Federal Communications Commission with respect to utilities subject to its jurisdiction shall determine the information required pursuant to subsection (b) with respect to each such utility and shall publish such information at least annually in reports prepared for and made readily available to the public, especially in the service area of each such utility.

(b) The information to be made available pursuant to this section with respect to each such utility shall include, insofar as practicable, comparable data for previous years and national averages and shall include—

(1) annual earnings stated as a rate of return on a depreciated average original cost rate base and pursuant to other accounting principles and practices of the relevant Federal commission;

(2) annual earnings in dollars as determined pursuant to clause (1);

(3) the dollar difference between amounts determined pursuant to clause (2) and the annual earnings if the utility earned 6 per centum rate of return on the rate base determined pursuant to clause (1);

(4) capital structure stated as percentage of capitalization obtained from long-term debit, preferred stock, common stock and earned surplus;

(5) average rate of interest on long-term debt;

(6) rate of return on average common stock equity;

(7) yearend yield on common stock (annual common dividend divided by yearend market price);

(8) dividend on preferred stock;

(9) yearend preferred dividend yield (annual preferred dividend divided by yearend market price of preferred stock);

(10) yearend earnings price ratio (earnings per share divided by yearend price per share);

(11) the names and addresses of the one hundred principal stockholders including, in those cases where voting stock is held by a party other than the beneficial owner, the name and address of each beneficial owner of 1 per centum or more of the voting stock in the corporation;

(12) the name and address of each officer and director and his annual income from the utility and its parent or subsidiary corporations, if any;

(13) the names and addresses of other corporations of which such officers and directors are also officers or directors;

(14) the names of directors, if any, who were not nominated by the management of the utility;

(15) terms of restricted stock option plans available to officers, directors and employees (not to include plans available to all employees on equal terms) and including name, title, salary and retirement benefits of each person to whom stock options have been granted, number of options each has exercised, date on which options were exercised, option price of the stock and market price of the stock when options were exercised;

(16) all payments included in any account for rate, management, construction, engineering, research, financial, valuation, legal, accounting, purchasing, advertising, labor relations, public relations, professional and other consultative services rendered under written or oral arrangements by any corporation, partnership, individual (other than for services as an employee) or organization of any kind, including legislative services;

(17) policy with respect to deposits of customers and service connection charges, if required;

(18) rate of interest charged customers by the utility, stated as simple annual interest;

(19) rate base valuation and components of the utility's rate base, as determined by the State commission having jurisdiction, expressed in dollar amounts, and including amount permitted in rate base in each of the following categories: accumulated tax deferrals, allowance for working capital, construction work in progress, customers' advances, materials and supplies, plant acquisition adjustment, and plant held for future use;

(20) rate base valuation and components of the utility's rate base, as determined by the Federal commission having jurisdiction, expressed in dollar amounts;

(21) dollar difference in each category and in sum, between the rate base as computed pursuant to clauses (19) and (20);

(22) terms of franchises or certificates of convenience and necessity; and

(23) with respect to contracts for purchase of coal, the following information: sales company, producing company, producing mine, tonnage, price f.o.b. at mine, transportation cost, total cost at plant, cost per ton;

(24) a summary of terms of pooling, interconnection and exchange agreements;

(25) such other information as the appropriate Federal commission determines to be in the public interest.

Such information shall be determined on a fiscal or calendar year basis as may be appropriate and shall be reported as soon as practicable after the termination of such year.

(c) The Federal Power Commission and the Federal Communications Commission are each authorized to establish such regulations as may be necessary to obtain information needed for the purposes of this section and the violation of such regulations shall be deemed to be a violation of regulations pursuant to the Federal Power Act, with respect to the utilities subject to such Act, the Natural Gas Act, with respect to utilities subject to such Act, or the Communications Act of 1934, with respect to utilities subject to such Act, respectively.

AUTOMATIC DATA PROCESSING

SEC. 202. The Federal Power Commission and Federal Communications Commission are hereby authorized and directed to make full use of automatic data processing in preparing the information required under this Act and other Acts to which they are subject, to the end that Federal and State regulatory bodies, the Congress, the United States Office of Utility Consumers' Counsel, such State and local offices of consumers' counsel as may be established with assistance under this Act, and the public shall receive in a timely and understandable manner information upon which rate adjustments can be made. Such Federal commissions are hereby directed to include in their annual reports accounts of their progress toward full use of automatic data processing.

APPROPRIATIONS AUTHORIZED

SEC. 203. There are authorized to be appropriated such amounts as may be necessary for the purposes of this title.

S. 608—INTRODUCTION OF BILL TO CREATE A TEMPORARY NATIONAL AVIATION PLANNING COMMISSION

Mr. PEARSON. Mr. President, today I introduce a bill which would create a National Aviation Planning Commission. I originally sought to implement this concept through legislation in the 90th Congress, early in 1967. This proposal was endorsed by President Nixon in his presidential campaign and is supported by individuals and organizations in government and industry, alike. My purpose is to place this concept of a planning agency into legislative form and to give it legislative authority. As anyone closely in touch with aviation affairs knows, there is no central unit charged with the responsibility to lay out plans for the development of a national air travel system or to establish a comprehensive air transportation policy. This failure is a critical flaw in our present national policies toward aviation affairs.

The necessity for the creation of a planning commission has been brought to the fore by the dynamic expansion of the aviation industry. Over the past decade, as our GNP has moved ahead at a rate of approximately 8 percent annually, the air transportation industry has expanded at a rate of nearly 40 percent. In the past 5 years, the number of passengers riding air carriers has more than doubled, and current projections indicate that these numbers will triple within the next decade. General aviation is probably the most accelerated aviation growth industry today as approximately 25 general aviation aircraft enter into operation each day. Air cargo and air taxi operations—new aviation industries which have in recent years sprung to life—are providing lively competition for the transportation dollar. All these facts indicate that the air transportation industry has developed into a healthy and mature segment of our national economy in its brief 50-year evolution.

While the public demand for a modern air transportation system has grown at a dramatic rate, our political and social institutions have not responded to these demands. Aviation technology is advancing rapidly and changing radically; however, modern government has not been able to keep up with these advances.

Evidence of this fact can be seen all around us. Air travel is commonly characterized by congestion—congestion in the air and on the ground. Our major airports are the focus of this congestion; they are jammed. Ticket counters are overcrowded; baggage is slow; runways are lined; and ground connections—usually not coordinated—are many times impossible. This problem is a crisis of convenience and a crisis of confidence; moreover, it is developing into a crisis of safety. But the real and harmful result is that these problems are beginning to place restraints upon the individual citizen, his mobility and choice of mobility, upon the aviation industry, its future growth prospects, and upon the future development of our national air transportation system.

It is not fair to say that a lack of planning on a national scale is the sole cause of the current condition of our air travel system, but it has played a major role. We were simply not ready for the dynamic growth in the aviation industry and the advances in aviation technology. No one or hardly anyone was looking to the future, for the pressures of the present were too pressing.

One major reason why there is no coordinated, comprehensive planning activity on a national scale is the dispersion of authority throughout the Nation for decisionmaking in aviation affairs. There are three distinct dimensions in this division of power. For instance, on the Federal level primary responsibility

is divided among the Civil Aeronautics Board, the Department of Transportation, and the Federal Aviation Administration. Secondary responsibility at the Federal level for technologically oriented research and development activities rests in our national aeronautics and space and military programs. The second dimension is the clear, yet uncoordinated, division of authority among the local, State, and National Governments. And third, there is a complex intermix between policymaking by those public agencies and decisions by private individuals in the aviation industry. The problem is that there is a lack of communication between these various points of decision; there are simply few formal or established channels of communication to be utilized. And this lacking points out the need for a national planning operation to act as a clearinghouse to communicate and evaluate information and ideas regarding future aviation affairs.

Let me now outline what I feel are some of the deficient areas of planning for aviation affairs:

First. Development of facilities for organizing a clearinghouse of information, ideas, and opinions regarding present and future aviation problems. Such an operation would provide channels for the collection and dissemination of such material and would have the resources necessary to analyze and evaluate this material.

Second. Development of a unit to look beyond technological advances and systematize research and development activities regarding the social and economic impact of aviation technology. Particular areas of impact to be examined are the entrance of jumbo jets and supersonic transport into our national air travel system; minimizing congestion problems through maximizing the utilization of present facilities with more efficient scheduling; and the integration and meshing of the air transportation system with the other various modes of transportation.

Third. Development of a central unit to process and analyze the developments evolving from the technological research activities of our national space and aeronautics and military aviation programs. There must be coordinated planning in order that new developments may have broad civil aviation applications.

Fourth. Development of realistic demand forecasts for scheduled passenger and cargo services, as well as for nonscheduled private, corporate and charter services on an international, national, regional, area and community basis.

Fifth. Development of a national scheduled air service pattern suitable to meet the present and future economic and social needs of the Nation. An important aspect of this is the contribution to the development of an adequate international air service pattern also.

Sixth. Development of realistic parameters within which air vehicles should be designed to be economically viable and technically compatible with the support systems that can be reasonably provided in the time frame appropriate to the forecast needs, and socially acceptable in the environment within which they must operate.

Seventh. Development of an aviation facilities plan, both technical and economic, suitable to provide the airways and ground facilities necessary to assure an orderly development of aviation growth and consistent with the economic and social needs and the compatibility of the air vehicles.

Eighth. Development of administrative mechanisms by which air transportation and other transportation modes can be suitably coordinated to assure the effective fulfillment of the Nation's transportation needs, including a comprehensive research and statistics program.

The gaps in aviation are now being recognized by air transportation officials. Within the last 6 months the Secretary of Transportation has formed an advisory committee to examine the requirements of an air traffic control system for the 1980's. The Chairman of the Civil Aeronautics Board recently announced that the CAB would solicit information concerning "what is being done, or planned, to handle air passengers between the airport and city center." The FAA has organized for next month the first annual National Aviation System Planning Review Conference to provide a public forum for the discussion of plans and policies in FAA's major program areas. These planning efforts on the part of national air transportation officials are laudable, but they are partial efforts. I think they simply provide further evidence of the need for an ongoing, overall national planning activity. What is needed is a continuous, comprehensive, planning operation which can confront and prepare for the problems facing aviation in the years ahead.

Mr. President, I know there are differences of opinion on how to attack the inadequacies in aviation planning inherent in our present national governmental structure. I could introduce legislation which would implement my own feelings regarding such inadequacies. However, I feel the best way of obtaining a solution to our aviation planning problem is to have a number of interested officials, interested parties, and recognized experts make a full investigation and study of the problem and make recommendations as to how it might be solved. To do this, I am introducing legislation which would create a National Aviation Planning Commission. This Commission would be composed of the Assistant Secretary of Transportation for Policy Development; the Administrator of the Federal Aviation Administration; the Chairman of the Civil Aeronautics Board; the Deputy Associate Administrator for Aeronautics of the National Aeronautics and Space Administration; the Assistant Secretary of Housing and Urban Development for Metropolitan Development, and 10 other persons appointed by the Secretary of Transportation. These latter 10 individuals would be selected from the various aviation industries, Federal Government agencies related to the aviation industry, and other persons having special knowledge and experience with respect to aviation.

This Commission would be charged with the responsibility for analyzing and determining the inadequacies regarding aviation planning in the Federal Government and outlining the functions necessary to supplant these inadequacies. Finally, the Commission would recommend the organizational changes necessary to carry out such planning functions. A report of these recommendations could then be made to the Congress through the Secretary of Transportation.

Tomorrow's air transportation problems can be monumental or, because of today's planning, they can be inconsequential. I sincerely hope that this bill to establish a National Aviation Planning Commission will receive hearings and a thorough study. I hope that in 10 years we may be able to say that we recognized the problems, we foresaw a future crisis, and we avoided it by a continuing program of coordinated planning.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD.

The VICE PRESIDENT. The bill will be appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 608) to create a temporary National Aviation Planning Commission in order to improve national planning in aviation, introduced by Mr. PEARSON, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 608

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "National Aviation Planning Commission Act of 1969."

DECLARATION OF PURPOSE

SEC. 2. The Congress hereby finds that the existing national air transportation system within the United States is rapidly becoming inadequate to meet the present and future needs of such system; that there is a need, beyond that provided under existing laws, for coordination and overall planning assistance in all aspects of aviation in order to develop and maintain such a system; and that there is a primary responsibility in the Federal Government to provide the necessary coordination and cooperation with state and local governments and other elements in the field of aviation in order to provide necessary planning to meet the needs of such system. It is therefore the purpose of this Act to provide for a study and recommendations with respect to the best means of providing for such planning on a permanent basis.

NATIONAL AVIATION PLANNING COMMISSION

SEC. 3. (a) The Secretary of Transportation shall establish a National Aviation Planning Commission consisting of the Assistant Secretary of Transportation for Policy Development, the Administrator of the Federal Aviation Agency, the Chairman of the Civil Aeronautics Board, the Deputy Associate Administrator for Aeronautics of the National Aeronautics and Space Administration, Assistant Secretary of Housing and Urban Development for Metropolitan Development, and not more than ten other members appointed by the Secretary, who represent the aviation industry (including air transportation and local public airports for the purpose of this section) or Government agencies affecting such industry or have special knowledge and experience or qualifications with respect to aviation. The Assistant Secretary

of Transportation shall serve as chairman of the commission.

(b) Such commission shall make a full investigation and study into the planning activities of Federal agencies in the field of aviation for the purpose of:

(1) Analyzing and determining the inadequacies of aviation planning in the Federal Government and the specific areas of aviation planning for which the Federal Government has no current authority or is ill-equipped to plan and program adequately;

(2) Outlining the functions necessary to supplant these inadequacies in aviation planning; and

(3) Recommending the necessary legislation or other action to carry out such functions.

(c) Members of such commission who are not regular full-time employees of the United States, shall, while serving on the business of the commission, be entitled to receive compensation at rates fixed by the Secretary of Transportation, but not exceeding $100 per day, including travel time; and, while so serving away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

(d) The Secretary of Transportation shall engage such technical assistance as may be required to carry out the functions of such commission, and the Secretary shall, in addition, make available to the commission such secretarial, clerical, and other assistance and such pertinent data prepared by the Department of Transportation as the commission may require to carry out its functions.

(e) In carrying out its functions pursuant to this section, such commission may utilize the services and facilities of any agency of the Federal Government, in accordance with agreements between the Secretary of Transportation and the head of such agency.

(f) Such commission shall complete such investigation and study and make a report thereon, not later than one year after the date of enactment of this Act, to the Secretary of Transportation. Not later than thirty days after receiving such report the Secretary shall forward it, together with his recommendations, to the President and the Congress. Such report shall include a review of the commission's activities pursuant to this Act and the commission's recommendations determined pursuant to subsection (b).

(g) Such commission shall cease to exist thirty days after the submission of such report to the Congress.

(h) There are authorized to be appropriated such amounts, not in excess of $———, as may be necessary to carry out the provisions of this Act.

S. 312—INTRODUCTION OF DAIRY IMPORT CONTROL ACT OF 1969

Mr. PROXMIRE. Mr. President, I rise today, to introduce, on behalf of myself and Senators McGOVERN, MUNDT, NELSON, and YOUNG of North Dakota, legislation to permanently stem the tide of dairy imports into the United States.

This proposal would set dairy imports at the 1961–65 average level of 844 million pounds. It would permit imports to share in any growth in domestic production. It would give the President the power to authorize additional imports if he felt they were in the national interest with the proviso that whenever domestic market prices were less than parity the Secretary of Agriculture would have to purchase an amount of domestic dairy products corresponding to the amount authorized to be imported by presidential order. Finally it would make it clear that products such as industrial casein, candy and bakery goods are not to be considered for the purposes of the quota.

Under existing law the President has authority, in accordance with section 22 of the Agricultural Adjustment Act of 1933, to curtail imports that—

Render ineffective, or materially interfere with, any . . . program or operation undertaken by the Department of Agriculture.

This authority has been used four times in the past 2 years to curtail imports that have threatened the stability of our dairy price support program. But the mere fact that it has been found necessary to issue four proclamations in 2 years testifies to the ineffectiveness of section 22 controls.

Let us take a brief look at the history of these attempts to control imports. In the early 1960's butter imports into this country were under effective control when imports of butteroil started to undermine the domestic dairy industry. As soon as a quota was placed on this product importers promptly concocted a butterfat-sugar mixture called exylone. Exylone imports were barred subsequently by a regulation applying to mixtures containing 45 percent or more of butterfat. Almost immediately junex, containing 44 percent butterfat, started to pour into the country.

Mr. CHURCH. Mr. President, will the Senator from Wisconsin yield?

Mr. PROXMIRE. I yield.

Mr. CHURCH. I wonder would the Senator from Wisconsin be good enough to add my name as a cosponsor of his bill.

Mr. PROXMIRE. I would be delighted to do so, and, Mr. President, I ask unanimous consent that the name of the distinguished Senator from Idaho (Mr. CHURCH) be added as a cosponsor to the bill.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, perhaps the greatest dairy import crisis occurred in 1967 when a flood of Colby cheese and junex-type mixtures threatened to wreck our domestic price support program. By the time section 22 hearings had been held before the Tariff Commission, the Commission's recommendations had been formulated and forwarded to the President, the Secretary of Agriculture had made his recommendations, and the President had acted, imports had skyrocketed to a level of 2.9 billion pounds from a mere 900 million pounds in 1965. This import explosion had cost the American taxpayer an estimated $131,177,198—money expended by the Agriculture Department under the dairy price support program to buy up surplus American products driven out of the marketplace by imports.

There was a general feeling in the latter part of 1967 that this Presidential proclamation took care of the import problem in a decisive manner—that it rendered passage of the Dairy Import Act unnecessary. However some of us were dubious. And again in 1968 the President was forced to issue two emergency proclamations to deal with imports of such diverse products as condensed and evaporated milk as well as Edam, Gouda, Swiss, Gruyere, and Emmenthaler cheeses. The latest Presidential proclamation, issued just a few weeks added chocolate crumb to this list, although the import level fixed for this product was, unfortunately, not low enough to prevent the major domestic manufacturer of milk crumb from beginning negotiations for the liquidation of his business.

The VICE PRESIDENT. The time of the Senator from Wisconsin has expired.

Mr. PROXMIRE. Mr. President, I ask unanimous consent to proceed for 3 additional minutes.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. PROXMIRE. This, then, is the the spotty history of section 22 controls—controls that have all too often demonstrated their inadequacy. I believe that it is clear enough that the only effective protection against the disruption of our domestic dairy market economy by imports is a hard and fast system such as that created by the bill I am introducing today.

But how about the consumer? Is he not forced to pay more for domestic dairy products because of foreign imports? Far from it. I have already pointed out the immense costs placed upon our Government, and thus the taxpayer—the consumer—by dairy imports that displace domestic production, which then has to be purchased under our price support program. We must also recognize, however, that fluid milk, the most important product of the dairy industry, is an unusually perishable commodity. If imports destroy domestic markets and drive domestic producers out of the dairy industry we will soon find that we are paying a very high price indeed for the fluid milk produced by the few dairy farmers remaining. For demand will outstrip supply and fluid milk cannot economically be imported.

But how about the importance of free trade? Does not this cut against protecting our domestic dairy industry, even if that free market means our children may have to be satisfied with imported powdered milk? Not if we look at the facts. For the international dairy market is far from free. A great many competitive dairy products imported into this country has been subsidized by the country of origin.

Here are some examples:

The August 26, 1968, issue of Foreign Agriculture indicates that common export subsidy rates for dairy products fixed by the European Economic Community amount to 60.33 cents per pound of butter, 17.24 cents per pound of Gruyere cheese, and 19.05 cents per pound of dry whole milk.

In summation then, this legislation would help to maintain a healthy domestic dairy industry free from subsidized import competition, save domestic price support dollars—dollars that ultimately come from the taxpayer—insure a continued supply of nature's perfect food, fluid milk, to our sons and daughters, and inject some long needed certainty into the dairy import picture by making unnecessary a continual resetting

of quotas through section 22 of the Agricultural Adjustment Act.

I ask unanimous consent that the text of the bill be printed in the RECORD.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 612) to regulate imports of milk and dairy products, and for other purposes, introduced by Mr. PROXMIRE (for himself and other Senators), was received, read twice by its title, referred to the Committee on Agriculture and Forestry, and ordered to be printed in the RECORD, as follows:

S. 612

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 "Dairy Import Act."

SEC. 2. No imports of dairy products shall be admitted into the United States for consumption for any food use except pursuant to authorizations issued by the Secretary of Agriculture in accordance with the provisions of this Act.

SEC. 3. No authorizations for imports of dairy products shall be issued by the Secretary which would result in total imports for consumption for any food use in any calendar year of butterfat, nonfat milk solids, casein, or caseinates, in any form, in excess of the respective total average annual quantities thereof which were admitted for consumption for any food use during the five calendar years 1961 through 1965.

SEC. 4. In the event that total annual domestic consumption of milk and milk products in any calendar year shall be greater or less than the average annual domestic consumption of milk and milk products during the five calendar years 1961 through 1965, the volume of imports of butterfat, nonfat milk solids, casein, and caseinates, in any form, authorized under this Act shall be increased or decreased for such calendar year by corresponding percentages. For the purpose of this Act, the Secretary may estimate such total annual domestic consumption and shall reflect adjustments of such estimates in the level of imports authorized in subsequent periods. In computing or estimating such annual domestic consumption under this Act, milk and milk products used in surplus disposal or in distribution programs sponsored by the Federal Government or any agency thereof shall be excluded.

SEC. 5. The President may permit, if he finds such action is required by overriding economic or national security interests of the United States, additional quantities of imports. Additional imports permitted under this section shall be admitted for consumption under special authorization issued by the Secretary. No additional imports shall be admitted for consumption under this section at a time when prices received by dairy farmers for milk on a national average as determined by the Secretary are at a level less than parity, unless the Secretary shall, at the time such imports are authorized, remove from the domestic market, in addition to and separate from other price support purchases and operations, a corresponding quantity of dairy products. The cost of removing such dairy products from the domestic market shall be separately reported and shall not be charged to any agricultural program.

SEC. 6. "Dairy products" for the purpose of this Act includes (1) all forms of milk and dairy products, butterfat, nonfat milk solids and any combination or mixture thereof; (2) any article, compound, or mixture containing 5 per centum or more of butter fat, or nonfat milk solids, or any combination of the two; and (3) casein, caseinates, and other derivatives of milk, butterfat, or nonfat milk solids, if imported commercially for any food use.

"Dairy products" for the purpose of this Act does not include (1) industrial casein, industrial caseinates, or any other industrial product, not to be used in any form for any food use, or as an ingredient of food; or (2) articles not normally considered to be dairy products, such as candy, bakery goods, and other similar articles, provided neither the butterfat, nonfat milk solids, casein, or caseinates, in any form, in any such article is commercially extractable or capable of being used commercially as a replacement or substitute for such ingredients in the manufacture of any food product.

SEC. 7. The Secretary may prescribe such rules and regulations as he deems necessary for the effective administration of this Act.

SEC. 8. Nothing contained in this Act shall be construed to repeal section 22 of the Agricultural Adjustment Act or any import limitation now in effect or hereafter established thereunder; but the respective total annual quantitative limitations on imports of butterfat, nonfat milk solids, casein, or caseinates, in any form, for any food use, prescribed by this Act shall prevail, and all imports authorized under said section 22 or any other law shall be included in computing such totals.

Mr. HOLLAND. Mr. President, will the Senator yield, on my time?

Mr. President, may I have 3 minutes for a colloquy with the Senator?

The VICE PRESIDENT. The Senator's time has expired.

Mr. HOLLAND. May I have 3 minutes to develop the same subject?

Mr. PROXMIRE. Mr. President, I am delighted to yield to the distinguished Senator from Florida, who is the ranking member of the Committee on Agriculture and Forestry and who for many years has been chairman of the Agriculture Subcommittee of the Committee on Appropriations.

Mr. HOLLAND. Mr. President, I wanted to say that while I shall do everything in my power to speed hearings on the bill which the Senator has introduced, I want the RECORD to show that, as we have faced problems of imported agricultural commodities, it is my feeling that the President who just left office the other day was very quick to respond to the needs of the dairy industry. I think the RECORD should show that his four Executive orders, issued in the effort to protect the local dairy industry, were issued quickly and were helpful and effective.

I am sorry that, from what the Senator says, they have not given as much aid to the dairy producers as it was thought they would give, but I think the RECORD should show clearly that the retiring President has been very helpful to the dairy industry and has answered promptly and helpfully each time that we have taken this cause to him.

Mr. PROXMIRE. May I say to the distinguished senior Senator from Florida that his point is excellent. I perhaps did not put enough emphasis on it. I did say in my remarks that the President acted, but I should emphasize that he deserves a great deal of credit, that he did help the dairy industry by his Executive orders, particularly the one in 1967.

Mr. HOLLAND. Mr. President, I yield the floor.

S. 621—INTRODUCTION OF BILL TO PROVIDE FOR THE ESTABLISHMENT OF THE APOSTLE ISLANDS NATIONAL LAKESHORE, WISCONSIN

Mr. NELSON. Mr. President, I introduce, for appropriate reference, a bill to establish an Apostle Islands National Lakeshore. This measure, when passed, will preserve for all time the beautiful heritage of the unspoiled islands and shoreline of Lake Superior's romantic archipelago.

I first introduced an Apostle Islands bill in the 89th Congress. After suitable revisions the bill was again introduced in the 90th Congress where it was favorably reported by the Interior Committee to the Senate and passed unanimously. The bill I introduce today has been approved and recommended by both the Interior Department and the Bureau of the Budget.

Early consideration in this Congress will assure sufficient time for full consideration by both bodies, and final passage will cause a 40-year-old dream to come true.

The proposed national lakeshore is an important step forward in forging another link in the priceless chain of national parks, scenic and wild waterways, and national forests now being created in the Great Lakes region.

With exceptions in the State of Alaska, our glorious natural resources have dwindled to a slim memory. White, gushing streams, free of the taint of man-invoked pollutants no longer exist in any reasonable quantity. Now they are visited as an exotic curiosity rather than as a commonplace occurrence.

Unplowed prairie lands bounding with freedom loving wildlife remain only in severely limited acreage and are treated as national geographic oddities.

Our Great Lakes one by one are becoming open cesspools for municipal and industrial refuse and as garbage dumps by outlaw ships plying their once unsullied waters.

We are only now beginning to wake up to the tragic fact that for the most part our sins against the land are almost irreversible. It is yet too early to tell whether recently enacted programs will ever be able to reclaim our land and water so they can be used by all of America's citizens.

CONSERVATION DECADE

To the everlasting credit of the Congresses and administrations since 1960, we are at least beginning to make inroads on our conservation requirements and recreation needs.

By act of Congress or Presidential edict, over 3,850,000 acres of land have been set aside for the national park system.

Since 1960 the public has used the national parks at an increasing, staggering rate. Use since that year has more than doubled, from 70 million visitors then to 153 million last year.

Congress, in this conservation decade, has set aside 59 new areas for our national park system.

Paying heed to the necessity to reclaim

a heritage belonging to everybody, we now have six new national seashores, four national parks, two national lakeshores, four national monuments, five recreational areas, the beginning of a national trails system, the creation of a wild and scenic rivers system, water quality standards for the States to stop the fouling of our precious water, and inroads on air pollution by passage of the Air Quality Act.

In addition, we now have a new Bureau of Outdoor Recreation in the Interior Department, money being spent to set aside through the land and water conservation fund of 1964, and the establishment of a national wilderness preservation system.

Where we have the opportunities we should seize them immediately. We can still save the remaining few of our immensely valuable assets.

The creation of a national lakeshore encompassing the Apostle Islands and some of the nearby lakeshore has been dreamed about, talked about, planned and replanned, and is now ready for the final step.

Conservationists over the decades have recognized the value of these jewels in the crown of Wisconsin. Even though we have been on this road for almost four decades, enthusiasm has not diminished one whit.

The achievement of this natural wonder into a chain of scenic marvels has been one of my major legislative goals since I was Governor of Wisconsin from 1958 to 1962, and as a Senator since then.

The time has come to act and act we must if we are to save the area forever from the developer or the despoiler.

This proposed bill would now place in perpetuity the labor of love of literally thousands of conservationists and recreation seekers. In addition, the spur to the growth of this economically hapless region would be a tremendous boost.

HISTORY OF THE PROJECT

In 1930, the 71st Congress authorized the Secretary of the Interior to look into the advisability of establishing an Apostle Islands National Park in Wisconsin. The committee report said:

> The vast area within (mid-America) is entirely without national park facilities. It comprises all of the heavily populated Middle Western States, with millions of nature-thirsty citizens in need of the advantages of a national park as easily accessible as one among the Apostle Islands would be. . . . . For outstanding scenic beauty of its particular type, the Apostle Islands group is unsurpassed.

Between 1930 and 1962, little was accomplished. The depths of the depression and the height of the crisis of World War II commanded the attention of the legislators and those who could make the crucial decisions. Nevertheless, interest never subsided and the glow of the idea still remained uppermost in the minds and hearts of the young and oldtimers who remembered the talk about the park.

In 1963, interest was again rekindled when President Kennedy made a conservation tour of the United States. The President agreed to land at Ashland, Wis., and to fly over the islands. During his stop, obviously impressed by the magnificence of the scenery and warmed by the greeting extended him by the inhabitants of America's northland, he said:

> Lake Superior, the Apostle Islands, the Bad River area, are all unique. They are worth improving for the benefit of sportsmen and tourists. . . . In fact, the entire northern Great Lakes area, with its vast inland seas, its 27,000 lakes, and its thousands of streams, is a central and significant part of the fresh water assets of this country, and we must act to preserve these assets.

Soon after, Secretary of the Interior Udall appointed a special task force which made a comprehensive study of the region and provided expertise for the initial Apostle Islands bill. In September 1965, I introduced this bill.

In February 1966 President Johnson, in his conservation message to the Congress, asked that the study and planning for the Apostle Islands National Lakeshore be completed at an early date.

The following year on January 30, 1967, President Johnson's conservation message to Congress outlined a plan to preserve our priceless natural assets.

However, on this occasion, President Johnson raised the Apostle Islands project from the planning and study stage to the action level. He listed it in his top four priorities for national park acquisitions for the 90th Congress, and recommended that Congress:

> Establish the Apostle Islands National Lakeshore in Wisconsin, to add a superb string of islands to our national seashore system.

Endorsed by the President himself, it represented not just a park for Wisconsin and Minnesota and Michigan, but a superb monument to our national heritage.

Propelled by the endorsement of the President and his special task force, the Senate Interior Committee held public hearings in the region and Washington where 250 witnesses overwhelmingly supported the bill. It soon reported the bill favorably to the Senate where it was passed unanimously on August 21, 1967. Senator JACKSON, chairman of the Interior Committee, in his legislative summary of the first session of the 90th Congress, reported to the Senate:

> The 21 islands in Lake Superior, the 30-mile long strip of shoreline in the Red Cliffs area, and the unique marsh and sloughs which make up the three units of the Lakeshore should provide some 50 million people living in the Midwest with a superlative unit of the National Park System.

By the end of the second session of the 90th Congress, a mountain of support had been built up for passage of the measure. The three Republican Governors of Wisconsin, Minnesota, and Michigan wired the House Interior Committee on September 4, 1968, of their support for the passage of the bill.

Governor Knowles, Governor LeVander, and Governor Romney stated in their telegram that:

> The Upper Great Lakes Regional Commission reaffirms its support for the establishment of the Apostle Islands National Lakeshore under Resolution No. 12 dated the 28th day of August, 1967 and submitted to the chairman. The bill has the endorsement of the Wisconsin delegation and is strongly supported by numerous conservation, business, and civic interests throughout the state.

And so now we have come almost full circle. A final endorsement by the Congress manifested by passage through both Houses will add another battle streamer to our conservation colors.

ECONOMIC POTENTIAL IMPORTANT

An eminent economist from the University of Wisconsin, Prof. I. V. Fine, did an intensely thorough study of the proposed project. He found that after the area had been fully developed almost 1 million visits per year would be paid the area by tourists and nature lovers who would generate about $7 million in new consumer spending. In addition, the Interior Department estimated that the lakeshore would employ 21 persons full-time and 50 part-time adding an annual payroll of $350,000. The study also showed that the project would generate 363 new jobs.

Naturally some private land would be lost to the tax rolls, but this would amount to less than $12,000. The commercial development, however, and payrolls and tourist spending would far outweigh the initial loss to the tax rolls.

The benefits would be many and varied. There are about 50 million Americans living within a single day's drive of the area. For years the Bad River Indians and the Red Cliff Indians living in the area have existed on what is left of the economy. They will be able to seize new opportunities both inside and outside the boundaries of the park in terms of new jobs and new business starts and expansions.

The Apostle Islands area is situated almost in the geographical center of the 119-county area of the Upper Great Lakes Regional Commission. The Commission, set up by Congress under the Public Works and Economic Development Act of 1965, is designed to spur the economic growth of this underdeveloped northland. The Apostle Islands project can be the progenitor of substantial economic spinoff and the pyramiding of the park's seed money. And the beauty of it is that the money provided by the Federal Government is secured by the real estate it buys for the project. There is no financial giveaway. There is an exchange of real values.

Besides being in the center of the Regional Commission area, the lakeshore is also located in the center of economically depressed EDA counties—where outmigration is critical. In six immediately adjacent EDA counties, it is estimated that the population will decrease by almost 20 percent during the two decade period ending 1980—unless orderly development goes forward.

Included in the boundaries of the proposed lakeshore is a 10,000 acre wild rice marsh, one of the few remaining productive marshes left in Wisconsin and the Nation. Here the Indians harvest this cash crop much as they did centuries ago, and it still forms the base for a substantial portion of their economy. Proper control and insured rights by the Chippewa Indians to harvest this wild rice is part of the proposed act.

The area roughly encompassed by the

119 counties of the Great Lakes Regional Commission has seen periods of dizzying prosperity and severe economic depression. Originally it was rich with great resources of thick forests of towering pines and tough hardwoods, high-grade iron mines, immense numbers of firm-fleshed lake trout, and small but efficient farms.

Timber interests cut the trees without thought of the future and destroyed the area's most valuable resource. The high-grade ores were exhausted, and mining became marginal. The lamprey eel ruined the lake trout fishery and the commercial fishermen no longer set sail every day to harvest those unique game and commercial fish. The marginal productive farms went the way of most small farms and the short growing season discouraged all but a few of the remaining large, mechanized entrepreneurs.

The future looks brighter with new methods of planting and cutting timber taking the place of the ruinous clear cutting. Lampreys have been controlled and the planting of coho salmon is giving the area a double-barreled approach to commercial and game fishing. And taconite ore is being studied in the hopes that iron mining can again become an integral part of the economic backbone.

The hope for the northland, however, remains with the development of the tourism potential. Here we have clean air, free of pollen and dust, free of smoke and smog; crystal-clear water where you can see to the bottom of the streams and the lakes and not see refuse when you do look. And miles of unlived-on land where a man can draw a breath and commune with his spirit.

Here we have untilled and uncleared land available to future generations to develop while their fathers and mothers are trying with little apparent success to join the 70 percent of the Nation now jammed onto 1 percent of the land.

A reversal of this flow and relief of the crisis occurring in our cities depends in no small measure on our ability to attract people back to the land.

UNSURPASSED BEAUTY

The proposed Apostle Islands National Lakeshore would be made up of 57,500 acres consisting of three separate entities.

One section would include 21 of the 22 islands making up the archipelago off the Bayfield Peninsula. Madeline Island—the biggest island—is not included because of its advanced stage of commercial and residential development. Also included in the project is a strip of land along the Bayfield Peninsula shoreline one-fourth to one-half mile wide and 30 miles long. This is referred to as the Red Cliff unit. The third component is the 10,370-acre section called the Bad River-Kakagon Sloughs.

The 21 islands are uninhabited formations of rugged beauty, consisting of rock outcroppings covered with clay, sand and stone deposited by the glaciers millions of years ago. Time and erosion has stamped its imprimatur of nature at work. Pines and hardwoods cover the islands dropping their leaves and needles so that a blanket of soft carpeting muffles the hikers' footsteps.

Miles and miles of shoreline, no two alike, provide havens where campers and latter-day explorers can tie up and scale the majestically rising brownstone cliffs or hike the sandy beaches with their mysterious inlets and coves.

The National Park Service would lay out new hiking trails and existing ones would be improved. But the theme is to leave the area as untouched, unspoiled and undisturbed as possible. There would be minimal docking facilities at certain deepwater locations, and simple campsites, fireplaces and toilet facilities on certain islands adaptable to campers' needs.

The entire project will provide a wide variety of unique natural settings for amateur and professional students of nature—the geologist and the collector of pretty stones, the ornithologist and the robin watcher, the fully equipped week-long camper and the casual sunbather.

A person who wants to explore by car would be able to traverse the Red Cliff 30-mile-long unit where the shoreline is heavily laced with coves and caverns and rock formations edged with bogs and sloughs and protected by dense growths of hardy northern trees. Here a scenic road would be built to accommodate the automotive explorer, and the spectacular views of the shore and islands would be reward enough for any jaded tourist. Seven areas, plus numerous scenic overlooks, would be developed for camping, boating, fishing, swimming and hiking.

The 10,370-acre slough is nature as it has always been. Undisturbed through the ages, including miles of navigable channels, this marsh is covered with wild rice, heath, and alder thickets and heavily populated with deer, bear, otter, and 240 species of birds. Fishing is excellent. This area would be conservatively dotted with parking areas, nature study trails, observation towers, and primitive camping sites. But the balance of nature would be zealously protected so that the delicate system now being administered by nature would not become endangered.

RECREATION DEMAND BOOMING

Public outcry for recreation facilities becomes increasingly louder each year. Public participation in outdoor recreation has increased by 51 percent since 1960. Estimates are that by the year 2000 we will see a 400-percent increase.

In 1967 the National Park Service reported an increase in use of 11.5 percent over the previous year. The biggest jumps in use were recorded by the four national seashores where attendance increased by 33.3 percent over the same period.

Rapid development of land areas is going on at such an accelerated rate that valuable sites are being lost forever.

The sound of the hammer and saw is everywhere. The axe is clearing the land for commercial and residential use at such dizzying speed that prime park sites are being lost forever. Unique areas, valuable only for recreation, should be saved now while the opportunity exists. In conservation there is no tomorrow.

OVERWHELMING SUPPORT

Two Presidents, three Governors, and the Senate have endorsed this project. The Wisconsin congressional delegation as well as others from adjoining states support the project. Secretary of the Interior Udall is for it.

During the Senate hearings in Ashland, Wis., and here in Washington, 250 witnesses spoke in favor of it.

Endorsements have been received by about 150 regional, labor, farm, civic, governmental, business and conservation organizations.

The county boards of the two counties involved—Ashland and Bayfield—as well as the county board from adjacent Iron County, and the city councils of Ashland, Bayfield, and Washburn have all testified in favor of the project.

The Wisconsin Department of Natural Resources has endorsed the bill.

Members of the House Interior Committee who heard testimony last year commented favorably on the bill. Congressman SAYLOR, of Pennsylvania, said:

I want to say to you three (Nelson, O'Konski, and Kastenmeier) that this, in my opinion, is one of the finest projects that we have ever had presented to us.

Congressman SKUBITZ, of Kansas, commented:

I want to join my colleague, Mr. SAYLOR, in saying that this is the best prepared presentation we have had in a long while . . . It seems to me this is the sort of project we ought to move in on quickly.

And Mr. O'KONSKI, the distinguished Congressman of the 10th District of Wisconsin in which the Apostle Islands are located, stated:

This project is the utmost importance to my district * * *

Time is critically important. Land values are soaring in anticipation of speculative profits. We have little time to grab hold of our priceless, irreplaceable natural resources.

A noted English historian once wrote that:

The need to preserve natural beauty is not merely a question of preserving holiday grounds for masses of people—

But also—

a matter of preserving a main source of spiritual well-being and inspiration, on which our ancestors thrived and which we are in danger of losing forever.

He also said:

We are literally children of the earth, and removed from her our spirit withers or runs to various forms of insanity. Unless we can refresh ourselves at least by intermittent contact with nature, we go awry.

But our own great American poet, Walt Whitman, stated it for all of us when he said that a mountain or a scenic vista on the Great Plains "awakes those grandest and sublest emotions in the human soul."

I urge the Congress to speedily enact this bill to create an Apostle Islands National Lakeshore.

I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 621) to provide for the

establishment of the Apostle Islands National Lakeshore in the State of Wisconsin, and for other purposes, introduced by Mr. NELSON, was received, read twice by its title, referred to the Committee on Interior and Insular Affairs, and ordered to be printed in the RECORD, as follows:

S. 621

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) (1) for the purpose of conserving and developing for the benefit, inspiration, and use of the public certain islands, shorelines, beaches, sandspits, and other natural and historical features within Ashland and Bayfield Counties, Wisconsin, which make up a significant portion of the diminishing shoreline and archipelago environments of the Great Lakes region and which possess high values to the Nation as examples of unspoiled areas of great natural beauty; and

(2) For the purposes of encouraging and enhancing the development and utilization of this region as an important center of public recreation activities, and particularly to encourage participation in the accomplishment of such purposes by the Bad River Band and the Red Cliff Band of the Lake Superior Chippewa Indians of Wisconsin (hereinafter referred to as the "Bad River Band" and the "Red Cliff Band") the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to establish and administer the Apostle Islands National Lakeshore (hereinafter referred to as the "lakeshore").

(b) The lakeshore shall comprise those islands, waters, and portions of mainland within Ashland and Bayfield Counties, Wisconsin, as generally depicted on a map identified as "Boundary Maps—Proposed Apostle Islands National Lakeshore, NL–AI–7100B, sheets 1, 2, and 3," dated 1965, revised February 1967. Said map shall be on file and available for public inspection in the offices of the National Park Service.

(c) As soon as practicable after acquisition by the Secretary of an acreage within the boundaries of the lakeshore which in his opinion can be administered efficiently for the purposes of this Act, he shall establish the lakeshore by publication of notice thereof in the Federal Register.

SEC. 2. (a) Within the boundaries of the lakeshore, the Secretary is authorized to acquire lands and interests therein by donation, purchase with donated or appropriated funds, or exchange. Any property or interests therein owned by the State of Wisconsin or any political subdivision thereof may be acquired only by donation. Notwithstanding any other provision of law, any Federal property located within the boundaries of the lakeshore may, with the concurrence of the agency having custody thereof, be transferred, without transfer of funds, to the administrative jurisdiction of the Secretary for the purposes of the lakeshore.

(b) Lands or interests therein within the boundaries of the lakeshore that are held by the United States in trust for the Bad River Band or the Red Cliff Band may be acquired by the Secretary only with the concurrence of the beneficial owner. The Secretary may agree to pay the purchase price either in a lump sum or in installments which in the aggregate equal the purchase price plus interest on unpaid balances.

(c) In order to provide substitute lands for the Bad River Band and the Red Cliff Band or for individual Indians of said bands in cases where their lands are acquired for the lakeshore, the Secretary may, from funds made available to him by such band or individual Indian, acquire by negotiated purchase any lands or interests therein outside of the boundaries of the lakeshore: *Provided,* That title to such lands shall be held by the United States in trust for the band or the individual Indians involved.

(d) In exercising his authority to acquire by negotiated purchase any land within the boundaries of the lakeshore that is held in trust or in a restricted status for individual Indians, the Secretary may, in cases where a particular tract of land is so held for more than one Indian, acquire such land without the consent of all of the beneficial owners if the acquisition is agreed to by the owners of not less than a 50 per centum interest in any land where ten or fewer persons own undivided interests or by the owners of not less than a 25 per centum interest in any land where eleven or more persons own undivided interests. The Secretary may represent for the purpose of this subsection any Indian owner who is a minor or who is non compos mentis, and, after giving such notice of the proposed acquisition as he deems sufficient to inform interested parties, the Secretary may represent any Indian owner who cannot be located, and he may execute any title documents necessary to convey a marketable and recordable title to the land.

(e) In exercising his authority to acquire property within the boundaries of the lakeshore by exchange, the Secretary may accept title to any non-Federal property therein, and in exchange therefor he may convey to the grantor of such property any federally owned property under his jurisdiction in the State of Wisconsin which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(f) In order to facilitate the acquisition by exchange of the lands within the boundaries of the lakeshore that are held by the United States in trust for the Bad River Band or the Red Cliff Band or held in trust or in a restricted status for individual Indians of said bands, the Secretary may acquire by negotiated purchase, lands, or interests therein, outside of the lakeshore boundaries. Lands so acquired may be exchanged for such Indian lands. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

SEC. 3. (a) With the exception of not more than eighty acres of land in the Red Cliff Creek area that the Secretary determines are necessary for an administrative site, visitor center, and related facilities, any owner or owners, including beneficial owners (hereinafter in this section referred to as "owner") of improved property on the date of its acquisition by the Secretary may, as a condition of such acquisition, retain for themselves and their successors or assigns a right of use and occupancy of the improved property for noncommercial residential purposes for a definite term not to exceed twenty-five years, or, in lieu thereof, for a term ending at the death of the owner, or the death of his spouse, whichever is the later. The owner shall elect the term to be reserved. The Secretary shall pay to the owner the fair market value of the property on the date of such acquisition less the fair market value on such date of the right retained by the owner.

(b) A right of use and occupancy retained pursuant to this section may be terminated with respect to the entire property by the Secretary upon his determination that the property or any portion thereof has ceased to be used for noncommercial residential or for agricultural purposes, and upon tender to the holder of a right an amount equal to the fair market value, as of the date of the tender, of what portion of the right which remains unexpired on the date of termination.

(c) The term "improved property", as used in this section, shall mean a detached, noncommercial residential dwelling, the construction of which was begun before January 1, 1967 (hereinafter referred to as "dwelling"), together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the land so designated.

SEC. 4. (a) The Bad River Band and the Red Cliff Band, notwithstanding the provisions of section 1 of the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415), may enter into leases with the Secretary for lands beneficially owned by the Bad River Band or the Red Cliff Band for a term of not to exceed ninety-nine years, and shall grant the Secretary the option of renewing the lease for as long as the lands are used as part of the lakeshore.

(b) Notwithstanding any other provision of law, improvements and structures needed for development and administration of the lakeshore may be constructed on lands leased pursuant to this section.

SEC. 5. Within the portions of the Bad River and Red Cliff Indian Reservations that are included in the lakeshore, recognized members of the Bad River and Red Cliff Bands shall be—

(a) permitted to traverse such areas in order to hunt, fish, trap, boat, or gather wild rice or to obtain access to their homes or businesses: *Provided,* That in order to preserve and interpret the historic, scenic, cultural, and other outdoor features and attractions within the lakeshore the Secretary may prescribe regulations under which the area can be traversed;

(b) granted the first right of refusal to purchase any timber at fair market value if the Secretary determines that the harvesting or removal of timber is necessary or desirable;

(c) granted, to the extent practicable, a preferential privilege of providing such visitor accommodations and services, including guide services, as the Secretary deems are desirable: *Provided,* That such a preferential privilege will not be granted unless the visitor accommodations and services meet such standards as the Secretary may prescribe;

(d) granted employment preference for construction or maintenance work or for other work in connection with the lakeshore for which they are qualified; and

(e) encouraged to produce and sell handicraft objects under the supervision of the Secretary.

SEC. 6. The Secretary shall, to the extent that appropriated funds and personnel are available, provide consultative or advisory assistance to the Bad River and Red Cliff Bands with respect to planning facilities or developments upon their tribal lands which are outside of the boundaries of the lakeshore.

SEC. 7. Subject to such regulations as the Secretary may prescribe, the recognized members of the Bad River and Red Cliff Bands may use without charge any docking facilities within the lakeshore that are operated directly by the Secretary.

SEC. 8. (a) The Secretary shall permit hunting, fishing, and trapping on lands and waters under his jurisdiction within the boundaries of the lakeshore in accordance with the appropriate laws of Wisconsin and the United States to the extent applicable, except that he may designate zones where, and establish periods when, no hunting, trapping, or fishing shall be permitted for reasons of public safety administration, fish or wildlife management, or public use and

enjoyment. Except in emergencies, any regulations prescribing any such restrictions shall be put into effect only after consultation with the appropriate State agency responsible for hunting, trapping, and fishing activities.

(b) Except for such regulations as the Secretary may issue under authority of this Act, nothing in this Act shall affect the existing rights of members of the Bad River Band or Red Cliff Band to hunt, fish, trap, or to gather wild rice, and the Secretary shall grant to such Indians the same rights with respect to lands acquired by him within the portions of the lakeshore that are applicable within the Bad River and Red Cliff Indian Reservations.

SEC. 9. The lakeshore shall be administered, protected, and developed in accordance with the provisions of the Act of August 25, 1916, (39 Stat. 535; 16 U.S.C. 1, 2–4), as amended and supplemented; and the Act of April 9, 1924 (43 Stat. 90; 16 U.S.C. 8a et seq.), as amended, except that any other statutory authority available to the Secretary for the conservation and management of natural resources may be utilized to the extent he finds such authority will further the purposes of the Act.

SEC. 10. (a) In the administration, protection, and development of the lakeshore, the Secretary shall adopt and implement, and may from time to time revise, a land and water use management plan which shall include specific provision for—

(1) protection of scenic, scientific, historic, geological, and archeological features contributing to public education, inspiration, and enjoyment;

(2) development of facilities to provide the benefits of public recreation and a scenic shoreline drive on the Bayfield Peninsula;

(3) preservation of the unique flora and fauna and the physiographic and geologic conditions now prevailing on the Apostle Islands within the lakeshore: *Provided*, That the Secretary may provide for the public enjoyment and understanding of the unique natural, historic, scientific, and archeological features of the Apostle Islands through the establishment of such trails, observation points, exhibits, and services as he may deem desirable; and

(4) preservation and enhancement of the unique characteristics of the Kakagon River and Bad River Sloughs.

(b) With respect to the portion of the lakeshore located within the boundaries of the Bad River Indian Reservation such land and water use management plan shall provide for—

(1) public enjoyment and understanding of the unique natural, historic, and scientific features through the establishment of such roads, trails, observation points, exhibits, and services as the Secretary may deem desirable; and

(2) public use and enjoyment areas that the Secretary considers especially adaptable for viewing wildlife: *Provided*, That no development or plan for the convenience of visitors shall be undertaken in such portion of the lakeshore if it would be incompatible with the preservation of the unique flora and fauna or the present physiographic conditions.

SEC. 11. Section 1 of the Act of August 9, 1955, (69 Stat. 539), as amended (25 U.S.C. 415), is hereby further amended by inserting the words "the Bad River Reservation, the Red Cliff Reservation," after the words "the Pyramid Lake Reservation,".

SEC. 12. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

S. 622—INTRODUCTION OF BILL RELATING TO RELIEF OF BASQUE SHEEPHERDERS

Mr. JORDAN of Idaho. Mr. President, on behalf of myself and my colleague (Mr. CHURCH), I introduce, for appropriate reference, a bill for the relief of 57 Basque sheepherders now in Idaho who desire to become permanent residents of the United States. Idaho has been blessed with one of the largest Basque settlements in the United States. These people have proven themselves to be good citizens and hard working, contributing greatly not only to the sheep industry, where their occupational skills are applauded throughout the world, but also to the general economy of the State. Their interests over the years have expanded and diversified. Their industry and leadership in public life, in banking and other business pursuits are well known and acknowledged, especially by Idahoans. We are glad to have the individuals listed in this bill in Idaho. We need them and welcome the opportunity to make them permanent residents. We therefore urge your support and encourage the passage of this bill.

The VICE PRESIDENT. The bill will be received and appropriately referred.

The bill (S. 622) for the relief of certain individuals, introduced by Mr. JORDAN of Idaho (for himself and Mr. CHURCH), was received, read twice by its title, and referred to the Committee on the Judiciary.

S. 623—INTRODUCTION OF FEDERAL CONSTITUTIONAL CONVENTION AMENDMENT ACT

Mr. ERVIN. Mr. President, I introduce for appropriate reference, a bill to establish procedures for calling constitutional conventions for proposing amendments to the Constitution of the United States, upon application of the legislatures of two-thirds of the States, pursuant to article V of the Constitution.

This bill is a revision of S. 2307 of the 90th Congress, a bill which I introduced on August 17, 1967. The earlier bill was submitted in an effort to clarify some of the confusion that developed when it was suddenly realized that a total of 32 States had petitioned the Congress for a constitutional convention to consider amendments pertaining to the reapportionment decisions of the Supreme Court.

When the Nation discovered that there lacked only two of the petitions from two-thirds of the States necessary for the calling of the first National Constitutional Convention since 1787, the first reaction was that the country faced the worst constitutional crisis since the Civil War. Voices were heard suggesting that the proposed convention would be a constitutional nightmare, that a runaway convention could abolish the Bill of Rights, repeal the income tax, provide for an elected Supreme Court, and that other horrible consequences were in store for the country if a convention were held. It was even suggested that Congress ignore its constitutional obligation by refusing to call a convention should the two additional petitions be submitted.

Second, sober thoughts have since recognized these extraordinary reactions were the product partly of surprise and partly of opposition to the substantive changes sought by the State petitions. Nonetheless, it is generally recognized that virtually no precedent exists to guide the States and the Congress in answering the complex and sensitive questions involved in implementing this part of article V of the Constitution.

S. 2307 was introduced in an effort to provide answers to these difficult questions. The bill was referred to the Senate Judiciary Subcommittee on Separation of Powers, and hearings were held in October 1967. The hearings have since been published, together with an extensive appendix containing all of the pertinent precedent and commentary available on the subject.

Following the hearings, the bill was revised in a number of respects and submitted to subcommittee members for approval. Understandably, some members of the subcommittee have had reservations about particularly controversial provisions of the revised bill. It is my hope that these problems can be worked out and that the Senate will have an opportunity to consider the legislation in the first part of the 91st Congress.

Briefly, the major changes between this bill and its predecessor, S. 2307, are as follows:

First. S. 2307 provided that in petitioning Congress, the States would proceed in accordance with whatever procedures their respective legislatures provided for that purpose. Procedural questions that might arise would be determined by the legislatures themselves.

The amended bill provides that the States are to use the same procedure for adopting petitions as they use for the passage of statutes of general application, but without the necessity of signature by the Governor. Questions arising as to the procedure would be finally determined by Congress.

These changes were made because of the diversity and confusion that exists in the States as to the proper procedure to be used in adopting petitions to Congress. The specification of a procedure which is familiar, easy to follow, and fairly uniform among the States will eliminate the possibility of problems arising as to the validity of petitions, and provide an easy rule for resolving any problem which should arise. Congress, to which is given the responsibility for receiving the petitions and issuing the convention call, is the proper body to make the preliminary determination that the necessary preconditions have been met.

Second. The amended bill provides that the receipt of a petition by Congress is to be announced on the floor of both Houses, and that copies of the petition are to be sent to each Member of Congress as they are received by the presiding officers. This is to insure that individual Members are apprised of the petitions as they are received.

Third. The original bill provided that petitions are to remain effective for 6 years. At the hearings some witnesses contended for a 7-year period, others for a 2- or even 1-year period. The 4-year period is a compromise between these positions. It gives sufficient opportunity for States to consider whether to join in a petition movement, yet is not too brief a period so that it would be a practical impossibility ever to get 34 petitions.

Fourth. The original bill provided for delegates to the convention in the same number as each State has Representatives in the House, each appointed or

elected as the State legislature would provide. The amended bill provides for election of delegates from each congressional district, with two additional delegates elected statewide. This change serves to make the convention a more accurate reflection of the wishes of the people. Similarly, the amended bill provides for individual voting by each delegate, rather than by unit vote from each State, as was originally provided in S. 2307.

Fifth. In response to testimony at the hearings, the bill now provides that Congress may disapprove a proposed amendment only on the ground that substantial procedural irregularities occurred at the convention or that the amendment pertains to a subject different from that described in the resolution calling the convention. The amended bill still precludes the Congress from disapproving a proposed amendment on the ground that it disagrees with the substance of the amendment.

Mr. President, I ask unanimous consent that a copy of the bill and an article written by me for the March 1968 Michigan Law Review entitled "Proposed Legislation To Implement the Convention Method of Amending the Constitution" be printed at the conclusion of my remarks. This article describes in full details the provisions of the amended legislation.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, from all outward signs, it appears that the State movement for a constitutional convention on reapportionment has slowed considerably. Outward appearances, however, may be deceptive. The coming period of State legislative activity may yet produce two additional petitions, thus bringing into being the "constitutional crisis" so much talked of 18 months ago. Even if this is not considered a very real likelihood, then certainly recollection of the consternation caused by the original 32 petitions should be sufficient reason for Congress to provide in advance for possible future efforts to use the convention form of proposing amendments. This is an ideal time for Congress to act: memories are still fresh, and yet the receding likelihood of a convention on the specific issue of reapportionment provides an opportunity to fashion legislation free of the partisanship of that particular issue.

Although I am a partisan on reapportionment, I have endeavored to draft this bill so that it presents even-handed and fair answers to the problems inherent in calling a constitutional convention. The revised bill gives adequate guidance to the States on the form petitions should take; it recognizes the role the Constitution gives to Congress in implementing article V, yet properly limits that role in accordance with the purpose of the article. The bill seeks to make the convention route no harder and no easier than the more familiar congressional joint resolution method of proposing amendments. This is in keeping with the intention of the 1787 Convention, which put both procedures in the Constitution and considered both of them valid means for effecting changes in the basic document.

The convention method of proposing amendments was included in the Constitution as part of a compromise between those who sought to give the National Congress the initiative in changing the Constitution and those who wished the initiative to be in the States. In the compromise that became article V both routes are equal in dignity. While it is well known that the convention method has never yet been employed as a means of proposing amendments, this is not to say that it has not been important in the past or may not again be important in the future. It was the threat of a State call for a constitutional convention to propose an amendment for direct election of Senators that forced the Senate finally to agree to pass the necessary resolution which it had refused for years. Only after some 31 States had adopted over 70 petitions calling for a convention to propose such an amendment that the Senate became convinced it had better accede to popular pressures.

Our historical experience with the amendment process demonstrates that neither the congressional-resolution method nor the State-petition method is necessarily the province of one particular school of political philosophy. Both are possible ways of adjusting the Constitution to the needs of modern circumstance. Implementing legislation of the type I have introduced is necessary to make viable the State-petition alternative. In an age in which so many seem enamored of new and radical ways to accomplish change, this is an opportunity to provide for orderly change through a constitutionally prescribed method. I sincerely hope that early progress can be made on the legislation.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the bill and article will be printed in the RECORD, as requested.

The bill (S. 623) to provide procedures for calling constitutional conventions for proposing amendments to the Constitution of the United States, on application of the legislatures of two-thirds of the States, pursuant to article V of the Constitution, introduced by Mr. ERVIN, was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

S. 623

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 "Federal Constitutional Convention Amendment Act."

APPLICATIONS FOR CONSTITUTIONAL CONVENTION

SEC. 2. The legislature of a State, in making application to the Congress for a constitutional convention under article V of the Constitution of the United States, shall adopt a resolution pursuant to this Act stating, in substance, that the legislature requests the calling of a convention for the purpose of proposing one or more amendments to the Constitution of the United States and stating the nature of the amendment or amendments to be proposed.

APPLICATION PROCEDURE

SEC. 3. (a) For the purpose of adopting or rescinding a resolution pursuant to section 2, the State legislature shall follow the rules of procedure that govern the enactment of a statute by that legislature, but without the need for approval of the legislature's action by the governor of the State.

(b) Questions concerning the State legislative procedure and the validity of the adoption of a State resolution cognizable under this Act shall be determinable by the Congress of the United States and its decisions thereon shall be binding on all others, including State and Federal courts.

TRANSMITTAL OF APPLICATIONS

SEC. 4. (a) Within thirty days after the adoption by the legislature of a State of a resolution to apply for the calling of a constitutional convention, the secretary of state of the State, or if there be no such officer, the person who is charged by the State law with such function, shall transmit to the Congress of the United States two copies of the application, one addressed to the President of the Senate, and one to the Speaker of the House of Representatives.

(b) Each copy of the application so made by any State shall contain—

(1) the title of the resolution,

(2) the exact text of the resolution, signed by the presiding officer of each house of the State legislature, and

(3) the date on which the legislature adopted the resolution; and shall be accompanied by a certificate of the secretary of state of the State, or such other person as is charged by the State law with such function, certifying that the application accurately sets forth the text of the resolution.

(c) Within ten days after receipt of a copy of any such application, the President of the Senate and Speaker of the House of Representatives shall report to the House of which he is presiding officer, identifying the State making application, the subject of the application, and the number of States then having made application on such subject. The President of the Senate and Speaker of the House of Representatives shall cause copies of such application to be sent to the presiding officer of each House of the legislature of every other State and to each member of the Senate and House of Representatives of the Congress of the United States.

EFFECTIVE PERIOD OF APPLICATION

SEC. 5. (a) An application submitted to the Congress by a State pursuant to this Act, unless sooner rescinded by the State legislature, shall remain effective for four calendar years after the date it is received by the Congress, except that whenever the Congress determines that within a period of four calendar years two-thirds or more of the several States have each submitted a valid application calling for a constitutional convention on the same subject all such applications shall remain in effect until the Congress has taken action on a concurrent resolution, pursuant to section 8, calling for a constitutional convention.

(b) A State may rescind its application calling for a constitutional convention by adopting and transmitting to the Congress a resolution of rescission in conformity with the procedure specified in sections 3 and 4, except that no such rescission shall be effective as to any valid application made for a constitutional convention upon any subject after the date on which two-thirds or more of the State legislatures have valid applications pending before the Congress seeking amendments on the same subject.

(c) Questions concerning the rescission of a State's application shall be determined solely by the Congress of the United States and its decisions shall be binding on all others, including State and Federal courts.

CALLING OF A CONSTITUTIONAL CONVENTION

SEC. 6. (a) It shall be the duty of the Secretary of the Senate and the Clerk of the House of Representatives to maintain a record of all applications received by the

President of the Senate and Speaker of the House of Representatives from States for the calling of a constitutional convention upon each subject. Whenever the Secretary or the Clerk has reason to believe that valid applications made by two-thirds or more of the States with respect to the same subject are in effect, he shall so report in writing to the officer to whom those applications were transmitted, and such officer thereupon shall announce upon the floor of the House of which he is an officer the substance of such report. It shall be the duty of such House to determine whether the recitation contained in any such report is correct. If either House of the Congress determines, upon a consideration of any such report or of a concurrent resolution agreed to by the other House of the Congress, that there are in effect valid applications made by two-thirds or more of the States for the calling of a constitutional convention upon the same subject, it shall be the duty of that House to agree to a concurrent resolution calling for the convening of a Federal constitutional convention upon that subject. Each such concurrent resolution shall (1) designate the place and time of meeting of the convention, and (2) set forth the nature of the amendment or amendments for the consideration of which the convention is called. A copy of each such concurrent resolution agreed to by both Houses of the Congress shall be transmitted forthwith to the presiding officer of each house of the legislature of each State.

(b) The convention shall be convened not later than one year after the adoption of the resolution.

DELEGATES

SEC. 7. (a) A convention called under this Act shall be composed of as many delegates from each State as it is entitled to Senators and Representatives in Congress. In each State two delegates shall be elected at large and one delegate shall be elected from each congressional district in the manner provided by State law. Any vacancy occurring in a State delegation shall be filled by appointment of the Governor of that State.

(b) The secretary of state of each State, or, if there be no such officer, the person charged by State law to perform such function shall certify to the Vice President of the United States the name of each delegate elected or appointed by the Governor pursuant to this section.

(c) Delegates shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at a session of the convention, and in going to and returning from the same; and for any speech or debate in the convention they shall not be questioned in any other place.

(d) Each delegate shall receive compensation for each day of service and shall be compensated for traveling and related expenses. Provision shall be made therefor in the concurrent resolution calling the convention. The convention shall fix the compensation of employees of the convention.

CONVENING THE CONVENTION

SEC. 8. (a) The Vice President of the United States shall convene the constitutional convention. He shall administer the oath of office of the delegates to the convention and shall preside until the delegates elect a presiding officer who shall preside thereafter. Before taking his seat each delegate shall subscribe to an oath by which he shall be committed during the conduct of the convention to refrain from proposing or casting his vote in favor of any proposed amendment to the Constitution of the United States relating to any subject matter which is not named or described in the concurrent resolution of the Congress by which the convention was called. Upon the election of permanent officers of the convention, the names of such officers shall be transmitted to the President of the Senate and the Speaker of the House of Representatives by the elected presiding officer of the convention. Further proceedings of the convention shall be conducted in accordance with such rules, not inconsistent with this Act, as the convention may adopt.

(b) The Congress shall appropriate moneys for the payment of all expenses of the convention.

(c) The Administrator of General Services shall provide such facilities, and each executive department and agency shall provide such information, as the convention may require, upon written request made by the elected presiding officer of the convention.

PROCEDURES OF THE CONVENTION

SEC. 9. (a) In voting on any question before the convention, including the proposal of amendments, each delegate shall have one vote.

(b) The convention shall keep a daily verbatim record of its proceedings and publish the same. The vote of the delegates on any question shall be entered on the record.

(c) The convention shall terminate its proceedings within one year after the date of its first meeting unless the period is extended by the Congress by concurrent resolution.

(d) Within thirty days after the termination of the proceedings of the convention, the presiding officer shall transmit to the Archivist of the United States all records of official proceedings of the convention.

PROPOSAL OF AMENDMENTS

SEC. 10. (a) Except as provided in subsection (b) of this section, a convention called under this Act may propose amendments to the Constitution by a vote of a majority of the total number of delegates to the convention.

(b) No convention called under this Act may propose any amendment or amendments of a general nature different from that stated in the concurrent resolution calling the convention. Questions arising under this subsection shall be determined solely by the Congress of the United States and its decisions shall be binding on all others, including State and Federal courts.

APPROVAL BY THE CONGRESS AND TRANSMITTAL TO THE STATES FOR RATIFICATION

SEC. 11. (a) The presiding officer of the convention shall, within thirty days after the termination of its proceedings, submit the exact text of any amendment or amendments agreed upon by the convention to the Congress.

(b) (1) Whenever a constitutional convention called under this Act has transmitted to the Congress a proposed amendment to the Constitution, the President of the Senate and the Speaker of the House of Representatives, acting jointly, shall transmit such amendment to the Administrator of General Services upon the expiration of the first period of ninety days of continuous session of the Congress following the date of receipt of such amendment unless within that period both Houses of the Congress have agreed to (A) a concurrent resolution directing the earlier transmission of such amendment to the Administrator of General Services and specifying in accordance with article V of the Constitution the manner in which such amendment shall be ratified, or (B) a concurrent resolution stating that the Congress disapproves the submission of such proposed amendment to the States because such proposed amendment relates to or includes a subject matter which differs from or was not included among the subjects named or described in the concurrent resolution of the Congress by which the convention was called, or because the procedures followed by the Convention in proposing the amendment were not in substantial conformity with the provisions of this Act. No measure agreed to by the Congress which expresses disapproval of any such proposed amendment for any other reason, or without a statement of any reason, shall relieve the President of the Senate and the Speaker of the House of Representatives of the obligation imposed upon them by the first sentence of this paragraph.

(2) For the purposes of paragraph (1) of this subsection, (A) the continuity of a session of the Congress shall be broken only by an adjournment of the Congress sine die, and (B) the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the period of ninety days.

(c) Upon receipt of any such proposed amendment to the Constitution, the Administrator shall transmit forthwith to each of the several States a duly certified copy thereof, a copy of any concurrent resolution agreed to by both Houses of the Congress which prescribes the time within which and the manner in which such amendment shall be ratified, and a copy of this Act.

RATIFICATION OF PROPOSED AMENDMENTS

SEC. 12. (a) Any amendment proposed by the convention and submitted to the States in accordance with the provisions of this Act shall be valid for all intents and purposes as part of the Constitution of the United States when duly ratified by three-fourths of the States in the manner and within the time specified.

(b) Acts of ratification shall be by convention or by State legislative action as the Congress may direct or as specified in subsection (c) of this section. For the purpose of ratifying proposed amendments transmitted to the States pursuant to this Act the State legislatures shall adopt their own rules of procedure. Any State action ratifying a proposed amendment to the Constitution shall be valid without the assent of the Governor of the State.

(c) Except as otherwise prescribed by concurrent resolution of the Congress, any proposed amendment to the Constitution shall become valid when ratified by the legislatures of three-fourths of the several States within seven years from the date of the submission thereof to the States, or within such other period of time as may be prescribed by such proposed amendment.

(d) The secretary of state of the State, or if there be no such officer, the person who is charged by State law with such function, shall transmit a certified copy of the State action ratifying any proposed amendment to the Administrator of General Services.

RECISION OF RATIFICATIONS

SEC. 13. (a) Any State may rescind its ratification of a proposed amendment by the same processes by which it ratified the proposed amendment, except that no State may rescind when there are existing valid ratifications of such amendment by three-fourths of the States.

(b) Any State may ratify a proposed amendment even though it previously may have rejected the same proposal.

(c) Questions concerning State ratification or rejection of amendments proposed to the Constitution of the United States, shall be determined solely by the Congress of the United States, and its decisions shall be binding on all others, including State and Federal courts.

PROCLAMATION OF CONSTITUTIONAL AMENDMENTS

SEC. 14. The Administrator of General Services, when three-fourths of the several States have ratified a proposed amendment to the Constitution of the United States, shall issue a proclamation that the amend-

ment is a part of the Constitution of the United States.

EFFECTIVE DATE OF AMENDMENTS

SEC. 15. An amendment proposed to the Constitution of the United States shall be effective from the date specified therein or, if no date is specified, then on the date on which the last State necessary to constitute three-fourths of the States of the United States, as provided for in article V, has ratified the same.

The article presented by Mr. ERVIN is as follows:

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PROPOSED LEGISLATION TO IMPLEMENT THE CONVENTION METHOD OF AMENDING THE CONSTITUTION

(By Senator SAM J. ERVIN, JR.*)

I. INTRODUCTION

Article V of the Constitution of the United States[1] provides that constitutional amendments may be proposed in either of two ways—by two-thirds of both houses of the Congress or by a convention called by the Congress in response to the applications of two-thirds of the state legislatures. Although the framers of the Constitution evidently contemplated that the two methods of initiating amendments would operate as parallel procedures, neither superior to the other, this has not been the case historically. Each of the twenty-five constitutional amendments ratified to date was proposed by the Congress under the first alternative. As a result, although the mechanics and limitations of congressional power under the first alternative are generally understood, very little exists in the way of precedent or learning relating to the unused alternative method in article V. This became distressingly clear recently, following the disclosure that thirty-two state legislatures had, in one form or another, petitioned the Congress to call a convention to propose a constitutional amendment permitting states to apportion their legislatures on the basis of some standard other than the Supreme Court's "one man-one vote" requirements. The scant information and considerable misinformation and even outright ignorance displayed on the subject of constitutional amendment, both within the Congress and outside of it—and particularly the dangerous precedents threatened by acceptance of some of the constitutional misconceptions put forth—prompted me to introduce in the Senate a legislative proposal designed to implement the convention amendment provision in article V. This article will discuss that provision of the Constitution, the major questions involved in its implementation, and the answers to those questions supplied by the provisions of the bill, Senate Bill No. 2307.[2]

II. BACKGROUND

On March 26, 1962, the United States Supreme Court, in the landmark case of *Baker* v. *Carr*,[3] held that state legislative apportionment is subject to judicial review in federal courts, thus overruling a long line of earlier decisions to the contrary. Two years later, on June 15, 1964, in *Reynolds* v. *Sims*,[4] the controversial "one man-one vote" decision, the Court held that the equal protection clause of the fourteenth amendment requires that both houses of bicameral state legislatures be apportioned on a population basis.

The two decisions evoked a storm of controversy. In the Congress, dissatisfaction with the Court's intrusion into the hitherto nonjustifiable political thicket resulted in attempts in both houses to reverse the rulings by legislation or constitutional amendment.

Footnotes at end of article.

On August 19, 1964, the House of Representatives passed a bill introduced by Representative Tuck of Virginia which would have stripped federal district courts of jurisdiction over state apportionment cases and denied the Supreme Court appellate jurisdiction over such cases. The Senate declined to invoke that extreme remedy, passing instead a "sense of Congress" resolution that the state leigslatures should be given time to reapportion before the federal judiciary intervened further. In both 1965 and 1966, however, a majority of the Senate voted to propose the so-called "Dirksen amendment" to the Constitution, which would permit a state to apportion one house of its bicameral legislature on some standard other than population. But the amendment failed both times to get the required two-thirds vote, failing fifty-seven to thirty-nine in 1965 and fifty-five to thirty-eight in 1966.

A more extraordinary effect of the rulings in *Baker* v. *Carr* and *Reynolds* v. *Sims* was the activity generated in the state legislatures designed to reverse the Court's rulings by means of a constitutional amendment proposed by a convention convened under the second clause of article V. In December 1962, following *Baker* v. *Carr*, the Council of State Governments, at its Sixteenth Biennial General Assembly of the States, recommended that the state legislatures petition the Congress for a constitutional convention to propose three amendments, including an amendment to accomplish essentially the same purpose as the Tuck bill, that is, the denial to federal courts of original and appellate jurisdiction over state legislative apportionment cases. In response to this call, twelve state petitions were sent to the Congress during 1963 requesting a constitutional convention to propose such an amendment.[5] Although this was the largest number of petitions on the same subject ever received by the Congress in any one year, the total was far below the required thirty-four, and their receipt caused no excitement in the Congress and attracted no public attention.

In December 1964, following the decision in *Reynolds* v. *Sims*, the Seventeenth Biennial General Assembly of the States recommended that the state legislatures petition the Congress to convene a constitutional convention to propose an amendment along the lines of the Dirksen amendment, permitting the states to apportion one house of a bicameral legislature on some standard other than population. The response to this call was even greater than in 1963. Twenty-two states submitted constitutional convention petitions to Congress during the Eighty-ninth Congress (1965 and 1966) and four more during the first session of the Ninetieth Congress (1967). If one counted the petitions adopted by four other states, questionable in regard to their proper receipt by Congress,[6] this brought the total number of state petitions on the subject of state legislative apportionment to thirty-two.

At this point, March 1967, the situation attracted the first attention in the press. A *New York Times* story on March 18, 1967,[7] reported that only two more petitions were necessary to invoke the convention amendment procedure. The immediate reaction was a rash of newspaper editorials and articles, almost uniformly critical of the effort to obtain a convention, and a flurry of speeches on the subject in the Congress. Whether favorable or unfavorable to the efforts by the states, all of these press items and all of the congressional speeches had one common denominator. They all bore the obvious imprint of the authors' feelings about the merits of state legislative apportionment. Those newspapers that had editorially supported the Supreme Court's decisions now decried the states' "back-door assault on the Constitution."[8] Those newspapers that had criticized one man-one vote now applauded the effort by the state legislatures to overrule the new principle by constitutional amendment. Much more disturbing to me was the fact that many of my colleagues in the Senate seemed to be influenced more by their views on the reapportionment issue than by concern for the need to answer objectively some of the perplexing constitutional questions raised by the states' action. Those Senators who had been critical of the "one man-one vote" decision and were eager to undo it now expressed the conviction that the Congress was obligated to call a convention when thirty-four petitions were on hand and that it had little power to judge the validity of state petitions. Those senators who agreed with the Supreme Court's ruling were now contending that some or all of the petitions were invalid for a variety of reasons and should be discounted, and that, in any case, Congress did not have to call a convention if it did not wish to. Most distressing of all was the apparent readiness of everyone to concede that any convention, once convened, would be unlimited in the scope of its authority and empowered to run rampant over the Constitution, proposing any amendment or amendments that happened to strike its fancy. That interpretation, supported neither by logic nor constitutional history, served the convenience of both sides in the apportionment controversy. Those who did not want to call a convention that might propose a reapportionment amendment pointed out that an open convention would surely be a constitutional nightmare. Opponents of one man-one vote cited the horrors of an open convention as an additional reason for proposal of a reapportionment amendment by the Congress.

My conviction was that the constitutional questions involved were far more important than the reapportionment issue that had brought them to light, and that they should receive more orderly and objective consideration than they had so far been accorded. Certainly it would be grossly unfortunate if the partisanship over state legislative apportionment—and I am admittedly a partisan on that issue—should be allowed to distort an attempt at clarification of the amendment process, which in the long run must command a higher obligation and duty than any single issue that might be the subject of that process. Any congressional action on this subject would be a precedent for the future, and the unseemly squabble that had already erupted was to me a certain indication that only bad precedents could result from an effort to settle questions of procedure under article V simultaneously with the presentation of a substantive issue by two-thirds of the states. Although it is not easy to anticipate all of the problems that may develop in the convention amendment process, nor to deal with those problems wisely in the abstract, I nevertheless felt that the wisest course would be to consider and enact permanent legislation to implement the convention amendment provision in article V.

I introduced S. 2307 on August 17, 1967. In my statement accompanying introduction, I stressed that I was not committed to the provisions of the bill as then drafted. I was convinced only of the necessity for action on the subject, action that might forestall a congressional choice between chaos on the one hand and refusal to abide the commands of article V on the other. Open hearings on the bill were held on October 30 and 31, 1967, before the Senate Subcommittee on Separation of Powers. The testimony revealed deficiencies in the bill and suggested modifications and additions. As a result, I have subsequently amended the bill in several respects. In discussing specific questions raised by the bill, I shall describe the relevant provision of the original draft and note the amendments made since the hearings.

III. QUESTIONS RAISED BY THE BILL

Before going to specific issues and matters of detail, it seems appropriate to discuss briefly two threshold problems posed by the bill: whether the Congress has the power to enact such legislation, and, if it does, what policy considerations should guide it in exercising such power.

I have no doubt that the Congress has the power to legislate about the process of amendment by convention. The Congress is made the agency for calling the convention, and it is hard to see why the Congress should have been involved in this alternative method of proposal at all unless it was expected to determine such questions as when sufficient appropriate applications had been received and to provide for the membership and procedures of the convention and for review and ratification of its proposals. Obviously the fifty state legislatures cannot themselves legislate on this subject. The constitutional convention cannot do so for it must first be brought into being. All that is left, therefore, is the Congress, which, in respect to this and other issues not specifically settled by the Constitution, has the residual power to legislate on matters that require uniform settlement. Add to this the weight of such decisions as *Coleman v. Miller*,[9] to the effect that questions arising in the amending process are nonjusticiable political questions exclusively in the congressional domain, and the conclusion seems inescapable that the Congress has plenary power to legislate on the subject of amendment by convention and to settle every point not actually settled by article V of the Constitution itself.

With respect to the second problem, within what general policy limitations that power should be exercised, I think the Congress should be extremely careful to close as few doors as possible. Any legislation on this subject will be what might be called "quasi-organic" legislation; in England it would be recognized as a constitutional statute. When dealing with such a measure, it is wise to bear in mind Marshall's well-worn aphorism that it is a Constitution we are expounding and not get involved in "an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must [be] seen dimly, and which can best be provided for as they occur."[10] This approach is reflected at several points in the bill, notably in its failure to try to anticipate and enumerate the various grounds on which Congress might justifiably rule a state petition invalid, and its failure to prescribe rigid rules of procedure for the convention. In addition, I think the Congress, in exercising its power under article V, should bear in mind that the Framers meant the convention method of amendment to be an attainable means of constitutional change. This legislation can be drawn so as to place as many hurdles as possible in the way of effective use of the process; or it can be drawn in a manner that will make such a process a possible, however improbable, method of amendment. The first alternative would be a flagrant disavowal of the clear language and intended function of article V. I have assumed that the Congress will wish to take the second road, and the bill is drawn with that principle in mind.

A. Open or limited convention?

Perhaps the most important issue raised by the bill is the question of the power of the Congress to limit the scope and authority of a convention convened under article V in accordance with the desires of the states as set forth in their applications. This was, as I have noted, one of the issues that most troubled me when I first heard of the efforts by the states to call a convention.

It has been argued that the subject matter of a convention convened under article V cannot be limited, since a constitutional convention is a premier assembly of the people, exercising all the power that the people themselves possess, and therefore supreme to all other governmental branches or agencies. Certainly, according to this argument, the states may not themselves, in their applications, dictate limitations on the convention's deliberations. They may not require the Congress to submit to the convention a given text of an amendment, nor even a single subject or idea. For the convention must be free to "propose" amendments, which suggests the freedom to canvass matters afresh and to weigh all possibilities and alternatives rather than ratify a single text or idea. The states may in their applications specify the amendment or amendments they would hope the convention would propose. But once the Congress calls the convention, those specifications would not control its deliberations. The convention could not be restricted to the consideration of certain topics and forbidden to consider certain other topics, nor could it be forbidden to write a new constitution if it should choose to do so.

I will concede that such an interpretation can be wrenched from article V—but only through a mechanical and literal reading of the words of the article, totally removed from the context of their promulgation and history. My reading of the debates on article V at the Philadelphia Convention and the other historical materials bearing on the intended function of the amendment process[11] leads me to the opposite conclusion. As I understand the debates, the Founders were concerned, first, that they not place the new government in the same straitjacket that inhibited the Confederation, unable to change fundamental law without the consent of every state. The amendment process, rather a novelty for the time, was therefore included in the Constitution itself. Second, the final form of article V was dictated by a major compromise between those delegates who would utilize the state legislatures as the sole means of initiating amendments and those who would lodge that power exclusively in the national legislature. The forces at the convention that sought to limit the power of originating amendments to the states were at first dominant. The original Virginia Plan, first approved by the convention, excluded the national legislature from participation in the amendment process. On reconsideration, the forces that would limit the power of origination of amendments to the national legislature became prevalent. The arguments on both sides were persuasive: the improprieties or excesses of power in the national government would not likely be corrected except by state initiative, while improprieties by the state governments or deficiencies in national power would not likely be corrected except by national initiative. In the spirit that typified the 1787 Convention, the result was acceptance of a Madison compromise proposal which read, as the final article was to read, in terms of alternative methods.

It is clear that neither of the two methods of amendment was expected by the Framers to be superior to the other or easier of accomplishment. There is certainly no indication that the national legislature was intended to promote individual amendments while the state legislatures were to be concerned with more extensive revisions. On the contrary, there is strong evidence that what the members of the convention were concerned with in both cases was the power to make specific amendments. They did not appear to anticipate a need for a general revision of the Constitution. And certainly this was understandable, in light of the difficulties that they had in finding the compromises to satisfy the divergent interests needed for ratification of their efforts. Provision in article V for two exceptions to the amendment power[12] underlines the notion that the convention anticipated specific amendment or amendments rather than general revision. For it is doubtful that these exceptions could have been expected to control a later general revision.

This construction is supported by references to the amendment process in the *Federalist Papers*. In *Federalist No. 43*, James Madison explained the need and function of article V as follows:

"That useful alterations will be suggested by experience, could not but be foreseen. It was requisite therefore that a mode for introducing them should be provided. The mode preferred by the Convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate its discovered faults. It moreover equally enables the general and the state governments to originate the amendment of errors as they may be pointed out by the experience on one side or on the other." Hamilton, in *Federalist No. 85*, was even more emphatic in pointing out the possibility of specific as well as general amendment of the Constitution on the initiative of the state legislatures:

"But every amendment to the constitution, if once established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise, in relation to any other point, no giving nor taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently whenever nine or rather ten states, were united in the desire of a particular amendment, that amendment must infallibly take place."

Apart from being inconsistent with the language and history of article V, the contention that any constitutional convention must be a wide open one is neither a practicable nor a desirable one. If the subject matter of amendments were to be left entirely to the convention, it would be hard to expect the states to call for a convention in the absence of a general discontent with the existing constitutional system. This construction would effectively destroy the power of the states to originate the amendment of errors pointed out by experience, as Madison expected them to do. Alternatively, under that construction, applications for a limited convention deriving in some states from a dissatisfaction with the school desegregation cases, in others because of the school prayer cases, and in still others by reason of objection ot the *Miranda* rule, could all be combined to make up the requisite two-thirds of the states needed to meet the requirements of article V. I find it hard to believe that this is the type of consensus that was thought to be appropriate to calling for a convention. For if such disparate demands were sufficient, all the applications to date—and there are a large number of them—should be added up to see whether, in what is considered an appropriate span of time, two-thirds of the states have made demands for a constitutional convention to propose amendments, no matter the cause for applications or the specifications contained in them. Moreover, once such a convention were convened, it could refuse to consider any of the problems or subjects specified in the states' applications, and instead propose amendments on other subjects or rewrite the Constitution in a manner unacceptable to any of the applicant states.

My construction of article V, with reference to the initiation of the amendment procedure by the state legislatures, is consistent with the literal language of the article as well as its history, and is more desirable and practicable than the alternative construction. As I see it, the intention of article V was to place the power of initiation of amendments in the state legislatures. The

Footnotes at end of article.

function of the convention was to provide a mechanism for effectuating this initiative. The role of the states in filing their applications would be to identify the problem or problems that they believed to call for resolution by way of amendment. The role of the convention that would be called by reason of such action by the states would then be to decide whether the problem called for correction by constitutional amendment and, if so, to frame the amendment itself and propose it for ratification as provided in article V. The bill carries out this intention in keeping not only with the letter but also with the spirit of article V.

The bill provides that state petitions to the Congress which request the calling of a convention under article V shall state the nature of the amendment or amendments to be proposed by such convention. Upon receipt of valid applications from two-thirds or more of the states requesting a convention on the same subject or subjects, the Congress is required to call a convention by concurrent resolution, specifying in the resolution the nature of the amendment or amendments for the consideration of which the convention is being called. The convention may not propose amendments on other subjects and, if it does, the Congress may refuse to submit them to the states for ratification.

Under these provisions, the states could not require the Congress to submit to a convention a given text of an amendment, demanding an up or down vote on it alone. But they could require the Congress to submit a single subject or problem, demanding action on it alone. They could not, however, define the subject so narrowly as to deprive the convention of all deliberative freedom. To use the reapportionment issue as an example, the states could not require the Congress to call a convention to accept or reject the exact text of the reapportionment amendment recommended by the Council of State Governments, for then the convention would be merely a ratifying body. But they could properly petition for a convention to consider the propriety of proposing a constitutional amendment to deal with the reapportionment problems raised by the Supreme Court decisions, defining those problems in specific terms. The convention would then be confined to that subject, but it would be free to consider the propriety of proposing any amendment and the form the amendment should take—that of the Dirksen proposal, the Tuck proposal, or some other form. To take another example, those states which might desire a convention to deal with the *Escobedo-Miranda* issue could phrase their petitions generally in terms of the problem of federal control over the criminal processes of the states. The convention would then be confined to that subject, but would nevertheless have great deliberative freedom to canvass all possible solutions and propose whatever amendment or amendments it deemed appropriate to respond to the problems identified by the states.

I am convinced that these provisions of the bill fully accord with the mandate of article V, its history, and intended function.

B. May Congress refuse to call a convention?

Perhaps the next most important question raised by the bill is whether the Congress has any discretion to refuse to call a convention in the face of appropriate applications from a sufficient number of states.

Article V states that Congress "shall" call a convention upon the applications of the legislatures of two-thirds of the states. I have absolutely no doubt that the article is peremptory and that the duty is mandatory, leaving no discretion to the Congress to review the wisdom of the state applications. Certainly this is the more desirable construction, consonant with the intended arrangement of article V as described in the preceding section of this article. The founders included the convention alternative in the amending article to enable the states to initiate constitutional reform in the event the national legislature refused to do so. To concede to the Congress any discretion to consider the wisdom and necessity of a particular convention call would in effect destroy the role of the states.

The comments of both Madison and Hamilton, subsequent to the 1787 Convention, sustain this construction. In a letter on the subject, Madison observed that the question concerning the calling of a convention "will not belong to the Federal Legislature. If two-thirds of the states apply for one, Congress cannot refuse to call it: if not, the other mode of amendments must be pursued."[13] Hamilton, in the *Federalist No. 85*, stated:

"By the fifth article of the plan the congress will be *obliged*, 'on the application of the legislatures of two-thirds of the states, (which at present amounts to nine) to call a convention for proposing amendments, which *shall be valid* to all intents and purposes, as part of the constitution, when ratified by the legislatures of three-fourths of the states, or by conventions in three-fourths thereof.' The words of this article are preemptory. The congress '*shall* call a convention.' Nothing in this particular is left to the discretion."

It has been argued forcefully that, notwithstanding the language of article V, the Congress need not call a convention if it does not wish to do so, and that, in any event no legislation such as this can commit a future Congress to call a convention against its judgment. This argument is based on the premise that although article V provides that Congress "shall" call a convention if enough states apply, this word may be interpreted to mean "may" for all practical purposes, since the courts are not apt to try to enforce the obligation if Congress wishes to evade it. I cannot accept such a flagrant disregard of clear language and purpose.

Although it may be true that no legislation by one Congress can bind a subsequent Congress to vote for a convention, and that the courts will not intervene, it is my strong feeling that the bill should recognize the fact that the Congress has a strict constitutional duty to call a convention if a sufficient number of proper applications are received. The bill does this by providing that it shall be the duty of both houses to agree to a concurrent resolution calling a convention whenever it shall be determined that two-thirds of the state legislatures have properly petitioned for a convention to propose an amendment or amendments on the same subject. Concededly, the Congress cannot be forced by the courts or by the provisions of this bill to vote for a particular convention. However, every member has taken an oath to support the Constitution, and I cannot believe a majority of the Congress will choose to ignore its clear obligation. I would hope, moreover, that this bill will facilitate the path to congressional action by underlining the obligation of the Congress to act.

C. Sufficiency of State applications

Assuming the Congress may not weigh the wisdom and necessity of state applications requesting the calling of a constitutional convention, does it have the power to judge the validity of state applications and state legislative procedures adopting such applications? Clearly the Congress has some such power. The fact alone that Congress is made the agency for convening the convention upon the receipt of the requisite number of state applications suggests that it must exercise some power to judge the validity of those applications. The impotence or withdrawal of the courts underlines the necessity for lodging some such power in the Congress. The relevant question, then, concerns the extent of that power.

It has been contended that Congress must have broad powers to judge the validity of state applications and that such power must include the authority to look beyond the content of an application, and its formal compliance with article V, to the legislative procedures followed in adopting the application. The counterargument is that to grant Congress the power to reject applications, particularly if that power is not carefully circumscribed, would be to supply it with a means of avoiding altogether the obligation to call a convention. The result would be that the Congress could arbitrarily reject all applications on subjects it did not consider appropriate for amendment, leaving us in effect with only one amendment process.

In drafting the bill I was mainly concerned with limiting the power of the Congress to frustrate the initiative of the states, particularly since the debate on the Senate floor at that time indicated that some Senators were inclined to seize on any slight irregularity in a petition as a basis for not counting it. My bill, as introduced, therefore set forth only requirements as to the content of state applications, leaving questions of legislative procedure for determination solely by the individual states, with their decisions made binding on the Congress and the courts. However, I think the hearing amply demonstrated the danger of disabling the Congress from reviewing the procedural validity of state petitions. In general, state legislatures ought to be masters of their own procedures. But this is a federal function that they would be performing, and the Congress should retain some power uniformity to settle the questions of irregularity that might arise. The bill has therefore been amended to remove the disability of the Congress to review legislative procedures. Under the amended bill, Congress would retain broad powers in this respect, indeterminate and unforeseeable in nature, but to be exercised, I would hope, rarely and with restraint.

It might be well to say something at this point on a question that is much debated: whether a legislature that has been held to be malapportioned, or that is under a decree requiring it to reapportion and perhaps qualifying its powers in some measure before reapportionment, can validly pass a resolution for a constitutional convention. I should think in general that it could, unless an outstanding decree forbids it to do so, either specifically or by mention of some analogous forbidden function. To open to congressional review the question of the propriety of state legislative composition would be to open a Pandora's box of constitutional doubts about the validity even of the fourteenth amendment.

However, the bill does not expressly answer this question. This is one of the many questions of irregularity on which the Congress will have to work its will should the question be squarely presented in the form of thirty-four state applications including some passed by malapportioned legislatures.

One further important point should be mentioned. Most of the states obviously do not now understand their role in designating subjects or problems for resolution by amendment, and many of them do not even know where to send their applications. By setting forth the formal requirements with respect to content of state applications and designating the congressional officers to whom they must be transmitted, the bill furnishes guidance to the state on these questions and promises to avert in the future some of the problems that have arisen in the current effort to convene a convention. The bill also requires that all applications received by the Congress be printed in the *Congressional Record* and that copies be sent to all members of Congress and to the legislature of each of the other states. In this

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Footnotes at end of article.

way, the element of congressional surprise can be eliminated, and each state can be given prompt and full opportunity to join in any call for a convention in which it concurs.

D. The role of State governors

The argument has been made that a state application for a constitutional convention must be approved by both the legislature and the governor of the state to be effective. This argument rests on the claim that article V intended state participation in the process to involve the whole legislative process of the state as defined in the state constitution. I do not agree with that argument. We do not have here any question about the exercise of the lawmaking process by a state legislature in combination with whatever executive participation might be called for by state law. We have rather a question of heeding the voice of the people of a state in expressing the possible need for a change in the fundamental document. It seems clear to me that the Founders properly viewed the state legislatures as the sole representative of the people on such a matter, since the executive veto, a carryover from the requirement of royal assent, was not regarded as the expression of popular opinion at the time of the 1787 Convention. And, to resort to the kind of literalism invoked by others as appropriate for construction of other provisions of article V, the language of the article definitely asserts that the appropriate applications are to come from "the Legislatures."

Closely analogous court decisions support this interpretation. The Supreme Court in *Hawke* v. *Smith, No. 1* [14] interpreted the term "legislatures" in the ratification clause of article V to mean the representative lawmaking bodies of the states, since ratification of a constitutional amendment "is not an act of legislation within the proper sense of the words." [15] Certainly the term "legislature" should have the same meaning in both the application clause and the ratification clause of article V. Further support is found in the decision in *Hollingsworth* v. *Virginia*,[16] in which the Court held that a constitutional amendment approved for proposal to the states by a two-thirds vote of Congress need not be submitted to the President for his signature or veto.

The bill therefore provides specifically that a state application need not be approved by the state's governor in order to be effective.

E. May a State rescind its application?

The question of whether a state should be allowed to rescind an application previously forwarded to the Congress is another of the political questions to which the courts have not supplied answers and presumably cannot. The Supreme Court has held that questions concerning the rescission of prior ratifications or rejections of amendments proposed by the Congress are determinable solely by Congress.[17] Presumably, then, the question of rescission of an application for a convention is also political and nonjusticiable. Although the Congress has previously taken the position that a state may not rescind its prior ratification of an amendment, it has taken no position concerning recission of applications. My strong conviction is that rescission should be permitted. Since a two-thirds consensus among the states at some point in time is necessary in order for the Congress to call a convention, the Congress should consider whether there has been a change of mind among some states that have earlier applied. Moreover, an application is not a final action, since it serves merely to initiate a convention, and does not commit even the applicant state to any substantive amendment that might eventually be proposed.

The bill therefore provides that a state may rescind at any time before its application is included among an accumulation of applications from two-thirds of the states, at which time the obligation of the Congress to call a convention becomes fixed. Incidentally, the bill also provides that a state may rescind its prior ratification of an amendment proposed by the convention up until the time there are existing valid ratifications by three-fourths of the states, and that a state may change its mind and ratify a proposed amendment that it previously has rejected.

F. How long does an application remain valid?

Another much debated point concerning state applications for a constitutional convention is timing. In order to be effective to mandate the Congress to act, within how long a period must applications be received from two-thirds of the state legislatures? Article V is silent on this question, and neither the Congress nor the courts has supplied an answer.

The Congress and the courts have agreed that constitutional amendments proposed by the Congress and submitted to the states for ratification can properly remain valid for ratification for a period of seven years. It has been felt that there should be a "reasonably contemporaneous" expression by three-fourths of the states that an amendment is acceptable in order for the Congress to conclude that a concensus in favor of the amendment exists among the people, and that ratification within a seven-year period satisfies this requirement.[18] Presumably, the same principle should govern the application stage of the constitutional amendment process. If so, the Congress would not be required, nor empowered, to call a convention unless it received "relatively contemporaneous" valid applications from the necessary number of states. This rule seems sensible. The Constitution contemplates a concurrent desire for a convention on the part of the legislatures of a sufficient number of states, and such a concurrent desire can scarcely be said to exist, or to reflect in each state the will of the people, if too long a period of time has passed from the date of enactment of the first application to the date of enactment of the last. It is true that legislatures are free under the bill to change their minds and rescind their applications; but the passage of a repealer is a different and more difficult political act than the defeat, starting fresh, of an application calling for a constitutional convention. The fact, therefore, that a legislature has not rescinded an application calling for a convention is an insufficient indication that the state in question, after the passage of a long period of time, still favors the calling of a convention.

What, then, is a proper period during which tendered applications are sufficiently contemporaneous to be counted together? Some Senators and scholars have suggested that two years, the lifetime of a Congress, would be a reasonable period. Others have suggested that petitions should remain valid for a generation. My feeling when I drafted the bill was that six years would be a reasonable compromise. However, the hearings revealed a general disposition among the witnesses to agree on a four-year period. Since this would be long enough to afford ample opportunity to all the state legislatures to join in the call for a convention—particularly in view of the requirement in the bill that all other states be given immediate notice of any application received by the Congress—I have concluded that a four-year period is preferable.

The bill has therefore been amended to provide that an application shall remain valid for four years after receipt by the Congress unless sooner rescinded. The bill also provides that rescission must be accomplished by means of the same legislative procedures followed in adopting the application in question, and that the Congress retains power to judge the validity of those proceedings.

G. Calling the convention

The bill provides that the Secretary of the Senate and the Clerk of the House of Representatives shall keep a record of the number of state applications received, according to subject matter. Whenever two-thirds of the states have submitted applications on the same subject or subjects, the presiding officer of each house shall be notified and shall announce the same on the floor. Each house is left free to adopt its own rules for determining the validity of the applications, presumably by reference to a committee followed by floor action. Once a determination has been made that there are valid applications from two-thirds or more of the state legislatures on the same subject or subjects, each house must agree to a concurrent resolution providing for the convening of a constitutional convention on such subject or subjects. The concurrent resolution would designate the place and time of meeting of the convention, set forth the nature of the amendment or amendments the convention is empowered to consider and propose, and provide for such other things as the provision of funds to pay the expenses of the convention and to compensate the delegates. The convention would be required to be convened not later than one year after adoption of the resolution.

As introduced, the bill required the Congress to designate in the concurrent resolution convening a convention the manner in which any amendments proposed by the convention must be ratified by the states and the period within which they must be ratified or deemed inoperative. Testimony at the hearings suggested that these determinations might properly be influenced by the nature of the amendments proposed and that they should therefore not be required to be made at the time the convention is called. For example, certain proposed amendments might call for ratification by state conventions rather than state legislatures, and certain circumstances might indicate a shorter or longer period than usual during which ratification should take place. The Congress should be able to make those decisions after it has the convention's proposals. The bill therefore has been amended to so provide.

H. Selection and apportionment of delegates

The bill as introduced provided that each state should have as many delegates as it is entitled to representatives in Congress, to be elected or appointed as provided by state law. However, the hearings revealed a general feeling that the national interest is too closely affected to permit each state to decide how its delegates to a national constitutional convention shall be elected, or indeed, appointed. For this reason, the bill has been amended to require that delegates be elected—not appointed—and that they be elected by the same constituency that elects the states' representatives in Congress. Under the amended bill, each state will be entitled to as many delegates as it is entitled to Senators and Representatives in Congress. Two delegates in each state will be elected at large and one delegate will be elected from each congressional district in the manner provided by state law. Vacancies in a state's delegation will be filled by appointment of the governor.

I. Convention procedure and voting

The bill provides that the Vice President of the United States shall convene the constitutional convention, administer the oath of office of the delegates and preside until a presiding officer is elected. The presiding officer will then preside over the election of other officers and thereafter. Further proceedings of the convention will be in accord-

Footnotes at end of article.

ance with rules adopted by the convention. A daily record of all convention proceedings, including the votes of delegates, shall be kept, and shall be transmitted to the Archivist of the United States within thirty days after the convention terminates. The convention must terminate its proceedings within one year of its opening unless the period is extended by the Congress by concurrent resolution.

As introduced, the bill provided that each state should have one vote on all matters before the convention, including the proposal of amendments. This was decided upon in deference to the method followed in the 1787 Convention rather than from a conviction that this would be the necessarily proper procedure in conventions called under article V. On the basis of the testimony presented at the hearings, I have decided that unit voting would not be appropriate for such conventions. The reasons for unit voting in the 1787 Convention were peculiar to the background against which that convention worked and are not valid today. Moreover, the states, as units, will have equal say in the ratification process. It seems appropriate, therefore, to recognize the interests of majority rule in the method of proposing amendments. Hence, the bill has been amended to provide that each state delegate shall have one vote so that the voting strength of each state will be in proportion to its population.

Finally, the bill provides that amendments may be proposed by the convention by a vote of a majority of the total number of delegates to the convention. The alternative would be to impose a two-thirds voting requirement analogous to the requirements for congressional proposal of amendments. However, article V does not call for this, and I think that such a requirement would place an undue and unnecessary obstacle in the way of effective utilization of the convention amendment process.

J. Ratification of proposed amendments

The bill provides that any amendment proposed by the convention must be transmitted to the Congress within the thirty days after the convention terminates its proceedings. The Congress must then transmit the proposed amendment to the Administrator of General Services for submission to the states. However, the Congress may, by concurrent resolution, refuse to approve an amendment for submission to the states for ratification, on the grounds of procedural irregularities in the convention or failure of the amendment to conform to the limitations on subject matter imposed by the Congress in the concurrent resolution calling the convention. The intent is to provide a means of remedying a refusal by the convention to abide by the limitations on its authority to amend the Constitution. Of course, unlimited power in the Congress to refuse to submit proposed amendments for ratification would destroy the independence of the second alternative amending process. Therefore, the Congress is explicitly forbidden to refuse to submit a proposed amendment for ratification because of doubts about the merits of its substantive provisions. The power is reserved for use only with respect to amendments outside the scope of the convention's authority or in the case of serious procedural irregularities.

Ratification by the states must be by state legislative action or convention, as the Congress may direct, and within the time period specified by the Congress. The Congress retains the power to review the validity of ratification procedures. As noted earlier, any state may rescind its prior ratification of an amendment by the same processes by which it ratified it, except that no state may rescind after that amendment has been validly ratified by three-fourths of the states. When three-fourths of the states have ratified a proposed amendment, the Administrator of General Services shall issue a proclamation that the amendment is a part of the Constitution, effective from the date of the last necessary ratification.

IV. CONCLUSION

There is some evidence that the current effort to require the Congress to call a convention to propose a reapportionment amendment has failed and that the danger of a constitutional crisis has passed. The two additional applications needed to bring the total to thirty-four have not been received and there is a strong likelihood that some applicant states will rescind their applications. Even if this is the case, however, the need for legislation to implement article V remains. There may well be other attempts to utilize the convention amendment process and, in the absence of legislation, the same unanswered questions will return to plague us. The legislation therefore is still timely, and the Congress may now have the opportunity to deal with the sensitive constitutional issues objectively, uninfluenced by competing views on state apportionment or any other substantive issue.

Some have argued that the convention method of amendment is an anomaly in the law, out of step with modern notions of majority rule and the relationship between the states and the federal government. If so, that part of article V should be stricken from the Constitution by the appropriate amendment process. It should not, however, be undermined by erecting every possible barrier in the way of its effective use. Such a course would be a disavowal of the clear language and history of article V. The Constitution made the amendment process difficult, and properly so. It certainly was not the intention of the original Convention to make it impossible. Nor is it possible to conclude that the Founders intended that amendments originating in the states should have so much harder a time of it than those proposed by Congress. As I have pointed out, that issue was fought out in 1787 Convention and resolved in favor of two originating sources, both difficult of achievement, but neither impossible and neither more difficult than the other. My bill seeks to preserve the symmetry of article V by implementing the convention alternative so as to make it a practicable but not easy method of constitutional amendment.

APPENDIX

S. 2307

A bill to provide procedures for calling constitutional conventions for proposing amendments to the Constitution of the United States, on application of the legislatures of two-thirds of the States, pursuant to article V of the Constitution

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 "Federal Constitution Convention Amendment Act".

APPLICATION FOR CONSTITUTIONAL CONVENTION

SEC. 2. The legislature of a State, in making application to the Congress for a constitutional convention under article V of the Constitution of the United States, shall adopt a resolution pursuant to this Act stating, in substance, that the legislature requests the calling of a convention for the purpose of proposing one or more amendments to the Constitution of the United States and stating the nature of the amendment or amendments to be proposed.

APPLICATION PROCEDURE

SEC. 3. (a) For the purpose of adopting or rescinding a resolution pursuant to section 2, the State legislature shall follow the rules of procedure that govern the enactment of a statute by that legislature, but without the need for approval of the legislature's action by the Governor of the State.

(b) Questions concerning the State legislative procedure and the validity of the adoption of a State resolution cognizable under this Act shall be determinable by the Congress of the United States and its decisions thereon shall be binding on all others, including State and Federal courts.

TRANSMITTAL OF APPLICATIONS

SEC. 4. (a) Within thirty days after the adoption by the legislature of a State of a resolution to apply for the calling of a constitutional convention, the secretary of state of the State, or if there be no such officer, the person who is charged by the State law with such function, shall transmit to the Congress of the United States two copies of the application, one addressed to the President of the Senate, and one to the Speaker of the House of Representatives.

(b) Each copy of the application so made by any State shall contain—

(1) the title of the resolution,

(2) the exact text of the resolution, signed by the presiding officer of each house of the State legislature, and

(3) the date on which the legislature adopted the resolution; and shall be accompanied by a certificate of the secretary of state of the State, or such other person as is charged by the State law with such function, certifying that the application accurately sets forth the text of the resolution.

(c) Within ten days after receipt of a copy of any such application, the President of the Senate and Speaker of the House of Representatives shall report to the House of which he is presiding officer, identifying the State making application, the subject of the application, and the number of States then having made application on such subject. The President of the Senate and Speaker of the House of Representatives shall cause copies of such application to be sent to the presiding officer of each House of the legislature of every other State and to each member of the Senate and House of Representatives of the Congress of the United States.

EFFECTIVE PERIOD OF APPLICATIONS

SEC. 5. (a) An application submitted to the Congress by a State pursuant to this Act, unless sooner rescinded by the State legislature, shall remain effective for four calendar years after the date it is received by the Congress, except that whenever the Congress determines that within a period of four calendar years two-thirds or more of the several States have each submitted a valid application calling for a constitutional convention on the same subject all such applications shall remain in effect until the Congress has taken action on a concurrent resolution, pursuant to section 8, calling for a constitutional convention.

(b) A State may rescind its application calling for a constitutional convention by adopting and transmitting to the Congress a resolution of rescission in conformity with the procedure specified in sections 3 and 4, except that no such rescission shall be effective as to any valid application made for a constitutional convention upon any subject after the date on which two-thirds or more of the State legislatures have valid applications pending before the Congress seeking amendments on the same subject.

(c) Questions concerning the rescission of a State's application shall be determined solely by the Congress of the United States and its decisions shall be binding on all others, including State and Federal courts.

CALLING OF A CONSTITUTIONAL CONVENTION

SEC. 6(a) It shall be the duty of the Secretary of the Senate and the Clerk of the House of Representatives to maintain a record of all applications received by the President of the Senate and Speaker of the House of Representatives from States for the calling

of a constitutional convention upon each subject. Whenever the Secretary or the Clerk has reason to believe that valid applications made by two-thirds or more of the States with respect to the same subject are in effect, he shall so report in writing to the officer to whom those applications were transmitted, and such officer thereupon shall announce upon the floor of the House of which he is an officer the substance of such report. Pursuant to such rules as such House may adopt, it shall be the duty of such House to determine whether the recitation contained in any such report is correct. If either House of the Congress determines, upon a consideration of any such report or of a concurrent resolution agreed to by the other House of the Congress, that there are in effect valid applications made by two-thirds or more of the States for the calling of a constitutional convention upon the same subject, it shall be the duty of that House to agree to a concurrent resolution calling for the convening of a Federal constitutional convention upon that subject. Each such concurrent resolution shall (1) designate the place and time of meeting of the convention; (2) set forth the nature of the amendment or amendments for the consideration of which the convention is called; and (3) authorize the appropriation of moneys for the payment of all expenses of the convention, including the compensation of delegates and employees. A copy of each such concurrent resolution agreed to by both Houses of the Congress shall be transmitted forthwith to the presiding officer of each House of the Legislature of each State.

(b) The convention shall be convened not later than one year after the adoption of the resolution.

DELEGATES

SEC. 7(a) A convention called under this Act shall be composed of as many delegates from each State as it is entitled to Senators and Representatives in Congress. In each State two delegates shall be elected at large and one delegate shall be elected from each Congressional district in the manner provided by State law. Any vacancy occurring in a State delegation shall be filled by appointment of the Governor of that State.

(b) The secretary of state of each State, or, if there be no such officer, the person charged by State law to perform such function shall certify to the Vice President of the United States the name of each delegate elected or appointed by the Governor pursuant to this section.

(c) Delegates shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at a session of the convention, and in going to and returning from the same; and for any speech or debate in the convention they shall not be questioned in any other place.

(d) Each delegate shall receive compensation for each day of service and shall be compensated for traveling and related expenses. Provision shall be made therefore in the concurrent resolution calling the convention. The convention shall fix the compensation of employees of the convention.

CONVENING THE CONVENTION

SEC. 8(a) The Vice President of the United States shall convene the constitutional convention. He shall administer the oath of office of the delegates to the convention and shall preside until the delegates elect a presiding officer who shall preside thereafter. Before taking his seat each delegate shall subscribe an oath not to attempt to change or alter any section, clause or article of the Constitution or propose additions thereto except in conformity with the concurrent resolution calling the convention. Upon the election of permanent officers of the convention, the names of such officers shall be transmitted to the President of the Senate and the Speaker of the House of Representatives by the elected presiding officer of the convention. Further proceedings of the convention shall be conducted in accordance with such rules, not inconsistent with this Act, as the convention may adopt.

(b) The Congress shall appropriate moneys for the payment of all expenses of the convention.

(c) Under such regulations as the President shall prescribe, the Administrator of General Services shall provide such facilities, and each executive department and agency shall provide such information, as the convention may require, upon written request made by the elected presiding officer of the convention.

PROCEDURES OF THE CONVENTION

SEC. 9(a) In voting on any question before the convention, including the proposal of amendments, each delegate shall have one vote.

(b) The convention shall keep a daily verbatim record of its proceedings and publish the same. The votes of the delegates on any question shall be entered on the record.

(c) The convention shall terminate its proceedings within one year after the date of its first meeting unless the period is extended by the Congress by concurrent resolution.

(d) Within thirty days after the termination of the proceedings of the convention, the presiding officer shall transmit to the Archivist of the United States all records of official proceedings of the convention.

PROPOSALS OF AMENDMENTS

SEC. 10(a) Except as provided in subsection (b) of this section, a convention called under this Act may propose amendments to the Constitution by a vote of a majority of the total number of delegates to the convention.

(b) No convention called under this Act may propose any amendment or amendments of a general nature different from that stated in the concurrent resolution calling the convention. Questions arising under this subsection shall be determined solely by the Congress of the United States and its decisions shall be binding on all others, including state and Federal courts.

APPROVAL BY THE CONGRESS AND TRANSMITTAL TO THE STATES FOR RATIFICATION

SEC. 11(a) The presiding officer of the convention shall, within thirty days after the termination of its proceedings, submit the exact text of any amendment or amendments agreed upon by the convention to the Congress for approval and transmittal to the several States for their ratification.

(b) The Congress, before the expiration of the first period of three months of continuous session following receipt of any proposed amendment, shall, by concurrent resolution, transmit such proposed amendment to the States for ratification, prescribing the time within which such amendment shall be ratified or deemed inoperative and the manner in which such amendment shall be ratified in accordance with Article V of the Constitution: *Provided*, That, within such period, the Congress may, by concurrent resolution, disapprove the submission of the proposed amendment to the States for ratification on the ground that its general nature is different from that stated in the concurrent resolution calling the convention or that the proposal of the amendment by the convention was not in conformity with the provisions of this Act: *Provided* further, that the Congress shall not disapprove the submission of a proposed amendment for ratification by the States because of its substantive provisions.

(c) If, upon the expiration of the period prescribed in the preceding subsection, the Congress has not adopted a concurrent resolution transmitting or disapproving the transmittal of a proposed amendment to the States for ratification, the President of the Senate and the Speaker of the House of Representatives, acting jointly, shall transmit such proposed amendment to the Administrator of General Services for submission to the States. The Administrator of General Services shall transmit exact copies of the same, together with his certification thereof, to the legislatures of the several States.

RATIFICATION OF PROPOSED AMENDMENTS

SEC. 12(a) Any amendment proposed by the convention and submitted to the States in accordance with the provisions of this Act shall be valid for all intents and purposes as part of the Constitution of the United States when duly ratified by three-fourths of the States in the manner and within the time specified.

(b) Acts of ratification shall be by convention or by State legislative action as the Congress may direct or as specified in subsection (c) of this section. For the purpose of ratifying proposed amendments transmitted to the States pursuant to this Act the State legislatures shall adopt their own rules of procedure. Any State action ratifying a proposed amendment to the Constitution shall be valid without the assent of the Governor of the State.

(c) Any proposed amendment transmitted to the States pursuant to the provisions of section 11(c) of this Act shall be ratified by the legislatures of three-fourths of the several States within seven years of the date of transmittal or be deemed inoperative.

(d) The secretary of state of the State, or if there be no such officer, the person who is charged by State law with such function, shall transmit a certified copy of the State action ratifying any proposed amendment to the Administrator of General Services.

RESCISSION OF RATIFICATION

SEC. 13(a) Any State may rescind its ratification of a proposed amendment by the same processes by which it ratified the proposed amendment, except that no State may rescind when there are existing valid ratifications of such amendment by three-fourths of the States.

(b) Any State may ratify a proposed amendment even though it previously may have rejected the same proposal.

(c) Questions concerning State ratification or rejection of amendments proposed to the Constitution of the United States shall be determined solely by the Congress of the United States, and its decisions shall be binding on all others, including State and Federal courts.

PROCLAMATION OF CONSTITUTIONAL AMENDMENTS

SEC. 14. The Administrator of General Services, when three-fourths of the several States have ratified a proposed amendment to the Constitution of the United States, shall issue a proclamation that the amendment is a part of the Constitution of the United States.

EFFECTIVE DATE OF AMENDMENTS

SEC. 15. An amendment proposed to the Constitution of the United States shall be effective from the date specified therein or, if no date is specified, then on the date on which the last State necessary to constitute three-fourths of the States of the United States, as provided for in article V, has ratified the same.

FOOTNOTES

*United States Senator from North Carolina.—Ed.

[1] The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths

of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

[2] The text of the bill, as amended, is set forth as an appendix to this Article. As of this writing, the amended bill has not been approved by the Committee on the Judiciary. The reported bill may include additional amendments.

[3] 369 U.S. 186 (1962).

[4] 377 U.S. 533 (1964).

[5] Copies of the applications referred to herein are on file in the offices of the Committees on the Judiciary of the United States Senate and House of Representatives.

[6] New Hampshire, Colorado, Utah, and Georgia have adopted applications, but copies are not on file with the Senate and House Judiciary Committees.

[7] The New York Times, March 18, 1967 (city ed.), at 1, col. 6.

[8] Editorial, The Washington Post, March 21, 1967, at A-10, col. 1.

[9] 307 U.S. 433 (1939).

[10] McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 407, 415 (1819).

[11] *E.g.*, Legislative Reference Serv., Library of Congress, The Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 39, 88th Cong., 1st Sess. 135–36 (1964); The Federalist Nos. 43 & 85 (J. Cooke ed. 1961); L. Orfield, Amending the Federal Constitution (1942); The Records of the Federal Convention of 1787 (M. Farrand ed. 1937). The relevant excerpts from these and other sources are printed as an appendix to the *Hearings on the Federal Constitutional Convention Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, United States Senate, Oct. 30 and 31, 1967.

[12] *See* the text of art. V quoted in note 1 *supra*.

[13] U.S. Bureau of Rolls and Library, Documentary History of the Constitution of the United States of America V, 141, 143, *quoting* Madison's letter to Mr. Eve, dated Jan. 2, 1789.

[14] 253 U.S. 221 (1920).

[15] *Id.* at 229.

[16] 3 U.S. (3 Dall.) 378 (1798).

[17] Coleman v. Miller, 307 U.S. 433, 448–49 (1939).

[18] Dillon v. Gloss, 256 U.S. 368 (1921).

S. 624—INTRODUCTION OF A BILL TO PROVIDE FOR THE ESTABLISHMENT OF THE POTOMAC NATIONAL RIVER IN THE STATES OF MARYLAND, VIRGINIA, AND WEST VIRGINIA, AND FOR OTHER PURPOSES

Mr. JACKSON. Mr. President, I introduce for appropriate reference, on behalf of myself, Mr. Tydings, and Mr. Nelson, a bill to provide for the establishment of the Potomac National River in the States of Maryland, Virginia, and West Virginia.

This bill was originally introduced in the second session of the 90th Congress as S. 3157, but received no hearings.

Mr. President, the great civilizations of the world have grown up under the influence of major rivers. The early permanent settlements on our own continent were situated near the estuaries of our rivers and the earliest efforts of our forebears to explore and inhabit a vast wilderness were made fruitful by the river systems extending inland.

Today we are not so completely constrained by the river valleys. Technology has provided new means of transportation. But the great rivers remain essential to our way of life and they sustain many of our largest cities. A vast amount of commerce is still carried on our waterways. We are dependent upon the water supplied by our streams, and hydroelectric power provides an important part of the Nation's energy. All of these uses have been of major concern to the Congress over the years and remain of vital importance today.

Recently, however, a new value has been recognized in the Nation's rivers. They have been used by the public for recreational purposes, of course, for decades. The desirability of a river and its banks for fishing, hunting, boating, and simply for the esthetic value which water can add to the national beauty of a landscape have long been reflected in property values.

But the rivers have been exploited. Their banks have been crowded by industrial development and unsightly trash, and their waters have been polluted with chemicals that destroy plants and wildlife. Today, in the vicinity of the large metropolitan areas, the great rivers are almost totally inaccessible to the public. Their banks are occupied with industrial development and dumps. Where a few miles of the banks are yet unspoiled, they are frequently in high-value residential areas closed to public use. Even a boater on the river itself cannot escape the trash, the smell, and the blighted view.

With the establishment last year of a national wild and scenic rivers system, however, the Congress acted to rectify this long neglect and to strike a balance in this country between the harnessing of rivers for our material wants and the preservation of values which can serve spiritual and recreational needs. In addition, certain rivers of special importance have been proposed or, like the Ozark National Scenic Riverways in Missouri, established as part of the national park system. The Allagash in Maine was established as a State wilderness waterway; indeed, many States are now moving forward with their own scenic rivers studies and protection progam.

Of all the streams in America that are of national significance, the one most truly deserving of the title, "The Nation's River," is our Potomac, flowing past the National Capital. Much of the spectrum of American tradition and history, past and current, is associated with its valley. It is one of the most beautiful major rivers in the East and more than 90 percent of its banks are still forested or farmed. The variety of the river's environment and its location near the major eastern magalopolis give it enormous potential for outdoor recreation in an urbanizing region where recreational opportunities are sorely needed. The analogy has been aptly drawn that the Potomac can be the Rock Creek Park of the magalopolis that will soon spread across this part of the Nation. The river is now within easy reach of more than 8 million Americans, and that number is expected to exceed 13 million within the next 40 years. Many of these citizens are or will be city dwellers whose recreational opportunities are all too limited, and for whom access to the outdoors is difficult. It is significant to note, therefore, that much of the proposed national river area is joined to urban centers by existing railways, as well as reached by major highways, and could be made readily accessible through mass transit facilities.

One of the principal recommendations of the recently completed "Potomac River Basin Study," closely coordinated with the Potomac Basin States, is to establish a Potomac National River. This would sheath the main stem of the Potomac in recreational green open space from Washington, D.C., to Cumberland, Md., a distance of 195 miles. The Department of the Interior's official report on the Potomac has pointed out that—

> It has unique majesty and beauty and both historic and symbolic associations that warrant a special degree of protection for it, and warrant also the assurance of the kind of public appreciation and enjoyment the park sheath would permit.

Such protection for the Potomac is urgent, for there is imminent danger that unplanned development could result in fragmentation of the remaining pastoral environment and loss of the opportunity for public recreation to incompatible private residential and industrial uses. Yet the concept of a national river is not a "nature and history only" approach to environmental conservation that would throttle or limit healthy industrial and residential growth in the valley. It is, rather, a call for wise Potomac planning that would keep the lifeline of the Potomac riverscape a permanent central asset on which surrounding communities can depend to keep the valley a good and pleasant place to work and live. Already the attractions of the river—even a river view—are so sought after that Washington apartments affording a view of the waterfront cost thousands of dollars more than equally comfortable quarters on the opposite side of the same building. Already, the Federal Government has gone to great effort and expense through easements to preserve the Potomac riverscape as a permanent public asset for the Washington area. Without planning and protection that anticipate area growth and recreational demands, the entire riverscape will be consumed and scarred as, in fact, is already happening.

The Potomac, though it be of national significance, is not suggested as a unilateral Federal undertaking, but rather a cooperative venture, with the States, counties, and municipalities along the river taking as large a role as possible in the acquisition and administration of riverside lands for conservation and recreational purposes. The national river proposal is thoroughly compatible both with the letter and the spirit of the Potomac River Basin compact proposal soon to be considered by State legislatures in the basin and then by the Congress. That proposed compact recognizes the interdependence of water and related land resources and the need to coordi-

nate and regulate the use of both for a wholesome total environment. Compact deliberations will take a long time, and time is running out for insuring the Potomac scenery, recreation, and orderly development.

We must act now if the integrity and usefulness of these resources are to be freed from jeopardy.

Moreover, it can serve as a model for safeguarding other important river resources throughout the Nation.

Heretofore, conservation efforts along the Potomac have been limited and piecemeal, although historically, they began long ago. The first meeting to discuss and plan for the Potomac was convened at Mount Vernon by George Washington. In the original Capital City design by Pierre L'Enfant, he recognized the need for the preservation of scenic beauty, and other open spaces as a prerequisite rather than an afterthought of good environmental planning.

The recently completed Potomac study and its recommended establishment as a national river have greatly broadened the concepts for Potomac planning, conservation, and development; and our vision of what a riverscape, protected and developed as a permanent scenic and recreational asset, can mean to the Nation, and do for the future of this region. We see now that the need is far larger, the opportunity far greater than preserving a historic canal alone, though that is a principal historic resource, protection and restoration of which is of high priority in national river administration. We see that we cannot address ourselves merely to the protection of one bank, but must regard the total riverscape as a unity if it is to retain its charm and beauty and serve the people adequately.

Furthermore, we should adopt conservation measures for the Potomac which can best serve the overall planning objectives and life styles of the Potomac Valley. That is why a national river, in reality a type of national recreation area, is suggested rather than the more restrictive policies of land management which park status connotes. Even the recently enacted legislation to establish a National System of Wild and Scenic Rivers would not suffice in providing for the large scale recreation needs and multiuse anticipated along the Nation's rivers.

The national river concept includes joint action by all levels of government. With its use of scenic easements and other less-than-fee ownership of land, it also involves the private sector in residential, commercial, and even industrial development in and adjoining the national river lands, under controls that would assure access to the river but keep developments in harmony with natural, historical, and recreational values. Management as a recreation area also will assure the greatest flexibility in providing for all types of outdoor recreation appropriate to the river area, including hunting, a cherished tradition in the valley.

For much of the length of this national river, only a narrow band of riverside land and islands need be purchased outright. At key locations, such as river bends, tributary confluences, places of exceptional historic or natural value, and other sites important for recreation, additional lands would be acquired for protection and appropriate development.

Included in the national river, but with its integrity preserved and structures restored, would be the existing Chesapeake and Ohio Canal, now a national monument and the principal historic feature along the Potomac. The canal towpath as well as a riverside route in Virginia are recommended to become part of the proposed Potomac Heritage Trail. Also, portions of two proposed parkways—the Allegheny and George Washington Country Parkways—could be accommodated within the exterior boundaries suggested for the national river.

In all, the proposed Potomac National River would comprise approximately 67,000 acres of land, nearly 11,000 acres of which are already in public ownership. It is estimated that at least a fourth of the privately owned land in the proposal could be preserved by means of less-than-fee interests in the land—scenic easements and the like. Much other land recommended for purchase could be leased back under appropriate controls for private uses. These approaches to Potomac conservation, plus the liberal use of life tenancy agreements and special efforts to perpetuate and encourage the agricultural uses traditional along the Potomac, should do much to allay fears that national river establishment might disrupt present patterns of life in the valley.

The river would provide the setting for wholesome and attractive growth in the Potomac Valley. When fully developed, there would be some 57 public-use centers along the river, including scores of natural and historical sites, numerous boat launching points, hundreds of miles of foot and bridle trails, as well as picnicking and camping facilities for many thousands of people—those who arrive by automobile or public conveyance, and those traveling up and down the river by trail or canoe.

Private businesses would provide most lodging, food and other essential services, either outside the national river or on private lands within it. Interpretive and educational programs would imaginatively attempt to convey an understanding of the river's character and history. In fact, the Potomac is envisioned as a major resource with which to build meaningful environmental education programs and centers with the aid of State and county school systems.

In its treatment of the riverscape and in the design of facilities, the national river would serve to demonstrate how residential, commercial, and industrial development in the basin can proceed in harmony with the processes and amenities of nature, perpetuating them for continuing enjoyment rather than consuming them for the exigencies of the moment.

The national river establishment must of course insure the integrity of the historic C. & O. Canal. It must be phased so as to complement and not disrupt the lives of present residents. It must assure access to the river for water and other utility purposes, so that scenic beauty, recreation and economic development can successfully coexist in the Potomac Valley. It must respect the variety of recreational resources along the river which make this opportunity such an exciting and important one.

A Potomac National River can be to millions of Americans—those who live along it or in neighboring cities, and those who visit it from afar—a vacation place, a classroom for environmental understanding and wise community planning, an avenue of serene natural beauty, a walkway through American history. It can help to establish the principle that our outstanding riverscapes are not merely real estate to exploit but, rather, natural resources for generations to enjoy under wise trusteeship. What we do for the Potomac, good or bad, successfully or otherwise, will influence the Nation's treatment of rivers elsewhere, ultimately conserving or impoverishing our American environment.

For the basin's present inhabitants this handsome river with its varied and wooded shores is a great blessing—

An interim report pointed out during the Potomac study—

Future inhabitants will have been badly cheated if it does not remain the same.

PROVISIONS OF THE BILL

The proposed Potomac National River will include approximately 67,000 acres of land bordering the river from the National Capital Park lands in the District of Columbia and Arlington County, Va., to Cumberland, Md., a distance of 195 miles. The bill provides that the Secretary of the Interior may acquire lands, waters and interests, including scenic easements, by donation, purchase with donated or appropriated funds, or exchange.

This land will be devoted to a variety of recreational uses including fishing and hunting (in suitable areas) without excluding the compatible use of the river by industry and commerce. The lands within the Chesapeake and Ohio Canal National Monument and other vital riverside lands and islands will be managed as part of the Potomac National River.

The concept of the Potomac National River, as reflected in the enclosed bill, stresses the need for close cooperation among Federal, State, and local governments, and private organizations and individuals. The Secretary of the Interior will assist and encourage these bodies in adopting and enforcing adequate master plans and zoning ordinances which will promote the use and development of private property within and adjacent to the proposed national river for recreational uses. Funds allocated to the State under the amended Land and Water Conservation Fund Act of 1968 shall be available for such planning, acquisition, and development.

The proposal recognizes the desire of some established residents to continue to live within the national river boundaries for a period of time. Except for property that the Secretary determines is necessary for administration and preservation purposes and for public use, the proposal

permits any owners of improved property acquired by the Secretary to retain, as a condition to such acquisition, a right of use and occupancy for noncommercial residential purposes or for agricultural purposes, for a life term or for a fixed term of not more than 25 years. The bill provides that, except as specifically authorized by the Congress, the Federal Power Commission shall not authorize the construction, operation, or maintenance within the Potomac National River of any dam or other project works under the Federal Power Act.

The proposal would establish a nine-member advisory commission composed of representatives of the three affected States and the District of Columbia, and one member appointed by the Secretary from the general public. The Commission would be temporary and would terminate 10 years after the date of enactment of the bill or upon the establishment of a more permanent body by or with the approval of Congress. The interim commission would advise the Secretary on the development of the national river.

Land acquisition costs for the national river are expected to be $65.5 million based on a 1967 appraisal.

The VICE PRESIDENT. The bill will be received and appropriately referred.

The bill (S. 624) to establish the Potomac National River in the States of Maryland, Virginia, and West Virginia, and for other purposes, introduced by Mr. JACKSON (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

SENATE JOINT RESOLUTION 29—JOINT RESOLUTION RELATING TO COMMEMORATION OF THE 100TH ANNIVERSARY OF THE ESTABLISHMENT OF YELLOWSTONE NATIONAL PARK

Mr. BIBLE. Mr. President, on behalf of myself and Senators JACKSON, ANDERSON, JORDAN of Idaho, MOSS, BURDICK, NELSON, MCGOVERN, ALLOTT, METCALF, STEVENS, CHURCH, HANSEN, and FANNIN, I introduce a joint resolution authorizing the Secretary of the Interior to provide for the commemoration of the 100th anniversary of the establishment of Yellowstone National Park, and for other purposes.

By the act of March 1, 1872 (17 Stat. 32), the Congress established the first national park in the world—Yellowstone. The national park concept originated in this act which recognized the need to preserve public land of great natural beauty and wonderment in perpetuity for the enjoyment of future generations.

To commemorate the 100th anniversary of the beginning of the national park movement, the resolution requests the President to issue a proclamation designating 1972 as "National Park Centennial Year." To plan the centennial activities, the joint resolution establishes a 15-member special commission, composed of four Members from the Senate, four Members from the House of Representatives, the Secretary of the Interior, and six nongovernmental members appointed by the President from among persons having outstanding knowledge and experience in the fields of natural and historical resource preservation and public recreation.

The national park concept is a unique American contribution to world culture. Since the establishment of the first national park at Yellowstone, the United States has developed a national park system which comprises 258 separate areas and which constitutes a vast repository of our natural and historical heritage. Following our lead, some 80 nations of the world have likewise developed their own national park systems.

We believe therefore, it is appropriate to designate the 100th year following the establishment of Yellowstone National Park as "National Park Centennial Year." Since 1872 was also the beginning of a worldwide movement for national parks, we believe it is fitting that representatives of other nations be invited to participate in the National Park Centennial. The appropriate vehicle for bringing together the knowledge and experience of all nations in this field would be, in our opinion, a World Conference on National Parks, to be held at Yellowstone and Grand Teton National Parks in 1972.

The Special Commission to be established under the joint resolution will prepare and execute the plans for the commemoration of the 100th anniversary of the establishment of the world's first national park, and will provide host services for the World Conference on National Parks in 1972. In carrying out its functions, we expect that the commission will develop and maintain special exhibitions on the national park system throughout the Nation, undertake important studies of the system for publication and distribution to schools and libraries, and encourage the development of nationwide and worldwide educational programs to promote the national park concept.

Mr. President, I ask that the measure be referred to the appropriate committee.

The VICE PRESIDENT. The joint resolution will be received and appropriately referred.

The joint resolution (S. J. Res. 29) authorizing the Secretary of the Interior to provide for the commemoration of the 100th anniversary of the establishment of Yellowstone National Park, and for other purposes, introduced by Mr. BIBLE (for himself and other Senators), was received, read twice by its title, and referred to the Committee on the Judiciary.

Mr. BIBLE. Mr. President, I ask unanimous consent to add the names of the distinguished majority leader (Mr. MANSFIELD) and the distinguished senior Senator from Florida (Mr. HOLLAND) as cosponsors.

The VICE PRESIDENT. Without objection, it is so ordered.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

Mr. PROXMIRE. Mr. President, I ask unanimous consent that, at its next printing, the names of the Senator from Nevada (Mr. CANNON) and the Senator from New York (Mr. JAVITS) be added as cosponsors of the bill (S. 406) a bill to amend the Federal Property and Administrative Services Act.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. SCOTT. Mr. President, I ask unanimous consent that, at its next printing, the name of the distinguished junior Senator from California (Mr. CRANSTON) be added as a cosponsor of the bill (S. 503) to provide for meeting the manpower needs of the Armed Forces of the United States.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. GOLDWATER. Mr. President, I ask unanimous consent that, at its next printing, the name of the Senator from Nevada (Mr. CANNON) be added as a cosponsor of the joint resolution (S.J. Res. 28) providing for renaming the central Arizona project as the Carl Hayden project.

Mr. BIBLE. Mr. President, will the Senator yield?

Mr. GOLDWATER. I yield.

Mr. BIBLE. I think I am already on that particular measure. If not, will the Senator ask unanimous consent that my name be added as a cosponsor?

Mr. GOLDWATER. Mr. President, I ask unanimous consent to add the name of the Senator from Nevada as a cosponsor, if necessary, but I think he is already on it.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, at its next printing, the name of the Senator from South Carolina (Mr. THURMOND) be added as a cosponsor of the joint resolution (S.J. Res. 2), proposing an amendment to the Constitution of the United States providing for the election of President and Vice President.

The VICE PRESIDENT. Without objection, it is so ordered.

SENATE CONCURRENT RESOLUTION 4—CONCURRENT RESOLUTION TO PREVENT TERMINATION OF FEDERAL FUNDS DURING SCHOOL YEAR

Mr. ERVIN. Mr. President, on behalf of myself and Senator JORDAN of North Carolina, I submit today a concurrent resolution setting forth the sense of Congress that no school funds administered by the Commissioner of Education shall be terminated under the authority of title VI of the 1964 Civil Rights Act after the beginning of the school year.

In order to avoid a great hardship to children of both races, Mr. President, the Department of Health, Education, and Welfare should be prohibited from terminating school funds in the middle of the school year. Great hardships result to school districts when their Federal funds are terminated after teachers have been hired and programs instituted in reliance on the receipt of Federal funds for the entire year. The school lunch programs often have to be abolished and many teachers and school employees have to be released and programs

stopped. There is no doubt that the termination of these Federal funds during the school year have a tremendous impact upon the entire local community.

We hope that Congress will agree with us that it is much better to terminate the funds at the end of the school year, thus allowing the summer months for negotiations with the Department of Health, Education, and Welfare, prior to the absolute cutoff of funds before the fall term.

I ask unanimous consent that my proposed concurrent resolution be appropriately referred and that a copy of it be printed at this point in the body of the RECORD.

The VICE PRESIDENT. The concurrent resolution will be received and appropriately referred; and, under the rule, the concurrent resolution will be printed in the RECORD.

The concurrent resolution (S. Con. Res. 4) was referred to the Committee on Labor and Public Welfare, as follows:

S. CON. RES. 4

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that in any case in which a State or local educational agency has filed an application for financial assistance for elementary or secondary education for any fiscal year under the provisions of any Act administered by the Commissioner of Education, the Commissioner shall not, after the beginning in such fiscal year of such agency's school year, terminate or refuse to grant such assistance under the authority of title VI of the Civil Rights Act of 1964.

ADDITIONAL COSPONSORS OF CONCURRENT RESOLUTION

Mr. PEARSON. Mr. President, I ask unanimous consent that, at its next printing, the names of the distinguished Senator from Texas (Mr. YARBOROUGH), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Oklahoma (Mr. HARRIS) be added as cosponsors of the concurrent resolution (S. Con. Res. 3), relating to the furnishing of relief assistance to persons affected by the Nigerian civil war.

The VICE PRESIDENT. Without objection, it is so ordered.

SENATE RESOLUTION 58—RESOLUTION TO CREATE A STANDING COMMITTEE ON VETERANS' AFFAIRS—FOR THE VETERANS' ADMINISTRATION

Mr. SCOTT. Mr. President, for too many years now, proposed legislation affecting this Nation's veterans has been subject to constant shuffling among various subcommittees of several Senate committees. This is a haphazard method of dealing with measures vital to the well-being of our veterans. It is about time that we faced up to the many problems inherent in the present system of handling veterans' proposals and adopted a new way to deal more effectively with them.

Therefore, I submit for appropriate reference a resolution to create a standing Senate Committee on Veterans' Affairs. This proposal is neither new nor revolutionary. It has been brought before the Senate many times in the past. In fact, I was a sponsor of Senate Resolution 8 during the 90th Congress, a resolution which never reached the floor for consideration. The measure I am now introducing is identical to the previous resolution.

Such a proposal has had the support of every major veterans' organization, and its adoption would create no great problems. As chairman of the Human Needs Subcommittee of the 1968 Republican Platform Committee, I received testimony from, among others, William E. Galbraith, the then National Commander of the American Legion, who urged the passage of this measure. Commander Galbraith said that the creation of such a committee "would insure that all veterans' legislation in the Senate received expert and prompt attention." I heartily concur with that opinion, and I urge my fellow Senators to act swiftly and favorably on this proposal.

The VICE PRESIDENT. The resolution will be received and appropriately referred; and, under the rule, the resolution will be printed in the RECORD.

The resolution (S. Res. 58) was referred to the Committee on Rules and Administration, as follows:

S. RES. 58

Resolved, That rule XXV of the Standing Rules of the Senate (relating to standing committees) is amended by—

(1) striking out subparagraphs 10 through 13 in paragraph (h) of section (1);

(2) striking out subparagraphs 16 through 19 in paragraph (1), section (1); and

(3) inserting in section (1) after paragraph (p) the following new paragraph:

"(q) Committee on Veterans' Affairs, to consist of nine Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

"1. Veterans' measures, generally.

"2. Pensions of all the wars of the United States, general and special.

"3. Life insurance issued by the Government on account of service in the Armed Forces.

"4. Compensation of veterans.

"5. Vocational rehabilitation and education of veterans.

"6. Veterans' hospitals, medical care, and treatment of veterans.

"7. Soldiers' and sailors' civil relief.

"8. Readjustment of servicemen to civil life."

SEC. 2. Section 4 of rule XXV of the Standing Rules of the Senate is amended by striking out "and Committee on Aeronautical and Space Sciences" and inserting in lieu thereof "Committee on Aeronautical and Space Sciences; and Committee on Veterans' Affairs".

SEC. 3. Section 6(a) of rule XVI of the Standing Rules of the Senate (relating to the designation of ex officio members of the Committee on Appropriations), is amended by adding at the end of the tabulation contained therein the following new item:

"Committee on Veterans' Affairs____For the Veterans' Administration."

SEC. 4. The Committee on Veterans' Affairs shall as promptly as feasible after its appointment and organization confer with the Committee on Finance and the Committee on Labor and Public Welfare for the purpose of determining what disposition should be made of proposed legislation, messages, petitions, memorials, and other matters theretofore previously referred to the Committee on Finance and the Committee on Labor and Public Welfare, which are within the jurisdiction of the Committee on Veterans' Affairs.

SENATE RESOLUTION 59—RESOLUTION TO PROVIDE ADDITIONAL FUNDS FOR THE COMMITTEE ON AERONAUTICAL AND SPACE SCIENCES—REPORT OF A COMMITTEE

Mr. ANDERSON, from the Committee on Aeronautical and Space Sciences, reported an original resolution (S. Res. 59); which was referred to the Committee on Rules and Administration, as follows:

S. RES. 59

Resolved, That the Committee on Aeronautical and Space Sciences, or any duly authorized subcommittee thereof, is authorized under sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdiction specified by rule XXV of the Standing Rules of the Senate, to examine, investigate, and make a complete study of any and all matters pertaining to the aeronautical and space activities of departments and agencies of the United States, including such activities peculiar to or primarily associated with the development of weapons systems or military operations.

SEC. 2. (a) For the purposes of this resolution the committee is authorized, from February 1, 1969, through January 31, 1970, inclusive, to (1) make such expenditures as it deems advisable, (2) employ upon a temporary basis and fix the compensation of technical, clerical, and other assistants and consultants, and (3) with the prior consent of the head of the department or agency of the Government concerned and the Committee on Rules and Administration, utilize the reimbursable services, information, facilities, and personnel of any department or agency of the Government.

(b) The minority is authorized to select one person for appointment as an assistant or consultant, and the person so selected shall be appointed. No assistant or consultant may receive compensation at an annual gross rate which exceeds by more than $2,400 the annual gross rate of compensation of any person so selected by the minority.

SEC. 3. The committee shall report its findings, together with its recommendations for such legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than January 31, 1970.

SEC. 4. Expenses of the committee under this resolution, which shall not exceed $40,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

S. 467—COAL MINE HEALTH ACT, INTRODUCED BY SENATOR RANDOLPH AT UNITED MINE WORKERS' REQUEST

Mr. RANDOLPH. Mr. President, this is to refute those critics of the United Mine Workers of America and of the leadership of that international union—critics who falsely claim that the men who work in the coal mines lack for adequate union attention to their health and safety needs. They are in error. History will not support such allegations; neither will current events.

On January 16, 1969, I introduced S. 355, the Bureau of Mines legislative proposals to improve the health and safety conditions of persons working in the coal mining industry of the United States. I introduced those legislative proposals in three titles—the first relating to administration and penalties, the second to coal mine safety, and the third embracing provisions for interim health standards

for underground mines. At the time of introduction, I expressed the view that separate bills, rather than separate titles of a single bill, might have been preferable to deal with coal mine safety and occupational health. This view has since been supported informally by representatives of coal industry management and of the United Mine Workers.

In fact, the president of the UMWA, W. A. "Tony" Boyle, and his legislative assistants went beyond merely hoping that the subjects of coal mine safety and occupational health of coal miners would be considered carefully, and separately, if need be for that procedure.

According to information I received from UMWA officials, they favor the principles of the administrative provisions and most of the safety section of S. 355, but differ substantially with its provisions as relate to penalties and in the area of health under title III.

Accordingly, knowing that I declared several months ago for a careful reevaluation of coal mine safety statutes and for a fresh look at occupational health aspects of underground coal mining, President Boyle requested that I consider introducing the United Mine Workers' proposed Coal Mine Health Act, a bill for the elimination of health dangers to coal miners resulting from the inhalation of coal dust. Because I believe that the occupational health of coal miners is a vital area for legislative consideration, and because I know that the Bureau of Mines recommendations in S. 355 are for interim health standards for underground mines, I readily agreed to introduce the UMWA recommendations for a permanent program dedicated to the elimination of health dangers to miners. The UMWA-supported measure was introduced by me on January 21, 1969, and is S. 67 in this 91st Congress. It is a comprehensive proposal for the abatement of dust conditions in the interest of "elimination of health dangers to miners." I believe in the principles of S. 467, just as I do with respect to S. 355, but I feel that I must keep a degree of flexibility on their provisions in some particulars until we have heard testimony and can study the record of hearings which I believe will be scheduled to begin sometime after mid-February, and possibly as late as mid-March, in the Committee on Labor and Public Welfare, on which I am the ranking majority member.

I have been working with the UMWA for over three decades on coal mine safety legislation, and the officials of that organization know of the problems and difficulties encountered in the practical application of the legislative processes as measures of this nature work their way through those processes. Even reporting bills in the industrial health and safety area from committees oftentimes becomes a real chore. The first Coal Mine Safety Act of any substance to pass the Congress required the use of a discharge petition, which I well remember having sponsored in the House of Representatives while a Member of that body. And, as Bob Howes of the UMWA organization recalled in a recent conversation, we had difficulty keeping signatures on that petition. There was opposition to our achieving the required number.

It has always been my experience in working with UMWA officials in this legislative area to know that they, like all of us, must keep in mind the coal miners' payrolls as well as their health and safety.

Closing coal mines and destroying payrolls constitute the easy way to clear away problems of safety and those relating to the occupational health hazards. That, however, is not the practical way—any more than is the closing of chemical plants or the shutting down of electric generating plants as air or water pollution control expedients. The search always must be for the feasible alternatives to complete closure and to the payroll cutoff. In this search for ways to continue operations, production, marketing, and payrolls while, at the same time, developing adequate safety procedures and requirements and feasible abatement of occupational health hazard conditions, we know that there will be encountered controversy over legislative provisions.

Mr. President, officials and representatives of the United Mine Workers—men like President Tony Boyle, Vice President George Titler, and their assistants—must not be accused of lacking in zeal and effort on behalf of their coal miner members because this is not a fact. There are no more devoted men to the causes of safety and health—and payrolls—of their members than Tony Boyle and George Titler and their associates and assistants. S. 467—the proposed Coal Mine Health Act—which I have introduced at their request, is but one of the very real manifestations of their fidelity to the men who work in the coal mines.

IN PRAISE OF WILLIAM C. FOSTER

Mr. PERCY. Mr. President, on December 31, 1968, a distinguished citizen quietly stepped down from a post he had held for over 7 years. This citizen was William C. Foster, Director of the U.S. Arms Control and Disarmament Agency.

A recent editorial in the Washington Star, paid tribute to Bill Foster, and noted that he should be remembered for helping to make the pursuit of international arms controls an acceptable activity in the eyes of most Americans. The editorial pointed out that, when Congress was considering the establishment of the Agency in 1961, certain fears were expressed but, according to the Star:

> Happily, Foster's solid Republican credentials and known anticommunism were such that Congress eventually was willing to approve the creation of ACDA.

Bill Foster's credentials extend, of course, beyond partisan considerations. His Government career has included, in addition to being Director of the Arms Control and Disarmament Agency, such posts as Under Secretary of Commerce, Administrator of the Marshall plan, and Deputy Secretary of Defense.

Some of his contributions in the national security field are little known. In 1957, for example, President Eisenhower brought together a blue-ribbon panel of distinguished citizens, under the chairmanship of H. Rowan Gaither, Jr., with Mr. Foster as cochairman. Their task was to review all the information available to determine as closely as possible the dimensions of the Communist bloc's capability to launch an attack on America, and the ability of America to deter or withstand an attack. The panel became known as the "Gaither Panel," and Bill Foster's involvement as cochairman of this important group was little noted.

No sooner had the exhaustive work of the Gaither Panel been completed than Secretary of Defense McElroy named Mr. Foster, Nelson Rockefeller, then chairman of the Joint Chiefs of Staff Nathan F. Twining, and former JCS Chairmen Omar Bradley and Arthur W. Radford, to be consultants on reorganization of the Pentagon.

Almost concurrently Mr. Foster served as one of the Secretary of State's advisers on arms control policy.

In October 1958, he was chosen to head the U.S. delegation to the Technical Conference on the Problem of Surprise Attack, which the Soviet Union had unexpectedly agreed to attend in Geneva. The conference proved abortive, but the experience yielded an important lesson: the need for broad political and technical expertise in disarmament negotiations. In reporting on the conference to the Senate Disarmament Subcommittee, Mr. Foster said such expertise could be obtained only "by hard work and deep thought and putting together competent people to work—not on a part-time basis but on a full-time basis." His evaluation presaged the creation of the U.S. Arms Control and Disarmament Agency.

This Agency has, over the past 7 years, come of age. As the Washington Star editorial put it:

> Foster has been able to attract an elite corps of scientists, soldiers, and diplomats to do the agency's important work—which demands a high degree of sophistication in the foreign affairs areas as well as technical expertise in the disarmament field. ACDA is now a tried and proven instrument for the carrying out of United States policy.

I first knew Bill Foster as a highly respected businessman. Since then, Bill Foster has received many commendations for his distinguished public service, but I know he received his greatest inner satisfaction and fulfillment from his work in arms control.

For his foresight and dedication in the pursuit of arms control as an instrument of national security policy, William C. Foster deserves the gratitude of the entire country.

TRIBUTE TO PRESIDENT JOHNSON

Mr. CRANSTON. Mr. President, I will always regret that I entered the Senate after Lyndon Johnson left it, and that he is leaving the White House and Washington to return to his native Texas so soon after I have come to Capitol Hill.

I have long admired from afar his great abilities and so much that he has done. I would have relished an opportunity to work closely with him in the pursuit of a better nation and a better world.

That is not to suggest that I did not have my areas of disagreement with Lyndon Johnson, for, of course I did—particularly over our country's role in Vietnam.

But I do not qualify, I do not in any way limit, my respect and admiration for the President Lyndon Johnson has been and the man he will always be.

The contributions of his Presidency will be imperishable in civil rights, voting rights, educational aid, model cities, medicare, rent supplements, control of water pollution, immigration reform, job training, and general and specific governmental concern for the well-being of all its people.

Imperishable, too, will be the impression he made on those people by his concern, his dedication, his humanity, his steadfastness, his grit, his guts.

A man whose heart was dedicated to peace, he was betrayed by an unwanted war.

ELECTORAL COLLEGE REFORM

Mr. ALLEN. Mr. President, the October 1968 issue of the Alabama Lawyer contains an interesting article entitled "An Analysis of Electoral College Reform," written by Hon. J. Edward Thornton.

The author, senior member of the firm of Thornton & McGowin, Mobile, Ala., is a graduate of Mississippi College, A.B. 1928, and Harvard University, LL. B. 1933, and was admitted to the bar of Alabama, 1934, and Massachusetts, 1936. He was assistant general counsel, Alabama State Department of Revenue, 1939–45; assistant circuit solicitor, Jefferson County, Ala., 1936–39; justice, Special Supreme Court of Alabama, 1967; 1968, member, house of delegates and State delegate for Alabama, American Bar Association, 1958–59; president, Mobile Bar Association, 1955; president, Alabama State bar, 1963. He is a member of American Law Institute and a fellow, American Bar Foundation.

Fifteen of Mr. Thornton's articles and addresses have been published in the Alabama Lawyer. He has also contributed articles to the Alabama Law Review. "Balancing Various Community Interests: Should This Be Part of the Judicial Function?" was published in ABA Journal, June 1949.

Since the issue of electoral college reform is being considered by the Senate, I believe that Mr. Thornton's article will furnish much valuable information to Members of the Senate and that his analysis of some of the proposals that have been suggested will aid the Senate in its consideration of this issue.

I ask unanimous consent to place the text of Mr. Thornton's article in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

AN ANALYSIS OF ELECTORAL COLLEGE REFORM

(By J. Edward Thornton)

I

Suppose there were no united States, only the several States. Suppose the fifty States were now engaged in uniting into a United States. Suppose they all believed that governmental power should be separated so that policy be determined only by the legislature, that it be carried out only by the executive, and the judicial power be limited to "cases" and "controversies" only. Suppose that a single executive is decided upon to carry out the policy determined by Congress as construed and interpreted by the courts. The question then comes up before the Constitutional Convention of these fifty States, who should elect this executive, remembering all the time that the Constitution will limit his activities to carrying out Federal policy with such exceptions as those contained in Sections 2, 3, and 4 of Article II of the present Federal Constitution? The three most obvious alternatives are that the appointment be made by (1) the States, (2) the Congress, or (3) the people. Which should it be? Before answering this, several matters should be considered.

1. Elected officials from justices of the peace, up or down, are beholden unto those who select them, whether the selector is the governor, the legislature or the voters. If federal policy as fixed by Congress is to be administered by a chief executive, who is elected by the masses, that executive will not be obligated to the States or Congress. Would a President beholden to the masses enforce the laws fearlessly against White majorities, or Protestant majorities, or Catholic majorities or whatever majorities there are?

2. For Congress to select the person to carry out the policy fixed by Congress violates the principle of separation of powers, for if the President is selected by Congress, Congress will determine how the policy Congress fixes will be enforced or unenforced. This would never do because of the premises set for this hypothetical case of the Constitutional Convention for the fifty States.

3. Direct popular election of chief executive officers has never been used in any confederation, such as the United Nations, the League of Nations, the European Common Market, the American Bar Association, the American Medical Association, and so on. In fact, it is hard to find any federation where the chief executive officer has been chosen by popular vote.

4. It would be the States which would be giving up a portion of their sovereignty to gain the advantages of union, not the people. Since the States would be doing the negotiating, it would seem that they would be the ones most likely to demand a *quid pro quo* for such union.

5. Who would be most interested in seeing that the federal policy was being faithfully executed, the States or the masses? Congress might be interested in seeing that its policy be carried out, but what interest would the masses have in this? And if no one in a position of influence has any interest in seeing that the system is carried out, how long will the system last?

Bearing these facts in mind, we return to the hypothetical Constitutional Convention seeking to determine how to select a chief executive. Since the American Bar Association is now engaged in advising the States on constitutional issues, such as Amendment XXV, no doubt this Convention would call on the American Bar Association. Unfortunately, the Report of the Commission on Electoral College Reform contained in the March, 1967, issue of the *American Bar Association Journal* will not shed much light on the issue before this hypothetical Constitutional Convention. Nor would President-Elect Gossett's article in the December, 1967, issue of the *Journal* assist.

But isn't this hypothetical issue the very one which should have a very clear and positive answer before the American Bar Association or anyone else starts tinkering with the machinery of government which, after all, has brought us along for nearly 200 years? Before engaging in remedial action we should know precisely what the remedy is.

If there is a case for having the President of these United States selected by the people rather than the States, it hasn't been adequately made yet. But it would seem that this is crucial before any action be taken to change the system.

That the system set out in the Federal Constitution does not completely embody either of these alternatives does not excuse us from having *an* answer to these questions, even if the answer is that neither of these methods should be used to select the chief executive officer of this nation. We always need to know in which direction we ought to be going, even if we are not going that way.

Historically, it seems the consensus was that the States should select the President, and it is not without significance that the one plan with the least support was the present plan by the American Bar Association. Of course, the more heavily populated States in the Convention in 1787 refused to be reduced to the strength of less heavily populated States in selecting the chief executive. And it was on this issue that ultimately Benjamin Franklin, of all members of the Convention, suggested that the subsequent meetings be opened with prayer. But they never abandoned the idea that the selection of the President was to be made by the States. The compromise was that in this process the strength of these big States be reduced and the strength of the smaller States be increased by the number of electors which was fixed at the number of representatives in the Senate and House in Congress.

Before abandoning completely this idea that the States select the chief executive, an answer ought to be made to the question, should we?

II

The Report of the A.B.A. Commission on Electoral College Reform states:

"In summary, direct election of the President would be in harmony with the prevailing philosophy of one person, one vote."

It should hardly be necessary now to remind members of the legal profession that merely because a Justice of the Supreme Court of the United States makes an assertion, this does not make it so, nor does it make it right. This is also true of assertions by A.B.A. Commissions. Therefore, with a majority of the States about to amend the Federal Constitution in regard to the one man, one vote rule, it might well be said that such a philosophy is hardly "prevailing." But even if it were, it still would be wrong and not necessarily applicable to the election of the President.

History gives us only two illustrations of efforts at universal suffrage, namely ancient Greece and during the French Revolution, and both of these failed. Can it now be made to work here by the *ipse dixit* of a few judges?

Furthermore, the idea of spreading political power among the illiterates, [*Cf. Katzenbach* v. *Morgan*, 384 U.S. 641 (1966)] the paupers, [See, *Harper* v. *Virginia*, 383 U.S. 663 (1966)] and now possibly the criminals, the Communists and the insane, is sheer nonsense. One head is not as good as any other head particularly when one of them is, say, a Justice of the Supreme Court, or a Dean of a Law School. To cancel out their votes with the illiterates doesn't show maturity. It shows insanity.

If all heads are equal in electing men to govern us, why all the bother for *public* education? Public education assumes a need for improvement of the public for the public. But if voting belongs to the un-improved as well as the improved, it seems to remove the incentive for society to improve the illiterate. If public education aims solely at increasing the income of the pupils, why should all society join in paying for it? Why shouldn't the pupil pay for his own education, if the

education is solely for his benefit? Assuming otherwise cannot be rational, much less right or just.

Furthermore, it assumes that a civic virtue and possibly a duty, has become a right. Exhaustive research in history and jurisprudence is not necessary to establish that voting has always been a privilege. Only in opinions by Justices of the United States Supreme Court can a different reading of history be found. And to find that in 1868 the States delegated away their rights to quality voters is not only a misreading of history, it is a misreading of the Constitution.

If voting is now a right, how about jury service? Do I have a right guaranteed by the Constitution to serve on the jury? And if I can serve on the jury, can a mere litigant or attorney peremptorily challenge my right to serve, and if they cannot, may I select the cases I choose to hear? So, is paying taxes a right? If so, can I determine the amount? Can the government now interfere with my right to pay taxes by assigning an arbitrary amount as my share?

This proliferation of "rights" found in the Constitution by Justices of the Supreme Court simply must be brought to a stop. The "right" to counsel has been extended to everyone, everywhere, in all types of cases. But now Justice Douglas has found in *Hackin v. Arizona*, 389 U.S. 143 (1967) a "right" to non-counsel. And, of course, the Justices have found in the Constitution a "right to possess and peddle pornography. [See *Smith v. Cal.*, 361 U.S. 147 (1959)] which has blown up to such proportions that the Justices themselves no longer know what is contained in the "right." [See *Redrup v. New York*, 386 U.S. 767 1967).]

The newly discovered constitutional "right of association" [nowhere explicitly provided. *Cf.* Black's dissent in *Griswold v. Conn.* 381 U.S. 479, 509 (1965) concerning a constitutional "right of privacy" which he could not find in the Constitution] now prohibits States from protecting their citizens from unauthorized practice of law. See *N.A.A.C.P. v. Button*, 371 U.S. 415 (1963); *Railroad Trainmen v. Va.*, 377 U.S. 1 (1964); *UMW v. Ill. Bar Assn.*, 389 U.S. 217 (1967), Justice Black can find this "right" in the words in the Constitution!

Obviously the Court is not vindicating the Constitution in these absurd decisions; it is cheapening the Constitution so that the Constitution must get protection from the Court if it is to remain as our charter of government.

This one man-one vote "right" is such an absurdity. For the organized Bar to support and implement this sort of stupidity does not make it less stupid. Hence, if the best reason for scrapping the electoral college is this one man-one vote right, then no change in the electoral college is indicated.

III

It has been asserted by President-Elect Gossett that actually the electoral college was merely a temporary stop-gap to get the Constitution adopted, and now in this "age of speedy transportation, instantaneous communication and high literacy" the need for such a broad power of attorney by the voter to the elector is gone, hence, the voter should re-claim his right to select the President directly.

Of course, this premise is patently unsound historically. The Electoral College was a compromise, but it was not temporary. But even if it were, it does not follow that today is the time for this change, or that this is the change called for. If we do assume, however, that this is indicated, then we become the bald-headed peddler of hair restorer. If the individual vote is now to elect the chief executive of these United States, why does the American Bar Association utilize an indirect method of election for its President? What is there about the American Bar Association which makes the selection of its chief executive officer so different from the selection of a President for these United States?

IV

It shouldn't be assumed that the A.B.A. Plan is the only change proposed for the electoral college. It has been attacked several times. Among the proposed changes were those by the Southland Committee in 1878, the Lea Amendment proposed in 1928, and the Lodge-Gossett Plan proposed in 1948.

Interesting enough, however, this is the first time it has been seriously suggested that the President be elected by direct popular vote. Andrew Jackson recommended it in five of his messages to Congress. But no one else has seriously advanced it. The question naturally arises why it took the A.B.A. in 1967 to discover this system. If there is so much merit to it, why has it been so late in being advanced?

The Lodge-Gossett Plan of apportioning electoral votes to popular votes to two decimal places within the States has been by far the most popular plan advocated. This means that in Alabama, where there are now 10 electoral votes, they would be apportioned to the popular vote. Thus, if one candidate got 400,000 votes out of 700,000 votes cast, the candidate would get 4/7 of 10 electoral votes. The other candidate would get 3/7 of 10 electoral votes.

The trouble with this system is that it is complicated to compute, but worse than that, it gives most unexpected results. Under it, Nixon would have been elected over Kennedy in 1960 with 265.31 electoral votes to 264.12 for Kennedy. Furthermore, though Garfield had a greater popular vote than Hancock in 1880, under this plan Hancock would have been elected. So Bryan would have been elected over McKinley in 1896, though McKinley had 51% of the popular votes over 46.7% for Bryan. Even the election of 1924 changes complexion under this plan.

All of this goes to show that we should look before we leap into constitutional changes, even when advocated by the A.B.A.

V

It must be remembered that the present system for selecting the President was not worked out as the best or most logical plan possible. It was a compromise, and an obviously awkward and sometimes illogical system. But it was the only plan which had sufficient support to get the Constitution adopted. Hence, to engage in finding flaws in the present system now is not particularly brilliant. It wasn't thought to be flawless by those who created it. It was just the best that could be had under the circumstances.

1. When, however, criticism is made of the system, it should be valid. For example, the Commission criticizes the present system as containing a "winner-take-all feature which totally suppresses at an intermediate stage all minority votes cast in a state." Just how much less than all should the winner take? If the winner gets 50% plus one of the votes, does he serve 50% plus one day (or week or month)? There simply cannot be but one winner in an election and when the winner reaches that point (whether it is a ¾ or ⅔ or some other majority) he wins, and he has to take all when he wins.

The idea that the losing minority votes are *suppressed* is a strange observation. Who suppressed the minority votes? Those voting for the loser were a minority. They voted for their candidate and their preference was registered. Those voting for the winner, the majority, registered their preference. Every vote is counted. None are suppressed. But only the majority can win, and the minority must lose. That this process somehow *suppresses* votes, is a queer way to use words.

If there is any idea lurking here that minorities, say, in Alabama, are to be added to minorities, say in New York, and thereby become majorities, this will create chaos. In fact, it could be said that unless there are minorities in elections, there can be no majorities, and if there can be no majorities, there can be no winners. Therefore, we must create minorities in order that the majorities may be majorities and thereby give effect to the votes for the winners. How far should this sort of verbalizing be carried?

In every election there must be a majority and there must be a minority. The minority may be "right" and they may have our sympathy, but it is still a minority and nothing can be done about it. Hence, to complain about the winner taking all in the present system is without merit.

2. There is another complaint of the present system which is not valid. It is objected that in many States where Democrats and Republicans are about evenly matched, a small minority such as Negroes, or others, can and do control the electoral vote from that State. Hence, it is objected that this minority control the election in that State. Therefore, it is argued the system should be scrapped. However, this is a rather superficial view of the election process. 50% plus one wins all elections controlled by majority vote. Which vote won the election? The one at the top, or the one at the bottom? The answer is, both votes won it, along with all the other votes. The only way to beat this system is to devise a system where 50% plus 1 does not win. To say that a minority won this election is to overlook the facts in the election. Suppose there are 49% Republicans and 49% Democrats, and 2% uncommitted. To say that 1% plus 1 of the uncommitted won the election is to overlook the 49%.

Furthermore, this sort of minority control would be true under the A.B.A. Plan. Suppose that out of 70,000,000 qualified voters there are 34,000,000 Democrats and 34,000,000 Republicans. This would make 1,000,001 votes controlling. Hence, would the candidates campaign only for these votes? If this premise is sound, this minority would govern the selection of a President.

3. It is also objected that since Alaska is sparsely populated, and cast only 67,259 votes in 1964 for 3 electoral votes, or some 22,000 popular votes per electoral vote, and Arkansas cast some 560,000 for 6 electoral votes, or some 90,000 popular votes per electoral vote, this present system gives popular votes in Alaska higher electoral count than in Arkansas, and somehow this is unfair. The idea is that one vote in Alaska should have the same weight for President as one vote in Arkansas. This, it is believed, is the real basis of the proposed change.

The fact of the matter is that the heavily populated States simply cannot stand having their power diluted by the Electoral College. But it was just this whittling down of the supposed power of the heavily populated States which made the adoption of the Constitution possible by the Constitutional Convention in 1787 and the adoption thereof by the less heavily populated States. Of course, Virginia (747,610 population), Pennsylvania (434,373), North Carolina (393,751), and the other States with larger populations, thought they should have more power than the less populated States, and they did not relish sharing this supposed power of numbers with the other States, but that simply was the price for these United States. Now to destroy this equalization of power would constitute a failure of consideration for the adoption of the Constitution by the other States. The complaint by the heavily populated States that the Electoral College denied them the influence they felt that their heavy populations warranted was true, but the exchange was negotiated fairly and squarely, and for the heavily populated States to reverse this now will very simply constitute a welching on the agreement made to achieve this Union.

VI

Finally, this A.B.A. Plan simply will not sell, at least to the less populated States. These States joined up with the heavily populated States only by having two Senators for each State, plus the Electoral College for selecting the President. That this gave the less populated States greater power in national affairs than their population might justify was precisely what was planned. This was the intention of the parties. A view at some figures today will show just how successful the plan was in accomplishing what was intended.

Alabama has approximately 2% of the voting strength in the Electoral College. New York has 8%, or four times Alabama's power in electing a President. But in 1964, the popular vote in Alabama was less than .9% of the total popular vote for President throughout the country. New York's popular vote was 10.2% of the vote cast throughout the country, or over ten times Alabama's vote. Alabama would hardly want to make that trade.

The figures on a few more States will also be enlightening.

States	Electoral vote	Percent of total electoral vote	Popular vote (in thousands)	Percent of popular vote
Alabama	10	2.0	689	0.9
Alaska	3	.56	67	.095
Arizona	5	1.0	480	.6
Arkansas	6	1.1	560	.8
Delaware	3	.56	201	.2
District of Columbia	3	.56	198	.2
Georgia	12	2.2	1,139	1.6
Hawaii	4	.74	207	.2
Idaho	4	.74	292	.4
Louisiana	10	2.0	896	1.2
Maine	4	.74	380	.5
Mississippi	7	1.3	409	.5
Montana	4	.74	278	.3
Nebraska	5	1.0	584	.8
Nevada	3	.56	135	.1
New Hampshire	4	.74	286	.4
New Mexico	4	.74	327	.4
North Carolina	13	2.4	1,424	2.0
North Dakota	4	.74	258	.3
Rhode Island	4	.74	390	.5
South Carolina	8	1.5	524	.7
Utah	4	.74	401	.5
Vermont	3	.56	162	.2
Virginia	12	2.2	1,042	1.4
Wyoming	3	.56	142	.2
Total	142	.....	11,471	.....

The significance of this table is that it presents the voting strength of almost half of the States. The electoral vote from these amounts to 26% of all the votes cast in the Electoral College. But their popular vote was only 16% of the popular vote cast in 1964. Hence, the heavily populated States were not stripped of all the power inherent in their numbers. They still have 84% of the popular vote, and they have 74% of the electoral vote. Is that so bad that the less populous States must add to the strength of the heavily populated States?

Actually, it would seem that this is a fair compromise between overwhelming the less populous States with numbers and permitting the less populous States power in excess of the number of their inhabitants. Without this compromise the less populous States will lose all voice in selecting a President. If a candidate got all 11,000,000 votes in this almost 50% of the States, he would not have a majority of the popular or electoral votes. But if the A.B.A. Plan is adopted, a candidate would be foolish to campaign in these States. He must get a substantial number of the 84% of the votes in the other 25 States to win. He will campaign where those votes are, and it will be to the majorities in those States to whom the candidate will be beholden.

Why must the A.B.A. mount a campaign to crush even further half of the States in this Union?

TV STATEMENTS BY SENATOR BYRD OF WEST VIRGINIA, ON PEACE TALKS, MINE SAFETY, AND FILIBUSTER DEBATE, JANUARY 21, 1969

Mr. BYRD of West Virginia. Mr. President, on January 22, 1969, I made statements for television regarding the Paris peace talks, a coal mine safety bill which I have introduced, and the debate on Senate rule XXII.

I ask unanimous consent that the transcript of these statements be printed in the RECORD.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

PARIS PEACE TALKS

I am hopeful that we are going to see some real progress at the peace talks in Paris, and I am encouraged by the indications that the Nixon administration is taking a firm approach toward the negotiations. I believe that the United States is negotiating from a position of military strength and that President Johnson in his last months in office paved the way for a settlement. The aggressive intentions of North Viet Nam have been severely thwarted by our military actions, and Hanoi knows full well that the United States possesses the full capabilities to resume, at any time, whatever military action is needed. I hope that we will not have to do that, and I don't believe that we will. South Viet Nam, because of our actions in helping its people, has become much stronger than it was, much more able to carry its fair share of its own burden. And I believe that if we continue to be determined and firm in dealing with Hanoi we shall see real progress toward a peaceful settlement in Southeast Asia.

COAL MINE SAFETY

Action is needed to reduce the tragedies which continue to occur in the coal mines of West Virginia and other states. This problem must be approached sensibly by all parties concerned and without any punitive aims in mind. I have introduced a bill which would allow a federal income tax credit to companies installing coal safety equipment and I hope that committee action will be favorable. The bill which I have introduced would give companies an added incentive to install such things as dust control systems which could reduce the danger of explosions and such diseases as black lung. I favor the tax credit approach because there are some small companies that cannot afford the cost of the equipment that would be necessary. We don't want to put any coal companies out of operation, because our state and other mining states need the jobs and the payrolls. On the other hand, an enlightened society can no longer afford to tolerate the loss of life and the loss of health that can result from working in the coal mines.

SENATE DEBATE ON THE FILIBUSTER

There is more than one side to this thing of ending the so-called filibuster in the Senate. Free debate prevented the passage of a bill in 1937 to pack the Supreme Court with members who would do the President's bidding. Free debate prevented the passage of legislation in 1946 to draft members of railway labor unions into the United States Army, and if there had been unlimited debate in the German Reichstag, it might have been possible to prevent the enactment of the Enabling Act which gave all power in Germany to Adolf Hitler. The majority today may be the minority tomorrow, and the right of unlimited debate is a valuable right for the protection of the small states and minorities, to check a ruthless majority. And it is particularly crucial to the protection, the endurance, and the lasting genius of our Republican form of government. What is needed in the Congress today is seldom greater speed, but always more thorough consideration in lawmaking. I am against the efforts to amend Rule 22 because I have seen how gag rule works when cloture is invoked. I am against gag rule. I am for free debate.

BONDING PROBLEMS OF BLACK CONTRACTORS

Mr. BAYH. Mr. President, during the past year, I have become increasingly aware of a problem which faces minority building contractors and, particularly the small black contractors. Numerous discussions with such contractors in Indiana and other States as well, have made it clear to me the great difficulty these men have in obtaining construction performance bonds. It is an important problem and merits close attention as we move to face the challenges of 1969.

The plight of the black contractor is especially relevant to the great dialog concerning our urban problems and rejuvenation of our inner cities. At a recent meeting in Philadelphia, sponsored by the NAACP, black contractors from 13 States gathered to organize the Afro-American Builders Corp. The difficulties of obtaining bonding to qualify for bidding on public works contracts was discussed. It was brought out that, ironically, black contractors are seldom able to bid successfully for demolition contracts to remove residential and commercial structures in areas of high black concentration which are slated for such public works as redevelopment or highway construction.

Public works contracts generally require a bond as a prerequisite to obtaining the contract. Nationally, according to the American Insurance Association, such contracts involve about $15 billion a year. There is, in addition, approximately $12 billion of bonded private work and $48 billion of normally unbonded work.

Millions of public dollars and increasingly large amounts of private capital are being committed to urban renewal and redevelopment. Related programs of manpower development and skilled apprenticeship training have been funded under public and private auspices. Unfortunately, very little of the money spent has found its way into the pockets of workers and businessmen in the black community. It is at best inconsistent to extol the virtures and potential of "black capitalism" and at the same time not provide black contractors with the capacity to compete effectively within the construction industry. The black contractor can be a key factor in reversing the dollar vacuum in the black community which has been created by generations of unequal access to competitive enterprise.

The Housing and Urban Development Act of 1968—Public Law 90–448, section 3—does provide, "to the greatest extent feasible," for the inclusion of area residents and businessmen in training, employment, and contracts for work performed in specified programs. The intent of the legislation clearly is to insure indigenous participation but the knotty

problem of bonding and equity requirements still exist. We must find a way to provide these black contractors, who have the performance capability, with assistance to meet the necessary bonding and equity requirements normal to the industry. I believe that their participation in programs of urban development is crucial and an important step toward increasing their importance to our economy.

Berkeley G. Burrell, president of the National Business League, an organization of black businessmen founded in 1900 by Booker T. Washington, suggested an approach to the problem in testimony before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency during hearings on proposed housing legislation for 1968. Mr. Burrell stated:

One avenue would be the establishment of a Small Builders Development Fund. . . . Such a fund can and should provide for direct bid performance and/or lien and completion bonds, and should underwrite or reinsure bonds written by others. It should also be enabled to make direct "seed" capital loans to builders who are technically qualified but economically ineligible to participate in the reconstruction of the inner city. Unless some such method is devised, few if any of our people will participate meaningfully in the remaking of their own physical environment.

Mr. Burrell's proposal merits serious consideration.

The black contractor is seeking the opportunity to be totally competitive. It is he more than any other black businessman, who has the potential for playing a vital role in the rebuilding of our inner cities and providing needed employment opportunities for residents of the affected areas.

I ask unanimous consent to have printed in the RECORD a very timely and informative article written by Mr. Vincent Cohen, staff writer for the Washington Post, which appeared in the Tuesday, January 21, 1969, issue and deals with specific problems facing black contractors.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BUILDING BOND PREJUDICE CITED

(By Vincent Cohen)

John Davies was awarded a $9000 Navy contract for subcontracting work at the David Taylor Model Basin in Maryland last year. The general contractor required him to submit a corporate surety bond for the work. Davies is black.

He applied to more than a dozen bonding companies. He was turned down by all of them, although he had completed jobs larger than $9000 without a bond. The contract was taken from him and offered to the second choice, a white contractor who got a bond—and the job.

The problem faced by John Davies is similar to the problems of 8000 minority contractors around the Nation.

They find it virtually impossible to get bonded and without bonds they cannot compete for what they feel is their fair share of the $100 billion spent in construction each year.

The obstacles facing contractors like Davies are rooted not only in the normal problems of business but in traditional patterns of discrimination and in what black contractors feel is unfairness on the part of the bonding companies.

They form a vicious circle from which, until recently, there was no way out.

A construction bond is a guarantee to the owner of a project that a contractor can do the job well and that he can finish it. If the contractor fails, the company that issued the bond is liable for any damage or inconvenience incurred by the owner.

Surety companies say they use three criteria in judging whether to bond a contractor: capability, character and credit. Surety association statements like the following, minority contractors contend, show there is a fourth "C"—color.

"As contractors, Negroes and other American minorities lack the necessary management and technical skills, experience and financial capacity. As a result, they operate at a low level of efficiency, organization and profitability."

This assertion came in an American Insurance Association statement to the Small Business Administration Construction Task Force, Sept. 10, 1968.

Davies and other members of the Washington Area Contractors Organization, a group of black contractors, say generalizations like the Association's statement show prejudice against them by the surety companies. The companies say the problem lies in the inability of minority contractors to fulfill adequately the three "C's."

The greatest problem, according to David Q. Cohen, spokesman for the surety industry, is the first "C"—capability.

Only in recent years has a handful of blacks and other nonwhites penetrated construction union ranks. This exclusion has cut them off from training that has proved valuable to white contractors.

Even with the absence of this training, contractors like Davies get jobs and complete them successfully. But Davies admits organized training for minority noncontractors and construction workers is badly needed.

Davies and other WACO members say bonding company judgments of contractor character are "subjective, to say the least." Surety companies admit their decisions are subjective. But they say each contractor must be considered in light of the job for which he wants the bond and of his record. They have issued repeated statements to SBA denying that race is a factor in their deliberations.

Cohen and others involved in bonding say past business dealings and on-the-job attitudes are the main points considered.

The credit criterion boils down to one thing: can a contractor get enough unrestricted cash to do the job and protect himself and the owner in case of unforeseen problems?

The assets of most minority contractors are limited to the capital they have saved from their construction work. Surety companies look on most loans against personal or company assets as liabilities, even if they temporarily put cash in the company account.

Many of the larger well-connected white contractors have made use of the funds of friends and family. Minority contractors are hard put to find such resources.

Black contractors, like Davies, feel that surety companies and government officers who require 100 per cent of the bid price of a job in ready liquid assets are unfair.

From 10 per cent to one-third of a project's price is usually needed to complete the first part of the job. After this, the contractor receives the first draw on the contract payment from the owner.

The problems of the minority contractor are now being studied by private and government agencies.

The Small Business Administration has developed an 18-city program called Action Construction Teams. The NAACP recently announced an organization called the Afro-American Builders Corporation already involving 1200 contractors in 20 cities.

In Washington, the Washington Area Contractors Association and Uptown Progress, a group of black mid-city businessmen planning for urban renewal, have plans for breaking the bonding wall.

The working model is the General and Specialty Contractors Association, Inc., of Oakland, Calif.

This group received a $300,000 grant from the Ford Foundation last year to develop programs to upgrade minority contractors and solve the bonding problem.

The resulting program provides working capital loans for member contractors.

GSCA also offers management training for contractors who may have construction ability but not business management know-how. Construction employe training is also given.

GSCA also helps its contractors bid on jobs and fill out bonding applications. Surety companies say faulty applications account for many bond rejections.

When the bond is obtained, GSCA advisers assist the contractor in construction performance. GSCA accountants help with the books and GSCA lawyers advise on legal matters.

After the member contractor completes a job, GSCA, advisers urge him to move immediately to a higher-priced project. When he reaches $2.5-million jobs, he is on his own.

Surety company executives, bond officials, community leaders and white contractors in the Oakland area sit on GSCA's board and assist in program development and implementation.

N. G. Tademy, a black GSCA contractor, advanced his job range from about $130,000 to more than $300,000 in the first six months of GSCA's operation.

Davies and other minority contractors say they need the large and profitable government jobs to grow. But the government has very stringent bonding requirements on all jobs over $200,000.

However, the Federal requirement for neighborhood company participation in the redevelopment of cities may force big white contractors to take in minority group members as partners to get part of the redevelopment money.

With billions to be spent on construction in 1969, contractors like John Davies now have some hope of moving up instead of around in a circle.

SALUTE TO CULVER

Mr. HARTKE. Mr. President, the Presidential inauguration of January 20, 1969, was visited by some of our country's finest young people. They came with their band directors and school chaperons from all over the Nation to help commemorate an historic occasion. Among them was a group of 95 young men from Indiana's Culver Military Academy. They were members of the Black Horse Troop of Culver, the largest military equestrian unit in the United States. It was Culver's sixth appearance in a Presidential inaugural parade and once again these young men conducted themselves in a most exemplary manner, gaining favorable comment from all with whom they came in contact and adding new luster to the great names of Culver. Let me add that it was my personal pleasure to be with the Culver men and their young lady guests at a dance here in Washington. I can report that they conduct themselves as gentlemen not

only when they are on parade but on social occasions as well.

These young men are a vital part of the bright hope for America's future, and I am pleased to take this opportunity to offer this salute to them and to Culver Academy's tradition of excellence which they so admirably represent.

JUNIOR LEADERS OF AMERICA

Mr. McGOVERN. Mr. President, some months ago, on May 13, 1968, I brought to the Senate's attention a remarkable youth program called Junior Leaders of America, which was being operated and funded locally in Yankton, S. Dak. This program was initiated by a student of Yankton College, of Richfield, Ohio, in his effort to meet youth recreation needs in the city of Yankton.

It is my pleasure to report the progress of Junior Leaders of America, up to date, and further explain this unique concept of recreation for elementary children.

The concept, which Mr. Tom Osborne advanced, is new and its value has been quickly grasped by people at State and even national levels whose business it is to know what leadership is and how it can be developed through this kind of program—reaching children early in recreation which attracts every young person.

Officials of the Greater South Dakota Association and our Industrial Development Association—IDEA—have made trips to visit with Osborne about expansion of his idea; Gov. Frank Farrar gave Osborne a lengthy taped commentary for the radio; he has been given national attention on a network news commentary.

Both Senator MUNDT and I have spoken to the Junior Leaders of America in Yankton on the basics of leadership, and on our roles in that regard.

Newspapers as distant as New York, Ohio, and Indiana have given descriptions of this program's beginning and conception. The local success of this concept of city recreation for elementary schoolchildren has been reflected at such distant points as Richfield, Ohio; Rock Springs, Wyo.; Oxford, Ohio; Pendleton, Ind.; Vancouver, Wash. Officials in these places have made inquiries relative to initiating Junior Leaders of America programs in their towns and cities.

Meetings have been held with various industrial leaders in South Dakota to arrange for the presentation of the program. Spearheading the industrial movement is Mr. Mark Bolluyt, executive of Dale Electronics, Inc., in Yankton.

Mr. Whayne Moore, district manager of the Chamber of Commerce of the United States, endorsed Junior Leaders as an "exciting and imaginative concept for building the leadership of tomorrow."

Another person who is closely associated with this project, program, and concept of Junior Leaders of America is Mrs. Dale Bruget, society editor for the Yankton Press & Dakotan. Mrs. Bruget is recognized for her dedication to causes and many interests, as well as Junior Leaders of America. Her ability to recognize ideas and ideals and to make them realities is reflected in Junior Leaders of America. In her capacity as a journalist for the past 30 years she has been the promoter of many projects which have benefited her city, State, and country.

The Junior Leaders of America concept is a study in the basic requirements of our American society. It is a very basic, necessary and vital approach to city recreation programs for youth, embracing the ideas and goals of many administrators and their views of youth recreation.

Being preparatory in nature, the Junior Leaders concept uses citywide recreation and athletic activities for children as a means for development rather than an end in itself.

It attempts to embrace four concerns of our American system: leadership, citizenship, responsibility, and followship. It attempts, through its approach to recreational activities, to put these to work through the action of the young people within, during, and throughout the entire Junior Leaders program.

This approach to city recreation for children embraces the trial and error method of learning these vitally important basics of the American system. Too often young people are expected to understand and use, flawlessly, these basics of social order when they never before have had contact with them. In light of this, Junior Leaders serves as a positive checkpoint for every city bringing young people together through a common media they all enjoy, and in this positive atmosphere teaching them to accept the basics of leadership and followship and allowing each and every one of them to lead, direct, teach and discipline their own peers. In contrast to this, we see the law enforcers in cities dealing with child after child who has used his one and only chance to fail in our social order. He must be dealt with by our courts. The Junior Leader is encouraged to try again, and again, and learn to identify with responsible authority, which is there to understand and respect him. Two areas of this program are particularly outstanding and will more fully illustrate this program's dynamics and positive teaching approach in the area of city recreation for children.

The first is personal encounter. This is an action experience through which the young person is brought into personal contact with various officials of his city, State, and country. These officials represent the senior leaders and seek to identify with the Junior Leaders in a positive atmosphere by relating their concept of leadership and the basics of our society.

As this program selects children to be leaders for each day's activities, the children are taught how to teach each activity to their peers, thus making them more fully independent as they conduct their own city recreation program. This requires each young person to assume full responsibility as he communicates in his own words the activity he has studied and learned under the direction of adult supervisors.

Yankton's Junior Leaders program has had from 600 to 1,000 participants out of a population of 12,000 people. No attempt has been made to recruit participants—the children have responded naturally and with real enthusiasm.

The program—especially its development as a voluntary college student endeavor and its teaching approach has won the respect and admiration of the entire community of Yankton.

The success of Junior Leaders of America in Yankton shows that a need is being met, and inquiries received from elsewhere indicate a similar need in other localities.

Tom Osborne is presently seeking funds in the interest of establishing a 1-year feasibility study to expand the program. During the 12-month study period, directors of Junior Leaders of America propose to conduct the Yankton citywide recreation program as a working model; polish the local program and project its functions to larger scope; investigate various areas involved with program expansion; study potential developments such as personnel training workshops; the building of a national headquarters which would serve as a hub for all regional national programs, training centers for directors, planning center for continuing advancement of the concept, and sources of Junior Leaders equipment and materials. This 1-year period of study and investigation is seen as a laboratory for the perfection and proving of the Junior Leaders of America program.

SUPPORT BY THE CATHOLIC PRESS FOR A DEPARTMENT OF PEACE

Mr. HARTKE. Mr. President, yesterday I spoke of the spontaneous reaction which has taken place throughout the country in support of the Hartke-Halpern proposal for a Cabinet-level Department of Peace. Introduction of the bills on a bipartisan basis, with both Republicans and Democrats cosponsoring in both Houses, took place last September.

The developments of which I spoke yesterday—interest by individuals, organizations, professors of government, churches, the press, and broadcast media—have comprised the largest response in my experience to a bill introduced late in the session with no action expected until after its reintroduction. This, Mr. HALPERN and I plan to do on February 6.

At the close of my statement yesterday, I placed in the RECORD by unanimous consent the text of an article titled "The Department of Peace," written by Dr. Allen Parrent, international affairs program director in Washington for the National Council of Churches. The text was from the Protestant organization's twice-monthly magazine Tempo.

Today I wish to share some of the response the bill has met with in the Catholic press, particularly due to the distribution of a feature article on the topic by Catholic Press Features of Bellerose, N.Y. The editor of CPF, J. D. Nicola, called my office shortly after the bill appeared. His subsequent article appeared in Catholic papers with a circulation in excess of half a million. One result was a considerable number of letters from Catholic clergy and presumably, while not identifiable in themselves, laymen as well, seeking copies of the bill or additional information. Among the papers which ran the Catholic Press Features story were the following, of which I have received tear sheets: The LaCrosse, Wis.,

Times Review; the Rockford, Ill., Observer; the Fresno Central California Register; the Winona, Minn., Courier; the San Francisco Monitor; the Burlington, Vt., Catholic Tribune; the Lake Shore, Erie Diocese, Visitor; the Springfield, Mo., Mirror; the Oakland Catholic Voice; the Portland, Maine, Church World; and the Milwaukee Catholic Herald Citizen.

It is most likely there were others, perhaps a significant number of others, which did not come to attention. Many of those named gave front page space to the story, and at least one, the Milwaukee paper, gave support through an editorial as well.

Mr. President, I ask unanimous consent that the Catholic Press Features article referred to may appear in the CONGRESSIONAL RECORD as printed in the papers named above, together with the editorial by Father Thomas R. Leahy in the Milwaukee Catholic Herald Citizen.

There being no objection, the article and editorial were ordered to be printed in the RECORD, as follows:

[From the Milwaukee Catholic Herald Citizen, Nov. 1, 1968]

PROPOSED IN CONGRESS: DEPARTMENT, ACADEMY OF PEACE

(By J. D. Nicola)

WASHINGTON, Bellerose, N.Y.—A governmental Department of Peace and a national Peace Academy—frequently suggested by religious groups in the U.S.—have been officially proposed in the Senate and the House of Representatives.

A bill for both a Peace Department and a Peace Academy comparable to the Army, Navy and Air Force academies was introduced in the Senate by Sen. Vance Hartke, a Democrat from Indiana, and in the House by Rep. Seymour Halpern, a Republican from New York.

In introducing his bill, titled the "Department of Peace Act," Senator Hartke announced that it was being co-sponsored by himself, Republican Sen. Mark Hatfield of Oregon and Democratic Sen. Ralph Yarborough of Texas as evidence of the bill's bipartisan support.

He said that although a federal Department of Peace had been proposed as far back as the time of the Founding Fathers and although similar proposals died in committee over the years, "here is a sound idea which has had to wait until the climate of opinion is ripe. Now, I believe, its time has come."

A national Peace Academy, where men and women could study the "science of peace," was suggested at the national convention of the Christian Family Movement two summers ago and has since become a CFM cause, with members being asked to write their Congressmen and Senators urging support for such a proposal.

The Hartke Senate bill—and its counterpart in the House—proposes the establishment of a federal Department of Peace, to be headed by a Secretary of Peace, and whose primary "function and purpose will be to promote the cause and advancement of peace both in this Nation and throughout the world," according to Hartke's bill.

The bill would put under the new department's control such existing agencies as the Peace Corps, the Arms Control and Disarmament Agency, the Agency for International Development and the International Agricultural Development Service.

But most importantly, the Department of Peace would establish an "International Peace Institute," whose purpose would be "to prepare citizens of the United States for service in positions or programs relating to the field of promoting international understanding and peace."

At the institute, special emphasis would be placed on studies which "will best prepare students for leadership in the nonviolent resolution of international conflicts and in the promotion of international understanding and peace," according to the bill.

Senator Hartke suggested that the curriculum might include such subjects as "the means of relieving world hunger through the exchange of international agricultural advancements, oceanography and marine biology. The peaceful uses of atomic energy worldwide should be of prime consideration in the establishment of curricula."

"In many respects, the Peace Institute is a parallel to the service academies," Senator Hartke told his Senate colleagues in introducing the bill. "We now train at special institutions—West Point, Annapolis, and in Colorado—for leadership in the three branches of military service; certainly it is fully as logical to establish a small institution to train for peace."

He said creation by the U.S. Government of a separate Department of Peace would give stature and recognition, "wholehearted and unabashed," to the nation's desire for peace. Also, he said, waging peace requires as much planning and organization as waging war:

"Goodwill of itself can do nothing. It needs organization, leadership, the application of brain and ingenuity, of technology and morality, on a scale such as we have never before attempted. . . . If we have needed a Department of Transportation and a Department of Urban Development because of the proliferation of independent but related efforts in their field and because the times demand it, then how much more we need the concentrated and positive efforts a Department of Peace such as this could command."

The Christian Family Movement got involved with the national Peace Academy idea as a result of the campaign waged by Mr. and Mrs. Dan Lucey, national CFM committee members from Oakland, Calif., whose own "Committee for a National Peace Academy" has drawn considerable press coverage and editorial support from such Catholic publications as *Ave Maria* magazine and *The Catholic Voice*, newspaper of the Oakland diocese.

The Luceys, parents of nine children, started their campaign in 1966, after a visit to the Air Force Academy at Colorado Springs, Colo. Why always "military" academies, they wondered, and why do all the nation's shrines commemorate military heroes and events? Where, in a country dedicated to peace, were the shrines and symbols honoring peace?

From that, the Lucey's Peace Academy idea grew, with appearances on West Coast radio programs, a newsletter, a prized endorsement from Sen. Robert F. Kennedy, and an invitation to present their ideas to the Christian Family Movement convention at Notre Dame in the summer of 1967.

(When Martin Luther King was assassinated, the CFM president couple, Pat and Patty Crowley, sent a telegram to President Johnson suggesting that a National Peace Academy be erected in his honor.)

The Luceys have even proposed a curriculum for teaching the "fine arts of peace," including such subjects as "Economics and Peace," "Literature and Peace," "Migration and Peace."

"Some day we may be faced with peace," Lucey, a post office employee, remarks, "Who will work it out? The generals the men trained in war," he answers, noting that even when the President visits other countries on a peace mission, he is accompanied by a retinue of military aides.

Praising the Lucey's Peace Academy proposal, *Ave Maria* saw the academy as "the academic counterpart of the Peace Corps, and the assemblage of the finest faculty in the world would insure a continuity on a graduate level as well for Peace Corps returnees who wish to pursue their work on behalf of mankind."

Oakland's *Catholic Voice* has described the Peace Academy idea as one that "can affect the whole world.

"However . . . the idea of a national Peace Academy will not even receive the hearing it deserves without massive public support—both in the form of discussion and by writing to the President and Congressmen urging that meaningful consideration be given this valuable area."

[From the Milwaukee Catholic Herald Citizen, Nov. 1, 1968]

A DEPARTMENT AND ACADEMY FOR PEACE

(By Father Thomas R. Leahy)

Some readers will recall the time when the top federal secretariat for external security was called the War department. More recently that name has been changed to the Department of Defense, certainly a less bellicose nomenclature.

The feature page of this issue highlights an article on the establishment of a proposed cabinet-level Department for Peace and also a national Peace academy.

No, these proposals have nothing directly to do with the current conflict in Vietnam. Neither do they stem from war protesters at home or abroad.

But why should there not be a positive and forthright advocacy for these proposed new national agencies? The question bears further consideration.

If the president's cabinet includes such functionary posts as secretaries for transportation and the post office, why logically should there not be a similar top-level secretariat for the promotion of world peace, which perhaps is just as desirable as getting the mail through on time?

Actually these two fascinating proposals were introduced as bipartisan bills during the recent session of the Congress. Democratic Sen. Vance Hartke of Indiana, joined by Republican Sen. Mark Hatfield of Oregon and Democratic Sen. Ralph Yarborough of Texas, introduced such a bill in the Senate. Similar legislation was proposed in the House by Republican Rep. Seymour Halpern of New York.

Neither bill got very far, unfortunately, but there's always another chance when the new House and Senate are seated in 1969.

The United States already has seen fit to establish at least four national service academies: at West Point (army), Annapolis (navy), New Haven (coast guard) and Colorado Springs (air force).

Now if these excellent training establishments exist for the fine art of war, it might also be logical to introduce a national academy for peace, a subject which Pope John hailed as that "exalted task," in his authoritative encyclical, Peace on Earth.

As has often been said (but soon forgotten), peace is not just the absence of war; rather it is the prevailing presence of truth, justice, love and freedom.

The Hartke bill would have put under the proposed Peace department's control such existing agencies as the well-proved Peace corps, the Arms Control and Disarmament agency, the Agency for International Development and the International Agricultural Development service.

Besides the cabinet post and peace department, the late bills also called for the establishment of an academy or institute which, on a much smaller basis than the other national service academies, would train America's finest young men and women in the fine art of peace, certainly a practical national goal.

Presumably, candidates for the proposed peace academy would be subject to the same investigation and appointment procedures as now exist for West Point and the others.

Nothing will promote the creation of a Department and an Academy for Peace but massive support from public opinion. This of course means expressed public opinion through letters, telegrams and phone calls to your Senator and Congressman or their successors to be elected shortly.

Christ said, quoting the customary Hebrew farewell, "Peace I bequeath to you, my own peace I give you . . ." Perhaps this bequeathed peace is the earthly kind that men of good will must attain by their own striving, persistence and creativity.

HOPE FOR CONTINUED PROGRESS

Mr. BYRD of West Virginia. Mr. President, the editorial in the Washington Post today entitled "Mr. Hickel's Opportunity" expresses what many Members of the Congress and many citizens probably feel about the new Secretary of the Interior.

The editorial makes the point that a new President is entitled to name his Cabinet, and that, I believe, is a valid contention. It also makes the point, which I believe is valid, and perhaps more significant, that Mr. Hickel is now on notice that there is concern in Congress and in the country generally as to how he proposes to go about meeting his responsibilities in such matters as conservation, water and air pollution and so on.

I voted to confirm Mr. Hickel, for I believe that a President should be allowed to surround himself with the men of his choice, unless there are serious and substantive reasons for denying him this right.

The Senate Interior Committee reported Mr. Hickel's name favorably by a vote of 14 to 3 after thorough hearings and careful questioning of Mr. Hickel, and it was the feeling of the majority of the committee that the nominee had clarified, to the satisfaction of most members, the questions which had been raised by Mr. Hickel's off-the-cuff remarks made at a press conference some time ago. Statements by Mr. Hickel at that press conference were the cause of much concern on the part of many citizens who are interested in good conservation practices.

I think the Post's editorial puts the matter into good perspective. I would add that I hope the new Secretary takes advantage of the opportunity that has now been given him to continue the progress that predecessors have made in the areas that affect the lives of so many Americans.

I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

MR. HICKEL'S OPPORTUNITY

The Senate's confirmation of Walter J. Hickel to be Secretary of the Interior had been taken for granted because of the strong feeling that selection of a Cabinet is the President's responsibility. The Senate would not have been justified in refusing to confirm the President's nominee in the absence of any scandal, official misconduct or evidence of gross unfitness for the job. No such showing has been made.

The hearings and the debate in the Senate brought to light, however, a good deal of concern about Governor Hickel's concept of the job assigned to him. Is he really a conservationist at heart? Can he put aside his big-business leanings in the past in order to administer the difficult oil-import quota system in the public interest? Will he be sensitive to the water-quality problems of the big cities? Will he be genuinely interested in protecting and expanding the wilderness system and the country's national parks and recreation centers?

At least the debate over Governor Hickel's nomination has served to alert him to the sense of national concern about these problems: He is on notice that the country will expect much from his department over the next four years. From this viewpoint we think the debate has been salutary. It is a good example of how a democracy functions to help its officials meet the public demands upon them.

Governor Hickel responded to the ordeal of public scrutiny with a large measure of flexibility. His willingness to maintain the freeze on public lands in Alaska so that the present Congress can pass upon native claims (contrary to the views he had expressed as Governor) suggests that he is capable of shifting to a national horizon. Similarly his stance in regard to the cleaning up of polluted rivers appears to have broadened along with his new responsibilities.

Being a man of great energy and an executive of known ability, Mr. Hickel could prove to be a great Secretary of the Interior. It will depend upon how he applies himself to his vast responsibility for improving our living environment from this point on. Now that he knows how Congress and the country feel about clean rivers and lakes, pure air to breathe, green space for enjoyment and fair administration of the country's great natural resources, we hope that he will give the kind of leadership that is required for continued progress.

CONCLUSION OF MORNING BUSINESS

The VICE PRESIDENT. Is there further morning business? If not, morning business is closed.

AMENDMENT OF RULE XXII

The VICE PRESIDENT. The Chair lays before the Senate the pending question, which will be stated by the clerk.

The BILL CLERK. The motion of Mr. HART to proceed to consider the resolution (S. Res. 11) to amend rule XXII of the Standing Rules of the Senate.

The Senate resumed the consideration of the motion.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, when I introduced Senate Resolution 11, on January 9 of this year, in the welcome company of its cosponsor, my worthy Republican colleague, Mr. PEARSON, I emphasized the very temperate nature of the change we proposed in the rules. I said:

Let me stress that by amending Rule XXII to provide that three-fifths, rather than two-thirds, of those Senators present and voting may invoke cloture, we would work no rash or radical change. This proposal is a modest one, moderate in its purpose and reach. It is anything but a "gag rule." It would not alter the essential character of the Senate as a deliberative body. It would not undermine nor even jeopardize the opportunity for extended debate.

Indeed, the real issue we face is quite the reverse. The long history of the filibuster has shown that Rule XXII, as presently written, places undue power in the hands of the few; the requirement that two-thirds of the Senators voting must concur before debate can be limited, raises a nearly-insurmountable barrier in the procedural path of even a substantial majority. The present filibuster rule is too formidable.

Proof of this fact is to be found in the history of the Senate itself. Since 1919, 44 attempts have been made in the Senate to limit debate by invoking cloture under the two-thirds rule. Only eight of these have proved successful. The figures speak for themselves. When the Senate, in 44 attempts over a period of half a century, has managed to limit debate on only eight occasions, it should be obvious that the present rule is too strict.

I foresee a time, Mr. President, when this country is beset by a grave crisis which calls for legislative action in the Senate, and we find ourselves unable to respond, held fast in the grip of rule XXII. Our paralysis will then occasion a public uproar of such proportions that we shall see the cloture rule swiftly swept away. All the hallowed habits of the Senate will then be cast aside, and a real "gag" rule will be instated here. In short, Mr. President, I fear that the very Senators who now defend rule XXII with such rigidity, may then be proven their own worst enemies, having themselves insisted upon the retention of the very rule that precipitates the one eventuality they most dread, the destruction of the Senate as a unique institution among parliaments, where the right to extended debate lies strongly fortified in its rules.

Modifying rule XXII by reducing from two-thirds to three-fifths the number of Senators present and voting required to limit debate, would reduce the chances of such a downfall from ever occurring. Morever, the three-fifths rule, which I believe a substantial majority in the Senate favors, would rest upon a consensus so strong that it would, in truth, form a better shield against the eventual adoption of majority cloture, than the rule in its present form.

For these reasons, I believe that the best interests of the Senate would be served if a majority were permitted to pass judgment on the three-fifths proposal. For 12 days now, we have been debating whether or not to take up the proposal and debate it on its merits. Surely the time has come for the Senate to bring the debate on this preliminary motion to a close. Accordingly, under the provisions of paragraph II of rule XXII of the Standing Rules of the Senate, I send to the desk a motion signed by myself and 34 other colleagues to bring to a close the debate on the motion to proceed to the consideration of Senate Resolution 11, and ask that it be read.

The VICE PRESIDENT. The motion will be stated.

The assistant legislative clerk read, as follows:

MOTION FOR CLOTURE

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the motion to proceed to the consideration of Senate Resolution 11, a resolution amending the Standing Rules of the Senate.

FRANK CHURCH, GEORGE MCGOVERN, PHILIP A. HART, JENNINGS RANDOLPH, FRANK E. MOSS, QUENTIN BURDICK, EDMUND S. MUSKIE, CLAIBORNE PELL, GAYLORD NELSON, WILLIAM PROXMIRE, JAMES B. PEARSON, CLIFFORD P. CASE, CHARLES GOODELL, EDWARD KENNEDY, VANCE HARTKE, CLINTON ANDERSON, HARRISON A. WILLIAMS, JACOB JAVITS, EDWARD W. BROOKE, HAROLD E. HUGHES, JOSEPH D. TYDINGS, JOHN O. PASTORE, LEE METCALF, STEPHEN M. YOUNG, MIKE MANSFIELD, STUART SYMINGTON, ALBERT GORE, THOMAS J. DODD, THOMAS J. MCINTYRE, FRED R. HARRIS, MARK O. HATFIELD, HENRY M. JACKSON, HUGH SCOTT, HIRAM L. FONG, EUGENE MCCARTHY.

Mr. PEARSON. Mr. President, will the Senator yield?

Mr. CHURCH. I am happy to yield to the distinguished Senator from Kansas (Mr. PEARSON), with whom, may I say, it has been a pleasure to work during the past 12 days. I want him to know how much I appreciate his cooperation and assistance.

Mr. PEARSON. I thank the Senator.

I wish to associate myself with the statement made by the distinguished Senator from Idaho. This rule, created out of necessity in 1917, is one that has been modified on a number of occasions, by precedent and by action of the Senate itself. Amendments in 1949 and again in 1957 come to mind, all designed to make this a more usable instrument in the proper conduct of the public business in this Chamber.

We live in times really very much different than even a decade ago, when this rule was last modified. Critical issues and problems surge upon us, not in sequence, but all at the same time, often demanding almost immediate action—action which touches upon almost every aspect of American life, and the issues of war and peace.

I hope this proposal can be considered. As the Senator from Idaho accurately states, we have been debating for 12 days a motion even to consider the resolution to make this change—I think a reasonable change—to three-fifths or 60 percent of the Senators present.

I ask the Senator from Idaho, whether, under the procedures we now follow, under rule XXII, it would take two-thirds of the Senators present and voting to cut off the debate at this time. Is that correct?

Mr. CHURCH. That is correct. As the Senator knows, the constitutional question was posed to the Senate itself a few days ago, as to whether or not, in the judgment of the Senate, a majority is sufficient, at the commencement of a Congress, to limit debate. The Senate voted that it was not, and I think, for purposes of the 91st Congress, that question has been settled.

Of course, the constitutional issue can—and in all likelihood will—be raised again at the commencement of the next Congress. It is evident that the trend is in the direction of establishing this constitutional proposition.

Mr. PEARSON. On Tuesday next, it will require two-thirds of the Senators present and voting to limit debate on this matter?

Mr. CHURCH. Yes; this cloture motion is brought within the rule, and it will take two-thirds to invoke cloture.

Mr. PEARSON. But if we reach the point of being able to consider the resolution itself, what vote would be required to agree to the resolution?

Mr. CHURCH. Then a majority could decide, if the Senate is permitted to vote on the merits.

Mr. PEARSON. I thank the Senator.

Mr. CHURCH. I should like to make one further observation.

In 1967, when the constitutional question of the right of the majority to act on changing the rules at the commencement of a new Congress was presented, the vote to sustain that proposition was 37 to 61. This time, when the vote was taken, the result was 45 to 53. The Senate has come within eight votes of establishing the proposition that, under the Constitution, the majority has the right to act.

I, as one Senator, would prefer not to have to go through that door; but so long as it is the strategy of those who defend rule XXII to prevent even a substantial majority of Senators from passing judgment on a modification so temperate as that which is now proposed, then we are left with no alternative but to seek entry through the constitutional door.

History is on our side. My plea to those who defend rule XXII is to look back upon the trend; to look ahead toward the likelihood that a majority will avail themselves of that door sometime in the near future; and then to consider how preferable it would be to come to a settlement with respect to rule XXII of the kind here proposed. I think that such a settlement would rest upon a consensus in this body so strong that we would not see the day when majority cloture would again loom as a serious possibility.

Those are the two alternatives. I would hope that it might prove possible for us to move ahead with the debate on the merits of the issue, and then to have a majority decide upon the three-fifths proposal.

Mr. PEARSON. I thank the Senator.

Mr. HOLLAND. Mr. President, this effort has taken a decidedly different direction from that which it took when the resolution was submitted. I shall not weary the Senate by quoting at length the colloquies that took place in the beginning. The two Senators will recall that from the very beginning it was made clear that those who submitted the resolution, and other Senators, as well, regarded the resolution as timely because they were of the feeling that majority cloture on the limited question of changing the rules could be voted upon and accomplished at the beginning of each Congress. It was not accomplished, and my distinguished friends have made it very clear that they recognize that it was not accomplished, and that for this Congress the rule now is that unless there be a two-thirds vote for cloture, cloture cannot be invoked. I so understood my distinguished friend from Idaho, and I so understood my distinguished friend from Kansas.

I call attention to that fact because that makes it quite clear that it is not necessary to bring up such a resolution as this in the opening hours of a Congress, but that it is instead possible and, I think, desirable and wise to bring up this question in the regular way as a resolution to be studied by the appropriate committee, on which hearings should be held and on which the matter will effectively come to the Senate floor for discussion. Such a course has been followed many times since this particular Senator became a Member of the Senate, in the last 22 years or more. In each instance, the matter was regarded as one for negotiation. In two instances, the negotiated change was worked out. In each instance, a negotiated change was accomplished which was very meaningful.

The last change was accomplished in 1959, according to my recollection, and was accomplished upon a negotiated settlement reached by the entire leadership on both sides of the aisle. The RECORD will show that the then distinguished majority leader, Mr. Johnson, and the distinguished minority leader (Mr. DIRKSEN) were joined by all the other members of the leadership. My recollection is that the Senator from Montana (Mr. MANSFIELD) was the whip on the Democratic side at that time, and that he joined in that negotiated settlement. My recollection is that the distinguished former Senator from Arizona, Mr. Hayden, who was the President pro tempore, joined in a negotiated settlement. My recollection is that, in addition, Senator DIRKSEN was joined by his two distinguished colleagues as of that time, who made up the whole Republican leadership. They were the Senator from Massachusetts, Mr. Saltonstall, no longer a Member of the Senate, and the Senator from New Hampshire, Mr. Bridges, unfortunately no longer among us. The change in the rule adopted at that time was by a vote of 72 Senators. It was regarded as a satisfactory solution of this problem by the leadership on both sides and by 72 Senators who, by their votes, approved it.

I think I should again remark that one of the Senators among the 72 who joined was the then Senator from Minnesota, Mr. Humphrey, who for some reason satisfactory to himself and, I am sure, to his conscience—because he is a man of conscience—took a different position and ruled in a different way in the Senate a few days ago when this question came on for a ruling. The Senator from Idaho (Mr. CHURCH) has correctly stated that the ruling by the then Vice President was appealed from and that the Senate refused to sustain the Vice President's ruling, thus disposing of the constitutional question and, incidentally, disposing of it without debate. Thus,

there is no longer the urge for a hurried settlement, a settlement not studied by committees, not negotiated by the leadership on both sides, not testified to by Senators who have had long experience in this field.

So I suggest to my distinguished friends that I think they will not find it too difficult to have this matter referred to the appropriate committee, studied, and reported to the Senate. If, as they say, there is large sentiment for a change from a two-thirds to a three-fifths affirmative vote requirement, I suspect that proposal, or something like it, can be worked out.

Mr. CHURCH. Mr. President, will the Senator yield?

Mr. HOLLAND. I am glad to yield.

Mr. CHURCH. I hope that the forecast the Senator makes will prove to be the case; but earlier in this debate I placed in the RECORD a history of attempts to alter rule XXII since 1959, when repeated reference of proposed changes to committee resulted in no action. Again and again, we have been told, "If you will only take the normal route, it will be possible to bring this matter to the Senate and have the Senate settle it." But this has not proved to be the case. Even animals are supposed to learn by experience. We must bring this issue to the Senate at the commencement of its session, because the normal procedures have repeatedly failed to produce results.

Mr. HOLLAND. I thank the Senator for his comment. I invite his attention to the fact that it is quite obvious that there is not complete agreement in the Senate, even on the part of those who want a change, as to whether this particular suggested change is appropriate, because I find on my desk an amendment prepared by the distinguished Senator from Iowa (Mr. MILLER) which is very meaningful. I suspect that my friends have seen it. No doubt other amendments will be offered in committee.

The point I am making, Mr. President—and I am pleading now a matter already pleaded in extenso by my distinguished friends—is that we have many new Members of the Senate. We have 16 new Members who have never voted on this question heretofore. I am sure they have convictions. I am sure they will have convictions after they have heard this question properly discussed in committee.

The leadership on both sides of the aisle is new. I am looking at the distinguished whip on this side of the aisle, who has just assumed that position. Another Senator, who is new in the leadership, has just assumed the similar position on the minority side.

My understanding is that there are other changes in the leadership on the Republican side, and I am sorry that I am not completely familiar with them, as to the personnel who are presiding over the conference and over the policy committee.

There are changes, and my observation in the past has been that when there are changes, there are sure to be differences of opinion that did not exist before.

Mr. President, my feeling is that there was some reason for the precipitous action of my distinguished friends when they thought that the Senate might rule, as the Senate did not rule, that majority cloture was available at the beginning of the Congress on this particular question to change the rule. I see no such justification at this time.

May I say to my distinguished friends that I should like to place in the RECORD a few observations, without seeking to debate this question at length, because I understand that numerous Senators wish to leave for the weekend. I have no desire to detain them, and I am sure that my friends who have an opposite position on this resolution are agreeable on this point, because I have discussed the matter with some of them.

One thing I wish to repeat, because it should be repeated over and over again, is that rule XXII is a rule of limitation of debate—the first time in its history that the Senate has had such a rule. I am familiar with the discussion about the previous question rule from 1789 to 1805. I think all the authorities show that that was not the previous question rule as we now know it; and there was no limitation of debate by Standing Rule of the Senate from the time it came into existence until this rule was adopted in 1917—and I think properly adopted, because there had been abuse of unlimited debate.

So this is a rule of limitation, and it has been twice changed in my own brief service in the Senate—as I have said, of some 22 years plus—both times in such a way as to liberalize the rule or to make it more effective in the event limitation was required. I shall not go into the details of those changes, because all Senators know what they were. I am certain that Senators will agree that they were liberalizing changes and that they were entered into as a result of negotiations; and even many of us who strongly and steadfastly support rule XXII supported the liberalized rules. I was one who did so in 1959.

Further, I want it again shown in the RECORD, so far as the Senator from Florida is concerned, that he regards this rule as a two-edged sword. He has voted twice for cloture in appropriate cases, in his own judgment and under his own conscience. He would stand ready to do so again. He thinks the Senate needs a rule for limitation of debate. He thinks the abuses which prevailed prior to 1917 justify such a rule. But he does feel that there is a regular way to go at this.

The fact that our distinguished friends have changed direction so clearly in their effort, as shown by the remarks of the Senator from Idaho a few minutes ago, indicates very clearly that here is a case now for regular handling under the appropriate Senate rules.

My second point is that, while it sounds very formidable to say that 44 times the rule of cloture has been sought to be invoked but it has been successfully invoked only eight times, is true, of course. The Senator from Idaho has never made a misstatement on the floor which I have ever heard, and I am sure he knows that I seek to make no misstatement. But the fact is that these 44 times do not represent 44 different cases or causes. I have not tried to develop how many causes there were, but there were a great many less than 44. Last year, for example, there were four attempts at cloture, the last of which was successful, in the debate upon the then pending civil rights bill, which had as its principal feature the open housing provision.

The fact is that all four of those votes were on the one bill, and the result of the failure of cloture in the first three attempts was to make that bill in each instance a little more tolerable, a little more moderate. The Senators who were Members then will recall that the final action of the Senate was taken then upon a substitute bill—again, a negotiated bill—offered, as I recall, by the distinguished Senator from Illinois (Mr. DIRKSEN) after all the debate had taken place and after cloture had failed three times.

I have made this point, Mr. President, because, instead of 44 separate causes, there were a great many fewer, and the RECORD will establish how many. My guess is approximately 30, but the list is in the debate. The other day I placed it in the RECORD and the RECORD will show how many different cases there were. In eight instances cloture was accomplished.

The third point I wish to mention is this: I do not believe there is any basis whatever, except the desire for liberalization of the rule, to hit upon three-fifths instead of two-thirds. I have looked rather diligently, but heretofore in vain, for any three-fifths precedent anywhere in the rules of the Senate, in the rules of the House, in Jefferson's Manual, in the Constitution, and elsewhere.

In the original Constitution were seven instances in which the two-thirds rule was laid down for action in cases regarded as serious. Four such incidents have been imposed by amendments to the Constitution, making 11 in all. In 11 instances, therefore, the Constitution as it now stands has provisions requiring a two-thirds vote. In no instance do I find a provision for a three-fifths vote.

Furthermore, aside from the Constitution and aside from the Standing Rules of the Senate, my information is that the Senate, itself, more than 100 years ago adopted the two-thirds rule by its practice as applicable to an attempt to waive or suspend the rules. That rule is there; we are governed by it; everybody knows it is there; yet, it is not found among the Standing Rules of the Senate. Two-thirds, therefore, has been constitutionally and by our own practice set up as the standard required when action that is regarded as peculiarly meaningful, and perhaps peculiarly severe, is to be taken. I want the RECORD to show that at this time.

In closing, I wish again to state what I said at the beginning. Any justification for trying to hurry this matter through without study, and thereby invite the great raft of amendments that might be offered on the floor, has now ceased to exist because, as shown by the debate in the very beginning, it was the conscientious belief of Senators offering the resolution that a majority vote of the Senate could accomplish cloture at this stage of the Congress and in this particular kind of an effort.

That is behind us, so where is the justification now for passage upon this measure without any hearings, without any effort in negotiation, and without any chance for new Members—many of whom served in the House of Representatives and who have full acquaintance with the House rules and procedures under the House rules—to state their views and make their convictions known?

Mr. President, I shall not attempt to further argue the matter in extenso today but I did wish to make these few observations.

I am glad to yield to the Senator from Idaho.

Mr. CHURCH. Mr. President, if the Senator from Florida has completed his remarks, I would like to make a few observations in the form of a short rebuttal to the argument presented by the distinguished Senator from Florida.

Mr. HOLLAND. I am glad to yield to the Senator from Idaho.

Mr. CHURCH. Mr. President, it is true that the Constitution establishes a requirement for a two-thirds vote for certain purposes. For example, a two-thirds vote is required for the ratification of treaties, and a similar vote is needed for the adoption of constitutional amendments. But, in the context of this debate, the important thing to remember is that the Constitution does not require a two-thirds vote for changing Senate rules. Article I, section 5 of the Constitution prescribes that each House may make its rules, and the precedents, through the years, have been to the effect that this means that the rules may be made and changed by majority vote. Indeed, that has been the practice whenever it has been possible to reach a vote in the Senate on rule changes.

Now, the Senator from Florida argues, in his usual persuasive manner, that we ought to follow the regular procedure. I have pointed out to him the number of times we have attempted to do that since 1959. Always we come back to the same parliamentary situation that now confronts us. It matters not whether the proposal is routed through the committee or whether it comes directly to the Senate at the commencement of a session, we end up in the same place. A filibuster is undertaken to preserve the filibuster rule, the result being that unless two-thirds of the Senate votes to invoke cloture, it is not possible for a majority, even though it may be a very substantial majority, to work its will.

Mr. HOLLAND. Mr. President, will the Senator yield at that point?

Mr. CHURCH. I would be happy to yield to the Senator but first, I wish to complete my thought.

Mr. President, it is because of this experience that proponents of a change in the filibuster rule have been forced to raise, at the commencement of each new Congress, the constitutional provision which, in our judgment, entitles the majority to limit debate on a proposal to change the rules.

I think one day, given the present trend, there will come a majority to the Senate which will seize upon its constitutional right to act. It is true this majority has been unwilling to do that, but as the Senator knows, this is a transient matter. There will come a time, in my judgment, when a majority in the Senate, having been frustrated again and again by filibusters to preserve untouched the filibuster rule, and having thus been prevented from changing it, will uphold the proposition of the right of the majority under the Constitution to act at the commencement of a new Congress.

As I have already said, I would prefer that the proposed modification of rule XXII might be achieved in a different manner. However, whether the proposal goes to a committee or whether it comes directly to the Senate at the commencement of the session, we end up in the same position. We either have to secure a two-thirds vote to invoke cloture in order to limit debate, or we have to abandon the effort. That mounting frustration will lead to the time when the very constitutional principle so adamantly opposed by the distinguished Senator from Florida will in fact be established here. Then, I would agree, the way will have been opened for the eventual adoption of a majority cloture rule.

So we again petition the Senate, after 12 days of debate on the motion to take up, conscious of the fact that no debate is more familiar to the Members, no issue better known. Even for those who come here for the first time, 12 days of debate on a motion to take up, so that the Senate can then proceed to debate the proposed change on its merits, ought to be sufficient to acquaint them with the arguments involved.

I do not know whether it is possible to secure a two-thirds vote on the motion on Tuesday. I hope it is, because that would then pave the way for the consideration of a change in the ordinary manner, in the regular way, which I would certainly prefer. But if it does not happen, I can plead with the distinguished Senator from Florida: Look at the votes; look at the trend. If one will do that, it will be apparent that the majority is moving in the direction of seizing hold of the constitutional principle, and it is being forced in this direction by those who have chosen to adopt such a rigid position in regard to rule XXII as it presently exists.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. CHURCH. I yield.

Mr. HOLLAND. Does not the Senator realize that part of the liberalizations accomplished here of the 1917 rule were accomplished without the constitutional rule having been referred to, and instead were accomplished by negotiation?

Mr. CHURCH. I am aware of that fact and also of the peculiar circumstances that surrounded those negotiations.

If there were any indication that such a negotiation were possible today, I would favor it; but I have seen none. In fact, it is apparent that, at the moment, there is no willingness really to negotiate any further modification of rule XXII. If there were, that is the route I would prefer. There being no such indication, it seems to me apparent that we have to follow the course we are following.

Mr. HOLLAND. Does not the Senator recall from the record and what has been said in this very debate that the Senator from Florida himself, as long as 20 years ago, strongly recommended that the cloture rule be changed so as to include a provision exempting important defense matters from the ordinary cloture rule and allowing the Senate to come to grips with them without prolonged debate? The Senator recalls that, does he not?

Mr. CHURCH. I do, indeed.

Mr. HOLLAND. Other Senators have ideas that should be incorporated and listened to. Under the kind of proceedings we have now in the Senate none of those procedures can be worked out because all of these things have to be worked out with great care and great finesse, as the Senator knows.

In the two negotiations which ended, each of them resulted in very meaningful liberalization of the former rule. Such negotiations did take place so as to permit Senators to have a meeting of the minds on what the new wording should be. This proposal does not allow any such meeting of the minds.

Mr. PEARSON. Mr. President, would the Senator from Idaho yield so that I may ask a question of the distinguished Senator from Florida?

Mr. CHURCH. I yield.

Mr. PEARSON. Did I correctly understand the Senator to say that the past two modifications, in 1959 and in 1949, were both by virtue of agreement?

Mr. HOLLAND. Yes, that is correct. The first was the one in which the motion to take up became subject to cloture as well as the substantive business. That was a very great liberalization of the rule. The Senator from Florida was one of those who sat in the negotiations which brought out that change.

Mr. PEARSON. My real question is: Has that always been the case? Has the Senate ever acted under its procedures to modify it, or has it virtually always been by negotiation?

Mr. HOLLAND. The only two changes in the 1917 rule that the Senator from Florida knows about were the result of long and difficult negotiations, and then on polishing the wording over and over again so as to mean exactly what we were trying to work out. While the Senator from Florida was not here, of course, in 1917, he understood that the original rule followed such a course of long negotiation, because it was such a radical departure from the unlimited debate practices of the Senate which had prevailed prior to that time.

Just to close on that point, the Senator from Florida believes that that is the way to bring 100 "prima donnas" together to sing a common tune. He does not know of any other way to accomplish it, but to have Senators work with each other and with their leadership on both sides of the aisle in trying to accomplish given objectives. It has been done in the two instances to which I referred.

Mr. PEARSON. The Senator from Florida is an able lawyer. I share with him the knowledge of the necessity and

the convenience of negotiation. What struck me about the Senator's statement was that the two modifications always come by virtue of negotiation and agreement. I am wondering whether there ever was a case where the Senate under its own rules can modify its rules. That would appear to me further to strengthen the argument that we need some modification, that the Senate, under its normal procedures and under its normal work, can act in this particular way.

Mr. HOLLAND. If the Senator means by his remarks that both modifications were not accomplished by invoking cloture, he is correct. But if the Senator means that the modifications were not accomplished by a regular working out of the amendments, first in committee, then by negotiation between the leaders, then by debate on the floor, and finally by majority vote of the Senate, he is wrong, because that is the way they were accomplished—completely under the rules. The Senator from Florida knows of no case when anyone was attempting to invoke cloture against efforts to amend the rules, except this instant case. It has always been worked out by agreement, after considerable discussion—and it has been difficult discussion—but it has brought results.

Perhaps the Senator from Kansas and the Senator from Idaho are a good deal younger than the Senator from Florida and maybe they seek more immediate relief from conditions which they think are burdensome. But I want to say to them that I have found that resort to the negotiation process in the Senate is the one which brings results. I have also found that to be true in a lifetime of practice of the law. Anything that attempts to shut off debate and tell Senators representing sovereign States, "You cannot speak but one hour from now on," is not apt to bring about a meeting of the minds which I think the Senators from Kansas and Idaho sincerely desire.

I do not question their motives at all. I know that they are bothered about this situation. What I am questioning is their procedure. I think it is an unhappy procedure and will not bring the results which they wish. It may leave a worse hardening of positions than if they had followed the customary routine of the Senate.

Mr. ALLEN. Mr. President, will the Senator from Idaho yield?

Mr. CHURCH. I am happy to yield to the Senator from Alabama.

Mr. ALLEN. I thank the Senator. In order that it may be crystal clear to the new Senator from Alabama, I should like to get the present position of the Senator from Idaho firmly in mind.

As the Senator from Alabama understands it, the Senator from Idaho has contended from the beginning of this session that at the beginning of each session of Congress, a majority of Senators could amend the rules so that a majority would be allowed to vote, so that a majority could cut off debate.

I should like to ask the Senator from Idaho whether he now feels that the beginning of the 91st Congress has now ended, that we are well into the 91st Congress, and that all the Senate rules of the 90th Congress have now become the rules of the 91st Congress; and that rule XXII, in its entirety, is now in full force and effect in the Senate; is that the Senator's present position?

Mr. CHURCH. Let me respond by saying that the Senator frames his question in a way which makes the answer exceedingly difficult.

The Senator from Idaho does not know when the beginning of the 91st Congress ends, but the former Vice President of the United States ruled that 51 Senators, having voted to invoke cloture, cloture was invoked, basing that rule upon the constitutional proposition that a majority had the right to limit debate at the commencement of a new session. An appeal was taken from the ruling of the Vice President and the Senate failed to sustain the Vice President in his ruling.

Accordingly, it is the position of the senior Senator from Idaho that a majority of the Senate has decided against the Vice President's ruling, and that this decision must be binding, or, at least, should be binding, for the remainder of the 91st Congress.

Having said that, however, let me stress that the present majority of the Senate cannot, in my judgment, bind future majorities. The constitutional proposition, in all likelihood, will be again presented at the start of the next Congress for the new majority to pass upon.

Mr. ALLEN. In other words, the Senator from Idaho reserves the right to make that contention at the start of the 92d Congress?

Mr. CHURCH. If it is necessary to do so, in order to permit a majority of the Senate to work its will upon the matter of the cloture rule. As long as the majority is denied that right, through application of the rule itself, then I think there is no alternative but to continue to argue the constitutional proposition. I would anticipate, under those circumstances, that the proposition would be raised again at the commencement of the next Congress.

Mr. ALLEN. Does the Senator from Idaho concede that rule XXII is in full force and effect, as having not been changed by the Senate?

Mr. CHURCH. The Senator is correct, and this motion is being offered under rule XXII in its entirety.

Mr. PEARSON. And in addition thereto, Mr. President, if the Senator will yield, the Senator will recall the unanimous-consent agreement that no rights were waived with respect to the right of any Senator to offer to amend any rule at the beginning of the session.

Mr. HOLLAND. That is correct, and no one is trying to diminish any right that accrued at the beginning of the Congress. The only thing that has changed anything is the vote itself. I think the Senator from Idaho has stated the situation, and other Senators have stated it this morning. The questions of the Senator from Alabama have brought out the matter again—that the Senate having taken the position it has in overruling the former Vice President's ruling, the matter is settled for this Congress, and rule XXII, as well as section 2 of rule XXXII, are now in full force and effect. I see the Senator from Idaho nodding. I think we are all in accord on that at this time.

Mr. CHURCH. Mr. President, I yield the floor.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS TO MONDAY, JANUARY 27, 1969

Mr. KENNEDY. Mr. President, in accordance with the order of yesterday, I move that the Senate stand in recess until 12 o'clock noon Monday.

The motion was agreed to; and (at 1 o'clock and 35 minutes p.m.) the Senate took a recess until Monday, January 27, 1969, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate January 24 (legislative day of January 10), 1969:

INTERNATIONAL MONETARY FUND

David M. Kennedy, of Illinois, to be U.S. Governor of the International Monetary Fund for a term of 5 years; U.S. Governor of the International Bank for Reconstruction and Development for a term of 5 years; and a Governor of the Inter-American Development Bank for a term of 5 years and until his successor has been appointed.

ASIAN DEVELOPMENT BANK

David M. Kennedy, of Illinois, to be U.S. Governor of the Asian Development Bank.

INTERNATIONAL MONETARY FUND

U. Alexis Johnson, of California, to be U.S. Alternate Governor of the International Monetary Fund for a term of 5 years and U.S. Alernate Governor of the International Bank for Reconstruction and Development for a term of 5 years.

CONFIRMATIONS

Executive nominations confirmed by the Senate, January 24 (legislative day of January 10), 1969:

IN THE AIR FORCE

Lt. Gen. Joseph R. Holzapple, [redacted] (major general, Regular Air Force), U.S. Air Force, to be assigned to positions of importance and responsibility designated by the President in the grade of general, under the provisions of section 8066, title 10, of the United States Code.

The following-named officers for appointment in the Regular Air Force, to the grades indicated, under the provisions of chapter 835, title 10, of the United States Code.

To be major generals

Maj. Gen. Paul T. Cooper, [redacted] (brigadier general, Regular Air Force), U.S. Air Force.

Maj. Gen. Robert H. McCutcheon, [redacted] (brigadier general, Regular Air Force), U.S. Air Force.

Maj. Gen. Ernest C. Hardin, Jr., [redacted] (brigadier general, Regular Air Force), U.S. Air Force.

Maj. Gen. Chesley G. Peterson, [redacted] (brigadier general, Regular Air Force, U.S. Air Force.

Maj. Gen. John L. Locke, XXXXXX (brigadier general, Regular Air Force), U.S. Air Force.
Maj. Gen. Kenneth C. Dempster, XXXXXX (brigadier general, Regular Air Force), U.S. Air Force.
Maj. Gen. John M. McNabb, XXXXXX (brigadier general, Regular Air Force), U.S. Air Force.
Maj. Gen. John L. Martin, Jr., XXXXXX (brigadier general, Regular Air Force), U.S. Air Force.
Maj. Gen. Lee V. Gossick, XXXXXX (brigadier general, Regular Air Force), U.S. Air Force.
Maj. Gen. William H. Reddell, XXXXXX (brigadier general, Regular Air Force), U.S. Air Force.
Maj. Gen. Richard D. Reinbold, XXXXXX (brigadier general, Regular Air Force), U.S. Air Force.
Maj. Gen. William C. Garland, XXXXXX (brigadier general, Regular Air Force), U.S. Air Force.
Maj. Gen. David C. Jones, XXXXXX (brigadier general, Regular Air Force), U.S. Air Force.
Maj. Gen. Russell E. Dougherty, XXXXXX (brigadier general, Regular Air Force), U.S. Air Force.
Maj. Gen. Roland A. Campbell, XXXXXX (brigadier general, Regular Air Force), U.S. Air Force.
Maj. Gen. Paul K. Carlton, XXXXXX (brigadier general, Regular Air Force), U.S. Air Force.
Maj. Gen. George M. Johnson, Jr., XXXXXX (brigadier general, Regular Air Force), U.S. Air Force.
Maj. Gen. Joseph R. DeLuca, XXXXXXX (brigadier general, Regular Air Force), U.S. Air Force.
Maj. Gen. Jammie M. Philpott, XXXXXXX (brigadier general, Regular Air Force), U.S. Air Force.

To be brigadier generals

Brig. Gen. Robert L. Cardenas, XXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. James S. Cheney, XXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. William S. Chairsell, XXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Paul R. Stoney, XXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. James F. Kirkendall, XXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Chester J. Butcher, XXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Robert J. Holbury, XXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. DeWitt R. Searles, XXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Frank M. Madsen, Jr. XXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. William R. MacDonald, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Felix M. Rogers, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Albert R. Shirley, Jr., XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. James M. Keck, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Robin Olds, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Ernest T. Cragg, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. John R. Kullman, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. William W. Snavely, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Dale S. Sweat, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Joseph H. Belser, XXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. John H. Buckner, XXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Charles W. Lenfest, XXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. William E. Bryan, Jr., XXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Leo W. Lewis, XXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Albert J. Bowley, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Douglas T. Nelson, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. David S. Chamberlain, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Archie S. Mayes, XXXXXXX (colonel, Regular Air Force, U.S. Air Force.
Brig. Gen. Leslie W. Bray, Jr., XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Robert V. Spencer, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Earl L. Johnson, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Richard M. Hoban, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. John B. Kidd, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. James A. Shannon, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Joseph G. Wilson, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. George J. Keegan, Jr., XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. George H. McKee, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Robert N. Ginsburgh, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Maj. Gen. William G. Moore, Jr., XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Donald E. Stout, XXXXXXX (colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. John C. Giraudo, XXXXXXX colonel, Regular Air Force), U.S. Air Force.
Brig. Gen. Harold F. Funsch, XXXXXXX (colonel, Regular Air Force, Medical), U.S. Air Force.

The following-named officers for temporary appointment in the U.S. Air Force, under the provisions of chapter 839, title 10, of the United States Code:

To be major generals

Brig. Gen. Anthony T. Shtogren, XXXXXX, Regular Air Force.
Brig. Gen. Thomas H. Crouch, XXXXXXX, Regular Air Force, Medical.
Brig. Gen. Robert L. Petit, XXXXXX, Regular Air Force.
Brig. Gen. Robert J. Gibbons, XXXXXX, Regular Air Force.
Brig. Gen. Clifford J. Kronauer, Jr., XXXXXX, Regular Air Force.
Brig. Gen. John W. Kline, XXXXXXX, Regular Air Force.
Brig. Gen. David I. Liebman, XXXXXX Regular Air Force.
Brig. Gen. George V. Williams, XXXX Regular Air Force.
Brig. Gen. Francis W. Nye, XXXXXX Regular Air Force.
Brig. Gen. James F. Kirkendall, XXXXXX Regular Air Force.
Brig. Gen. Rockly Triantafellu, XXXXXX Regular Air Force.
Brig. Gen. William V. McBride, XXXXXXX, Regular Air Force.
Brig. Gen. Russell K. Pierce, Jr., XXXXXXX, Regular Air Force.
Brig. Gen. William P. McBride, XXXXXX, Regular Air Force.
Brig. Gen. Timothy J. Dacey, Jr., XXXXXX Regular Air Force.
Brig. Gen. William S. Harrell, XXXXXX Regular Air Force.
Brig. Gen. Franklin A. Nichols, XXXXXX Regular Air Force.
Brig. Gen. Joe T. Scepansky, XXXXXX Regular Air Force.
Brig. Gen. Paul R. Stoney, XXXXXX Regular Air Force.
Brig. Gen. Kenneth W. Schultz, XXXXXX, Regular Air Force.
Brig. Gen. George J. Eade, XXXXXX Regular Air Force.
Brig. Gen. William F. Pitts, XXXXXX Regular Air Force.
Brig. Gen. Louis L. Wilson, Jr., XXXXXX Regular Air Force.
Brig. Gen. Carlos M. Talbott, XXXXXX, Regular Air Force.
Brig. Gen. Felix M. Rogers, XXXXXXX, Regular Air Force.
Brig. Gen. William W. Snavely, XXXXXXX Regular Air Force.
Brig. Gen. Carl W. Stapleton, XXXXXX Regular Air Force.
Brig. Gen. Albert J. Bowley, XXXXXXX Regular Air Force.
Brig. Gen. Augustus M. Hendry, Jr., XXXXXX Regular Air Force.
Brig. Gen. Rene G. DuPont, XXXXXXX Regular Air Force.
Brig. Gen. Donavon F. Smith, XXXXXXX Regular Air Force.
Brig. Gen. Dale S. Sweat, XXXXXXX Regular Air Force.
Brig. Gen. George J. Keegan, Jr., XXXXXXX Regular Air Force.

IN THE ARMY

Gen. Theodore William Parker, XXXXXX Army of the United States (major general, U.S. Army), to be placed on the retired list in the grade of general, under the provisions of title 10, United States Code, section 3962.
Gen. Robert William Porter, Jr., XXXXXX Army of the United States (major general, U.S. Army), to be placed on the retired list in the grade of general, under the provisions of title 10, United States Code, section 3962.

The following-named officer, under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be general

Lt. Gen. George Robinson Mather, XXXXXX Army of the United States (major general, U.S. Army).

The following-named Medical Corps officers for temporary appointment in the Army of the United States to the grade indicated, under the provisions of title 10, United States Code, sections 3442 and 3447:

To be brigadier generals, Medical Corps

Col. William Henry Moncrief, Jr., XXXXXX Army of the United States (lieutenant colonel, Medical Corps, U.S. Army).
Col. Thomas Joseph Whelan, Jr., XXXXXX Army of the United States (lieutenant colonel, Medical Corps, U.S. Army).

The following-named officers for appointment in the Regular Army of the United States, to the grade indicated, under the provisions of title 10, United States Code, sections 3284 and 3307:

To be major generals

Maj. Gen. Chester Lee Johnson, XXXXXX Army of the United States (brigadier general, U.S. Army).
Maj. Gen. Walter Edward Lotz, Jr., XXXXXX Army of the United States (brigadier general, U.S. Army).
Maj. Gen. Frank Wade Norris, XXXXXX Army of the United States (brigadier general, U.S. Army).
Lt. Gen. William Raymond Peers, XXXXXX Army of the United States (brigadier general, U.S. Army).
Maj. Gen. Robert Riis Ploger, XXXXXX Army of the United States (brigadier general, U.S. Army).
Maj. Gen. Walter Evans Brinker, XXXXXX Army of the United States (brigadier general, U.S. Army).
Maj. Gen. Phillip Buford Davidson, Jr., XXXXXX Army of the United States (brigadier general, U.S. Army).
Maj. Gen. Edward Paul Smith, XXXXXX Army of the United States (brigadier general, U.S. Army).
Maj. Gen. Stephen Wheeler Downey, Jr., XXXXXX Army of the United States (brigadier general, U.S. Army).
Maj. Gen. Patrick Francis Cassidy, XXXXXX Army of the United States (brigadier general, U.S. Army).
Maj. Gen. Robert Ray Williams, XXXXXX

Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Henry Augustine Miley, Jr. [redacted] Army of the United States (brigadier general, U.S. Army).

Lt. Gen. Donald Vivian Bennett, [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. John MacNair Wright, Jr., [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Leland George Cagwin, [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Richard Thomas Cassidy, [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. John Milton Hightower, [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Charles Pershing Brown, [redacted] Army of the United States (brigadier general, U.S. Army).

Lt. Gen. William Bradford Rosson, [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Willard Pearson, [redacted], Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Charles Marsden Duke, [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Charles Martin Gettys, [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Wendell John Coats, [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Roland Merrill Gleszer, [redacted] Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Charles Thompson Horner, Jr., [redacted] Army of the United States (brigadier general, U.S. Army).

IN THE NAVY

Vice Adm. Rufus L. Taylor, U.S. Navy, for appointment to the grade of vice admiral on the retired list, in accordance with the provisions of title 10, United States Code, section 5233.

Rear Adm. George M. Davis, Jr., Medical Corps, U.S. Navy, for appointment as Chief of the Bureau of Medicine and Surgery for a term of 4 years, in accordance with the provisions of title 10, United States Code, section 5137(a).

Vice Adm. Robert B. Brown, Medical Corps, U.S. Navy, for appointment to the grade of vice admiral on the retired list, in accordance with the provisions of title 10, United States Code, section 5133(b)

Vice Adm. George G. Burkley, Medical Corps, U.S. Navy (retired), for permanent appointment to the grade of vice admiral on the retired list, pursuant to article II, section 2, clause 2, of the Constitution.

Rear Adm. William P. Mack, U.S. Navy, having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

IN THE AIR FORCE

The nominations beginning Daniel H. Spoor, to be major, and ending Karl E. Zukaitis, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on January 10, 1969.

IN THE ARMY

The nominations beginning Joseph P. Madden, to be captain, and ending Alexander M. Zupsich, to be second lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on January 15, 1969.

IN THE NAVY

The nominations beginning William B. Anderson, Jr., to be captain, and ending Kathleen A. Hammel, to be lieutenant, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on January 16, 1969; and

Donald W. Stauffer to be lieutenant commander while serving as leader of the U.S. Navy Band, which nomination was received by the Senate and appeared in the CONGRESSIONAL RECORD on January 10, 1969.

EXTENSIONS OF REMARKS

EPISCOPAL BISHOP HARRY S. KENNEDY RETIRES AFTER 25 YEARS OF SERVICE IN HAWAII

HON. SPARK M. MATSUNAGA

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Thursday, January 23, 1969

Mr. MATSUNAGA. Mr. Speaker, with the retirement of Harry Sherbourne Kennedy, Episcopal bishop of Honolulu, the official career of the great spiritual leader of the diocese of Hawaii has come to an end. At a testimonial luncheon held earlier this month at the Ilikai Hotel in Honolulu, over 800 friends and members of his congregation turned out to pay tribute to the retiring bishop and to wish him "Godspeed."

It has been said that "the sun never sets on Bishop Kennedy," and during the past 25 years his mission of service has encompassed not only Hawaii, but American Samoa, Okinawa, Wake, Midway, Guam, the Philippines, Taiwan, and Thailand.

His deep regard for his diocese is reflected in the complete transformation of St. Andrew's Cathedral, the seat of the island's Episcopal community, during the last two and a half decades. More than 24 new church buildings as well as 90 chapels, educational halls and rectories were constructed during his tenure. Bishop Kennedy, once referred to as a "building bishop," has added more than buildings to his diocese. Since he came to Hawaii in 1945, he has ordained 93 deacons and priests, enlarging the cathedral's diocese from 19 to 68 clergy.

With characteristic wit, Bishop Kennedy once said that a bishop has to be a combination architect, lawyer, interior decorator, and diplomat. The island bishop has been this and much, much, more. The imprint of his lifetime of service to his fellow man will long be felt in the vast area where he devoted so much of his time and talent.

It is inspiring to note also that since the beginning of his mission in Hawaii as the head of Hawaii's Episcopal congregation, Bishop Kennedy has always been on call to offer spiritual guidance to military men in the Pacific. He was on Okinawa with Gen. Joseph Stillwell when Gen. Douglas MacArthur arrived to begin peace negotiations with Japan. In recent years the bishop has made numerous trips to Vietnam, several times coming under direct enemy fire, in order to be with our U.S. fighting men.

The Island State is indeed grateful for the dedicated service of this great American churchman, and I know that my colleagues would wish to join me in extending to him and Mrs. Kennedy all good wishes for continued health and happiness together during their leisure years.

I am pleased to submit for the CONGRESSIONAL RECORD a very interesting feature article on Bishop Kennedy, by Honolulu Star-Bulletin reporter Ligaya Fruto, which appeared on Wednesday, January 1, 1969:

BISHOP KENNEDY RETIRES AFTER 25 YEARS IN ISLES

(By Ligaya Fruto)

A churchman once said that the sun never sets on Harry S. Kennedy.

Episcopalians of the Diocese of Hawaii, which includes American Samoa, Wake, Midway, Guam, and Okinawa, may know the pall of sunset as the Rt. Rev. Kennedy retires today from his post of episcopacy.

He has also "covered" the Philippines, Taiwan, and Thailand.

Bishop Kennedy's 25 years in Hawaii has been described as a building episcopacy. During his tenure, the St. Andrew's Cathedral had been refurbished and completed; 24 new church buildings, six chapels, 23 parish halls, 21 educational buildings (not including those of the Priory, Seabury Hall, Iolani and the Academy) and 40 rectories had been constructed.

More than buildings had been added to the diocese. The bishop has ordained 93 deacons and priests, and today there are 68 active clergy—seven retired—compared with the 19 he found when he first came here in 1945. He has welcomed 18 new congregations.

His diocese covers such a large area that he once jokingly told a Texas audience that compared to his diocese, Texas was peanuts.

Harry Sherbourne Kennedy was born Aug. 21, 1901, in Brooklyn, N.Y., the second son and youngest of the five children of Mr. and Mrs. David E. Kennedy. His family crossed the Hudson when Harry was still an infant to settle in New Jersey, where his father worked as a hotel manager.

He went to schools in New Jersey, earning a letter in football, but between his high school and his college years in Colorado State at Greeley during a three-year hiatus he worked in the freight claim section of Pennsylvania Railroad to augment the family income when his father died.

He earned another football letter when he played end in Rocky Mountain Conference football, then went on to work for a divinity degree from St. John's Theological College, a seminary supported by the Western bishops to train priests for the West.

Kennedy was made a deacon in 1925, ordained a priest in 1926, and married Katharine Jane Kittel of Greeley in 1927.

His service in missions in the West—including riding a circuit of seven missions in San Luis Valley and a plural cure in Colorado Springs, plus an Army chaplaincy—forecast with some accuracy what would eventually be the lot of the young man who took the "Go West . . ." injunction too literally.

Kennedy was an Army chaplain on leave from Grace Church in Colorado Springs when he was elected on the first ballot during the 54 General Convention of Episcopal bishops to head the See of Honolulu.

It was three days before the 42-year-old