United States of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 92d CONGRESS, SECOND SESSION

## SENATE—*Friday, August 4, 1972*

The Senate met at 8:45 a.m. and was called to order by the Acting President pro tempore (Mr. METCALF).

PRAYER

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

God of our Fathers and our God, whose sovereignty transcends all lesser sovereignties, we thank Thee for this good land and for all lands which honor Thy name and revere Thy law. Draw the nations of the world closer together in mutual trust and honest endeavor that they may concert their best efforts for the security of each and the peace of all. To the President give Thy higher wisdom. Especially guide Thy servants here in their deliberations and decisions of this day that they may enhance the Nation's welfare and set forward Thy kingdom on earth. At evening give us the peace of those who are kept by Thy grace and live to do Thy will.

In the name of the Prince of Peace. Amen.

### THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, August 3, 1972, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

### EASTERN MONTANA COAL DEPOSITS AND STRIP MINING

Mr. MANSFIELD. Mr. President, eastern Montana has a very rich and underdeveloped resource in its vast coal deposits which extend across the eastern part of the State. Plans for developing this coal by strip mining have generated considerable controversy. There are two points of view: First, the economic interests; and, second, those who are concerned about the environment.

I do not want to see eastern Montana irreparably scarred by unsightly strip mines which cannot be restored to their original state. This is too much to ask in the name of economic development. We must have a strong set of rules and regulations, State and Federal, which would require the reclaiming of all mined lands. If it is demonstrated that the land cannot be reclaimed, ther. strip mining should be prohibited.

An area of particular concern to me is when the mineral rights are held by the developer and the surface rights are held by different persons for purposes such as farming and ranching. The farmers and ranchers should not be asked to stand by while the surface of their lands is torn apart. Monetary compensation is not the answer. Some means must be found to make certain that these people are given equal consideration and that both rights are recognized. Adequate protection in this area will undoubtedly require legislative action by the States under their eminent domain laws. The Department of the Interior must also provide these guarantees in the management of our public lands.

In some parts of eastern Montana, such as in the vicinity of Colstrip, the title to subsurface and surface rights are owned by the same party. Strip mining would not disrupt any other activity. The one thing that must be required in these instances is proper reclamation of the land for the future.

I stand ready to assist and support in the U.S. Senate in bringing about a strong workable program of environmental protection through legislation and appropriate studies and inventories of our mineral resources.

### COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs; the Subcommittee on Environment of the Committee on Commerce; and the Committee on Finance be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Does the Senator from Pennsylvania seek recognition?

### THE DIKES OF NORTH VIETNAM

Mr. SCOTT. Mr. President, as the time of the annual flooding in North Vietnam approaches, a great deal of manpower is required by them to man their dikes and irrigation systems. This, of course, detracts from the amount of manpower they are able to make available for their various offensives or attempts at offensives.

Naturally, the propaganda from Hanoi at this time has to be an attempt to put the blame on the United States for an alleged bombing of the dikes. This is an enemy lie, Mr. President. There is no intent, there is no order; there is, in fact, a contrary prohibition against the bombing of the dikes.

As the President has made clear, the United States, if it wished to do so—it would be a horrendous thing to do and will not be done—could turn North Vietnam into a lake in less than a week. In all the years of this war, restraint has been practiced. It has not been done; it is not being done. Any allegation that it is being done is exactly the propaganda which Hanoi wants to foment in this country; because, at all costs, Hanoi wants to generate as much manpower as it can to drive South Vietnam into the sea and to force the United States into disagreeable and, if necessary, dishonorable actions in South Vietnam. That is all that the dikes are about.

I recognize Communist propaganda, whether it originates in Stockholm or Paris or the United States. These dams are not being bombed. There is an order by the President that they shall not be. When Hanoi establishes a SAM missile site or other military objective near the dikes, it is Hanoi which takes the risk that some accidental damage will be done to the dikes. There have been 12 such instances, none of which has been major.

We are going to continue to hear all this business about stopping bombing the dikes. I gather that at the previous convention, recently held, most of the issues raised by the delegates seemed to indicate that they were against lettuce and for dikes. Well, that is about as irrelevant and extraneous as a political convention can be; and to carry that politics on the floor of the Senate is clearly irrelevant and extraneous.

I simply make this point to indicate that it is about time we debated the genuine issues which affect the United States in foreign policy and in domestic policy and stop this extraneous and inane nonsense whereby Americans allege that the American Government is doing what an American President has forbidden to be done and which is not being done.

### ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Pennsylvania (Mr. SCHWEIKER) is now recognized for not to exceed 10 minutes.

(The remarks that Mr. SCHWEIKER made when he introduced S. 3880, the National Diabetic Education and Detection Act, are printed in the Routine Morning Business section of the RECORD under Statements on Introduced Bills and Joint Resolutions.)

The ACTING PRESIDENT pro tempore. Under the previous order, the dis-



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tinguished Senator from California (Mr. TUNNEY) is now recognized for not to exceed 15 minutes.

(The remarks of Mr. TUNNEY on Senate Resolution 342 dealing with bombing of dikes in North Vietnam and the remarks of Mr. HARRIS and Mr. KENNEDY on the same subject are printed in the Routine Morning Business section of the RECORD under Submission of a Resolution.)

Mr. ROBERT C. BYRD. Mr. President, will the Senator from Oklahoma yield his time to the able Senator from Massachusetts?

Mr. HARRIS. Mr. President, I yield my remaining time to the distinguished Senator from Massachusetts (Mr. KENNEDY).

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts is yielded the remaining time of the Senator from Oklahoma, and under the previous order, he has 15 minutes in his own right.

(The remarks of Mr. KENNEDY on the submission of an amendment to S. 2507 are printed in the Routine Morning Business section of the RECORD under Gun Control Act—amendment.)

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## EXTENSION OF THE COMMISSION ON CIVIL RIGHTS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 955, H.R. 12652.

The ACTING PRESIDENT pro tempore (Mr. METCALF). The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 12652) to extend the life of this Commission on Civil Rights, to expand the jurisdiction of the Commission to include discrimination because of sex, to authorize appropriations for the Commission, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with amendments on page 1, after the enacting clause, insert:

TITLE I—EXTENSION OF LIFE OF COMMISSION ON CIVIL RIGHTS

At the beginning of line 5, strike out "That section" and insert "Sec. 101. Section "; on page 2, at the beginning of line 3, change the section number from "2" to "102"; at the beginning of line 12, change the section number from "3" to "103"; at the beginning of line 19, change the section number from "4" to "104"; at the beginning of line 23, change the section number from "5" to "105"; on page 3, at the beginning of line 10, change the section number from "6" to "106"; in line 15, after the word "of", strike out "$6,500,000" and insert "$5,500,000"; in line 17, after the word "of", strike out "$8,500,000" and insert "$7,000,000"; and, after line 17, insert a new title, as follows:

TITLE II—PROTECTION OF CONSTITUTIONAL RIGHTS OF GOVERNMENT EMPLOYEES

SEC. 201. It shall be unlawful for any officer of any executive department or any executive agency of the United States Government, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person seeking employment in the executive branch of the United States Government, to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit inquiry concerning the citizenship of any employee or person if his citizenship is a statutory condition of his obtaining or retaining his employment: *Provided further,* That nothing contained in this subsection shall be construed to prohibit inquiry concerning the national origin or citizenship of any such employee or person or of his forebears, when such inquiry is deemed necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States.

(b) To state or intimate, or to attempt to state or intimate, to any civilian employee of the United States serving in the department or agency that any notice will be taken of his attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the executive branch of the United States Government, or by any person acting or purporting to act under his authority, or by any outside parties or organizations to advise, instruct, or indoctrinate any civilian employee of the United States serving in the department or agency in respect to any matter or subject other than the performance of official duties to which he is or may be assigned in the department or agency, or the development of skills, knowledge, or abilities which qualify him for the performance of such duties: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit taking notice of the participation of a civilian employee in the activities of any professonal group or association.

(c) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(d) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to make any report concerning any of his activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties, or unless there is reason to believe that the civilian employee is engaged in outside activities or employment in conflict with his offical dutes.

(e) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,* That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the department or agency from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(f) To require or request, or attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

(g) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to support by personal endeavor or contribution of money or any other thing of value the nomination or the election of any person or group of persons to public Office in the Government of the United States or of any State, district, Commonwealth, territory, or possession of the United States, or to attend any meeting held to promote or support the activities or undertakings of any political party of the United States or of any State, district, Commonwealth, territory, or possession of the United States.

(h) To coerce or attempt to coerce any civilian employee of the United States serving in the department or agency to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or to make donations to any institution or cause of any kind: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, from calling meetings and taking any action appropriate to afford any civilian employee of the United States the opportunity voluntarily to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or voluntarily to make donations to any institution or cause.

(i) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any mem-

ber of his family or household: *Provided, however,* That this subsection shall not apply to any civilian employee who has authority to make any final determination with respect to the tax or other liability of any person, corporation, or other legal entity to the United States, or claims which require expenditure of moneys of the United States: *Provided further, however,* That nothing contained in this subsection shall prohibit the Department of the Treasury or any other executive department or agency of the United States Government from requiring any civilian employee of the United States to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, custom duties, or other obligations imposed by law.

(j) To require or request, or to attempt to require or request, any civilian employee of the United States embraced within the terms of the proviso in subsection (i) to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household other than specific items tending to indicate a conflict of interest in respect to the performance of any of the official duties to which he is or may be assigned.

(k) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, who is under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice, if he so requests: *Provided, however,* That a civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves, or by counsel who has been approved by the agency for access to the information involved.

(l) To discharge, discipline, demote, deny promotion to, relocate, reassign, or otherwise discriminate in regard to any term or condition of employment of, any civilian employee of the United States serving in the department or agency, or to threaten to commit any of such acts, by reason of the refusal or failure of such employee to submit to or comply with any requirement, request, or action made unlawful by this Act, or by reason of the exercise by such civilian employee of any right granted or secured by this Act.

SEC. 202. It shall be unlawful for any officer of the United States Civil Service Commission, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any executive department or any executive agency of the United States Government, or any officer or employee serving in such department or agency, to violate any of the provisions of section 1 of this Act.

(b) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,* That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the Civil Service Commission from advising any civilian employee or applicant on a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(c) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

SEC. 203. It shall be unlawful for any commissioned officer, as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, to require or request, or to attempt to require or request, any civilian employee of the executive branch of the United States Government under his authority or subject to his supervision to perform any of the acts or submit to any of the requirements made unlawful by section 1 of this Act.

SEC. 204. Whenever any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, or any commissioned officer as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, violates or threatens to violate any of the provisions of section 1, 2, or 3 of this Act, any civilian employee of the United States serving in any department or agency of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, affected or aggrieved by the violation or threatened violation, may bring a civil action in his own behalf or in behalf of himself and others similarly situated, against the offending officer or person in the United States district court for the district in which the violation occurs or is threatened, or the district in which the offending officer or person is found, or in the United States District Court for the District of Columbia, to prevent the threatened violation or to obtain redress against the consequences of the violation. The Attorney General shall defend all officers or persons sued under this section who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of this Act. Such United States district court shall have jurisdiction to try and determine such civil action irrespective of the actuality or amount of pecuniary injury done or threatened, and without regard to whether the aggrieved party shall have exhausted any administrative remedies that may be provided by law, and to issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation. With the written consent of any person affected or aggrieved by a violation or threatened violation of section 1, 2, or 3 of this Act, any employee organization may bring such action on behalf of such person, or may intervene in such action. For the purposes of this section, employee organizations shall be construed to include any brotherhood, council, federation, organization, union, or professional association made up in whole or in part of civilian employees of the United States and which has as one of its purposes dealing with departments, agencies, commissions, and independent agencies of the United States concerning the condition and terms of employment of such employees.

SEC. 205. (a) There is hereby established a Board on Employees' Rights (hereinafter referred to as the "Board"). The Board shall be composed of three members, appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member as chairman. No more than two members of the Board may be of the same political party. No member of the Board shall be an officer or employee of the United States Government.

(b) The term of office of each member of the Board shall be five years, except that (1) of those members first appointed, one shall serve for five years, one for three years, and one for one year, respectively, from the date of enactment of this Act, and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) Members of the Board shall be compensated at the rate of $75 a day for each day spent in the work of the Board, and shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence, as authorized by section 5703 of title 5, United States Code.

(d) Two members shall constitute a quorum for the transaction of business.

(e) The Board may appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures as may be necessary to carry out its functions.

(f) The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

(g) The Board shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this Act and to conduct a hearing on each such complaint. Within ten days after the receipt of any such complaint, the Board shall furnish notice of the time, place, and nature of the hearing thereon to all interested parties. The Board shall render its final decision with respect to any complaint within thirty days after the conclusion of its hearing thereon.

(h) Officers or representatives of any Federal employee organization in any degree concerned with employment of the category in which any alleged violation of this Act occurred or is threatened shall be given an opportunity to participate in each hearing conducted under this section, through sub-

mission of written data, views, or arguments, and in the discretion of the Board, with opportunity for oral presentation. Government employees called upon by any party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall be free to do so without incurring travel cost or suffering loss in leave or pay; and all such employees shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such participation shall be held and considered to be Federal employment for all purposes.

(i) Insofar as consistent with the purposes of this section, the provisions of subchapter II of chapter 5 of title 5, United States Code, relating to the furnishing of notice and manner of conducting agency hearings, shall be applicable to hearings conducted by the Board under this section.

(j) If the Board shall determine after hearing that a violation of this Act has not occurred or is not threatened, the Board shall state its determination and notify all interested parties of such determination. Each such determination shall constitute a final decision of the Board for purposes of judicial review.

(k) If the Board shall determine that any violation of this Act has been committed or threatened by any civilian officer or employee of the United States, the Board immediately (1) issue and cause to be served on such officer or employee an order requiring such officer or employee to cease and desist from the unlawful act or practice which constittues a violation, (2) endeavor to eliminate any such unlawful act or practice by informal methods of conference, conciliation, and persuasion, and (3) may—

(A) (i) in the case of the first offense by any civilian officer or employee of the United States, other than any officer appointed by the President, by and with the advice and consent of the Senate, issue an official reprimand agains such officer or employee or order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed fifteen days, and (ii) in the case of a second or subsequent offense by any such officer or employee, order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed thirty days or order the removal of such officer or employee from such position or office; and

(B) in the case of any offense by any officer appointed by the President, by and with the advice and consent of the Senate, transmit a report concerning such violation to the President and the Congress.

(l) If the Board shall determine that any violation of this Act has been committed or threatened by any officer of any of the Armed Forces of the United States, or any person purporting to act under authority conferred by such officer, the Board shall (1) submit a report thereon to the President, the Congress, and the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice which constitutes such a violation by informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. Thereupon such person shall take immediate steps to dispose of the matter under chapter 47 of title 10, United States Code Uniform Code/Military Justice).

(m) Any party aggrieved by any final determination or order of the Board may institute, in the district court of the United States for the judicial district wherein the violation or threatened violation of this Act occurred, or in the United States District Court for the District of Columbia, a civil action for the review of such determination or order. If any such action, the court shall have jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board which is under review, or (2) require the Board to make any determination or order which it is authorized to make under subsection (k), but which it has refused to make. The reviewing court shall set aside any finding, conclusion, determination, or order of the Board as to which complaint is made which is unsupported by substantial evidence on the record considered as a whole.

(n) The Board shall submit, not later than March 31 of each year, to the Senate and House of Representatives, respectively, a report on its activities under this section during the immediately preceding calendar year, including a statement concerning the nature of all complaints filed with it, its determinations and orders resulting from hearings thereon, and the names of all officers or employees of the United States with respect to whom any penalties have been imposed under this section.

(o) There are authorized to be appropriated sums necessary, not in excess of $100,000 to carry out the provisions of this section.

SEC. 206. Nothing contained in this Act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency from requesting any civilian employee or applicant to take a polygraph test, or to take a psychological test, designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement, if the Director of the Central Intelligence Agency or his designee or the Director of the National Security Agency or his designee makes a personal finding with regard to each individual to be so tested or examined that such test or information is required to protect the national security.

SEC. 207. No civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency, and no individual or organization acting in behalf of such employee, shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency one hundred and twenty days from the date of such complaint to prevent the threatened violation or to redress the actual violation: *Provided, however,* That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under section 403(c), of title 50, United States Code, and any authorities available to the National Security Agency under section 833 of title 50, United States Code, to terminate the employment of any employee.

SEC. 208. Nothing in this Act shall be construed to affect in any way the authority of the Directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or executive order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or Executive order shall be conclusive and no such information shall be admissible in evidence in any interrogation under section 1(k) or in any civil action under section 4 or in any proceeding or civil action under section 5

SEC. 209. This Act shall not be applicable to the Federal Bureau of Investigation.

SEC. 210. Nothing contained in sections 4 and 5 shall be construed to prevent establishment of department and agency grievance procedures to enforce this Act, but the existence of such procedures shall not preclude any applicant or employee from pursuing the remedies established by this Act or any other remedies provided by law: *Provided, however,* That if under the procedures established, the employee or applicant has obtained complete protection against threatened violations or complete redress for violations, such action may be pleaded in bar in the United States district court or in proceedings before the Board on Employee Rights: *And provided further,* That if an employee elects to seek a remedy under either section 4 or section 5, he waives his right to proceed by an independent action under the remaining section.

SEC. 211. If any provision of this Act or the application of any provision to any person or circumstance shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

LEGISLATIVE HISTORY OF TITLE II OF H.R. 12652

Mr. ERVIN. Mr. President, title II of H.R. 12652 is identical to S. 1438 which was approved by the Senate by unanimous consent last December. Its provisions are designed to protect the constitutional rights of employees of the executive branch and to prevent unwarranted governmental invasions of their privacy. I proposed the addition of this title to the House bill to extend the life of the Civil Rights Commission to afford the Senate another chance to express its desire to protect the privacy of millions of citizens who now work for the Government or who may apply to work for it.

The December vote was not the first time the Senate expressed itself on this issue and sent to the House this measure containing privacy guarantees.

I introduced this bill in 1966 in the 89th Congress. Hearings were conducted and staff studies were made on the problems. In the 90th Congress I reintroduced the bill with 54 cosponsors, and it was unanimously and favorably reported by the Committee on the Judiciary as S. 1035. On September 13, 1967, the Senate approved it by an impressive vote of 79 to 4, a vote that totaled 90 to 4 by the time absentees were recorded. The bill was then referred to the House Post Office and Civil Service Committee which did not report on it in the 90th Congress.

In the 91st Congress, I reintroduced the identical bill as S. 782 with 54 cosponsors. Again the subcommittee considered it, held hearings, conducted investigations, and reported the bill unanimously. The Judiciary Committee repeated their support for the bill and again recommended that the bill be enacted.

True to the sentiments of their constituents and to the extensive editorial support for this privacy bill, Members of the Senate again approved the measure, this time by unanimous consent. The bill was again sent to the House Post Office and Civil Service Committee whose subcommittee conducted some hearings. I

appeared before that subcommittee and reported on the complaints and findings in the Constitutional Rights Subcommittee. No further action was taken by the House committee in that Congress.

In 1971, for the third time, I introduced the employee "bill of rights" as S. 1438, with 50 cosponsors.

For the third time, the subcommittee and the Committee on the Judiciary unanimously recommended that it be enacted. And by unanimous consent, the Senate approved this measure for the third time. For the third Congress, the House has not acted.

There has been widespread support for this measure for many years.

I believe Americans today fear for their privacy and their constitutional freedoms. This bill will provide some minimum statutory guarantees for millions of citizens who work for the executive branch of the Federal Government or who may apply to work for it.

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–1006), explaining the purposes of the measure.

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

AMENDMENTS

1. Amendment No. 1 provides that Section 106, lines 11 through 15, page 3, be deleted and the following inserted in lieu thereof:

SEC. 106. For the purposes of carrying out this Act, there is authorized to be appropriated for the fiscal year ending June 30, 1973, the sum of $5.5 million, and for each fiscal year thereafter through June 30, 1978, the sum of $7.0 million.

The amendment to Section 106 of the bill reduces the amounts of appropriations authorized for the Commission in fiscal years 1973 through 1978, as provided in the House bill.

2. Amendment No. 2 adds Title II to the bill, which incorporates the provisions of S. 1438, a bill approved by the Committee in the First Session as an Act to protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

TITLE I—LEGISLATIVE HISTORY

President Nixon in his State of the Union message of January 20, 1972, called for a five-year extension of the Civil Rights Commission and the expansion of its jurisdiction to include discrimination based on sex.

The Commission then drafted its proposals which were introduced in the House (H.R. 12652) on January 26, 1972, and in the Senate (S. 3121) on February 3, 1972. The bills were identical, calling for an extension of the Commission for five years, an expansion of its jurisdiction to include sex discrimination, and an open-ended appropriation authorization.

Subcommittee No. 5 of the House Judiciary Committee held hearings on H.R. 12652 on February 24, 1972. At the conclusion of the hearings, the subcommittee replaced the open-ended authorization with an authorization ceiling of $6.5 million for fiscal year 73 and $8.5 million for fiscal years 74–78. The bill as amended was passed by the House of Representatives on May 1, 1972.

S. 3121 and H.R. 12652 were referred to the Senate Judiciary Committee. The Subcommittee on Constitutional Rights held hearings on the bills on June 16, 1972. Testimony from the Commission was received in support of H.R. 12652. Also testifying in support of the bill was the national director of the National Federation of Business and Professional Women's Clubs. Statements of support were submitted by three Senators, The Women's Equity Action League, The League of Women Voters of the United States, The Leadership Conference on Civil Rights. The Duluth Business and Professional Women's Club, and the Pennsylvania Commission on the Status of Women. No testimony or statements were received in opposition to the bill. The aforementioned communications can be found in the printed text of the hearings. The bill as amended was reported by the subcommittee by a divided vote.

TITLE AS AMENDED

Title I has three primary purposes, and three secondary ones.

Section 4 provides that the Commission will make its final report to the President and to the Congress by June 30, 1978, rather than January 31, 1973. This, in effect, extends the life of the Commission for five years and five months.

Section 3 expands the jurisdiction of the Commission to include discrimination based on sex. At present, the Commission's jurisdiction is limited to investigating denials of equal protection based on race, color, religion, or national origin.

Section 6 as amended provides a ceiling on appropriations of $5.5 million for fiscal year 73, and $7.0 million for the four succeeding fiscal years. The bill as originally introduced contained an open-ended authorization for "such sums as are necessary to carry out the provisions of this Act." The bill was amended in the House, however, to provide a ceiling of $6.5 million in fiscal year 73 and $8.5 million in the four succeeding fiscal years. The amended provision thus represents a reduction in the authorization approved by the House of $1 million in fiscal year 73 and $1.5 million in each of the succeeding four fiscal years.

Sections 1, 2, and 5 of the bill provide for increased compensation for witnesses, commissioners, and consultants, respectively. Witnesses will be paid at the rate paid witnesses in federal courts. Commissioners will be compensated at the rate of level IV of the Federal Executive Salary Schedule for each day spent in the work of the Commission, and consultants will be paid at a rate not to exceed the daily rate paid a GS–15. These provisions are comparable to those now in effect in other government agencies.

STATEMENT

The Commission on Civil Rights was created in 1957 as an independent fact-finding agency with a two-year life span. Its power was limited to conducting studies and making recommendations to the President and Congress concerning denials of equal protection based on race, color, religion, and national origin.

The Commission has since been extended five times by the Congress. Its staff and program have expanded, and its appropriation authorization has steadily climbed to its present level of $4.0 million for fiscal year 1972.

In the early years of its existence, the Commission concerned itself largely with the problems facing black Americans. Recently, however, it has turned its attention to other minority groups, most notably Indians and Mexican Americans. More than 60% of its recommendations have been enacted into law.

The Committee is of the view that there is a continuing need for the Commission to appraise the policies of the federal government with respect to civil rights and to serve as a reliable source of information for future legislative proposals.

The Committee also favors the inclusion of sex discrimination as a logical expansion of the Commission's jurisdiction. The Commission is already empowered to investigate denials of equal protection on other grounds, and has a working structure designed to cope with such problems. The Committee hopes, however, that the Commission's assumption of new jurisdiction will not signify a slackening of the Commission's efforts to deal with problems of neglected smaller minorities. The Committee furthermore hopes that particular attention will be given to the special problems of minority women when the Commission turns its attention to the problems of sex discrimination in general. In short, the grant of additional jurisdiction should not be allowed to cloud the other important concerns of the Commission.

Finally, the Committee favors the fiscal limits of $5.5 million in fiscal year 73 and $7.0 million in the succeeding four fiscal years as a more realistic estimate of the Commission's costs than those contained in the House bill. The authorization of the Commission for fiscal year 72 was $4.0 million. The limit of $5.5 million in fiscal year 73 represents a 37.5% increase over fiscal year 72; the $7.0 million, a 75% increase over fiscal year 72. These authorizations represent, the Committee feels, amounts reasonably calculated to allow the Commission to carry out its responsibilities.

The Committee has already requested an increase in the appropriations for fiscal year 73 to $4.8 million without the new jurisdiction to cover sex discrimination. The authorization called for in the Committee amendment provides $.7 million for fiscal year 1973 in addition to this request to allow the Commission to begin its new work in the area of sex discrimination and a contemplated project on Asian-Americans. The $7.0 million figure for fiscal years 74 through 78 makes it possible for the Commission to expand its efforts in the area of sex discrimination and allows for future cost increases to its total program.

COSTS

In accordance with Section 252 of the Legislative Reorganization Act of 1970, the Committee estimates the costs of H.R. 12652, as amended, in fiscal year 1973 will be $1.5 million more than the appropriation of $4.0 million already authorized. If the Civil Rights Commission is extended until December 31, 1978, as provided by the bill, the annual cost is estimated to be $7.0 million for each of the fiscal years 1974 through 1978.

The printed hearings contain a detailed projection made by the Commission of its program for the next five years and its estimated costs.

TITLE II—PROTECTING PRIVACY AND THE RIGHTS OF FEDERAL INCOME

Title II is identical to the provisions of S. 1438 which was approved by the Committee without amendment on December 6, 1971, and which was passed by the Senate by unanimous consent on December 8. It is also identical to S. 782 of the 91st Congress as unanimously reported by the Committee and unanimously approved by the Senate. This title is designed to protect civilian employees of the executive branch of the United States Government in the enjoyment of their

constitutional rights and to prevent unwarranted governmental invasions of their privacy.

The language of the Committee report on the provisions of S. 1438 is reprinted below as adopted by the Committee.

The references in the report on Title II are to the numbered provisions of S. 1438 as formerly approved by the Committee.

The section references in the legislative analysis of Title II accord with the numbered section of the parent bill.

PURPOSE

The purpose of Title II is to prohibit indiscriminate executive branch requirements that employees and, in certain instances, applicants for Government employment disclose their race, religion, or national origin; attend Government-sponsored meetings and lecturers or participate in outside activities unrelated to their employment; report on their outside activities or undertakings unrelated to their work; submit to questioning about their religion, personal relationships or sexual attitudes through interviews, psychological tests, or polygraphs; support political candidates or attend political meetings. The bill would make it illegal to coerce an employee to buy bonds or make charitable contributions. It prohibits officials from requiring him to disclose his own personal assets, liabilities, or expenditures, or those of any member of his family unless, in the case of certain specified employees, such items would tend to show a conflict of interest. It would provide a right to have a counsel or other person present, if the employee wishes, at an interview which may lead to disciplinary proceedings. It would accord the right to a civil action in a Federal court for violation or threatened violation of the act, and it would establish a Board on Employees' Rights to receive and conduct hearings on complaints of violation of the act and to determine and administer remedies and penalties.

STATEMENT

The committee has found, a threefold need for this legislation. The first is the immediate need to establish a statutory basis for the preservation of certain rights and liberties of those who work for government now and those who will work for it in the future. The bill, therefore, not only remedies problems of today but looks to the future, in recognition of the almost certain enlargement of the scope of Federal activity and the continuing rise in the number of Americans employed by their Federal Government or serving it in some capacity.

Second, the bill meets the Federal Government's need to attract the best qualified employees and to retain them. As the former Chairman of the Civil Service Commission, Robert Ramspeck, testified:

"Today, the Federal Government affects the lives of every human being in the United States. Therefore, we need better people today, better qualified people, more dedicated people, in Federal service than we ever needed before. And we cannot get them if you are going to deal with them on the basis of suspicion, and delve into their private lives, because if there is anything the average American cherishes, it is his right of freedom of action, and his right to privacy. So I think this bill is hitting at an evil that has grown up, maybe not intended, but which is hurting the ability of the Federal Government to acquire the type of personnel that we must have in the career service."

Third is the growing need for the beneficial influence which such a statute would provide in view of the present impact of Federal policies, regulations and practices on those of State and local government and of private business and industry. An example of the interest demonstrated by governmental and private employers is the following comment by Allan J. Graham, secretary of the Civil Service Commission of the city of New York:

"It is my opinion, based on over 25 years of former Government service, including some years in a fairly high managerial capacity, that your bill, if enacted into law, will be a major step to stem the tide of "Big Brotherism," which constitutes a very real threat to our American way of life.

"In my present position as secretary of the Civil Service Commission of the city of New York, I have taken steps to propose the inclusion of several of the concepts of your bill into the rules and regulations of the city civil service commission."

Passage of the bill will signify congressional recognition of the threats to individual privacy posed by an advanced technology and by increasingly more complex organizations. Illustrating these trends is the greatly expanded use of computers and governmental and private development of vast systems for the efficient gathering of information and for data storage and retrieval. While Government enjoys the benefit of these developments, there is at the same time an urgent need for defining the areas of individual liberty and privacy which should be exempt from the unwarranted instrusions facilitated by scientific techniques.

As Prof. Charles Reich of Yale Law School has stated, this bill "would be a significant step forward in defining the right of privacy today."

"One of the most important tasks which faces the Congress and State legislatures in the next decade is the protection of the citizen against invasion of privacy," states Prof. Stanley Anderson of the University of California, Santa Barbara. "No citizens," in his opinion, "are in more immediate danger of incursion into private affairs than Government employees. When enacted the bill will provide a bulwark of protection against such incursions."

The bill is based on several premises which the subcommittee investigation has proved valid for purposes of enacting this legislation. The first is that civil servants do not surrender the basic rights and liberties which are their due as citizens under the Constitution of the United States by their action in accepting Government employment. Chief among these constitutional protections is the first amendment, which protects the employee to privacy in his thoughts, beliefs and attitudes, to silence in his action and participation or his inaction and nonparticipation in community life and civic affairs. This principle is the essence of constitutional liberty in a free society.

The constitutional focus of the bill was emphasized by Senator Ervin in the following terms when he introduced S. 1035 on February 21, 1967:

"If this bill is to have any meaning for those it affects, or serve as a precedent for those who seek guidelines in those matters, its purpose must be phrased in constitutional terms. Otherwise its goals will be lost.

"We must have as our point of reference the constitutional principles which guide every official act of our Federal Government. I believe that the Constitution, as it was drafted and as it has been implemented, embodies a view of the citizen as possessed of an inherent dignity and as enjoying certain basic liberties. Many current practices of Government affecting employees are unconstitutional; they violate not only the letter but the very spirit of the Constitution.

"I introduced this bill originally because I believe that, to the extent it has permited or authorized unwarranted invasion of employee privacy and unreasonable restrictions on their liberty, the Federal Government has neglected its constitutional duty where its own employees are concerned, and it has failed in its role as the model employer for the Nation.

"Second, although it is a question of some dispute, I hold that Congress has a duty under the Constitution not only to consider the constitutionality of the laws it enacts, but to assure as far as possible that those in the executive branch responsible for administering the laws adhere to constitutional standards in their programs, policies, and administrative techniques."

The committee believes that it is time for Congress to forsake its reluctance to tell the executive branch how to treat its employees. When so many American citizens are subject to unfair treatment, to being unreasonably coerced or required without warrant to surrender their liberty, their privacy, or their freedom to act or not to act, to reveal or not to reveal information about themselves and their private thoughts and actions, then Congress has a duty to call a statutory halt to such practices. It has a duty to remind the executive branch that even though it might have to expend a little more time and effort to obtain some favored policy goal, the techniques and tools must be reasonable and fair.

Each section of the bill is based on evidence from many hundreds of cases and complaints showing that generally in the Federal service, as in any similar organizational situation, a request from a superior is equivalent to a command. This evidence refutes the argument that an employee's response to a superior's request for information or action is a voluntary response, and that an employee "consents" to an invasion of his privacy or the curtailment of his liberty. Where his employment opportunities are at stake, where there is present the economic coercion to submit to questionable practices which are contrary to our constitutional values, then the presence of consent or voluntarism may be open to serious doubt. For this reason the bill makes it illegal for officials to "request" as well as to "require" an employee to submit to certain inquiries or practices or to take certain actions.

Each section of the bill reflects a balancing of the interests involved: The interest of the Government in attracting the best qualified individuals to its service; and its interest in pursuing laudable goals such as protecting the national security, promoting equal employment opportunities, assuring mental health, or conducting successful bond-selling campaigns. There is, however, also the interest of the individual in protection of his rights and liberties as a private citizen. When he becomes an employee of his Government, he has a right to expect that the policies and practices applicable to him will reflect the best values of his society.

The balance of interests achieved assures him this right. While it places no absolute prohibition on Government inquiries, the bill does assure that restrictions on his rights and liberties as a Government employee are reasonable ones.

As Senator Bible stated:

"There is a line between what is Federal business and what is personal business, and Congress must draw that line. The right of privacy must be spelled out."

The weight of evidence, as Senator Fong has said: "points to the fact that the invasions of privacy under threats and coercion and economic intimidation are rampant in our Federal civil service system today. The degree of privacy in the lives of our civil servants is small enough as it is, and it is still shrinking with further advances in tech-

nical know-how. That these citizens are being forced by economic coercion to surrender this precious liberty in order to obtain and hold jobs is an invasion of privacy which should disturb every American. I, therefore, strongly believe that congressional action to protect our civil servants is long overdue."

The national president of the National Association of Internal Revenue Employees, Vincent Connery, told the subcommittee of this proposal in the 89th Congress:

"Senate bill 3779 is soundly conceived and perfectly timed. It appears on the legislative scene during a season of public employee unrest, and a period of rapidly accelerating demand among Federal employees for truly first-class citizenship. For the first time within my memory, at least, a proposed bill holds out the serious hope of attaining such citizenship. S. 3779, therefore, amply deserves the fullest support of all employee organizations, both public and private, federation affiliated, and independent alike."

Similar statements endorsing the broad purpose of the bill were made by many others, including the following witnesses:

John F. Griner, national president, American Federation of Government Employees.

E. C. Hallbeck, national president, United Federation of Postal Clerks.

Jerome Keating, president, National Association of Letter Carriers.

Kenneth T. Lyons, national president, National Association of Government Employees.

John A. McCart, operations director, Government Employees Council of AFL–CIO.

Hon. Robert Ramspeck, former Chairman, Civil Service Commission.

Vincent Jay, executive vice president, Federal Professional Association.

Francis J. Speh, president, 14th District Department, American Federation of Government Employees.

Lawrence Speiser, director, Washington office, American Civil Liberties Union.

Nathan Wolkomir, national president, National Federation of Federal Employees.

## ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Florida (Mr. CHILES) was to have been recognized at this time.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, without prejudice to the Senator from Florida.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered.

## ORDER OF BUSINESS

The PRESIDING OFFICER. At this time, under the previous order, the Chair recognizes the distinguished Senator from Florida (Mr. CHILES) for not to exceed 15 minutes.

(The remarks of Mr. CHILES on the introduction of S. 3881 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)



## ROLLING STOCK UTILIZATION AND FINANCING ACT OF 1972

The PRESIDING OFFICER. At this time, in accordance with the previous order, the Chair lays before the Senate S. 1729, which the clerk will report.

The assistant legislative clerk read as follows:

Calendar Order No. 932 (S. 1729), a bill to supply general service freight cars to meet the needs of commerce, users, shippers, national defense, and the consuming public.

The Senate proceeded to consider the bill which had been reported from the Committee on Commerce with an amendment to strike out all after the enacting clause and insert:

That this Act may be cited as the "Rolling Stock Utilization and Financing Act of 1972".

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### TITLE I—NATIONAL ROLLING STOCK INFORMATION SERVICE AND FEDERAL RAILROAD EQUIPMENT OBLIGATION INSURANCE FUND

#### PURPOSES

SEC. 101. The Congress hereby declares that the purposes of this Act are—

(a) to improve the utilization and distribution of rolling stock to meet the needs of commerce, users, shippers, the national defense, and the consuming public;

(b) to assist railroads in acquiring additional rolling stock to provide fast and expeditious service to meet the increasing demands of the Nation's economy now and in the years to come; and

(c) to assist in achieving full employment by insuring adequate equipment necessary to transport the products of American industry.

#### DEFINITIONS

SEC. 102. For the purposes of this Act—

(1) "Authority" means the Rolling Stock Authority which may also be known as RSA.

(2) "Board" means the Federal Railroad Equipment Obligation Insurance Board.

(3) "Car-pooling company" means a company that furnishes rolling stock to three or more railroads on a pooling basis.

(4) "Directors" means the Board of Directors of the Authority.

(5) "Equipment obligations" means bonds, notes, conditional sale agreements, equipment trust certificates, leases, and other obligations issued or guaranteed by railroads or car-pooling companies to finance or refinance rolling stock.

(6) "Holder" means the holder of an equipment obligation, except that where a bank or trust company is acting as agent or trustee for the holder of the equipment obligation, the bank or trust company shall be deemed to be the holder.

(7) "Obligor" includes the original borrower under an equipment obligation and his successors and assigns approved by the Board. An obligor must be a railroad or car-pooling company.

(8) "Railroad" means a common carrier by railroad, as defined in section 1(3) of the Interstate Commerce Act, as amended, and includes, where determined appropriate by the Board, any railroad controlled by a railroad within the meaning of section 1(3)(b) of the Interstate Commerce Act.

(9) "Rolling stock" means any type of new or rebuilt general service railroad freight car whose use is not confined to a specialized purpose by special equipment and design or other limiting features, cabooses, and standard gage locomotives. The Board may designate what types of freight cars are general service freight cars, including, but not limited to, boxcars, gondolas, open top and covered hopper cars, and flatcars.

(10) "Secretary" means the Secretary of Transportation.

#### NATIONAL ROLLING STOCK INFORMATION SYSTEM

SEC. 103. (a) The Secretary is authorized to design a national rolling stock information system and to contract with and provide technical and financial assistance to individual railroads or a group of railroads working together, including the sharing of costs and the funding in part of demonstration projects, to assist in the establishment of a national rolling stock information system. Such national rolling stock information system shall use computer and communication techniques and equipment which will facilitate equitable distribution and efficient and economical utilization of rolling stock. Such system shall be capable of furnishing information about all rolling stock owned directly or indirectly by railroads and car-pooling companies with respect to physical characteristics, origin, destination, location, availability for future loadings, and such other information as the Secretary determines to be useful for the equitable distribution and efficient and economical utilization of rolling stock. The Secretary shall consult with shippers, railroads, and the Interstate Commerce Commission before finally approving the design of the system. Information shall be available to shippers, railroads, the Secretary, the Interstate Commerce Commission, and other members of the public subject to such rules as the Interstate Commerce Commission shall prescribe to insure the confidentiality of certain types of competitive

information supplied for use in connection with the system.

(b) The Secretary shall report semiannually to the Congress with respect to the progress made in implementing the national system provided for in subsection (a). Such report shall include recommendations for such additional funding as may be necessary to make the national system fully effective.

(c) In exercising his authority under this section, the Secretary may enter into agreements of contracts without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5).

(d) Persons contracting with the Secretary with respect to the design of a national or individual rolling stock information system or the use of information supplied by such system shall be and are hereby relieved from prohibitions of the antitrust laws of the United States, with respect to such contracts, to the extent necessary to facilitate carrying out the purposes of this Act.

(e) There is authorized to be appropriated to the Secretary out of money in the Treasury not otherwise appropriated, the sum of $10,000,000 for purposes of this section, such amount to remain available for one year after the date of enactment of this Act.

(f) If, not later than one year after such date, the Secretary finds that a practical design for a national rolling stock information system has been completed and that such design can be implemented so as to produce information useful for significantly improved utilization of rolling stock in the near future, there is authorized to be appropriated to the Secretary out of money in the Treasury not otherwise appropriated, the sum of $15,000,000 for the purpose of assisting individual railroads or a group of railroads working together to implement such design, such amount to remain available for one year after the Secretary makes such finding.

(g) If, not later than two years after such date, the Secretary finds that substantial progress has been made toward completion of a national rolling stock information system, there is authorized to be appropriated to the Secretary out of money in the Treasury not otherwise appropriated, the sum of $10,000,000 for the purpose of completing such system, such amount to remain available for one year after such finding.

FEDERAL RAILROAD EQUIPMENT OBLIGATION INSURANCE FUND

SEC. 104. (a) There is created a Federal Railroad Equipment Obligation Insurance Fund (hereafter in this Act referred to as the "fund") which shall be used by the Board as a revolving fund for the purpose of carrying out sections 105 through 108 of this Act. Moneys in the fund shall be deposited in the Treasury of the United States to the credit of the fund or invested in bonds or other obligations of, or guaranteed as to principal and interest by, the United States for the account of the fund.

(b) The Federal Railroad Equipment Obligation Insurance Board shall have seven members, of whom one shall be elected annually by the Board to serve as Chairman. The Secretary of Transportation and the Secretary of the Treasury, or persons designated by them respectively in writing, shall serve as ex officio members of the Board with the same powers as other members of the Board. The President of the United States shall, within ninety days after enactment of this Act, appoint the remaining members of the Board, by and with the advice and consent of the Senate, on the following basis: (1) three, to be selected from recommendations of organizations of shippers who shall be representative of different, major shipping interests, including small shippers; (2) one, to be selected from recommendations of organizations of consumers; and (3) one, to be selected from recommendations of the national organization of State Commissions as referred to in sections 202(b) and 205(f) of the Interstate Commerce Act, who shall be a member of a State agency authorized by State law to fix rates for transportation by railroad. Each of the members appointed by the President may reserve compensation at a rate not to exceed $300 for each meeting of the Board which he attends and shall be reimbursed for necessary travel and subsistence expense incurred in attending such meetings.

AUTHORIZATION TO INSURE EQUIPMENT OBLIGATIONS

SEC. 105. (a) Upon application by a railroad or carpooling company, the Board is authorized to insure the interest on, and the unpaid principal balance of, any equipment obligation offered to it which it determines is eligible for insurance under this Act. The Board also may make commitments to insure any equipment obligation prior to the date of execution or disbursement thereon. Such insurance and commitments shall be extended in such form, on such terms and conditions, and pursuant to such regulations, as the Board considers appropriate and which are not inconsistent with the provisions of this Act.

(b) Each insurance contract made under this section shall run to and be for the benefit of the holder of the equipment obligation.

(c) The aggregate unpaid principal amount of equipment obligations insured under this title shall not exceed $2,000,000,000 at any one time.

(d) Each equipment obligation insured under this section shall bear interest (exclusive of premium charges for insurance and service charges) at a rate not to exceed such per centum on the principal obligation outstanding which the Board determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar obligations.

(e) Upon receipt of an application from a railroad or car-pooling company, the Board shall publish notice of the receipt of such application in the Federal Register and shall afford interested parties an opportunity to submit comments in accordance with the provisions of section 553 of title 5 of the United States Code.

LIMITATIONS AND CONDITIONS; PREMIUM CHARGES

SEC. 106. (a) Before insuring any equipment obligation under section 105 of this Act, the Board shall find in writing that—

(1) the equipment obligation is secured by rolling stock to be financed or refinanced thereby;

(2) the terms of the equipment obligation require full payment within fifteen years from the date thereof;

(3) the financing or refinancing of the rolling stock is justified by the present and future demand for transportation services to be rendered by the railroad or carpooling company for which the rolling stock is procured;

(4) the common carrier operations of the railroad or car-pooling company are sufficiently efficient at the date of any such financing or refinancing to assure economic utilization of any rolling stock in which the obligor then has a beneficial interest or in which the obligor may obtain such an interest as a consequence of such financing or refinancing;

(5) the purchase of the rolling stock will serve to insure an adequate national car supply to meet demonstrable demands for rail transportation services, and to provide shippers with equipment suited to their transportation needs;

(6) the probable value of the rolling stock will provide reasonable protection to the United States in the event of repossession of the rolling stock by the holder of any equipment obligation insured under this Act.

(b) Before insuring any equipment obligation under section 105 of this Act, the Board shall obtain in writing an agreement from the obligor that while any principal or interest on such obligation is unpaid—

(1) there will be an increase in the load-carrying capacity of the obligor's rolling stock;

(2) dividends that are payable in the discretion of the obligor will not be increased over the average amount paid during the five years preceding enactment of this Act;

(3) assets and revenue related to, or derived from, railroad operations or property will not be used by the obligor in nonrailroad enterprises;

(4) the obligor will cooperate with the Secretary in programs pursuant to title II of this Act to improve the equitable distribution and efficient and expeditious use of rolling stock; and

(5) such obligation will become immediately due and payable if the Secretary finds that conditions (1), (2), and (3) of this subsection have not been satisfied.

(c) The Board shall fix a premium charge for the insurance of equipment obligations under this Act of not to exceed 1 per centum per annum of the principal amount of such equipment obligation outstanding. Premium payments shall be made when moneys are first advanced by the lender under the equipment obligation and on each anniversary date thereafter.

(4) All money received under sections 104 through 108 of this Act shall be deposited in the fund. Amounts not to exceed 5 per centum of the sums collected each year under subsection (c) of this section may be used to pay administrative expenses incurred by the Board incident to the administration of sections 104 through 108 of this title.

ISSUANCE OF NOTES OR OBLIGATIONS

SEC. 107. (a) If at anytime the moneys in the fund are not sufficient to pay any amount the Board is required to pay under an agreement made under section 105 of this Act, the Board is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Board, with the approval of the Secretary of the Treasury. The notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States on comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations to be issued hereunder and for such purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Funds borrowed under this section shall be deposited in the fund and redemptions of such notes and obligations shall be made by the Board from the fund.

(b) Notwithstanding any other provisions of law relating to the acquisition, handling, or disposal of property by the United States, the Board shall have the right in its discretion to perform such acts as may be necessary to complete, recondition, renovate, repair, maintain, and manage, lease, rent,

sell, or otherwise dispose of any property or other interests acquired by it under an agreement made under sections 105 and 106 of this Act.

(c) Any contract or commitment of insurance entered into by the Board under the provisions of this Act shall not be terminated, canceled, or otherwise revoked, except as provided by the terms and conditions prescribed by the Board under sections 105 and 106 of this Act; and shall be conclusive evidence that the obligation complies fully with the provisions of this Act and of the approval and legality of the principal amount, interest rate, and all other terms of the obligation; and any contract or commitment of insurance so entered into shall be valid and incontestable in the hands of a holder from the date as of which such contract or commitment's entered into, except for fraud, duress, mutual mistake of fact, or material misrepresentation on the part of such holder.

MODIFICATIONS

SEC. 108. The Board may consent to the modification of the provisions of an equipment obligation as to rate of interest, time of payment of interest or principal, security, or the terms and conditions of any contract or commitment of insurance which it shall have entered into pursuant to this Act whenever it finds in writing that such modification is equitable. However, such consent shall not be given unless any consent of the holder, which may be required pursuant to the provisions of any equipment obligation, shall have first been obtained.

GENERAL ACCOUNTING OFFICE AUDIT

SEC. 109. (a) The transactions of the Board may be audited by the Comptroller General of the United States in accordance with such rules and regulations as may be prescribed by the Comptroller General. The representatives of the Comptroller General shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the Board pertaining to its financial transactions and necessary to facilitate an audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of the Board shall remain in possession and custody of the Board.

(b) To the extent the Comptroller General deems necessary in connection with such audits as he may make of the financial transactions of the Board, pursuant to subsection (a), his representatives shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by any obligor for which the Board has insured an equipment obligation, pertaining to such obligor's financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of such obligor remain in the possession and custody of the obligor.

(c) A report of each such audit shall be made by the Comptroller General to the Congress. The report to the Congress shall contain such comments and information as the Comptroller General may deem necessary to inform Congress of the financial operations and condition of the fund, together with such recommendation with respect thereto as he may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary, and to the Board at the time submitted to the Congress.

## TITLE II—TO IMPROVE UTILIZATION

UTILIZATION INDEX AND REPORT

SEC. 201. Within ninety days after the date of enactment of this Act, the Secretary shall develop an index measuring the degree of utilization of freight cars. The Secretary shall compile data required by such index and shall publish such index at least once each quarter together with a report setting forth the changes in such utilization and the causes thereof.

INTERSTATE COMMERCE COMMISSION REPORT

SEC. 202. The Interstate Commerce Commission shall publish a report on utilization of freight cars thirty days after each report by the Secretary pursuant to section 201. Each report by the Commission shall give consideration to the latest report by the Secretary.

DEPARTMENT OF TRANSPORTATION STUDY

SEC. 203. The Secretary shall prepare a study on the utilization of freight cars and means to improve such utilization including, but not limited to, consideration of per diem and other car hire charges, demurrage, car service rules and orders of the Interstate Commerce Commission and of the railroads, the practice of assigning cars to specific traffic or shippers, payments for use of privately owned cars, and publicly and privately owned car-pools. The Secretary shall submit legislative recommendations based upon such study within two years of the date of this Act.

USE OF EXISTING LAW

SEC. 204. (a) The Secretary shall make use of existing law to improve the utilization of rolling stock.

(b) For the purposes of this section, the Secretary shall have such standing as is necessary to bring proceedings before the courts and administrative agencies.

## TITLE III—ROLLING STOCK AUTHORITY

ESTABLISHMENT

SEC. 301. (a) Within three years from the date of enactment of this Act, if the Commission has not found that there is no longer a continuing freight car shortage arising from an inadequate supply of rolling stock and inadequate car service and the Secretary has not found that there has been a substantial increase in utilization of such rolling stock, there is hereby authorized to be created a corporation to be known as the Rolling Stock Authority. Its purposes shall be to acquire, maintain, and provide rolling stock, to manage a pool of such rolling stock, and to employ innovative concepts for equitable distribution and efficient and expeditious use of such rolling stock to meet the needs of the national economy.

(b) Three years after enactment of this Act the Secretary shall transmit to Congress a report stating whether or not he and the Commission have made the findings set forth in section 301(a). Unless Congress disapproves the establishment of the Authority within three years and six months after enactment of this Act, the Authority shall be established in accordance with the provisions of this title.

(c) The Authority shall not be subject to the provisions of the Interstate Commerce Act, as amended, or of any other law regulating railroads except that it shall be deemed to be a railroad with respect to: (1) sections 1(10) through 1(17) of the Interstate Commerce Act; (2) the representation of its employees for purposes of collective bargaining, the handling of disputes between railroads and their employees, employee retirement, annuity and unemployment systems, liability for injuries to employees, and other dealings with its employees; and (3) safety, subject to the same laws and regulations with respect to safety as any common carrier subject to part I of the Interstate Commerce Act.

(d) The Authority shall be subject to the provisions of this Act, and, to the extent not inconsistent with this Act, to the District of Columbia Business Corporation Act (D.C. Code 29–901 et seq.). The right to repeal, alter, or amend this Act at any time is expressly reserved. The articles of incorporation shall provide for cumulative voting for all stockholders.

ORGANIZING DIRECTORS

SEC. 302. Unless Congress disapproves establishment of the Authority, the Chairman of the Interstate Commerce Commission, the president of the Association of American Railroads, the president of the parent body of the American Federation of Labor and Congress of Industrial Organizations, the president of the National Industrial Traffic League, the Secretary of Agriculture, and the Secretary of Transportation (or their designees) shall, ex officio, become incorporators of the Authority. Such persons shall also serve as the initial Board of Directors. The incorporators shall take whatever actions are necessary to establish the Authority as soon as possible, and within not more than ninety days following the date of their assuming office. The initial Directors shall serve until at least seven of the Directors appointed by the President have been confirmed by the Senate.

DIRECTORS AND OFFICERS

SEC. 303. (a) The Authority shall have a Board of eleven Directors, of whom one shall be elected annually by the Board to serve as Chairman. The Secretary of Transportation and the Secretary of the Treasury, or persons designated by them respectively in writing, shall serve as ex officio members of the Board with the same powers as other members of the Board. Such officials shall assume their directorships when the Senate confirms at least seven of the Directors appointed by the President. The President of the United States shall, within one hundred and twenty days after the incorporators take office, appoint the remaining members of the Board, by and with the advice and consent of the Senate, on the following basis: (1) three, upon recommendation of the Association of American Railroads or its successor, one of whom shall be a representative of the eastern territory railroads, one of whom shall be a representative of the western territory railroads, and the other shall be a representative of the southern territory railroads; (2) one, upon recommendation of the parent body of the American Federation of Labor and Congress of Industrial Organizations or its successor, who shall be representative of labor; (3) one, upon recommendation of the National Academy of Sciences, who shall be a person with expert knowledge of, or practical experience with, data and information systems and of application of computer technology to the management of large-scale systems such as would be involved with the rolling stock fleet of the Authority; (4) three, to be selected from recommendations of organizations of shippers who shall be representative of different, major shipping interests, including small shippers, and satisfactory to the largest number of such shippers; and (5) one, to be selected from recommendations of organizations of consumers, to be satisfactory to the largest number of consumers.

(b) The terms of office of the Directors appointed by the President shall be for four years except that the terms of five of the members, initially appointed, shall expire at the end of two years following their first appointment. A member appointed to fill a vacancy may be appointed only for the unexpired term of the member whom he succeeds. The Directors shall take office immediately upon the expiration of the terms of the initial Board of Directors. Each of the Directors appointed by the President shall receive

compensation at the rate of $300 for each meeting of the Board which he attends and shall be reimbursed for necessary travel and subsistence expense incurred in attending such meetings.

(c) So long as any capital stock of the Authority is owned by the United States, Directors, officers, and employees of the Authority shall be deemed to be special Government employees subject to the conflict of interest provisions of title 18, United States Code, sections 201–209, Directors appointed by the President pursuant to section 307(d) shall be deemed to be special Government employees subject to the conflict of interest provisions of title 18, United States Code, sections 201–209. A Director appointed upon recommendations made pursuant to subsection (a) of this section or pursuant to subsection (d) of section 307 may be included for purposes of determining the presence of a quorum at any meeting of the Directors which he attends, may participate in discussions in any such meetings and may vote upon matters, notwithstanding his service as officer, director, trustee, partner, or employee in an organization or corporation which is a member of the organization which made such recommendation.

GENERAL POWERS OF THE AUTHORITY

SEC. 304. (a) In order to carry out the purposes set forth in section 301 the Authority shall have power—

(1) to sue and be sued, complain and defend, in its corporate name;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal bylaws, rules, and regulations as may be necessary for the conduct of its business;

(4) to conduct its business, carry on its operations, and have offices and exercise the powers granted by this Act in any State;

(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Authority;

(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

(8) to appoint such attorneys, employees, and agents as may be required, to define their duties, to fix and to pay such compensation for their services as may be determined: Provided, That, except as otherwise specified in this Act, such attorneys, employees, and agents as well as the members of the Board of Directors shall not be subject to the provisions of Federal laws relating to Federal employees with respect to appointments, promotions, adverse actions, hours of work, rates of compensation, allowances, leave, unemployment compensation, compensation for work injuries, and Federal benefits such as retirement, life insurance, and health benefits;

(9) to enter into contracts, to execute instruments, to incur liabilities, and to do all things as are necessary or incidental to the proper management of the affairs and proper conduct of its business.

(10) to build, purchase, own, lease, and manage rolling stock to be operated for the purpose of providing modern, efficient freight transportation of goods; to conduct research and development related to the purposes of this Act; and to acquire, or to contract for the use of, physical facilities, equipment, and devices necessary for equitable distribution and efficient and expeditious use of its rolling stock; and

(11) to enter into agreements and contracts necessary for the building, operation, maintenance, and repair of its rolling stock and for the performance of all services and work incidental thereto, consistent with prudent management of the affairs of the Authority and not inconsistent with the provisions of section 311 of this Act.

(b) Persons contracting with the Authority with respect to the operation or maintenance of such rolling stock shall be and are hereby relieved from prohibitions of the antitrust laws of the United States, with respect to such contracts insofar as may be necessary to enable them to enter into such contracts and to perform their obligations thereunder.

FINANCING

SEC. 305. (a) PER DIEM SURCHARGE.—Every railroad, except switching and terminal railroads, shall pay to the Authority a per diem surcharge of 50 cents per car-day on each general service freight car for each day that such a railroad incurs a car-hire charge for the use of such car, except that no one railroad, or group of railroads under common management and control, shall make total payments in excess of 10 per centum of the total amount paid by all railroads. The Authority shall impose the surcharge levy no later than sixty days after the Board of Directors shall have taken office pursuant to section 303, and the levy shall continue until the Board of Directors of the Authority determines that such sum as may be necessary for the purposes of this Act but not less than $10,000,000 nor more than $30,000,000 will be due or will have been paid to the Authority as of a certain date, whereupon the levy of the surcharge will cease as of that date. The surcharge shall be payable on the tenth day of the second month succeeding the month in which the charge accrues. If it should be determined that any one railroad, or any group of railroads under common management and control at the time of payment, has paid in excess of 10 per centum of the total amount paid by all railroads, the Authority shall refund the excess payments.

(b) The Authority shall issue a negotiable debenture to each railroad in the amount of per diem surcharge paid by such railroad. Such debentures shall bear and pay interest at a rate determined by the Secretary of the Treasury to be the current rate for similar debentures in the open market. The par value of such debentures shall be due and payable December 31 of the thirtieth year after the date of issuance unless such date shall be a Saturday, Sunday, or holiday, in which event said par value shall be payable the next full business day, which shall not be either Saturday, Sunday, or holiday. Such debentures shall be debts of the Authority but shall be subordinate to all other debts of the Authority. Neither the par value nor the interest on such debentures shall be guaranteed by the United States of America.

(c) REFUND OF PER DIEM SURCHARGE.—(1) In the event of partial or complete liquidation of the Authority, any assets remaining after payment of the Authority's obligations and expenses will be distributed pro rata to the railroads, not to exceed the amount paid into the Authority as per diem surcharge under paragraph (a) of this section plus accrued interest, if any, and the remainder will be paid into the Treasury of the United States and credited to miscellaneous receipts.

(2) In the event of complete liquidation of any railroad subject to this Act, the Board of Directors of the Authority may, if and when funds are available, refund to the railroad a sum not to exceed the amount paid in as per diem surcharge under the provisions of paragraph (a) of this section plus accrued interest, if any.

(d) INCURRENCE OF DEBT FOR CAPITAL PURPOSES.—The Authority is hereby empowered to incur debt for capital purposes. Such debt may be incurred in the form of bonds, debentures, equipment trust certificates, conditional sale agreements, or any other form of securities, agreements, or obligations. So long as all capital stock of the Authority is owned by the United States, payment of principal and interest on all obligations issued by the Authority, shall be guaranteed by the United States, such guarantee to be expressed on the face thereof. So long as any capital stock is owned by the United States, payment of principal and interest on obligations issued by the Authority may be guaranteed by the United States, such guarantees to be expressed on the face thereof. Guaranteed obligations shall not exceed $1,000,000,000 in principal amount outstanding at any one time. Such obligations may be redeemable at the option of the Authority before maturity in such manner as may be stipulated therein and shall be in such forms and denominations, have such maturities, and be subject to such terms and conditions as shall be determined by the Board of Directors, with the approval of the Secretary of the Treasury. The Authority may also incur debt not guaranteed by the United States in addition to that provided for under subsection (b) of this section.

(e) PURCHASE OF OBLIGATIONS BY TREASURY.—The Secretary of the Treasury may elect to purchase the obligations of the Authority guaranteed by the United States in an amount not to exceed $1,000,000,000 in principal amount outstanding at any one time, under such terms, including rates of interest, as he and the Authority may agree, but at a rate or yield no less than the current average yield on outstanding Treasury securities of comparable maturity, as determined by the Secretary of the Treasury.

(f) PUBLIC DEBT TRANSACTION.—For the purpose of any purchase of the obligations of the Authority, and to enable him to carry out his responsibility relating to guarantees made pursuant to this section, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include any purchases of the obligations of the Authority under this Act. The Secretary of the Treasury may at any time sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations of the Authority acquired by him hereunder. All redemptions, purchases, and sales by the Secretary of the obligations of the Authority shall be treated as public debt transactions of the United States.

(g) AUTHORIZATION FOR APPROPRIATIONS.—(1) In order to facilitate the formation and the implementation of the objectives of the Authority, there is hereby authorized to be appropriated, out of money in the Treasury not otherwise appropriated, the sum of $10,000,000 to be used to acquire capital stock of the Authority, such sum to continue to be available until expended.

(2) There are authorized to be appropriated to the Secretary of the Treasury such sums as may be necessary to pay the principal and interest on notes or obligations issued by him as a consequence of any guarantee made under this section.

(3) In the event of any default on any guaranteed obligation, and payment in accordance with a guarantee by the United States, the Attorney General shall take such action as may be appropriate to recover the amount of such payments, with interest, from the Authority or other persons liable therefor.

(h) LAWFUL INVESTMENT AND EXEMPTION FROM REGULATIONS AND RESTRICTIONS.—Securities guaranteed under this section shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof, and shall be deemed to be exempt securities within the meaning of laws administered by the Interstate Commerce Com-

mission. The limitations and restrictions as to a National or State bank dealing in, underwriting, or purchasing investment securities for its own account, as provided in title 12, United States Code, sections 24 and 335, shall not apply to securities guaranteed under this section.

(i) CAPITAL STOCK.—(1) The Authority is authorized to issue and have outstanding capital stock in such amounts and of such classes as it shall determine. At no time shall the aggregate of the shares of the capital stock of the Authority owned by a single railroad or by any person controlling one or more railroads, as defined in section 1(3)(b) of the Interstate Commerce Act, directly or indirectly through subsidiaries or affiliated companies, nominees, or any person subject to its direction or control or by any other stockholder, or any syndicate or affiliated group of such stockholders exceed 5 per centum of such shares issued and outstanding.

(2) The requirement of section 45(b) of the District of Columbia Corporation Act (D.C. Code, sec. 29–920(b)) as to the percent of stock which a stockholder must hold in order to have the rights of inspection and copying set forth in that subsection shall not be applicable in the case of holders of the stock of the Authority, and they may exercise such rights without regard to the percentage of stock they hold.

(3) Capital stock of the Authority offered and sold to the public shall be offered in compliance with all applicable laws of the United States governing the offering and sale of securities by private corporations.

AUDIT AND EXPENDITURES

SEC. 306. (a) So long as any of the capital stock of the Authority is owned by the United States, "Rolling Stock Authority" shall be added to the list of corporations in section 846, title 31, United States Code, and the Authority shall be subject to the provisions of the "Government Corporation Control Act" (31 U.S.C. 841, et seq.).

(b) Except as otherwise provided in paragraph (a) of this section, the Authority is authorized to make such expenditures and to enter into such contracts, agreements, and arrangements, upon such terms and conditions and in such manner as it deems necessary, including the final settlement of all claims and litigation by or against the Authority.

(c) Nothing in this section shall be construed as denying to the Authority the power to obtain audits of the accounts of the Authority and reports concerning its financial condition and operations by certified public accounting firms. Such audits and reports shall be in addition to those required by this section.

CONVERSION BY PUBLIC SALE OF STOCK

SEC. 307. (a) As soon as is practicable, a panel composed of the Secretary of Transportation, the Secretary of the Treasury, the Chairman of the Securities and Exchange Commission, the Chairman of the Interstate Commerce Commission, and the Chairman of the Board of the Authority shall submit to the President and to the Congress a plan for the public sale of stock in the Authority upon finding that a market exists for the sale of such stock and that the purposes of this Act shall be served thereby. This plan shall include, among other elements, a program which (1) will require refinancing, or the establishment of a reserve fund or other method, in order to protect the public interest against defaults on obligations of the Authority guaranteed by the United States, and (2) will assure that the sale of the stock will result in a wide dispersion in the ownership of the stock.

(b) The plan for sale of stock to the public shall specify a program for systematically reducing the amount of obligations of the Authority guaranteed by the United States and shall propose a capital structure for the Authority designed to insure sound financial and operating performance. Unless the Congress disapproves the plan within six months following submission of the plan to it, stock shall be sold in accordance with the plan.

(c) Upon the sale of stock to the public, the Board of Directors may be enlarged by addition of members elected by owners of such stock, but in no event shall the Board of Directors exceed fifteen members while stock is held by the United States. During such period, the rights and privileges of owners of such stock, including determination of the number of Directors to be so elected, shall be as set forth in the bylaws of the Authority.

(d) The proceeds of the sale of stock to the public shall be applied to the retirement of stock held by the United States and, upon retirement of all stock held by the United States, the terms of office of members of the Board of Directors appointed pursuant to section 303(a) shall terminate at such time and in such manner as may be provided by the plan, and all Directors shall thereafter be elected by the owners of the stock; except that the President shall have authority to appoint three Directors by and with the advice and consent of the Senate, one upon recommendation of the parent body of the American Federation of Labor and Congress of Industrial Organizations, one upon recommendation of the Federal Trade Commission, after consultation with organizations of consumers, and one upon recommendation of the Interstate Commerce Commission, after consultation with organizations of shippers, to represent the interest of the public in the deliberations of the Board.

(e) Upon retirement of all stock held by the United States, the Authority shall pay to the United States an annual fee equal to the difference between the amount of interest actually paid and that which the Secretary of the Treasury determines would have been paid upon outstanding guaranteed obligations if hey had not been guaranteed, plus one-fourth per centum. The Authority shall make every effort to refinance such obligations in order to terminate the liability of the United States arising from its guarantee of such obligations.

(f) Upon retirement of all stock held by the United States, the Secretary of the Treasury may no longer purchase or guarantee the Authority's notes or other obligations.

(g) Upon default of the Authority in payment of obligations guaranteed by the United States, the United States shall have the right to control the Authority and a Board of Directors shall be appointed in accordance with the provisions of section 303 of this Act.

NATIONAL ROLLING STOCK INFORMATION SERVICE

SEC. 308. (a) If a national rolling stock information system as defined in section 103 of this Act is not in operation at the date of incorporation of the Authority, the Authority shall establish such a system within one year from that date.

(b) In the event that the Authority undertakes to establish a national rolling stock information system, the Secretary shall permit the Authority access to, and use of, all information, studies, designs, equipment, facilities, computer programs, and other things acquired or developed pursuant to section 103 of this Act and shall give all possible assistance to the Authority to further the purposes of this section.

(c) Information from the national rolling stock information system shall be made available to the Authority, shippers, railroads, the Commission, the Secretary, and interested members of the public, subject to such rules as the Commission shall prescribe to insure the confidentiality of certain types of competitive information supplied for use in connection with the system.

(d) The Authority shall report semiannually to the Congress with respect to the progress made in implementing the national system. Such report shall include recommendations for such additional funding as may be necessary to make the national system fully effective.

(e) In exercising its authority under this section, the Authority may enter into agreements or contracts without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5).

(f) Persons contracting with the Authority with respect to the design of a national rolling stock information system or the use of information supplied by such systems shall be and are hereby relieved from prohibitions of the antitrust laws of the United States, to the extent necessary to facilitate carrying out the purposes of this Act.

CONDITIONS AND CHARGES FOR USE OF ROLLING STOCK

SEC. 309. (a) The Authority shall establish charges for the use of rolling stock supplied by it which, in the judgment of the Board, will at least enable the Authority to meet its operating and administrative expenses, including depreciation and debt-carrying charges, and to provide sufficient earnings to facilitate conversion of the Authority to private ownership pursuant to section 307, except that such charges shall not exceed a maximum of 150 per centum of the cost to the Authority of acquiring, owning, maintaining, and operating the class of rolling stock. In establishing such charges the Authority shall take into account the prevailing rates and conditions for use of similar rolling stock.

(b) The Authority shall not assess charges for rolling stock located on a railroad that is not required for such railroad's use in originating traffic provided that such rolling stock is not the subject of a car service order of the Authority or of the Commission: And provided further, That such railroad furnishes appropriate notice to the Authority according to terms and conditions established for use of such rolling stock.

(c) The Authority shall establish reasonable rates of compensation through negotiation with a railroad for storage of any excess rolling stock on the property of such railroad.

(d) The Authority shall establish and may amend from time to time terms and conditions governing the use of its equipment, including requirements for identification of its rolling stock as shall in its judgment be appropriate to effecutuate the purposes of this Act.

(e) The Authority, after consulting with railroads and other car distribution agencies, shall establish and may amend from time to time just and reasonable car service rules, regulations, and practices with respect to its rolling stock. Such rules, regulations, and practices, and car distribution directions issued thereunder, shall take precedence over any conflicting rules, regulations, or practices established by any railroad or group of railroads.

(f) Each railroad shall comply with such car service rules, regulations, and practices as may be established, and such car distribution directions as may be issued pursuant to this section.

AUTHORITY OF THE INTERSTATE COMMERCE COMMISSION

SEC. 310. The Authority shall be subject to the car service provisions of the Interstate Commerce Act, section 1(10) through 1(17), and the orders of the Commission thereunder to the extent applicable. Upon petition of any person affected by any charge, rule, regulation, practice, term, condition, or directive of the Authority, or upon its own motion, the Commission shall make an investigation and, after a hearing, shall order any charge, rule, regulation, practice, term,

condition, or directive which it finds not to be in conformity with this Act, or to be inconsistent with any rule, order, or directive of the Commission pursuant to applicable provisions of section 1(10) through 1(17) of the Interstate Commerce Act to be canceled, annulled, or amended, as the Commission shall find to be appropriate.

PROTECTIVE ARRANGEMENT FOR EMPLOYEES

SEC. 311. (a) In awarding contracts for building or rebuilding rolling stock under this Act, the Authority, to the extent practicable, shall conform to the prevaling practices of the railroad industry in distributing such work among railroads with rolling stock building and rebuilding facilities and to nonrailroad car builders. The Authority shall be guided in distributing such work by the proportions of car building, and car rebuilding, respectively, accomplished by railroads and nonrailroad car builders, respectively, in the five calendar year period immediately preceding enactment of this Act. Any downward variations from the guidelines in car building, and car rebuilding, shall not exceed 5 per centum. The total number of cars and locomotives built, and rebuilt, respectively, by railroad facilities, or by nonrailroad car builders, respectively, in a calendar year need not exceed the average number built and rebuilt, respectively, by railroad facilities, or by nonrailroad car builders, respectively, during the five calendar year period immediately preceding that calendar year, but the same relative proportions of such car building, and car rebuilding, respectively, shall be maintained in the distribution of such work as between railroad facilities and nonrailroad car builders. If the Authority for any reason under its control fails to maintain such proportions in distributing such work to railroad facilities under such contracts, the Authority shall provide fair and equitable arrangements in contracts entered into by railroad employers with their employees as certified by the Secretary of Labor, to protect the interests of any of the employees of such employers who may be affected by such variations in the distribution of such work. To the extent applicable, such arrangements shall include, without being limited to, the protective arrangements specified in section 13 of the Urban Mass Transporation Act of 1964 (49 U.S.C. 1609).

(b) The Authority shall take all necessary action to insure that fair and equitable arrangements are made as certified by the Secretary of Labor, to protect the interests of employees affected by any change in technology designed to provide for more effective use and distribution of rolling stock which may have been induced or otherwise caused by the Authority in its administration of this title. To the extent applicable, such arrangements shall include, without being limited to, the protective arrangements specified in section 10 of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1609).

(c) To the extent practicable, the Authority shall award contracts for the repair and maintenance of rolling stock to railroads with facilities for performing such work.

(d) The Authority shall take such action as may be necessary in insure that all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed with the assistance of funds received under any contract or agreement entered into under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Authority shall not enter into any such contract or agreement without first obtaining adequate assurance that required labor standards will be maintained on the construction work. Health and safety standards promulgated by the Secretary of Labor pursuant to section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) shall be applicable to all construction work performed under such contracts or agreements, except any construction work performed by a railroad employee. Wage rates provided for in collective-bargaining agreements negotiated under and pursuant to the Railway Labor Act shall be considered as being in compliance with the Davis-Bacon Act.

ACTIONS TO ENFORCE OBLIGATIONS

SEC. 312. (a) The Authority may by any appropriate civil action apply to any district court of the United States having jurisdiction of the parties to enforce compliance with any obligation owing to it by virtue of or pursuant to any provision of this title of any agreement or regulation made pursuant thereto.

(b) If the Authority, any railroad, or other person fails or refuses to comply with any rules, regulations, charges, or practices established or any car distribution directions and orders issued under this title, or Commission directive to pay charges, any district court of the United States having jurisdiction of the parties shall have jurisdiction, upon petition by the Commission with respect to matters arising under section 310 of this Act or by the Corporation with respect to matters arising under section 309 of this Act to grant such relief as may be necessary or appropriate to prevent or terminate such failure or refusal.

(c) If the Authority or any railroad or other party violates or threatens to violate any provision of this Act, or any order, rule, or regulation issued thereunder, any district court of the United States having jurisdiction of the parties shall have jurisdiction, upon petition, or in a case involving a labor agreement, upon petition by any employee affected thereby, including duly authorized employee representatives, to grant such equitable relief as may be necessary or appropriate to prevent or terminate any such violation.

(d) Nothing contained in this section shall be construed as relieving any person from any punishment, liability, or sanction which may be imposed otherwise than under this Act.

INTERCHANGE OF CARS

SEC. 313. (a) No railroad may refuse to transport general service freight cars owned by the Authority, whether loaded or empty, subject to applicable safety regulations, reasonable interchange rules, reasonable line and prevailing charges set pursuant to section 309 of this Act.

(b) No railroad shall be entitled to any compensation from the Authority for the movement of empty Authority-owned freight cars between any points on its line of railroad, between a point on its line of railroad and a point on another line of railroad, or as a bridge carrier between points on two or more other lines of railroad, when moving upon either a car distribution directive (1) issued by the Commission or (2) issued by the Authority for the purpose of distributing Authority-owned cars for loading.

REPORTS TO THE CONGRESS

SEC. 314. The Authority shall transmit to the President and directly to the Congress, annually, commencing one year from the date of enactment of this Act, and at such other times as it deems desirable, a comprehensive and detailed report on its operations, activities, and accomplishments under this Act, the state of rail freight service, including an annual report of the numbers of rolling stock, by classes, acquired and owned by the Authority, and the numbers of such stock, by classes, owned by the railroads, and shall include in such report a statement of receipts and expenditures for the previous year, an explanation of the method by which the amount of rolling stock purchased was determined, and the criteria used in distributing rolling stock.

SEPARABILITY

SEC. 315. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Mr. HARTKE. Mr. President, the bill before us is a freight car bill. Freight car shortages are a problem that has been before many Congresses. Various solutions have been proposed and tried. However, none have worked. In S. 1729 we have developed a measure that we hope will meet the various complexities of the whole problem.

THE PROBLEM

Before describing the bill, let me describe the problem that the bill is intended to meet. First, the problem is really a problem that shippers face—they cannot obtain freight cars when they order them and when they need them. Thus, the focus of the solution must be upon the shippers and whether or not their problem is solved. A bill to alleviate freight car shortages is really a bill to aid shippers, not a bill to aid railroads. Indeed, purpose of the bill must be to induce railroads to give shippers adequate service.

Let me emphasize that word "induce." The continued existence and worsening degree of the freight car shortages demonstrates without a doubt that the industry will not solve the problem on its own. Affirmative action is required to bring about changes and improved service.

A second aspect of the problem is that there are not enough cars. This is an easy issue to understand and relatively easy to deal with—to the extent that railroads do not have strong enough credit to acquire an adequate supply of cars, their credit can be strengthened by loan guarantees or they can draw cars from a common pool as they need them.

A third aspect of the problem is that cars are poorly utilized. The importance of improved utilization to solution of freight car shortages has become increasingly apparent. It cannot be too strongly stressed. If cars are more efficiently utilized, fewer cars will be needed to carry the same or increased amounts of freight. That means that the total investment in the freight car fleet need not be as large as it would otherwise. Just as importantly, improved utilization will improve the quality of service that shippers receive. If cars are efficiently used, they can be developed on schedule. Railroad transit time and service can become more reliable, and shippers can depend on getting cars when ordered. Lost or delayed cars can be reduced.

The major impediment to improved utilization is lack of information about car location and the failure of railroads to coordinate their operations with one another. It must be kept in mind that over 50 percent of all shipments pass across two or more railroads to reach their destinations. It is apparent that coordination and cooperation between

railroads must be close if service is to be dependable and utilization efficient. A weak link in the chain of railroads can easily ruin otherwise good service. It must also be kept in mind that railroads compete with each other to some extent. Thus, the proprietary interests of each road and its desire to protect relations with its customers incline railroads to keep information private and to focus their attentions to their separate operations. This inclination must be overcome and closer cooperation and coordination must be fostered by any legislation that hopes to solve freight car problems.

EXPLANATION OF BILL

UTILIZATION

The bill as reported by the committee meets the issues described above. First, it contains a number of provisions to improve utilization. Primary among these is section 103 which directs the Secretary of Transportation to design and assist in the establishment of a national rolling stock information system on the railroads. A total of $35 million in financial assistance is provided to accomplish this. Such a computerized system would provide timely information about car location and status. It would allow quick determination of the locale of empty cars so that they could be sent to shippers. It would permit the quick tracing of cars that have been lost and would also serve as a communication system for orders to get them going in the right direction.

Title II directs the Secretary to develop and publish a quarterly index of car utilization together with an analysis of changes. This will give objective information about changes in utilization and will provide a measuring stick for both Government and shippers. Title II also requires the ICC to make quarterly reports about utilization. It further calls for a 2-year study that will take into consideration all factors in utilization and legislative and other recommendations to improve utilization. Finally, the title directs the Secretary to take all action possible under existing law to improve utilization. Thus, he might well bring a proceeding before the ICC urging the Commission to issue regulations under its broad car service authority.

Title III, which would provide for establishment of the Rolling Stock Authority in the event the railroads do not eliminate the freight car shortage within 3 years, is also a powerful stimulant to improved utilization and better service. If it is established, the Authority would develop and demonstrate methods of improving utilization. It would be a yardstick against which to measure the performance of the industry.

Thus, the bill strongly emphasizes the need for improved service and utilization. It provides for a system to reduce the information gap. Its structure encourages greater cooperation and coordination between railroads.

INCREASED CAR SUPPLY

Title I meets the problem of inadequate car supply by establishing a fund to insure up to $2 billion of equipment obligations. The purpose of this provision is to bolster the credit of railroads in weak financial condition so that they can obtain financing for equipment and to bring down the interest rates that they pay for such financing. It is anticipated that if the weak roads obtain an adequate supply of cars, then stronger roads that can now finance equipment without assistance will increase their equipment acquisition programs. Presently the stronger roads are reluctant to purchase cars that are mainly used by other roads with inadequate car supply of their own.

The guarantee provision is carefully hedged with conditions so that the taxpayer will not, in effect, be guaranteeing increased dividends to railroad stockholders or investment in nonrailroad ventures. If a railroad cannot manage to meet its obligation to supply an adequate number of cars to its shippers without Federal assistance, it should be required to retain as much of its own funds as possible within the company and devoted to meeting its car service objectives. Taxpayers should not be required to guarantee a flow of funds into one pocket of the railroad while holes are left in other pockets for money to drain out into private hands or nonrailroad uses.

Mr. MAGNUSON. Freight car shortages have long been a recurring problem for the users of railroad transportation. The problem is that shippers are periodically unable to obtain sufficient numbers of freight cars when they request them to move their products. As a result, grain is piled in the streets of midwestern towns, manufactured goods stack up on shippers' docks, vital coal stockpiles are diminished, and lumber prices skyrocket, in part, because the production cannot be moved to the location of demand for them. Shippers have turned to Congress and to the Interstate Commerce Commission many times for solution of the freight car problem.

In considering this bill, it must be kept in mind that this is an extremely old problem. The first case to be brought before the Interstate Commerce Commission—Docket No. 1 in 1887—was a complaint by wheat farmers in the Dakota territory that the railroad upon which they depended did not furnish enough freight cars to move their harvest.

There have been repeated efforts since 1887 to find a solution. Voluntary action by the industry was relied upon until 1917 when Congress gave the ICC power to issue and enforce car service rules. A declining agricultural economy and the great depression eliminated freight car shortages more effectively then the ICC. During World War II and after, a thriving economy again increased freight car demand beyond supply. In 1947 the ICC acknowledged what every Western shipper knew—freight cars were not available to shippers when they needed them the most.

Freight car shortages continued to be a serious problem fluctuating in intensity with the state of the economy. Recessions reduced freight car supply problems because, of course, there was much less reason to ship anything.

The ICC began another inquiry in 1963 and 6 years later, in 1969, finally found that not much had changed since its previous study in 1947, except shortages were no longer confined to summer and fall in the West or to grain shippers or lumber shippers.

The Commission noted that railroads had not lived up to their promises made 22 years previously. It also said that shortages occurred in almost every year during the peak periods of loading and in almost all producing areas of the country. The Commission went on to state that:

> This situation results from a combination of an inadequate ownership of general purpose type freight cars by [railroads] as a group and improper utilization of the available freight car fleet.

In hearings before the Senate Commerce Committee, the Department of Transportation has supported the ICC's view.

Freight car shortages were once thought to be a characteristic problem for western farmers during harvest season. During the many years since the problem's origin, chronic shortages have spread throughout the economy. It is now apparent that almost every major industry in any region of the country may be threatened with car shortages at some time during the year. The problem can no longer be dismissed as a seasonal problem of prime concern to only one region of the country and one group of shippers. It is apparent that freight car shortages are a major problem of the rail industry and for the Nation's shippers.

The problem is twofold. There is a shortage of general service freight cars. The railroads have tended to invest heavily in special service cars but general service cars, primarily box cars, have begun to fade from the rail system. While the stronger railroads have sufficient funds to acquire cars for their own needs, the weaker roads do not have adequate access to the capital markets. They can borrow money but only at high rates which reduces the number of cars they can purchase. At the same time the weaker roads, because they must rely upon cars from other railroads pay out a considerable amount in per diem, thereby further reducing their ability to make investments. One of Penn Central's major expenses is its extremely large equipment rental. Further adding to the dilemma the weaker roads lose several millions of dollars by not having sufficient cars available. Without outside assistance to break the cycle there seems to be no hope for improvement.

But perhaps more important than the number of cars is the inefficient use of cars. Improved car use is the key to solving the freight car shortage problem. It is also the key to revitalizing the weaker railroads.

It is unanimously conceded that the general service freight car fleet is poorly utilized. The average freight car is in movement only 12 percent of the time. It is moving with a load only about 7 percent of the time; the rest of the time is empty movement. The average freight car moves loaded an average of only 32 miles per day.

No doubt investment in freight cars could be more efficiently utilized. To do so would reduce the number of cars and amount of investment required to serv-

ice the needs of the Nation's rail shippers. For example, the Department of Transportation estimated the shortage of freight cars to be 130,000 cars, about 9 percent of the existing railroad-owned fleet. A 9 percent increase in car utilization—increasing loaded movement to 7.63 percent of the time and average mileage to 34.9 miles per day—would eliminate this car shortage without the need for investment in additional cars.

If railroads could improve service to shippers, they would be improving utilization and helping themselves financially. The Department of Transportation estimates that only one car in three will arrive on the day it is scheduled to do so. How can the railroads compete with the trucking industry which has an 85 percent to 95 percent on-time delivery record? The answer is partially found in the declining percentage of freight now carried by the railroads.

Better use of freight cars, which represents the principal form of current investment by the industry, is the industry's No. 1 challenge, because gains in utilization are of critical importance to broader marketing of rail service, reduced investment requirements, and enhanced financial strength.

It has been demonstrated that modern computer and communications technology, if properly put to use, could help improve utilization dramatically. The industry lacks the ability to locate cars and put them to work efficiently. On some occasions hundreds of cars and even whole trains have been misplaced.

Why has the industry not corrected the problem? One hundred years of shipper complaints simply could not overcome the fact that the industry, while it is to a high degree interdependent and interrelated, it still remains composed of individual, sometimes competitive companies. The first goal of every company of course is to maximize profits. Each company is concerned primarily with its own problems and opportunities. This means that the interests of the industry as a whole—and the interests of shippers who must often rely on more than one carrier for delivery of their shipments—are subordinated to the varied interests of the individual rail companies. Projects to benefit the industry as a whole are undertaken only when they coincide with the separate interest of the individual railroads. Since different railroads are located in different environments—in terms of geography, climate, track layout, regional economics, and financial strength—their problems and goals cannot often be expected to coincide. Thus, improved rail service which requires a large degree of cooperation between railroads is difficult to achieve and maintain because of the segmented structure of the industry.

Several approaches to a solution have been proposed and employed in the past. Often it has been suggested that increases in car-hire rates or per diem rates, as they are called, will force railroads to send cars home to the owner railroad. But such suggestions inevitably pit chronic debtor roads of the East against the creditor roads of the West. In 1966 after tremendous battles in Congress, we finally passed the so-called incentive Per Diem Act using this approach. First of all, it took the ICC 4 years to put the law into effect. But the legislation was so weakened by amendments and subsequent ICC interpretation that its effect to date has not been noticeable.

The experiences of the past cast doubt on the old approaches. We need an answer which meets the legitimate interests of both the East and the West, which will increase the number of cars but will more importantly improve utilization of cars. The bill before us today does this in very interesting ways. It provides a carrot to the industry in the form of $3 billion in loan guarantees for the purchase of general service freight cars.

Every effort is made in the legislation to insure that the money goes into freight cars, not something else like dividends or fancy hotels. The bill also provides for the establishment of a car information system—to help find out where the cars are at any one time.

How do we know this will work? No one could be sure so we added a stick to the carrot. The stick is that if railroad performance does not improve, the Federal Government will in 3 years move more aggressively into the field through the establishment of a quasi-public authority which will have authority to purchase its own cars and control their use. The committee realizes the industry may not be delighted about the possibility of this authority coming into existence. In fact the railroads' concern will, we hope, turn into concrete affirmative action so that the railroads will take care of the car supply problems themselves without the need for greater Federal involvement. This provision is, therefore, vital to the scheme of the bill and must be retained in its present form to make the legislation effective.

Mr. President, I believe the Commerce Committee has fashioned a very unique instrument for combating a problem as old as railroading. The senior Senator from Indiana (Mr. HARTKE), chairman of the Special Subcommittee on Freight Car Shortages has done a fantastic job in developing this bill. The senior Senator from Kansas (Mr. PEARSON), who has long worked hard to find an answer to this age-old problem, deserves full credit for his dedication and his desire to produce a workable bill.

Mr. President, I urge the passage of S. 1729 as amended by the committee.

Mr. HATFIELD. Mr. President, the average shopper in a supermarket should have a keen interest in this bill, for the consumers of America are hurt by rail car shortages. Consumers pay more when no rail cars are available to ship a perishable commodity to market. If the crop spoils on a siding because of delays in getting freight cars, it forces upward the price of other produce on grocery shelves. The effects of rail car shortages on shippers of perishable goods is as devastating as a rail strike, for they face financial ruin in both cases.

As a Senator from a lumbering State, I know the price increases to lumber caused by freight car shortages. Such shortages are one reason for cost increases in new home construction. To meet the housing needs of this country, efforts must be made to hold down housing costs. Providing an adequate rail car supply will help, for Oregon ships 60 percent of its lumber east of the Rockies.

This bill is a good compromise. If the carrot does not work, the stick goes into effect.

Mr. President, robbing Peter to pay Paul is no way to run a railroad. This approach, however, has lasted far too long in the minds of many railroad men in this country. It is no secret that much of the current dilemma stems from squabbles over cars between the railroads in the East and those railroads in the West. Unfortunately, the western roads usually have been the losers in such past battles.

It has been said and resaid that the first case before the ICC in 1887 concerned freight car shortages in the Dakota Territory, but I can also say I have talked to many Oregon shipppers who feel they have waited since that time for cars they desperately needed. In fact, it is interesting to quote from an order issued by the Oregon Railroad Commission in 1916. The order said, in part:

> A severe car shortage in the years 1903, 1904, 1905, and 1906 was one of the causes which led to the creation of this Commission, and each year since the shippers on the lines of the Southern Pacific Co. in Oregon have experienced a shortage in greater or less degree.

Nothing has changed, Mr. President, since those days over half a century ago.

In 1963, the ICC began another investigation into freight car shortages. In its 1969 decision, following 6 years of research, the ICC harked back to yet another earlier ICC investigation in 1947. The 1969 decision stated:

> It has been 22 years since the last proceeding and little, if any, improvement has been made in freight car service to the public; the railroads simply have not fulfilled the promises or assurances made to the Commission in that proceeding. Car shortages of varying duration and severity have occurrred during this period and in nearly every national emergency. They have occurred in almost every year during the peak periods of loading and in almost all producing areas of the country (p. 270).

The ICC report—Investigation of Adequacy of Railroad Freight Car Ownership, 335 ICC 264, 1969—concluded with the comment:

> That there is a continuing freight car shortage which requires affirmative, remedial action at this time. We believe that this situation results from a combination of an inadequate ownership of general purpose type freight cars by respondents as a group and improper utilization of the available freight car fleet. (p. 308)

Mr. President, the ICC need not have spent 6 years to find that out. Had they come to Oregon, plenty of my shipper friends would have explained it to them in simple terms.

As my colleagues are aware, I was a member of the Commerce Committee during 1971, and I left the committee only because I had the opportunity to serve on the Appropriations Committee. During my year as a junior member of the committee, I had the privilege to

serve as a member of the Special Subcommittee on Freight Car Shortages, chaired ably by the senior Senator from Indiana (Mr. HARTKE). I learned a great deal about the problem in my year on the committee during our several days of hearings on this problem.

When I first came to the Senate in 1967, it had been my understanding that the problems of freight car supply were limited primarily to a shortage in numbers, and the squabbles for these cars between the eastern and western roads.

It was not until I become involved intimately in the hearings that I became aware of the scandalously low level of utilization of our existing freight car supply.

I would like to quote from the committee report about the utilization problem. The report says:

It is unanimously conceded that the general service freight car fleet is poorly utilized. The average freight car is in movement only 12% of the time. It is moving with a load about 7% of the time; the rest of the time is empty movement. The average freight car moves loaded an average of only 32 miles per day.

When I found out that a car is loaded and moving only 7 percent of the time, I barely could believe it. A reading of the hearing records will show my extreme interest in this phase of the bill during the course of the hearings.

The importance of utilization is put best by comments in the report that the existing car supply is somewhere in the neighborhood of 130,000, according to the Department of Transportation. That is about 9 percent of the total of the existing fleet. If utilization were increased 9 percent—only increasing it 9 percent over its low level—this slight increase would eliminate the need for additional cars without the added investment in new cars. This 9-percent increase—upping the loaded and moving percentage to 7.63 percent of the life of the car, and increasing the average daily mileage of a loaded car from the current 32 miles to 34.9 miles—seems reasonable in anyone's mind.

I think the distinguished chairman of our subcommittee and the staff members know how deeply I believe that strong incentives to increase utilization must be included in this bill.

Mr. President, in my opinion S. 1729, as amended, does much to provide for increasing utilization. The bill establishes a national, computerized rolling stock information system to give timely information on location and other factors. That is section 103 of the bill. It also develops a quarterly published index of freight car utilization by the Secretary of Transportation together with his analysis of changes in utilization. This is section 201 of the bill. It establishes quarterly reports by the ICC of utilization analysis—section 202 of the bill. There will be undertaken by the Secretary of Transportation a 2-year study on ways to increase utilization, and a report from DOT containing legislation to implement these findings. I can say that I am ready now, 2 years in advance, to support legislation that will increase utilization of these freight cars. This is section 203 of the bill. The last section of the bill dealing with utilization, section 204, mandates the Secretary of Transportation to use all existing provisions of various statutes to increase utilization of freight cars.

Increased utilization is at the cornerstone of the entire supply problem, and I stand ready to offer any assistance I can to see that these sections of the bill are put into effect and followed vigorously.

There was one witness who testified before our committee who seemed to think that the ICC could solve the entire problem through its existing authority. While I did not agree with his thoughts, I ask unanimous consent that a colloquy I had with Mr. Rodman Kober, chairman of the National Grain & Feed Association's transportation committee on June 3, 1971 appear at this point in the RECORD.

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

Senator HATFIELD. Thank you very much, Mr. Kober.

Mr. Kober, I find your testimony very interesting. I would like to pose a few questions just to clarify it in my mind.

Perhaps you have stated this in different language, but just to make sure I understand you clearly, do you believe that there is a freight car problem today that we could call of a serious magnitude?

Mr. KOBER. Yes, I do.

Senator HATFIELD. In other words, you believe that there are shippers today that are suffering a substantial economic harm because they can't get the freight cars they need for their particular products?

Mr. KOBER. I would agree with that statement.

Senator HATFIELD. Do you believe that this problem is of sufficient magnitude to require Federal legislation?

Mr. KOBER. I have expressed myself in our association's statement that I am not sure any further Federal legislation would be required.

I think the ICC has the authority to produce the type of improvements in the operational system which I think would produce a lasting increase in the number of car-days that would be available to the shippers who are presently suffering due to a lack of usable freight car equipment.

Senator HATFIELD. In other words, then, you feel that just with the power that is now vested in the ICC, its rulemaking power, that this would be sufficient to handle the problem as far as the Federal Government's action is concerned?

Mr. KOBER. For the present, I do.

Now, it may very well be that if you had an ideal system, which I am sure we can never achieve and I wouldn't suggest otherwise, we may then find that we do need additional cars. I think before we are able to make that judgment, we have to do everything possible to treat the infection itself, which is the inefficient way in which the existing cars are being handled, before we can make any judgment as to how many new cars and what type of new cars will be required.

Senator HATFIELD. Now, you mention in part of your testimony this point of utilization. You did not feel that S. 1729 or S. 1730 or S. 1731—any one of these three bills—addressed itself to these problems.

Are you aware that S. 1729 very specifically talks about utilization? I am referring to page 14, section 10(b), in which it says:

"The Corporation may provide financial incentives, including shaping of costs and per diem surcharges to encourage the installation and use of automatic car identification, scanning devices, and computer technology to assure improved use and distribution of freight cars; and may enter into such contracts as, in its judgment, may be required for the development and operation of a computer system for car distribution."

It goes on with other comments relating to the general subject of better utilization.

Would you not support at least that concept within this part of the bill?

Mr. KOBER. I would support that concept and say that that certainly goes in the direction that we have suggested here this morning but it doesn't suggest all the possible approaches that could be taken to improve the way in which the existing car fleet is being handled by the Nation's railroads.

I would certainly support that as one affirmative move which could assist in improving ultization, but I don't think the language that you have referred me to really goes far enough in that direction.

Senator HATFIELD. Do I understand you correctly so that I can make this statement: that you believe the railroad industry is capable of alleviating the car problem with these suggested changes in the ICC rules?

Mr. KOBER. Yes; I think the system is capable of achieving some large measure of improvement. I think, however, that the capability has to be related to some incentive. The system had deteriorated with respect to the efficiency of utilization and handling of equipment, and I think that merely suggests that despite my belief that the capability to improve exists, the incentives haven't been there to create the impetus to use that capability.

Senator HATFIELD. In other words, you are saying, given enough money, the rail industry could solve this whole problem?

Mr. KOBER. I am not suggesting that kind of incentive. I think the type of incentive that we have suggested, and, in fact, suggested to the Commission in *Ex Parte 265*, was the penalty incentive, that if a rail company could not handle a particular car with a certain level of dispatch or with adhering to certain service criteria, that they would have to pay a penalty.

Now, there might be some question as to whom that penalty might be paid, and I am not here to debate that. But that is the type of incentive I have in mind. I am not asking for any Federal funds.

Senator HATFIELD. Let me say to you that the penalty system has not helped us in the lumber industry in the Pacific Northwest. We have had a type of penalty program there, particularly on the wide-door boxcar, and we found that some of the eastern rails would just as soon pay the penalty and keep the equipment.

Mr. KOBER. I am speaking about a penalty which the railroad in our concept would have to pay to the receiver or the shipper of the freight for its inability to handle cars based upon some predetermined set of service criteria.

I can't speak specifically to what has happened in the Pacific Northwest, but I think the penalty provisions that you have in mind are the per diem penalty provisions, and perhaps they haven't worked because they really weren't sufficiently punitive. I don't know. I know there are some people here representing the lumber industry who can speak much more fully on that.

Senator HATFIELD. Do you think the ICC would be willing to accept this kind of proposal based upon the *Ex Parte 265*?

Mr. KOBER. Four commissioners in dissent indicated that they thought something along these lines should be done, and the other

seven commisisoners in the majority opinion expressed the feeling that there has to be some improvement in service but apparently weren't ready to tackle the problem to that particular report.

Senator HATFIELD. In other words, you have a seven to four uphill battle at this point, as far as getting your proposals accepted by the Commission if they were to make that determination themselves?

Mr. KOBER. That is correct.

Senator HATFIELD. Mr. Kober, there are problems that have been called to our attention that relate to the matter of bunching of freight cars at ports of embarkation.

Would you care to comment on that as part of the utilization problem?

Mr. KOBER. Yes, I would. I participated in a recent demurrage case before the Commission in which we presented rather copious evidence that one of the reasons why freight cars are bunched at the ports is that rail service is so erratic that if one were determined to try to schedule the shipment of his goods to fit an orderly receipt pattern, so that cars would not be unduly detained at the port, it would be impossible to do so.

In fact, that point of view was accepted in that particular case and it was used as a basis for rejecting the proposed increases in demurrage charges that would have applied to export traffic at certain southern ports as being unreasonable because the rails themselves through their operational deficiencies were contributing to the bunching problem.

We are not saying nor suggesting that shippers and receivers are never responsible for bunching. That certainly isn't true. What I am saying is that the inefficient way in which cars are operated and handled in this country contributes substantially or significantly to the bunching of equipment at the ports.

When you deal with the exportation of grain, for example, where the average vessel today takes something like 500 or 600 boxcars to fill its holds, you are talking about the need to schedule a substantial volume of traffic. In our company, for example, we make every effort to do that, and despite every one of our efforts, there is bunching which occurs over which we have absolutely no control.

I certainly would reject any suggestion that in the grain trade, at least, specific cars are ordered for specific vessels and the cars wait for the vessel. That is not the way the grain trade operates in its export area, and as a matter of fact, the general concept of operation in the export area is one of a pipeline function, where you try to fill an elevator whether or not the ship is there and you try to schedule your inventory control based on some historic record of rail operations which often proves to be inadequate.

Senator HATFIELD. Are you saying that a substantial increase in demurrage charges would discourage this kind of bunching problem?

Mr. KOBER. No, as a matter of fact, it would have no effect on it at all. All it would accomplish would be to serve to penalize, in many cases, the innocent victim of the inefficient rail operational system.

Senator HATFIELD. What was your proposal as to how we are going to correct this bunching problem?

Mr. KOBER. In the particular case involved, we didn't offer any specific remedial steps except to suggest to the Commission that when the railroads are able to reorder their own operational system so that we can make reasonable estimates of how long it will take to get a car from A to B, and that service would, in fact, be produced with some degree of reliability, the bunching problem would be substantially alleviated or eliminated.

If that ideal were achievable in any degree, then, I think, that most receivers of freight would say okay, to the extent we contribute to bunching, we would be willing to pay even a higher demurrage than presently applies where we contribute to inefficient detention of equipment.

Senator HATFIELD. Is the lack of elevator and other such storage facilities related to this bunching problem in your opinion?

Mr. KOBER. No. As a matter of fact, the observation generally in the grain trade, especially at the gulf coast and the north Pacific coast, is that there is a great oversupply of elevator capability.

Senator HATFIELD. Oversupply?

Mr. KOBER. Oversupply, yes.

Senator HATFIELD. In your testimony then, you would generally oppose, I suppose, a national pool concept, whether this pool is operated by the Government or by a semiprivate organization or by a private corporation of some kind?

Mr. KOBER. We would oppose it as not being the logical first step. We think the logical first step is to provide the incentives, either through additional legislation which we don't think is needed or through congressional resolution which would compel the Interstate Commerce Commission to take the necessary steps to improve the operational efficiency with which our transport resources are being handled.

Now, it may well be that once that has been done, and I admit it is a complex problem, we may discover we need more cars or a pooling concept. I think we are a long way from making that decision today, because if you place more cars into a congested system, you are not going to cause that system to work more efficiently, and that is what these bills would propose to do.

Senator HATFIELD. Let me ask you, is your industry united on this position and this philosophy that you have presented here this morning?

Mr. KOBER. I believe it is.

As a matter of fact, the policy which I have stated to you received unanimous endorsement of the 14 members of our transportation committee who participated in the deliberations at our last annual convention leading to this policy, and the policy was unanimously approved by the board of directors at that same convention. So I have to say to you based upon that evidence that there are no dissents to my knowledge within the industry.

Senator HATFIELD. And they, like you, feel that the rail industry with certain incentives and additional regulations by the ICC will solve this whole problem?

Mr. KOBER. It could solve this problem, not the whole problem, perhaps, but we are in no position today to make a judgment as to what part of the problem could possibly be solved by the legislation before the committee.

Senator HATFIELD. Does any of your group come from the Pacific Northwest?

Mr. KOBER. Yes, as a matter of fact, Louis Dreyfus Corp. operates an elevator in the Pacific Northwest. Cargill Inc. is represented on the committee and they operate elevators in the Pacific Northwest. Continental Grain is represented on the committee, and they operate elevators in the Pacific Northwest. United Grain Corp., which does not have a member on the committee, is a member of the association, and they operate an elevator in the Pacific Northwest.

I would say that our association is well represented in the Pacific Northwest.

Senator HATFIELD. And they support your testimony here this morning?

Mr. KOBER. Certainly with respect to the companies I have named, yes.

Senator HATFIELD. What, in your industry, would be the requirement for additional rolling stock? How many more cars? What kind of cars would you need to alleviate your shortage? Could you get us that information if you don't have it?

Mr. KOBER. There is no way to determine that in our opinion at the present time.

Senator HATFIELD. Why is that?

Mr. KOBER. Because it may very well be that with any degree of improvement in the operational efficiency with which the existing general purpose—so-called general purpose—equipment is being handled by the railroads, we may discover that we don't need any more general-purpose cars.

Of course, we have a problem. I might also add, with the term "general-purpose equipment." The legislation would seem to propose the construction of, to the extent it speaks about general-purpose equipment, boxcars; and I think most of the grain trade is pretty united today that boxcars are not the most efficient vehicle with which to handle grain in interstate commerce. We would propose that grain is much more efficiently handled in jumbo-covered hopper cars.

Senator HATFIELD. How many of them would you need?

Mr. KOBER. We would have no way of determining an exact quantity.

Senator HATFIELD. The coal industry came in here and gave us a very specific figure. The Scrap Iron and Metal Institute came in here and gave us a figure of 10,000 gondolas, or whatever the figure. They had a specific figure that they said they had computed, studied, and analyzed, and brought forth this figure for this committee.

Is your industry that much different that it cannot give us some general idea as to what your shortage is?

Mr. KOBER. Our industry is different in this respect: We believe that with the increase in efficiency with which these cars are handled, you will not need to create any additional resources to carry the grain in interstate commerce.

Senator HATFIELD. Then, let me ask you, what percentage of the time is the equipment that you use loaded and operated? Can you give us that figure so as to indicate the utilization factor?

Mr. KOBER. I think the national average is about 9 percent.

Senator HATFIELD. Do you represent the small or the medium size operation, particularly the small elevator out, say, in a place like Pendleton, Oreg.?

Mr. KOBER. We hope to, yes, and we do, in fact. There are members on our committee that are specifically there because they present the point of view of what we call the small country elevator.

Senator HATFIELD. And the country elevator people don't feel like they need additional equipment?

Mr. KOBER. They have accepted the analysis that has been developed by the committee; that is, the answer isn't additional equipment. The answer is increased efficiency with which the existing equipment is handled.

Senator HATFIELD. I see. You see it as a single problem then, not as a twofold problem. You see it singly as a utilization problem rather than utilization plus additional equipment?

Mr. KOBER. I see the disease as one of inefficient operational control and I see the manifestation or symptom of that disease as inadequate freight car supply.

Senator HATFIELD. And that just dangling a carrot or two out here of incentives will correct this?

Mr. KOBER. I see our proposal as suggesting much more than a carrot or two.

We would suggest that the incentives be meaningful, that any rail-road that would not live up to the operational standards to be

imposed by the Interstate Commerce Commission, would feel the bite of its inefficiency.

Senator HATFIELD. Good, bright orange carrots of whatever quality they may be, with a club behind the back so if they take them and don't perform, you give them a little hit on the head with the ICC regulation?

Mr. KOBER. We would give them more than a little hit on the head.

Senator HATFIELD. I have believed in living my whole life by faith, but I must say that you are men of great faith. I commend you on the faith that you present rather than the substance of your testimony.

I do not feel that your testimony is very realistic in this manner of saying that you are going to solve a problem short of Federal legislation. That you are going to solve a problem purely by a few more ICC regulations and a few incentives or maybe many incentives. The problem is in your opinion—what, 90 percent utilization and 10 percent shortage?

How would you rate that?

Mr. KOBER. As I have already said, the problem at this point is 100 percent inefficiency in operation.

Senator HATFIELD. 100 percent, all right.

Well, that's fine. I notice, too, in your testimony you say you believe there should be greater freedom to compete and to control one's economic destiny in the transportation field.

How do you feel about how much more freedom that the industry needs as it relates to rail service?

Mr. KOBER. Well, as a matter of fact, in another policy position which we developed at our last annual convention, we indicated that we would support statutory revision that would allow greater discretion to rail managements in the publication of line haul rates without suspension provided a new statute be enacted to treat trade restraints that might result from such freer ratemaking.

We are willing to give the railroads all of the freedom which they have indicated they would require in order to place their houses in order.

Senator HATFIELD. In other words, you believe in a movement toward deregulating the industry?

Mr. KOBER. Reregulating it as much as possible, recognizing that railroads are basically public utilities and they will require some degree of regulation.

But as far as the price making decisional process, we would give them as much freedom as possible and impose whatever antitrust restraints appear appropriate in that circumstance.

Senator HATFIELD. So, deregulating, though, would be the direction you would want to move regarding the rails?

Mr. KOBER. We would want to reregulate.

Senator HATFIELD. Well, you are talking about greater freedom. Is it reregulating or deregulating that is going to bring greater freedom?

Mr. KOBER. I think reregulating in the price decisional process.

Senator HATFIELD. Do you believe in Government intervention like in the case of Penn Central at the time they had financial problems?

Mr. KOBER. No; I don't.

Senator HATFIELD. And the SST for the aeronautical space industry.

Mr. KOBER. I am not stating the association's position.

Are you asking for my personal position?

Senator HATFIELD. Yes.

Mr. KOBER. I am against that intervention.

Senator HATFIELD. And Lockheed?

Mr. KOBER. Also.

Senator HATFIELD. Well, you are consistent and I certainly admire you. Maybe I am not.

Mr. KOBER. That position doesn't represent the opinion of the association.

Senator HATFIELD. The record will so state that Mr. Kober is speaking for himself on this point because I think it is at the very heart of your testimony. I am not pursuing these facetiously at all because I think the very heart of your testimony is one in which you feel the Federal Government should have less involvement rather than more involvement. S. 1729, S. 1730, and S. 1731 are, therefore, repugnant to that basic philosophy that you are expressing.

I certainly respect that philosophy and your right to express it. The only point I want to make clear in my own mind is we are not asking on the one hand for Government finance and on the other hand we want deregulation of the industry. Too many people have approached Government with the idea that Government is an ogre when they want to regulate us but they are a great source of revenue or money when we want some help out of our financial problems.

Mr. KOBER. I share the Senator's concern for that type of economic inconsistency, and I might add the philosophy I have expressed in our statement is not mine but that of the association.

Senator HATFIELD. The only point of which I would disagree is your conclusion that this is going to solve the problem. Neither one of us will know that we are right until we have tried something else. I am only saying that up to this point the philosophy you have expressed, I think, has been at the heart of the whole effort on the part of the Government or the lack of involvement on the part of the Government. This problem therefore, has grown in such magnitude and such proportion that today we are talking in terms of S. 1729, S. 1730, and S. 1731.

I think that is the reason we have that kind of proposal before us.

Mr. HATFIELD. Mr. President, I do believe that the ICC does have a role to play in the future plans for car utilization. Their historical role has put them in a position to draw on that knowledge and work with DOT and the Congress so that meaningful steps can be taken to help the shippers of this country.

On June 16, 1971, ICC witnesses appeared before our committee to testify on the various bills we were considering. I ask unanimous consent that my opening remarks on that day might appear at this point in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

FREIGHT CAR SHORTAGES

Senator HATFIELD. The hearing will please come to order.

The chairman, Senator Magnuson from Washington, is detained at this moment and we will proceed to conduct the hearing.

Before I call upon our witness this morning, Chairman Stafford, I wish to make a few comments concerning the general subject of our hearings.

This committee has heard several days of witnesses representing the transportation industry, the shippers, and the commodities groups, and others as well. Today we hear from the ICC.

I hope that the witness today, the representatives of the associations, the industries affected, labor unions that would be affected, and the Congress might work together so that some progress can be made toward a solution of the freight car shortage problem.

It is easy—in fact, all too easy—for the buck to be passed. As a Senator, I can criticize the ICC or the railroads at how they are shortchanging our Oregon shippers. The ICC can say that it is the fault of another agency, or the industry. The rail management people can talk about the union problems as being the cause, the shippers can talk about the industry as being the cause, and on and on it goes.

I would like to suggest a rapprochement among the various parties so that we can proceed toward a solution of this problem. The purpose of this committee is to look for the best composite proposal we can devise. We are looking to the appropriate agencies, to the industries affected and their associations, and other interested parties to assist us.

The problem of freight car shortages is of such urgency, and some solution is so necessary, that I would hope that the petty differences, the bureaucratic infighting, the industry-shipper squabbling, and the politicking all could be abandoned. I realize that a permanent detente among the factions is difficult, but I am a man of faith. I ask that all parties be ready to give a little, to compromise on a few points, and to work in support of whatever approach is finally adopted.

I make this comment as only one member of the committee, but as one who is deeply interested and concerned about the issue that brings us together in these particular hearings.

We are very pleased this morning and especially privileged to have the Chairman of the Interstate Commerce Commission, Mr. George M. Stafford, and I believe that he has with him as well Mr. Murphy, and we are at this time ready to hear from both the Chairman and the Commissioner of the ICC, if they will come forward to the table at this time.

We welcome you to the hearings. Our Chairman is most pleased that you have come this morning, and he will certainly review carefully your statement, as will the other members of this committee.

You may proceed either to summarize or to outline your comments. They will be placed in the record as printed.

Also, we especially want to commend the gentlemen here, the Chairman and the Commissioner, for the extensive studies on freight car shortages you have conducted, and we look to you as sort of the leading expert from the Government agencies on this subject, so we welcome you.

Mr. HATFIELD. The second leg of this bill relates to increasing the supply of rail cars. Class I railroad ownership of freight cars declined from 1,702,016 cars in 1961 to 1,464,613 cars in 1971. This decline came in the face of a 35-percent traffic increase. The resultant squeeze has hurt nearly every shipper in the United States. With more and more to ship, there are fewer and fewer cars to use. Combining this with the stagnant utilization figures and our shippers face a bleak future without assistance from this bill. The committee report notes that DOT estimates a one-third increase in rail freight transportation between 1971 and 1980. This breaks down to a need for 617,000 cars to meet this increase. We also need 130,000 cars to meet the current shortages.

I ask unanimous consent that a table showing the decline of railcar ownership appear at this point in the RECORD.

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

EXHIBIT III.—FREIGHT CARS IN SERVICE, 1955-69, BY CAR TYPE, CLASS I LINE-HAUL RAILROAD OWNED

| | Box cars | | Flat cars | | | Hopper cars | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General service | Special service | General service | Special service [1] | Gondola cars | Open top | Covered | Refrigerator cars | Tank cars | Stock cars | Other cars | Total freight carrying cars | Aggregate capacity (tons) |
| December 31: | | | | | | | | | | | | | |
| 1955 | 661,194 | 57,756 | 56,124 | 25,559 | 280,536 | 506,449 | 42,609 | 19,849 | 6,737 | 37,922 | 4,079 | 1,698,814 | 91,229,260 |
| 1956 | 673,747 | 53,912 | 55,962 | 29,378 | 277,802 | 503,442 | 46,952 | 20,010 | 6,461 | 36,830 | 2,347 | 1,706,843 | 92,161,038 |
| 1957 | 685,330 | 53,624 | 54,923 | 33,775 | 277,530 | 521,376 | 54,567 | 20,210 | 6,355 | 35,717 | 2,334 | 1,745,721 | 95,083,869 |
| 1958 | 672,402 | 52,553 | 52,666 | 34,767 | 278,016 | 512,489 | 58,833 | 20,081 | 6,152 | 33,727 | 2,542 | 1,724,228 | 94,486,434 |
| 1959 | 654,718 | 52,848 | 52,719 | 35,972 | 270,971 | 486,486 | 61,879 | 20,541 | 6,024 | 31,791 | 2,437 | 1,676,386 | 92,264,509 |
| 1960 | 637,829 | 54,900 | 52,714 | 37,472 | 265,950 | 480,445 | 64,255 | 25,527 | 5,824 | 30,800 | 2,576 | 1,658,292 | 91,947,166 |
| 1961 | 608,367 | 56,565 | 51,931 | 37,014 | 256,431 | 462,149 | 65,886 | 28,054 | 5,826 | 29,427 | 2,591 | 1,604,241 | 89,292,229 |
| 1962 | 577,106 | 62,354 | 49,979 | 37,697 | 249,080 | 440,368 | 69,378 | 29,457 | 5,608 | 26,567 | 2,473 | 1,550,067 | 87,223,695 |
| 1963 | 545,751 | 71,611 | 49,385 | 38,170 | 236,738 | 431,712 | 73,216 | 33,365 | 5,248 | 24,647 | 2,463 | 1,512,306 | 85,942,901 |
| 1964 | 515,123 | 81,220 | 48,257 | 41,075 | 222,897 | 431,791 | 81,168 | 36,922 | 5,157 | 22,445 | 2,330 | 1,448,385 | 86,671,709 |
| 1965 | 479,201 | 102,884 | 38,176 | 54,884 | 216,165 | 425,236 | 90,506 | 42,502 | 5,120 | 20,862 | 2,469 | 1,478,005 | 88,322,825 |
| 1966 | 455,753 | 125,345 | 37,822 | 58,507 | 209,367 | 422,546 | 103,477 | 48,715 | 4,895 | 19,383 | 2,305 | 1,488,115 | 91,440,684 |
| 1967 | 429,482 | 137,114 | 36,751 | 64,545 | 202,421 | 415,275 | 118,111 | 51,314 | 4,659 | 16,694 | 2,800 | 1,477,154 | 93,668,829 |
| 1968 [2] | 565,341 | 23,208 | 31,808 | 67,909 | 202,741 | 403,201 | 121,102 | 15,638 | 4,459 | 15,084 | 3,392 | 1,453,871 | 93,549,014 |
| 1969 | 563,715 | 23,956 | 30,957 | 71,105 | 196,301 | 388,609 | 125,362 | 15,099 | 4,298 | 11,981 | 3,431 | 1,434,817 | 94,346,486 |

[1] 1955-64. Some are included in general service.
[2] Reclassification year for all types of cars.

Source: Transport Statistics in the United States.

Mr. HATFIELD. With this litany of sobering statistics facing us, our committee investigated various alternatives to assist in the construction of new freight cars. I served on the committee only long enough to hear witnesses point out strengths and faults in our bills—I left before this compromise provision was worked out. I think it does represent a good compromise, and one I sincerely hope will be such that it solves the problem.

Establishment of the Federal railroad equipment obligation insurance fund will guarantee loans to insure obligations of railroads and car-pooling companies incurred in the acquisition of rolling stock—general service freight cars, cabooses, and locomotives. I personally have reservations about adding locomotives to this, but I was not involved in its consideration in committee and there may well be compelling reasons to have added them.

I ask unanimous consent that the section of the committee report dealing with the operation and scope of this loan guarantee provision appear at this point in the RECORD.

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

TO INCREASE THE CAPACITY OF THE GENERAL SERVICE CAR FLEET

In order to increase car supply, the measure would establish the Federal Railroad Equipment Obligation Insurance Fund (Sec. 104), backed by Federal guarantee of its obligations (Sec. 107), to insure creditors against loss on equipment obligations incurred by eligible railroads or car-pooling companies. The Fund would be administered by a Board composed of 7 members (the Secretary of Transportation, the Secretary of the Treasury and 5 members appointed by the President—3 upon recommendation of shipper organizations, 1 upon recommendation of consumer organizations and 1 upon recommendation of the association of state regulatory commissions) (Sec. 104(b)). The Board would decide whether or not to insure equipment obligations.

Equipment obligation insurance would improve the credit rating of railroads and carpooling companies that otherwise would experience difficulty securing equipment financing. It would also lower the interest rate for financing and thereby reduce a significant cost in equipment acquisition. Such insurance can be expected to increase equipment acquisition by railroads with weak credit and low profits.

The risk to the government of default should be low. Since railroads need equipment to continue operations, there have been few defaults on equipment obligations, even by bankrupt railroads. Further, in the event of a default, the equipment can be repossessed and resold to another railroad. There is generally a market for sale of railroad equipment to the many railroads in the Nation.

Although the risk of loss by the Government is relatively small, the provision must be recognized as a subsidy to the industry. It is justified only if it results in solution of a serious problem for the public and is strictly conditioned so that funds are properly used.

A flexible premium charge of not to exceed 1% per annum of the outstanding principal amount is provided (Sec. 106(c)). The Department of Transportation recommended a flexible charge that could be adjusted according to needs at the time of application. A low charge would make insurance beneficial to all railroads; a high charge would make it beneficial only to roads with weak credit that would otherwise be required to pay a higher interest rate than the stronger roads. Except for unusual circumstances, it is expected that the charge will be set so that insurance will be beneficial only to the weaker roads that have difficulty obtaining equipment financing at interest rates similar to those paid by the financially stronger roads.

Sec. 106 (a) establishes findings required to be made before insurance can be granted. The findings required by paragraph (a)(1)–(3) and (6) are intended to prohibit insurance of an obligation unless the rolling stock acquired thereby provides reasonable security for the Fund. Paragraph (a)(4) is intended to improve utilization by requiring a finding that the common carrier operations of railroads or the operations of carpooling companies are sufficiently efficient at the date of application for insurance to assure economic utilization of rolling stock acquired as a result of insurance. Paragraph (a)(5) is intended to assure that rolling stock acquired as a result of insurance will contribute to reduction of the shortage of such rolling stock. It is expected that the Department of Transportation will supply the Board with an analysis of national needs for rolling stock so that the Board can make this finding. In order to make the findings required by this subsection the Board must look beyond mere recitals by the industry or the applicant.

Sec. 106(b) sets forth conditions that are intended to assure that all financial assistance resulting from insurance is used to alleviate the shortage of cars and that none of it is diverted to other purposes.

Paragraph (b)(1) requires that there be an increase in the load-carrying capacity of the obligor's rolling stock. Discretion is left to the Board to determine, in view of the conditions in each case, or by general rule, the amount and means of measuring such increase.

Paragraph (b)(2) is intended to prohibit the direct or indirect financing of increased dividend payments by the Fund. It applies to increases in dividends to common stock and to other classes of stock that are payable in the discretion of the obligor. It is not intended to apply to the payment of nondiscretionary dividends such as dividends of fixed rate on preferred stock that are payable so long as there are sufficient earnings for their payment. To prohibit increase in such dividends would be unfair to the owners of such stock in companies that did not have sufficient earnings to pay such dividends during the base period. Unqualified prohibition of dividend increases would prohibit such companies from paying such dividends if they subsequently began to earn profits. Owners of stock that has a non-discretionary, fixed rate of dividend payment do not have the benefit of appreciation in the market value of their stock as the alternative to dividends to the same degree as do owners of common stock. Rolling stock insurance benefits common stock owners by strengthening their company. Such increased strength is reflected in a higher market price for their stock and is an alternative to the payment of increased dividends. In any case a company is not frozen into a fixed level of dividends for the 15-year term of an obligation by obtaining insurance for it. The company can terminate at any time the prohibition of this paragraph against dividend increases by refinancing its insured obligation so as to terminate the insurance. When the Government is no longer liable for its obligations because of insurance, the company is free to pay what dividends it chooses.

It is left to the discretion of the Board to determine what constitutes increases in dividends: changes in the number of shares that alter the per share dividend and changes in the amount of equity investment that alter the total amount paid in dividends might in some cases be permissible.

Paragraph (b)(3) restricts the use of assets and revenue related to or derived from railroad operations or property in nonrailroad enterprises for the purpose of keeping railroads in the transportation business and in order to avoid the siphoning-off of revenues and assets into businesses, such as real estate investments, not related to the performance of common carrier railroad service.

Paragraph (b)(4) is directed toward improved utilization and requires companies granted insurance to cooperate with the Secretary in programs pursuant to Title II to improve utilization.

The Board is expected to exercise its discretion under the language of these four conditions in specifying the terms of the written agreement with applicants for insurance.

Mr. HATFIELD. Mr. President, at the time of the introduction of S. 1729, which I cosponsored with the distinguished committee chairman (Mr. MAGNUSON), the establishment of a national corporation to operate a freight car pool was proposed immediately. An examination of the hearing record shows a great deal of comment, pro and con, on this approach.

The provisions for a rolling stock authority contained in this revised version of S. 1729 offer a good compromise.

Operation is very simple—if the utilization improvement and provisions for new car construction do not work, then the corporation can come into being. I think it has been made clear that no one on the committee wanted to rush into a government corporation if we thought that good solutions could be found elsewhere. So, we are giving the railroads one last chance, as it were, to see if they can do the job. I have said many times that I would not support a bill that only gave more money to the railroads—a position our subcommittee chairman also made clear a number of times during the hearings over the year I served on the subcommittee.

Mr. President, I ask unanimous consent that the portion of the committee report explaining the operation of the rolling stock authority appear at this point in the RECORD.

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

ROLLING STOCK AUTHORITY—DIRECT ACTION IF INDUSTRY FAILS TO REMEDY PROBLEM

If the rail industry fails to solve the freight car problem wtihin 3 years, even with the financial and technical assistance provided by Titles I and II, then incorporation of the Rolling Stock Authority is authorized (Sec. 301). The Authority would have power to acquire rolling stock (its obligations would be backed by Federal guarantees up to $1 billion) and to operate such rolling stock as a pool. It would be directed to employ innovative concepts for the equitable distribution and efficient and expeditious use of such rolling stock.

The Authority would not control a large part of the Nation's freight cars. A $1 billion investment in rolling stock would result in acquisition of between 50,000 and 75,000 freight cars, only about 4% or 5% of the number of cars in the present railroad fleet. In essence, the Authority would be an experiment to demonstrate the effectiveness of carpooling and other ideas for improved freight car utilization. It could serve as a yardstick against which to measure the performance of the railroads' car utilization.

Being independent of the rail industry, the Authority would bring a fresh point of view for efficient management and utilization of rolling stock. It would be removed from the separate proprietary interests that confine the actions of the individual railroads and often place them in contention with one another to the detriment of system users. Having the entire Nation as the scope of its operation, the Authority would see its tasks from the viewpoint of the entire rail system. It would be able to monitor the movement of its cars no matter what railroad they are located on. Not being limited by artificial railroad boundaries, it would be able better to match empty cars with loads. It could deal more effectively than the industry with the accumulation of its empty cars in the East by ordering their return directly to location of loads in other regions of the country. It need not be concerned with returning its cars to a "home road."

If the Authority is established, it will be vested with the public interest and will therefore have a special obligation to meet the interests of shippers, including the small shipper, and consumers. Its board of directors will be appointed by the President and will be drawn from the full range of those affected by the freight car problem (shippers, railroads, consumers and labor) and will also have a computer system expert (Sec. 303). In the event of conversion of the Authority to private ownership and management, provision is made for continued public appointment of three directors to represent the public interest in the decisions and policies of the Authority.

The Authority is intended to be a seedbed for the development of new ideas and new techniques for the provision and distribution of rail equipment. The Authority should make the use of rolling stock more flexible and responsive to the seasonal and economic needs of all shippers. It is expected that the Authority will encourage innovation in the relative roles of railroads and shippers and will experiment with furnishing cars directly to shippers at their request.

There well may be the initiative in the private sector needed to bring forward other innovative concepts to meet the problems for which this legislation is designed. Establishment of the Authority is not intended to prevent or inhibit such private initiative.

Some may object to the Authority as being one more body in the proliferation of government agencies. However, the Authority will not come into being unless industry fails to remedy the long-standing freight car problem. This bill makes available to industry all of the assistance it can reasonably seek from the Government and time to put its house in order. If it does not, there will be no alternative to direct Governmental action to alleviate the problem.

The bill would also provide means for conversion of the Authority from Governmental ownership and control to private ownership and control as soon as is practicable (Sec. 307). Thus, once the Authority demonstrates the viability of its approach and its value to the Nation's rail system, it can be moved out of the Government and into the private sector by sale of its stock on the public market and repayment of the Government's investment. Experience with conversion of the Federal National Mortgage Association, Federal Land Banks, Production Credit Associations Banks for Cooperatives and others demonstrates the feasibility and value of this approach. If the Authority is established, it is anticipated that it would be speedily converted to the private sector.

The rail industry, as is to be expected, opposes establishment of the Authority because it would mean some loss of the industry's dominance of car service. However, creation of the Authority means that the industry has not solved by itself a problem of vital concern for the public. The concerns of the industry should not be placed before the interests of the public.

Establishment of the Authority should not be equated to nationalization of the railroads. The Authority would not replace any railroad or assume the functions of a railroad. Its fleet would be very small in comparison to the size of the railroad fleet—4% to 5%. It would rely on the railroads for movement of its cars. The Authority would be a car furnishing company, similar in many respects to existing independent car lines. To be sure, the Authority would bring an increased measure of Government presence to the industry. But the point is that this degree of Government presence is much less than will be required in the long-run if action is not taken now to remedy the freight car problem and to bring about generally improved service by the industry. Further, means are provided to terminate Government control of the Authority by selling its stock to the public and converting it to a private corporation.

Others may be concerned about creation of the Authority because of dissatisfaction with the performance of the National Passenger Service Corporation (Amtrak). Since the Authority is designed to remedy a problem substantially different from that for which Amtrack was intended, comparisons between the two are misleading. Amtrak assumed the burden of rail passenger service—a service which the rail industry considered to be a losing business and had encumbered with years of neglect and downgrading. The Authority, on the other hand, would enter into the healthy side of the business—freight. Amtrak assumed a contracting service while the Authority would be involved in, but would not assume, an expanding service. Further, the Authority would not undertake the bulk of the service as did Amtrak; the Authority would have a small percentage of the total car ownership and only one of the many functions involved in freight service. Finally, dissatisfaction with Amtrak may be premature; it is in the infant stages of an effort to reverse the decades of neglect and deterioration. The Committee in its report on 1972 amendments to the Amtrak Act (Senate Report No. 92–756) expressed its view that failure to implement the Act in accordance with Congressional mandate is perhaps the principal reason for dissatisfaction. Safeguards against lack-luster implementation have been built into this bill at every conceivable place. Thus, the Amtrak experience does not weigh heavily against establishment of the Authority.

*The Rolling Stock Authority is the strongest inducement for industry action.*—The provision of Sec. 301 that the Authority will come into existence unless there are findings that the freight car shortage problem has been solved is vital to accomplishment of the objectives of the bill. Without this provision there will be no incentive for the rail industry to take necessary, and long-neglected, action to remedy the freight car problem. Past experience shows that the industry will not take such action voluntarily. The industry's failure is understandable, because of each railroad's proprietary vantage point. However, the industry must be given a powerful reason for taking action broader in scope than the direct business interest of the individual railroad.

The hope is that the industry will take the necessary action by itself in order to avoid imposition of a solution by the Government. If that possibility is not sufficient inducement, then there is no alternative and some form of Government action will be necessary.

In order to provide a strong incentive, it must be certain that the Authority will be established unless the freight car problem is solved by industry. The less certainty as to its establishment, the less incentive value it offers. For example, to make incorporation contingent upon legislation would certainly reduce, if not vitiate, the inceptive value of the Authority. The industry could then postpone needed action in the hope that other, more important problems would occupy Congress' attention at the time of decision, thereby delaying establishment of the Authority. Such procrastination might delay the day of establishment but the intervening deterioration in the industry would hasten the day when nationalization might be necessary.

The rationale for making the Authority contingent upon further legislation is that conditions might change in the meanwhile.

Sec. 301(b) anticipates this eventuality. It requires the Secretary to transmit a report to Congress stating whether the required findings have been made; this requirement assures that the issue will be placed before Congress and will not pass unnoticed. Then, the issue must remain before Congress for six months during which time Congress can disapprove establishment of the Authority. Thus, there is ample provision to permit response to changed circumstances.

Sec. 301(a) provides that the Authority will not be incorporated if (1) the Interstate Commerce Commission finds that there is no longer a continuing freight car shortage arising from an inadequate supply of rolling stock and inadequate car service and (2) the Secretary of Transportation finds that there has been a substantial increase in utilization of such rolling stock. The finding by the Commission essentially requires a reversal of its conclusion in *Ex Parte 241, Investigation of Adequacy of Railroad Freight Car Ownership, Car Utilization, Distribution, Rules, and Practices,* 335 I.C.C. 264, 308 (1969). The Secretary's index, report and study of freight car utilization (Title II) provide him ample information to determine whether or not the second finding can be made. If the two findings can be made, then it is clear that the industry, with the assistance provided in Titles I and II, will have solved the freight car problem. If they cannot be made, then direct action by the Government will have been delayed long enough and should begin immediately.

Sec. 301(a) was intended to permit establishment of the Authority in the event no findings are made. This design reduces uncertainty as to establishment of the Authority in the event that the problem has not been solved by industry. To reverse the design to a positive finding to the effect that the authority is necessary would permit the industry to turn its attention toward delaying decision rather than concentrating its efforts on remedying the underlying problem. A review of Commission decisions demonstrates how long they can be prolonged. The design of Sec. 3011(a) makes delay unrewarding.

Mr. HATFIELD. Mr. President, I would like to turn away from a discussion of the bill to a discussion of the need for this legislation in more general terms. I think a strong case can be made for the specific points in the bill, and I have touched on several of them. It is the need, though, for some good legislation now that calls for enactment of this bill without delay.

Before I turn to problems of the shippers, I would like to comment on the effects of car shortages on the consumers of this country. In discussions I have in Oregon, I find the entire subject of freight car shortages is dull to all but shippers and railroad groups. Yet it is the average shopper in a supermarket who should have just as keen an interest in such legislation as we are considering here today.

Consumers pay more when no rail cars are available to ship a perishable commodity to markets. As my friends from other agricultural areas are well aware, when a rail car is needed for a shipment of fresh produce, failure to have it there can ruin an entire year's crop. If a crop spoils at a siding because of a delay in getting a car to a farmer, this forces the price upward of the amount of produce getting to markets from other suppliers. That is simple supply and demand.

In the fresh agriculture area, it is critical as is true nowhere else that an adequate supply of cars be available when they are needed.

Our subcommittee went to my home State of Oregon for a day of field hearings on our bills on September 20, 1971. In my opening remarks, I noted:

I submit that the effect of a strike is just the same on a small Oregon shipper of perishable goods who cannot get freight cars during his critical shipping period. When his goods spoil or rot because of an inadequate freight car supply, the effect on this individual is just the same as it is during a rail strike. Yet the public attention usually is not focused on these daily problems, only when we have something as dramatic as a strike.

I ask unanimous consent that my entire opening statement at these field hearings in Portland appear at this point in the RECORD.

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

OPENING STATEMENT BY SENATOR HATFIELD

Senator HATFIELD. Thank you very much, Mr. Chairman.

On behalf of the people of Oregon and also on behalf of the people of Washington, I wish to thank you for scheduling this field hearing here in Portland. I'd like to say that Senator Magnuson, who is our committee chairman, has indicated a keen disappointment in not being able to be here this morning. He is also a member of this subcommittee, and has asked me to speak a word on behalf of his constituents in Washington at this hearing. We in the Northwest sometimes think the Federal Government turns its wheels in Washington, D.C., 3,000 miles away, and the input into these decisions is made with little contact with the people around the country. The fact that you, Senator Hartke, have taken the time from your busy schedule to come to Portland reflects your desire to see that the people are heard on this important legislation. I think the presence of Senator Stevens from Alaska here today also points up the national character of the problem and the identification that we have here as colleagues repersenting the Pacific Northwest States.

The people in the hearing room today should recognize that Senator Hartke has given important leadership to the efforts to provide a solution to the chronic freight car shortage. As a new member of this committee only since January. I have appreciated his counsel on matters relating to railroad and shipping problems.

The purpose of any field hearing is to hear from the people, not to hear from the Senators; so my opening remarks are brief. Due to a scheduling conflict of Senator Hartke on the day those hearings began in Washington, D.C., I had the privilege of chairing those hearings. I have brought copies of my remarks on that day, and they are available to those who are interested.

During my 8 years as Governor of Oregon, I was involved in trying to secure an adequate supply of freight cars for Oregon shippers, and as I look around the room today, I see friends who helped us then and are assisting this committee today in finding a solution to the problem. As Governor, my efforts were primarily on behalf of our forest products industry and our agricultural industry. I thought then that the problems we faced were unique to the West.

As I have listened to the 7 days of hearings held thus far in Washington in 1971, I realize more and more that these car shortages are nationwide and affect nearly all segments of our economy and all areas of the country. Representatives of the scrap metal industry say they need so many thousand cars, the coal industry needs so many thousand cars, and the list goes on and on.

We have heard the merits and shortcomings of the four bills discussed in detail during our 7 days of hearings in Washington. We have come here primarily to hear about your problems, problems that are unique to our area and to our industries. I think it is safe to forecast at this point that whatever legislation is adopted will be a compromise drawn from the various bills.

While the focus of the bills is primarily directed toward increasing car supplies, I want to assure this group that I will push for increased utilization of our existing car supply. I was shocked to learn that a study by the Department of Transportation indicates that a freight car today is loaded and moving only 6 percent of its life—6 percent. Our committee has been told that an increase in utilization of only 10 percent would add over 40,000 cars to our supply. As I have pointed out to Senator Hartke when we have been discussing these bills, Oregon is a State dependent on adequate transportation facilities to market our goods. Oregon exports to other States twice the amount of goods that we import. I want to underscore this, that we export twice the amount of goods that we import. Adequate freight car supplies are vital if our State is to grow economically.

Oregon railroads serve 650 forest products shippers and over 700 shippers in agriculture and related products, canned and frozen and other processed foods. There are 2,000 other shippers served by Oregon railroads. That totals nearly 3,400 shippers served by the 200 daily trains along Oregon's 3,200 miles of rail lines. You can see, Senator Hartke and Senator Stevens, the impact of inadequate car supplies on Oregon's economy.

During the recent rail strike, public attention was focused on the problems facing our shippers caused by the strike. I certainly agree that great economic and financial hardships are caused by such strikes. I submit that the effect of a strike is just the same on a small Oregon shipper of perishable goods who cannot get freight cars during his critical shipping period. When his goods spoil or rot because of an inadequate freight car supply, the effect on this individual or small company is just the same as it is during a rail strike. Yet the public attention usually is not focused on these daily problems, only when we have something as dramatic as a strike.

The current situation, with shortages touching nearly every segment of northwest industries, cannot continue without relief. The very survival of small shippers is at stake, for they cannot absorb losses caused by an inadequate car supply. Our companies in Oregon, where we ship out twice the amount we bring in, cannot grow and expand their markets when no cars are available to ship our goods to other sections of the country.

We in the Congress owe to the people around the country a sincere effort to solve the chronic freight car shortage plaguing all areas and all industries. These hearings are part of our efforts to find the best answer, and I want to thank those of you who have appeared here today to testify, and I hope it will not be too long before we meet with you with a draft of a bill that the committee has approved.

Thank you, Mr. Chairman.

Senator HARTKE. Thank you, Senator Hatfield.

Mr. HATFIELD. The point I want to make here is that the consumer will benefit from this legislation. It will help hold the line against rising food prices.

By cutting the amount of crop spoilage resulting from inadequate car supplies, it will help the farmer's income as well.

I think, Mr. President, that a discussion of the effect on consumers provides a bridge for me to turn from a discussion of the effects of a freight car shortage on the agriculture industry to the effects on the forest products industry, a major contributor to the economy of my area of the country.

Providing adequate housing for the people of this country has been a goal of the Congress, and a goal shared by most of the people in the country. Recent years, however, have seen construction cost for new housing rising at a rate faster than incomes have risen. Many factors have contributed to this. I submit, however, that by providing an adequate supply of rail cars to move wood products will provide an important price stabilizer to assist in the leveling off of recent price increases in the forest products industry area.

At the field hearing in Portland, this point was brought out in testimony. Very simply, it stands to reason that when supplies of lumber are kept from reaching the markets of the country where lumber is sold, prices for lumber that is there increases. I urge people who would like detailed explanations of the effects of these car shortages on lumber prices to read the hearings report of our field hearing in Portland last September. Many experts testified on the financial impact wrought by these shortages.

I would like to note only two examples. I ask unanimous consent that portions of the testimony of Mr. Putnam S. Robbins, of Willamette Industries, and following that, of Mr. Robert W. Van Duker, of Fir Ply, Inc., appear in the RECORD at this point.

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

STATEMENT OF PUTNAM S. ROBBINS, MARKETING SERVICES MANAGER, WILLIAMETTE INDUSTRIES, INC., ALBANY, OREG.

During the recent period of car shortage we were forced to truck particleboard from our mills in Oregon to one of our major distributors in Chicago, this at a cost over rail of approximately $7 a thousand square feet. This is in rate alone, based on ¾-inch particleboard. If we were to protect this as we had to with paper wrap, this adds an additional $10 per 1,000 to the direct cost of getting that product to market, for a total of somewhere around $17 per 1,000. Now these were costs which we as a manufacturer could not absorb, and still be competitive, nor could our customer in Chicago absorb these charges.

I think we should also consider it is unproductive capital which cannot certainly be stood by the industry, if the housing needs of this country are to be met, but these are costs which were required of us because of a car shortage.

STATEMENT OF ROBERT W. VAN DUKER, FIR PLY, INC., WHITE CITY, OREG.

The actual cost to our company amounts to about $2-per-thousand feet. Additional costs which cannot reflect price discounts are our production costs. You will note that appendix 2 is a detailed analysis of our production costs for 2 recent months. These figures show that because of many fixed costs in plywood production, the actual cost per thousand feet on a three-eighths basis, will rise when production decreases. For instance, during the month of June, a normal producing and shipping period, our overall production costs were $50.62-per-thousand square feet, three-eights basis. During the month of August, on the other hand, we experienced a severe shortage of equipment, and our costs rose to $52.46-per-thousand square feet, three-eighths basis.

There are several other costs directly attributable to a car shortage such as the cost due to interrupted cash flow, increased warehouse handling, increased damage factor, which sometimes means as much as a 15-percent discount in our price. Although these costs are certainly reflected in our overall profit picture, they are not easily calculable on a per-thousand basis. We know they exist, but the individual expense of determining the actual costs would be extremely high.

Mr. HATFIELD. Mr. President, there were several examples I could cite from the Portland hearing, but these give a flavor of the impact of the shortage on lumber prices.

The problems of the forest products industry in meeting its freight car needs are not confined to the small or medium sized operation, either, as might be imagined. Certainly one of the largest operations in the country is the Weyerhaeuser Corp., headquartered in Tacoma, Wash. I believe a colloquy Senators HARTKE, STEVENS, and I had with Mr. Max Allen, manager of mill supply for Springfield, Oreg., Weyerhaeuser operation, points out the problems even a giant in the industry faces. I ask unanimous consent that this section of the colloquy and his statement at the Portland hearings appear at this point in the RECORD.

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

STATEMENT OF MAX L. ALLEN, MANAGER, MILL SUPPLY FOR SPRINGFIELD, OREG., WOOD PRODUCTS DIVISION, WEYERHAEUSER CO.

Mr. ALLEN. My name is Max L. Allen. I am manager, mill supply, for the Weyerhaeuser Co. mill, Springfield, Oreg. Weyerhaeuser Co. is engaged principally in the growing and harvesting of timber and in the manufacture, distribution, and sale of forest products. Total annual sales of the company in 1970 exceeded $1,200 million; approximately one-half consisting of wood product sales.

Senator HARTKE. Let me ask you sir, do you think it is possible this can be solved by the railroads alone, without any help—if they could have some system of enforcement of the utilization of cars rather than building new cars?

Mr. ALLEN. I personally do not think so.

Senator HATFIELD. Mr. Hartke, Mr. Stevens, I would just like to make one general observation. As you probably know, Weyerhaeuser is one of the largest of our timber operations in the Pacific Northwest, and probably one of the finest in corporate responsibility and public concern and public interest. I would say it is a remarkable corporation. It is truly one of our finest.

I have nothing against largeness per se, or bigness per se, only when bigness tends to create a situation where it excludes small- or medium-sized operations, and I want to say that in listening to Mr. Allen today, if these are the problems of Weyerhaeuser, what in the world must be the magnitude of the problem of the small- or medium-sized business?

Senator HARTKE. In other words, you have the economic wherewithal to get the job done that the small shipper does not have, and even you cannot get the job done?

Mr. ALLEN. No.

Senator STEVENS. I must say that I share Senator Hatfield's respect for your company, and I only wish that you did a bit more business up in Alaska.

Mr. ALLEN. We are working on it.

Senator HARTKE. Just for your information, they are in Indiana.

Mr. ALLEN. Yes, we have some of our best customers in your State, and this specialized equipment goes heavy into your State. Thank you very much.

Senator HARTKE. Thank you. We appreciate your comments.

(The statement follows:)

STATEMENT OF MAX L. ALLEN, MANAGER, WEYERHAEUSER CO. MILL, SPRINGFIELD, OREG.

My name is Max L. Allen. I am manager, mill supply, for the Weyerhaeuser Co. mill., Springfield, Oreg. Weyerhaeuser Co. is engaged principally in the growing and harvesting of timber and in the manufacture, distribution, and sale of forest products. Total annual sales of the company in 1970 exceeded $1.2 billion; approximately one-half consisting of wood products sales.

My activities involve the sales, marketing, and shipment of wood products. I have responsibility for the coordination and allocation of rail equipment at Weyerhaeuser Co.'s three western Oregon wood products facilities (Springfield, Coos Bay, and Cottage Grove). I am in daily touch with the car supply situation at these points and their relationships to other shipping origins of our company in the Pacific Northwest.

These three mills are located on and served exclusively by trackage of the Southern Pacific Transportation Co. Over a period of a year, we will ship approximately 13,000 railcar loads of manufactured wood products to destinations throughout the United States.

The car supply problem is one of continuing concern to my company. The situation with which I am most familiar relates to our Oregon mills located at Springfield, Coos Bay, Cottage Grove, and Klamath Falls, but many of the conditions faced by Weyerhaeuser Co. apply equally to the railcar situation at other shippers in Oregon.

To be competitive in the wood products market, our manufacturing units are designed to fully utilize the raw material available. We have a need for all types of rail equipment. Our customers demand unitized loading in railcars. The 40-foot single-door boxcar is becoming obsolete. The increased demands are for double-door 40-foot, 50-foot, some full-door boxcars and bulkhead flats.

The Weyerhaeuser Co. western Oregon mills have charted the railcars ordered and received in the first 18 months of 1971.

This chart shows by week our western Oregon mill railcars received on a very erratic schedule. At times the mills receive 100 percent of need or as ordered; however, at other times we receive only about 50 percent of needs.

Now this chart shows a consistent railcar shortage throughout the year, this is up to the first of September. Now, the extreme railcar shortage was during the Southern Pacific railcar-strike period, which is shown right in here and over in here [indicating] but you can see, if I recall right, that there were only 7 weeks out of the first 36 weeks of the year that we received 100 percent as ordered, type ordered in the year of 1971 at our three western Oregon facilities.

In evaluating the railcars received, the following factors must be considered:

1. The railcars were delivered on an erratic schedule. The shipping crews were often required to work 48 or more hours a week to load what normally would have been loaded in a 40-hour workweek:

2. The type of cars received was not always the type ordered. This causes delinquencies, cancellations of orders, dissatisfied customers and loss of customers.

3. The railcar shortage often develops on a strong market. Railcars are generally available on a weak market. Our mills at times must ship at a low sales price when railcars are available to keep operational.

To operate our Oregon manufacturing units at normal production rate during a severe railcar shortage is a costly operation which requires the following action.

1. Build inventories.

2. Build up local sales and increase truck shipments utilizing commercial and/or Weyerhaeuser Co. trucks.

I estimate our Oregon mills will ship in 1971: 7,050 truckloads of lumber; 1,640 truckloads of plywood; 271 truckloads of particleboard; and 175 truckloads of Ply-Veneer for a total of 9,136 truckloads of manufactured wood products.

The railcar shortage forces us to truck shipments. During a severe car shortage, all Oregon intrastate shipments go by truck.

2. Shipments to Washington, California, Idaho, Utah, Nevada and Arizona are often made by truck at unfavorable freight costs.

3. We have set up and contacted reload sites on Burlington Northern Railroad at Eugene and Junction City. We have hired extra personnel and rented equipment so we could ship from two rail lines instead of one. This is an additional cost to us of about $400/railcar on material coming from Coos Bay and less cost, proportionately, from Cottage Grove and Springfield.

4. We have had built and increased our leased fleet to 87 railcars for the Oregon mills. Seventy-one of these are special, full sidedoor boxcars needed for loading of long unitized panels. Although our supplying railroad company cannot supply us with this type railcar, it has only been during the last few months that they have agreed to handle these privately leased cars in their trackage.

5. We have an arrangement with Evergreen Freight Car Corp. We intend to work with them in this arrangement to help them justify revenue to build more of these double-door 50-foot Evergreen boxcars.

6. We have attempted to increase our export and cargo sales. The longshoremen's strike this summer has prevented us from utilizing this method of shipping to its maximum potential.

My company has had many meetings with our supplying railroad and has worked closely with them to utilize the available railcars to maximum efficiency.

We have set up a system that is helpful to both the carriers and ourselves in planning care requirements. One system involved a series of forecasts where we maintained records as to the number of cars ordered, supplied, and actually shipped. We estimate our requirements several months into the future.

These records are maintained for all of our mills, and are coordinated in our Tacoma office. These reports are available to the carriers serving our facilities.

Gentlemen, the railcar supply in Oregon is critical and costly. The Western railroads and the Oregon shippers need your help to solve the tradtional railcar supply problems of Oregon and the Pacific Northwest.

Mr. HATFIELD. Mr. President, the Far West produces lumber in far greater quantities than it consumes, and ships about 60 percent of its production east of the Rockies. I am advised that in 1970, about 300,000 carloads of lumber were shipped from western mills.

An adequate rail car supply is needed. From a selfish point of view, as a Senator from a timber State such as Oregon, having enough freight cars enables our economy to prosper, and I am all for that. From a broader prospective, though, if we are to meet the housing goals and needs of this country, we must take steps to hold down the cost of new houses. Providing enough rail cars is a big step in offering some stability to an industry that suffers pricing fluctuation brought on by factors more complex than the one under discussion today.

I ask unanimous consent that my statement at the opening day of the hearings, as we began investigating the aspects of the various bills before the committee back on May 19, 1971, appear at this point in the RECORD.

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

FREIGHT CAR SHORTAGES

(Opening statement by Senator HATFIELD)

The hearing will please come to order.

Let the record show that Senator Magnuson, the chairman of the Commerce Committee and a member of the Special Subcommittee on Freight Car Shortage, has commitments on the Senate floor this morning and will try to join us if at all possible. I do not think it is necessary to indicate his keen interest because it has been amply demonstrated on many occasions concerning the subject on which we will be holding hearings this morning.

I am pleased to welcome each and every one of you here this morning to the first day of the hearings before the Special Subcommittee on Freight Car Shortages on freight car shortage problems and on four relevant bills which have been introduced—Senate bill 1415, introduced by Senator Pearson, which would authorize the Department of Defense to purchase for its use not less than 10,000 general purpose freight cars; Senate bill 1729, introduced by Senator Magnuson with 33 cosponsors, which would create a public corporation to acquire general purpose cars and to foster improved utilization through modern computer systems; Senate bill 1730, introduced at the request of the National Industrial Traffic League, which would create a combination public-private corporation to acquire general purpose cars; and Senate bill 1731, introduced at the request of the Association of American Railroads which would provide Government insurance against default on railroad equipment loans.

The freight car shortage problem is familiar to all of us. It has been before the Commerce Committee many times down through the years. But it has grown more severe in recent years. Not only does it affect our western grain farmers and lumber shippers, but it also affects the coal industry in the East, the lumber industry, almost every industry in every region in the country.

I think it is clear that the time is ripe for legislative action. The freight car shortages are of major concern to many of the Nation's shippers. Further, we must keep in mind the weakened condition of the rail industry itself. A creative solution to the freight car shortage will not only aid shippers, but it will also help the beleaguered railroads.

This subcommittee intends to conduct a thorough analysis of the problem and will attempt to develop a solution to it. We will have 2 days of hearings, today and Friday this week. I expect that we will have several more days not yet scheduled before we are finished. The bills before us should provide a good starting point for our work. We hope to improve upon them before we are finished and we look forward to the comments of our witnesses to help us in this regard.

Today, I will not go into detail in support of the various bills before our subcommittee, but as a member of this special subcommittee I do want to highlight the problem as it relates to my own State of Oregon where we ship twice as many goods out of the State as we import.

Oregon shippers need empty cars for our goods to travel to markets in other States. Probably the best known of the areas where the shortage plagues Oregon businesses are in the forest products area and in agriculture. I could count off numerous occurrences with friends of mine in the lumber industry where boxcar shortages have hindered and even crippled efforts to reach markets in other States at crucial times.

Throughout Oregon, our forest products shippers—from the giant companies to the small independent operators—have lost profits, faced serious financial difficulties, and have laid off men, and thus increased unemployment. These problems occurred because no boxcars were available when they were needed. One small mill in western Oregon was forced to lay off 200 workers because no railcars were available to transport the mill's lumber production.

As the economy in the country improves, I anticipate increases in new home construction. The boxcar shortages of the past 2 years will pale in comparison to what Oregon lumber companies will face if more cars are not provided for our products. I also would presume that similar situations exist in other Northwest States.

I would also add that our State's agriculture industry has a vital interest in improving the freight car situation. The most dramatic cases concern shipments of fruit, produce, and vegetables. The equation here is simple: If there are no cars, everything is lost when the crops spoil.

The effects on consumers can be illustrated most clearly in this context. When crops spoil or are delayed, the supply cannot meet the demand The result is higher prices for the American consumer.

Secretary of Agriculture Clifford Hardin testified last year on this problem of the freight car shortages as it affects agriculture. I would like to have the record show here the selections from his testimony as indicated.

"The answer to the problem is complex: It involves money for equipment, changing railcar usage patterns, rising costs, and distribution of available equipment into agricultural areas at times of peak harvest demand.

"The number of plain boxcars in use has declined annually for the past 11 years or more.

"Between Jan. 1, 1959 and Jan. 1, 1970, this decline was a sharp 42.7 percent.

"On Jan. 1, 1959, American railroads had 674,792 such boxcars; by Jan. 1 this year, this total had dropped to 386,499. Of these boxcars, the total of narrow-door boxcars suitable for grain hauling had declined to 180,574. Meanwhile, it is true, the number of covered hopper cars—the kind suitable for unit trains and bulk hauls between major terminals—increased from 58,383 on Jan. 1, 1959, to 125,867 on Jan. 1, 1970. However, these hopper cars are used for many purposes other than the transportation of grain and similarly-handled agricultural products. They have by no means met the current needs of the grain industry.

"In addition to the shortage of ordinary boxcars, there is also a critical shortage of mechanical refrigerated cars for the movement of perishable agricultural products.

"While the boxcar shortage has grown increasingly acute since 1959, the population of the United States has increased by more than 27 million persons. The need for adequate movement of the basic agricultural raw materials into the food production areas of our Nation increases daily.

"Complicating matters even more are two strictly agricultural problems. One is the matter of greatly increased crop volumes which must be moved and the particularly sharp increase in fall-harvested crops.

"Wheat production during the 1950–70 period has expanded from around 1 billion bushels annually to about 1½ billion; corn production has grown from around 3.8 billion bushels to around 4.5 billion; grain sorghum from 555 million bushels to more than 700 million; and soybean production has nearly doubled—to the point where it now exceeds 1 billion bushels annually. Furthermore, the percentage of the corn and grain sorghum crops moved off the farm has increased substantially."

From this testimony of Secretary Hardin, these statistics point out just how severe this problem is across the entire country.

In conclusion, I hope that this committee will approve legislation which will help solve the severe problems facing shippers in Oregon and other parts of the country as well. On behalf of businessmen and consumers in Oregon and throughout the country, I will urge approval of legislation which will enable meaningful steps to be taken to solve this transportation crisis.

Mr. HATFIELD. Mr. President, I also want to point out that the railroads that serve Oregon have done a great deal to try and solve the problem in our area of the country.

In a recent edition of "Keeping Track," the publication of the Oregon Railroad Association, it is brought out that the railroads serving Oregon bought 23 percent of all new rail freight cars manufactured last year. I applaud this action, but as I have pointed out, it is not enough.

I ask unanimous consent that this article on new car purchases appear at this point in the RECORD.

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

[From Keeping Track, April 1972]

OREGON RAILROADS BOUGHT BIG SHARE OF NATION'S NEW CAR FLEET LAST YEAR

Latest annual freight car order figures again highlight the significance of railroad spending to the Northwest economy: railroads operating in Oregon ordered 23 per cent of new freight cars manufactured nationally in 1971.

And more than two-thirds of all new cars ordered by the three Oregon Railroad Association member lines in 1971 are from Oregon and Washington manufacturers.

Burlington Northern, Southern Pacific and Union Pacific—three of 71 Class I railroads making up the national system—ordered a total of 12,046 new freight cars.

Of these, 4,431 are from Gunderson, Inc., Portland car builder; 3,450 are from Pacific Car & Foundry Co. in Renton, Wash.; and 375 are from company shops in Oregon.

Nationally, new freight car orders in 1971 totaled 52,482—up nearly 5 per cent over 1970. The number purchased by the three ORA member lines (which operate railroads in a total of 22 states besides Oregon) represents 23 per cent of the national figure.

Railroads nationally are expected to invest in more than 70,000 new cars in 1972, with a significant portion of them again to be built in the Pacific Northwest.

Mr. HATFIELD. Mr. President, I wish to call special attention today to the leadership given this legislation by several of our colleagues. The distinguished chairman of our subcommittee (Mr. HARTKE) who is carrying the ball now in the debate on the floor, has given much of his time and energies in the preparation of this very worthwhile compromise. In my year on the committee, I appreciated the counsel and advice of the senior Senator from Indiana (Mr. HARTKE) as we held several days of hearings on these bills.

I think we all owe our thanks to the leadership of the distinguished Commerce Committee chairman for whom I have such affection and admiration (Mr. MAGNUSON). As Governor of Oregon, I knew years ago that Senator MAGNUSON was an able and skillful legislator—sometimes to his State's direct benefit and my State's direct loss. Since coming to the Senate, though, it has been my pleasure to work in tandem with him in solving common problems of the Northwest far more often than we work at odds with each other. He was responsible for my appointment to the freight car subcommittee, and I welcomed the opportunity to become more familiar with such a complex topic, and to participate in the initial consideration of these bills.

On the Republican side of the aisle, the able senior Senator from New Hampshire and I should be at odds on any such legislation—he from the Northeast and I from the Northwest. We should be tugging away at each other, for the car shortages have been thought of as purely regional struggles. I think we both recognize, however, that we have passed that stage—it is a national problem, not a regional one. There is no solution that will help New Hampshire at the expense of Oregon—there is only a solution that will help the entire country, or conversely, hurt it to the same degree. I appreciated sharing my thinking on this issue with Senator COTTON, and I profited from his wise comments.

Lastly, I want to call special attention to the leadership role played by the senior Senator from Kansas (Mr. PEARSON). Throughout my service in the Senate, I have looked to JIM PEARSON for continued leadership in trying to help solve the freight car shortage. He has been a constant battler for the farmers, not only of his State, but throughout the country, as he has helped to see that they have had sufficient cars to meet their needs.

I also want to thank John Cary and Henry Rush, now with the Federal Railroad Administration. John and Henry, as able staffers on this subcommittee, gave our committee, and me as a new member in particular, the kind of backup that makes our job much easier. I know I speak for other members of the committee when I thank you both.

In conclusion, Mr. President, I think this bill is a workable compromise. It is the carrot and the stick—we offer the railroads some needed assistance, but stand ready with the stick if the carrot does not solve the problem.

For too long, solutions to freight car shortages have been long on talk and short on action. I commend this bill to my colleagues—not because it is perfect in every way but because it represents a concrete step toward solving this severe problem.

This bill helps the railroads, but I think it helps them in a responsible manner. They are provided incentives to purchase and build new rail cars to increase the car supply.

This bill helps the shippers. Both by providing more new cars and increasing utilization of our existing car supplies, we will help the thousands of shippers across the country.

This bill helps the consumers. Insufficient car supplies contribute to rising prices for food and lumber. This bill, in alleviating car shortages, will help stabilize recent prices rises in both food and lumber prices.

I ask unanimous consent that an editorial by Wes Sullivan in the Oregon Statesman, Salem, Oreg., on October 17, 1971, appear in the RECORD at this point.

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

THREE RAIL BOXCAR SHORTAGE ROUTES

The forces governing the chronic Pacific Northwest boxcar shortage seem, like the weather, to be beyond the control of those affected by it. The public feels the impact of the car shortage only indirectly, so it is difficult to get public indignation high enough to meet the issue headon.

The shortage dates back to the post-World War II boom in rail freight. The West exports twice as much as it imports. So there is a financial incentive for cars to move from west to east, but not back again.

While western shippers cried for cars, they sat on eastern sidings. Per diem charges were levied against the railroads holding the cars, but they were so small the railroads would rather pay the penalties than send the cars back. Even when they were raised and Congress instructed the Interstate Commerce Commission to monitor the situation, the cars remained in the East.

To make matters worse, the Eastern railroads didn't order many new cars to meet the tremendous expansion in rail traffic. Why should they build cars when they had all they wanted, the reasoning went?

Railroads, beset with labor problems, circumscribed by government regulation and ofttimes lacking imaginative management, began to lose ground financially. The more red ink they accumulated, the fewer cars they built, making matters worse.

Things are so bad now, that only 6 per cent of the nation's boxcars are moving at any one time. And instead of getting larger, the nation's inventory of boxcars is getting smaller, down from 665,000 just 15 years ago to 380,000..

Southern Pacific points to its efforts to meet the situation, a continuing program of adding new cars, 5,000 both in 1969 and 1970, and computerization of boxcar recordkeeping, so SP knows exactly where each car is.

Full computerization of the U.S. boxcar inventory is years away, but it would help untangle the red tape which keeps so many cars immobilized.

In the face of this frustrating picture, which seriously handicaps the Pacific Northwest economy, three measures are awaiting action in the U.S. Senate. They offer three approaches to the problem.

S. 1729 would put the government in the boxcar business, creating a government corporation to build cars, operate its own shops

and have authority over distribution of cars. Labor tends to favor this bill.

S. 1730 would create a quasi-government corporation which could own a boxcar pool and distribute cars where needed to supplement the railroads' efforts. This plan was prepared by shippers but not all endorse it.

S. 1731 would provide government financing to railroads to buy cars and would continue to rely upon the ICC to control distribution of them. The Association of American Railroads backs this bill.

We can sympathize with the frustration of those who now favor having the government take over the boxcar business as it has taken over the passenger traffic. But piecemeal nationalization of railroads is not the way to build a stronger rail system.

Far better to provide public financing both for new cars and for a universal computer system to make more efficient use of the present supply. Then put enough teeth into both the legislation governing the railroads and their regulating agencies to insure the railroads do the job.

Mr. COTTON. Mr. President, I ask unanimous consent that two members of the minority staff of the Commerce Committee, Mr. David Clanton and Mr. Malcolm Sterrett, be authorized to be on the floor during the consideration of S. 1729.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COTTON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk proceeded to state the amendment.

Mr. COTTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and the amendment will be printed in the RECORD.

The amendment is as follows:

Commencing on page 38, line 5, strike out all through line 24, and insert in lieu thereof the following new subsections:

"SEC. 301. (a) Within three years from the date of enactment of this Act, the Secretary shall transmit to the Congress a report stating whether or not he and the Interstate Commerce Commission have found that substantial progress has been made toward eliminating the freight car shortage arising from an inadequate supply of rolling stock and inadequate car service and that there has been a substantial increase in utilization of such rolling stock.

"(b) If the Secretary reports that he and the Commission have found that substantial progress in freight car supply and utilization has not been made, Congress may, within three years and six months after enactment of this Act, by affirmative resolution, authorize the establishment of a corporation to be known as the Rolling Stock Authority in accordance with the provisions of this title. Its purposes shall be to acquire, maintain, and provide rolling stock, to manage a pool of such rolling stock, and to employ innovative concepts for equitable distribution and efficient and expeditious use of such rolling stock to meet the needs of the national economy."

Mr. COTTON. Mr. President, I yield myself 5 minutes. I believe that we have an agreement of 10 minutes to the side of amendments.

The PRESIDING OFFICER. The Senator is correct.

Mr. COTTON. Mr. President, I believe I can explain my amendment very quickly. The bill is a good bill and my amendment does not go to the real essence of the bill at all. The bill provides a setup for the next 3 years, whereby the Secretary of Transportation could provide up to $2 billion in loan guarantees to attack the freight car shortage problem.

At the end of 3 years under title 3 of the bill, on page 38, we find a double negative. The bill would provide that if the Secretary and the ICC do not find that the freight car shortage no longer exists, and there has been a substantial increase in utilization of freight cars, then automatically, unless Congress takes action to prevent it, a Government corporation comes into being. As set up in title 3, $1 billion in loan guarantees would be authorized to start the corporation off and to continue it on a more permanent basis for the purpose of supplying sufficient freight cars for the Nation's transportation needs.

Mr. President, the only objection the Senator from New Hampshire has to this bill is that I have certain apprehensions as to the procedure for bringing the corporation into being 3 years from now. Of course, the precedent for the procedure in title III of the bill was set in all of these reorganization plans. The President sends down a reorganization plan and unless Congress acts against it and rejects it within a certain period of time it automatically becomes law. The Senator from New Hampshire has always opposed that. It is, in his opinion, a dangerous, backhanded way of legislating.

In the case of this corporation, 3 years from now the personnel of these committees will have changed, personnel of the House and the Senate will have changed. Meanwhile, time goes by and unless someone is on his toes to the nature of this measure, the first thing we know we automatically have another huge and formidable Federal corporation with a billion-dollar authorization.

So all my amendment would do would be to change the language and state:

(a) Within three years from the date of enactment of this Act, the Secretary shall transmit to the Congress a report stating whether or not he and the Interstate Commerce Commission have found that substantial progress has been made toward eliminating the freight car shortage arising from an inadequate supply of rolling stock and inadequate car service and that there has been a substantial increase in utilization of such rolling stock.

(b) If the Secretary reports that he and the Commission have found that substantial progress in freight car supply and utilization has not been made, Congress may, within three years and six months after enactment of this Act, by affirmative resolution, authorize the establishment of a corporation to be known as the Rolling Stock Authority in accordance with the provisions of this title. Its purposes shall be to acquire, maintain, and provide rolling stock, to manage a pool of such rolling stock, and to employ innovative concepts for equitable distribution and efficient and expeditious use of such rolling stock to meet the needs of the national economy.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. COTTON. I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. COTTON. This would require affirmative action, but only the affirmative action of a simple resolution by Congress that it wishes the corporation to go into effect. That, Mr. President, is the sole purpose of my amendment.

I reserve the remainder of my time.

Mr. HARTKE. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. HARTKE. Mr. President, I understand fully the concern of the Senator from New Hampshire about these automatic provisions which occur without the express authorization of Congress, and I would share with him that same feeling of apprehension if this were in the same context of the reorganization bill, but this is different.

What we are talking about here is the creation of an authority as the stick part of a carrot and stick operation. The carrot is providing a guaranteed loan for building freight cars; the stick is that if the railroads do not take the opportunity to eliminate the freight car shortage we will make sure the job gets done.

If the rail industry fails to solve the freight car problem within 3 years, even with the financial and technical assistance provided in titles I and II, then incorporation of the authority is authorized—section 301. It would have power to acquire rolling stock—its obligations would be backed by Federal guarantees up to $1 billion—and to operate such rolling stock as a pool. It would be directed to employ innovative concepts to improve utilization.

The authority, if established, would at a maximum control only 4 to 5 percent of the number of cars now in the railroad fleet. In essence, it would be an experiment to demonstrate the effectiveness of new ideas such as car pooling for improved utilization. It would be a yardstick against which to measure railroads' performance in car utilization.

Section 307 provides a mechanism for conversion of the authority to private ownership and control as soon as is practicable. Thus, the authority can be moved out of the Government Establishment and into the private sector once its value is shown and private investment replaces Government investment.

In my opinion, title III, which would, in effect, be softened by the amendment of the Senator from New Hampshire, is essential to the bill. Many railroads oppose creation of the authority, because it would be a solution imposed upon them and because it would reduce their dominance of car service. The structure of title III plays upon this opposition to use establishment of the authority as an inducement to railroads to put aside their proprietary interests and to work together to improve car utilization and to eliminate freight car shortages. The loan guarantees of title I are the carrot; the authority is the stick, to induce railroads to eliminate car shortages.

Without title III the industry might take the carrot yet not eliminate the shortages.

Railroads could easily devote the financial assistance to advancement of their own proprietary interests rather than taking action to solve the problem. With title III, they know that the Government will step in if they do not take appropriate action.

It is vital to title III that establishment of the authority be certain if freight car shortages are not eliminated within a fixed time—3 years. The less certainty there is, the weaker is the stick.

The many years the freight car problem has been around teaches us the necessity for the stick. Railroads have been given guaranteed loans before; they have been given large tax breaks for car acquisition. The first case before the ICC when it was established a long time ago involved freight car shortages. They have taken these carrots, but they have not solved the freight car problem. There must be something affirmative to overcome their inclination to advance only their separate proprietary interests instead of the interest of the rail system.

If establishment of the authority is not certain, if the railroads can take the carrot and postpone the stick, then solution of the freight problem will be delayed or lost. We would then have a railroad assistance bill, but not a bill to solve the freight car problem nor a bill that would help shippers. At that point, it might be better to have no bill.

In the final analysis, certain findings must be made by the Secretary of the Department and the Secretary of the Interstate Commerce Commission that there is no shortage. If that occurs, then the automatic birth of the corporation would not be needed and, therefore, it would not come into existence. Second, Congress itself, after the finding is made, would have 6 months in which to decide not to have a corporation.

Senator COTTON compares this bill to the Government reorganization act, where if no action is taken by Congress on the President's plan, then the plans would come into operation. This bill is quite different from the reorganization act. We have had 9 days of hearings and long committee consideration of the specifics of the provision. This is not wide open authority to make any sort of plan.

I understand the apprehension of the Senator from New Hampshire but I feel that without this type of stick the effectiveness of the bill would be aversely affected.

Mr. President, for those reasons I oppose the amendment.

Mr. COTTON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. COTTON. Mr. President, I suggest the absence of a quorum so that we may have a sufficient number of Senators to ask for the yeas and nays, and I ask unanimous consent that the time not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COTTON. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. COTTON. Mr. President, I yield myself 2 more minutes.

I listened with careful attention to the remarks of my distinguished friend from Indiana. He says that this is a different situation from the reorganization plan. I certainly agree that it is. This is a more dangerous situation. In the case of a reorganization plan, we act on it expeditiously or else the President goes on with it. If some other President comes along, it can fall by the wayside, but the procedure is not delayed as it would be in this bill.

We have had disagreements about the freight car shortage matter, many of which have been eliminated by the fact that short haul eastern lines have not been protected and have gone out of business.

I am for this bill. However, I doubt if there is anyone on the committee or in Congress who, with an understanding of the history of this situation, does not believe that the stick will be used. We might as well put that stick in now, except it would cause more controversy. But the whole point is that what is sought to be done is tc have this stick come in automatically unless Congress acts negatively.

The Secretary has to make reports—I do not know how many people read them—on behalf of himself and the ICC, and those reports will be forthcoming. The information will all be there, if the problem is not solved.

I do not even ask that the affirmative action on the part of Congress be in the form of legislation that has to be signed by the President. I do not change a word or syllable of the setup of this corporation. I simply insist that reports shall be made and the Congress, by the simplest and quickest process, affirmatively act on it, rather than leave it as a snake in the grass which could set a precedent for all kinds of corporations coming into being when Congress personnel has changed and they have forgotten all about it.

I reserve the remainder of my time.

I am willing to yield my time back at this time.

Mr. HARTKE. Mr. President, I understand everything the Senator from New Hampshire is talking about. I will say that probably, if I followed the same inclination, I would recommend that this corporation be put into effect immediately. This is sort of like getting ready to cross the desert and saying this is the last chance to get our last drink of water.

What we are saying to them is, "We will give you 3 years. You have not done it since 1887. We are going to give you 3 more years to solve it, and if you do not do it, the Government is going to do it."

We had 9 days of hearings on this single item. We went into it in depth. I agree that probably the best solution is to put the corporation into effect.

Mr. COTTON. We are saying to them, when you set up the whole thing and require a report and the most simple action by Congress, it can be done.

I yield back the remainder of my time.

Mr. HARTKE. I yield back my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment offered by the Senator from New Hampshire. The yeas and nays have been ordered, and the clerk will please call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Georgia (Mr. GAMBRELL), the Senator from Oklahoma (Mr. HARRIS), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Maine (Mr. MUSKIE) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG) is absent on official business.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL) would vote "yea."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Michigan (Mr. GRIFFIN), the Senator from Iowa (Mr. MILLER), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Massachusetts (Mr. BROOKE) and the Senator from Iowa (Mr. MILLER) would each vote "yea."

The result was announced—yeas 43, nays 41, as follows:

[No. 344 Leg.]

YEAS—43

| | | |
|---|---|---|
| Aiken | Dole | Saxbe |
| Allen | Ervin | Schweiker |
| Beall | Fannin | Scott |
| Bellmon | Fong | Smith |
| Bennett | Gurney | Sparkman |
| Bentsen | Hansen | Spong |
| Boggs | Hruska | Stafford |
| Brock | Jordan, N.C. | Stennis |
| Buckley | Kennedy | Stevens |
| Byrd, Harry F., Jr. | Mathias | Taft |
| | McClellan | Talmadge |
| Cannon | McIntyre | Thurmond |
| Chiles | Pastore | Tower |
| Cooper | Pell | Weicker |
| Cotton | Roth | |

NAYS—41

| | | |
|---|---|---|
| Anderson | Hart | Mondale |
| Bayh | Hartke | Moss |
| Bible | Hatfield | Nelson |
| Burdick | Hollings | Packwood |
| Byrd, Robert C. | Hughes | Pearson |
| Case | Humphrey | Proxmire |
| Church | Inouye | Randolph |
| Cook | Jackson | Ribicoff |
| Cranston | Javits | Stevenson |
| Curtis | Jordan, Idaho | Symington |
| Dominick | Magnuson | Tunney |
| Fulbright | Mansfield | Williams |
| Goldwater | McGee | Young |
| Gravel | Metcalf | |

NOT VOTING—15

| | | |
|---|---|---|
| Allott | Eagleton | Griffin |
| Baker | Eastland | Harris |
| Brooke | Gambrell | Long |

| | | |
|---|---|---|
| McGovern | Montoya | Muskie |
| Miller | Mundt | Percy |

So Mr. COTTON'S amendment was agreed to.

## MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed the bill (S. 3726) to extend and amend the Export Administration Act of 1969 to afford more equal export opportunity, to establish a Council on International Economic Policy, and for other purposes, with amendments, in which it requested the concurrence of the Senate; that the House insisted upon its amendments to the bill, asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PATMAN, Mr. BARRETT, Mrs. SULLIVAN, Mr. REUSS, Mr. ASHLEY, Mr. ST GERMAIN, Mr. WIDNALL, Mr. JOHNSON of Pennsylvania, Mr. BLACKBURN, and Mr. BROWN of Michigan were appointed managers on the part of the House at the conference.

## EXTENSION OF EXPORT ADMINISTRATION ACT OF 1969

Mr. ROBERT C. BYRD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3726.

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 3726) to extend and amend the Export Administration Act of 1969 to afford more equal export opportunity, to establish a Council on International Economic Policy, and for other purposes, which were to strike out all after the enacting clause, and insert:

That section 14 of the Export Administration Act of 1969 is amended by striking out "August 1, 1972" and inserting in lieu thereof "June 30, 1974".

SEC. 2. Section 4(e) of such Act is amended to read as follows:

"(e) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by him to be in excess of the requirements of the domestic economy, except to the extent the President determines that such exercise of authority is required to effectuate the policies set forth in clause (B) or (C) of paragraph (2) of section 3 of this Act."

Any rule, regulation, proclamation, or order issued after July 1, 1972, under section 4 of the Export Administration Act of 1969, exercising any authority conferred by such section with respect to any agricultural commodity, including fats and oils or animal hides or skins, shall cease to be effective upon the date of enactment of this Act.

And amend the title so as to read: "An act to extend the Export Administration Act of 1969, and for other purposes."

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate disagree to the amendments, agree to the conference requested by the House of Representatives on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. SPARKMAN, Mr. WILLIAMS, Mr. MONDALE, Mr. BENNETT, and Mr. BROCK conferees on the part of the Senate.

## ROLLING STOCK UTILIZATION AND FINANCING ACT OF 1972

The Senate continued with the consideration of the bill (S. 1729) to supply general service freight cars to meet the needs of commerce, users, shippers, national defense, and the consuming public.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. BELLMON. Mr. President, I call up my amendment at the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. BELLMON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

At the end of the bill, add the following new title:

"TITLE ——. RURAL RAILROAD ASSISTANCE

SEC. —. (a) The Secretary of Transportation (hereinafter referred to as the "Secretary") is authorized to make loans and loan guarantees pursuant to this Act to assist States and local public bodies and agencies thereof in financing the acquisition, construction, reconstruction, and improvement of railroad facilities and equipment for use, by operation or lease or otherwise, in rural areas. Eligible facilities and equipment may include railroad right-of-way, tracks, rolling stock, and other real and personal property needed for an efficient and coordinated rural railroad transportation system.

(b) No such loan or loan guarantee shall be provided unless the Secretary determines that the applicant has or will have—

(1) demonstrated a valid need for the establishment or reestablishment of railroad service in the affected area; and

(2) the technical capability to carry out the proposed project.

(c) Any such loan or loan guarantee may be made for not to exceed 80 per centum of the total costs of the proposed project and shall be subject to such other terms and conditions as the Secretary may determine are necessary to carry out the purposes of this Act.

SEC. —. The General Accounting Office shall make a detailed audit of all accounts, books, records, and transactions of any borrower with respect to which an application for a loan or loan guarantee is made under this title. The General Accounting Office shall report the results of such audit to the Secretary of Transportation.

SEC. —. There is authorized to be appropriated not to exceed $25,000,000 to carry out the provisions of this Act. Sums so appropriated shall remain available until expended.

SEC. —. As used in this Act—

(1) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States;

(2) the term "local public bodies" includes municipalities and other political subdivisions of States; public agencies and instrumentalities of States, muncipalities, and political subdivisions of such States; and other public boards, corporations, and commissions established under the laws of any State;

(3) the term "rural area" means all the territory of a State that is not within the outer boundary of any city having a population of fifty thousand or more and its immediately adjacent urbanized and urbanizing area with a population density of more than one hundred persons per square mile, according to the latest decennial census of the United States.

Mr. BELLMON. I yield myself 5 minutes.

Mr. President, on June 30, I introduced a bill, S. 3790, that is intended to establish a loan fund to which communities that are about to reduce their rail service may turn in order to obtain the funds necessary to keep essential service in operation.

Since that bill was introduced, the chairman of the Committee on Commerce, the Senator from Washington (Mr. MAGNUSON), has received a copy of a letter from the Comptroller General in which one deficiency is pointed out in the bill. This amendment is now submitted to correct that deficiency.

The purpose is to make it possible for communities that are willing to put forth local effort and to have a project that receives the support and approval of the Secretary of Transportation to provide a means for keeping their rail service in operation. To be specific, this problem arose in our State because a 350-mile railroad which serves 12 of our western counties is to be closed on August 31. The ICC has agreed to this closing, and it is going to leave that very large section of our State largely without rail service.

This is not a Federal giveaway. It requires that the Secretary find that the project is feasible and that it has a good possibility of repaying the loan. It is limited to communities with a population of less than 50,000, and it is intended to make certain that the development of the rural sections of this country is not hampered by lack of rail service.

Mr. PASTORE. Mr. President, will the Senator yield for a question?

Mr. BELLMON. I yield.

Mr. PASTORE. Has this to do with passenger railroad service or freight?

Mr. BELLMON. Freight service.

Mr. PASTORE. Just freight?

Mr. BELLMON. Freight service.

Mr. President, this matter has been discussed with the chairman of the committee and the chairman of the subcommittee. I believe that they are generally in agreement that the amendment is acceptable.

Mr. HARTKE. Mr. President, I have discussed this matter with the Senator, and it is an emergency situation. It is not exactly germane to the bill itself.

The problem he presents is a situation in the rural sections of Oklahoma in which the ICC has permitted an abandonment. The question of abandonment is a matter on which we are having a series of hearings. I have discussed with the

Senator two ideas on this proposition. First we will accept the amendment and take it to conference. In the meantime we will proceed with hearings and, hopefully, will be able to work out a satisfactory solution to this specific problem in Oklahoma. The difficulty we are faced with is that this is not the only abandonment case in the United States which presents a problem. I do not know a single State in the Union now in which there is no controversy surrounding the question of abandonment of railroad tracks. This is one of the most difficult problems we have to deal with. But, with this understanding, we will accept the amendment.

I have nothing further to say and am ready to yield back my time.

Mr. PEARSON. Mr. President, I am very much pleased that the manager of the bill will accept the amendment.

Actually, all those who have been concerned about rural revitalization are now really faced with a new dimension to the problem because, as the chairman said, this is not an isolated case. The amendment may have direct reference to Oklahoma, but if the rail abandonments are carried out in Kansas, I forget the exact percentage, but in my mind it is something like 36 percent or 37 percent of the total lines in Kansas will be abandoned in the small communities. I do not know whether this will be a solution or not, but it is one permissive on the part of the small communities, with approval by the Secretary of Transportation, with accounting procedures by the GAO, and some safeguards here that will permit us not only to accept the amendment but to work for it in conference and see if this is not one way to handle a serious problem.

I commend the Senator from Oklahoma for finding a way. Whether it will be the way we will have to utilize, I do not know, but it does meet the immediate need. I am very much pleased that the chairman will take the amendment to conference.

Mr. BELLMON. I should like to say that this amendment does not relate only to the situation in my State. Provided here is $25 million, of which Oklahoma would require only $5 million, so there is more money to take care of other communities.

Mr. MAGNUSON. In Oklahoma, as I understand it, there is some emergency right now.

Mr. BELLMON. The emergency is very great, yes.

Mr. MAGNUSON. But the amendment would allow other cases, which the distinguished Senator from Kansas (Mr. PEARSON) has just talked about to come in under the umbrella of this amendment in order to do such things as they might be able to do, to forestall abandonment of certain lines, small spurs serving small communities; is that not correct?

Mr. BELLMON. That is entirely correct.

Mr. HUMPHREY. Mr. President, I want to express my thanks to the distinguished Senator from Oklahoma (Mr. BELLMON) for this amendment. He and I have worked closely, as we have with the distinguished Senator from Kansas (Mr. PEARSON) and others, on what we call the Rural Development Subcommittee. We have held hearings all through the country on the problems of rural America and I am here to say that all this money we are appropriating here in Congress for the redevelopment of the cities will go far naught if we do not do something about the rural countryside and the services which are required there. One of the real failures today in this respect is transportation. I can speak of a community in my home State in which new factories have been located and the railroads have abandoned all service. The county roads can only take up to 6 tons and the big trucks carry over 6 tons, so there is no truck service and the factories are having to close down. The railroads, however, do not care about rural America. Unless they can have a line of freight cars at least 75 to 100 cars long, they do not even want to go through. If they do go through a rural town, they do not want to stop there. Therefore, I am so pleased that the Senator from Oklahoma has offered this amendment. I simply say that $25 million, Senator, should be looked upon here as just a teaser. It will not count for much, but it will help a little bit.

Although the amendment may be interpreted as an amendment just for Oklahoma, and even though the Senator from Oklahoma has taken the initiative here, this has got to be done. What is in this amendment has got to be done across this Nation or we will have more people coming into the cities. Of course we know that every time people come into the cities it increases the taxpayers' costs.

I can say to the Senate that in communities of 5,000 to 10,000, such as in Oklahoma, Kansas, or Minnesota, the cost of social services for those people is one-fifth what they are in New York City, Philadelphia, Chicago, or Detroit. The ratio is 5 to 1. In some cities it is as much as 7 to 1. In other words, it takes $7 to take care of a particular matter for an individual in New York City that it would take $1 to take care of an individual living in a community like Cokato, Minn.

But Congress, the cities, the government, seem to be determined to let rural America rot. There is not enough money in this country to rebuild the cities. We must do something about rural America. We are going to get onto this rural development bill shortly. We have heard the story so many times, yet we come in here, because this country is urbanized, and we appropriate billions of dollars for the cities, which is necessary because the cities are in dire trouble, but no one wants to do anything for that great part of America where there is room to live, where living conditions could be good, where the air is sweet and clean, where water is available, and where there is plenty of space. But we say, "Let the bumblebees and the birds flitter and flutter around, but close up the railroads, do not build any airports, let us not have any water or sewage systems, the people will get along."

I want to say that this last amendment that was just agreed to will deny to my State some boxcars. We need boxcars not only in Minnesota, but in Wyoming, in Indiana. We need them in Oklahoma too.

Ever since I came to Congress in 1949, we have been arguing about the question of boxcars. We seem to be able to build aircraft carriers, plenty of missiles, we can build space stations and satellites, but we cannot build a boxcar. We cannot get any boxcars available in North Dakota or South Dakota or in Minnesota where the crops come in. The railroads have the boxcars in their Philadelphia yards, not out where the grain is.

We have lost millions and millions of dollars because of the railroads. The Government will not provide sufficient boxcars. I predict it will not do so under this legislation. For some reason or other, the Government has some kind of economic constipation when it comes to providing boxcars.

Mr. MAGNUSON. It is even worse than that. The ICC was created in 1887. What does the Senator think their docket No. 1 was? It was a petition of farmers in North Dakota concerning a freight car shortage so that they could get their products to Duluth. That was 85 years ago and we are still not doing what the Senator is talking about. That is a sorry record, is it not? Eighty-five years. Docket No. 1 concerned a freight car shortage, the first problem to come before the ICC in 1887 on the first day it met.

Mr. HUMPHREY. The distinguished Senator from Washington has been a stalwart in this fight. We have tried for years to remedy the situation. I am pleased that we are bringing it up now, in August of 1972. But as surely as we are in this Chamber today, with the crops now beginning to come in in our part of the country up in Minnesota and Wyoming, especially when the wheat crop starts to be harvested, there will still be no new boxcars.

Mr. MAGNUSON. When I first came to the Senate, I was assigned to the Commerce Committee. The very first day I attended a meeting, we had a hearing on a freight car shortage. We have been going on with that problem ever since.

Mr. PEARSON. Mr. President, I ask unanimous consent that my staff member, John Kirkland be permitted the privilege of the floor during the consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARTKE. Mr. President, I appreciate these kinds words. I will say that this is the first freight car shortage bill that provides direct efforts to build cars.

I hope that, even with the amendment of the Senator from New Hampshire, we will have a bill that will work. However, it will depend upon the cooperation of the railroads and a lot of people who have a vital interest in the matter to make sure that what Congress does today has not been in vain.

Mr. BELLMON. Mr. President, I ask unanimous consent that the Senator from Kentucky (Mr. COOK) and the Senator from Oregon (Mr. HATFIELD), and the Senator from Minnesota (Mr. HUM-

PHREY) be added as cosponsors of my amendment.

The PRESIDING OFFICER (Mr. McGEE). Without objection, it is so ordered.

Mr. HARTKE. Mr. President, I yield back the remainder of my time.

Mr. BELLMON. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oklahoma (putting the question).

The amendment was agreed to.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. MOSS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk proceeded to state the amendment.

Mr. MOSS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with and that I be permitted to explain the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered; and the amendment will be printed in the RECORD.

The amendment is as follows:

At the end of the bill insert a new section as follows:

"ESTABLISHMENT OF NONDISCRIMINATORY RATES FOR THE TRANSPORTATION OF RECYCLED SOLID WASTE MATERIALS

SEC. . (a) The Congress hereby finds that, in order to accomplish the purposes of the Solid Waste Disposal Act, as amended by the Resource Recovery Act of 1970, it is essential to establish and maintain fair, reasonable, and non-discriminatory transportation rates which will facilitate and encourage broader utilization of recycled solid waste materials and promote conservation of vital natural resources.

"(b) The Interstate Commerce Commission, within the maximum scope of its jurisdiction under the Interstate Commerce Act, as amended, shall, within twenty-four months of the date of enactment of this section and on a continuing basis thereafter—

"(1) investigate and formally identify all rates charged by transportation carriers subject to its jurisdiction for the transportation of recycled solid waste materials and shall, in each case, determine whether the rates charged and the terms and conditions of transportation for such materials are fair and reasonable, and whether they unjustly discriminate against the movement or shipment in commerce of recycled solid waste materials in favor of competing virgin natural materials or commodities;

"(2) issue appropriate orders in all cases where the rates charged for, or terms or conditions of transportation applicable to, recycled solid waste materials are found to be unfair, unreasonable or discriminatory pursuant to which such rates or conditions of transportation will be effectively canceled and repealed and replaced by rates or conditions of transportation which are found to be fair, reasonable and non-discriminatory;

"(3) file a report with the President and the Congress regarding the results of the investigations and all actions taken to establish minimum, fair, reasonable, and non-discriminatory rates for the transportation of recycled solid waste materials.

"(c) For the purposes of this section 'recycled solid waste materials' means scrap metals, waste paper and paper products, textiles, rubber, plastics, glass and other materials recovered or reclaimed from 'solid waste' as that term is defined in the Solid Waste Disposal Act (42 U.S.C. sec. 3252 (4))."

Mr. MOSS. Mr. President, I ask unanimous consent that the Senator from Oregon (Mr. HATFIELD), the Senator from Connecticut (Mr. WEICKER), the Senator from Texas (Mr. TOWER), the Senator from Wisconsin (Mr. NELSON), and the Senator from Montana (Mr. METCALF) be added as cosponsors of my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOSS. Mr. President, I ask unanimous consent that my assistants, Kem Gardner and Karl Braithwaite, be allowed the privilege of the floor during discussion of this amendment and any rollcalls that may occur, though I would hope that this amendment could be handled without the necessity of a rollcall.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOSS. Mr. President, my amendment would direct the ICC to undertake a 2-year study to determine the existence and extent of freight rate discrimination against recycled materials. If unfair rates are found to exist, the Commission is to issue appropriate orders to remedy any inequity.

I believe this is a very fair way to settle the issues surrounding the allegations that railroads discourage recycling by charging higher rates for such materials than they do for the virgin resource counterpart. I believe that the evidence shows clear discrimination, but I am willing to sumbit the whole question to a thorough study and abide by the results, rather than have Congress order an immediate readjustment of these freight rates.

Current evidence lends strong support to the idea that freight rates for materials used in recycling need to be reexamined. Let me cite a few examples. Waste paper shipped in the East travels at a rate that is 100 percent above the rate for pulpwood. The rate for a shipment traveling 95 miles is 14 cents per hundredweight for pulpwood, and 28 cents per hundredweight for wastepaper.

Scrap copper is charged 75 percent more per ton than copper ore when carried between Los Angeles and Tacoma. Shipping aluminum scrap costs almost three times more than the basic ore when it is carried from Mobile, Ala., to Los Angeles. The rate is $45.80 per ton for scrap, $16.73 per ton for the ore.

The examples can be listed for pages. Across the board, virtually every category, the rates for scrap materials are substantially higher than for the competing virgin products.

I realize that a straight comparison of rates does not tell us the extent to which rate differences might be due to the ease of handling the materials, size of shipments, density, and market competition. That is why I believe that a study is a reasonable step to take before rates are changed. Such a study is certainly justified by the tremendous disparity that exists on face value between the freight rates for scrap materials and the rates for competing virgin products.

Action should not be delayed 1 more day on this issue. The long run effects of the present discrimination are compounding daily. Business firms are forced by cost factors to make investment decisions that will hamper the growth of recycling for years to come unless we now set in motion the proceedings that will lead to a reversal of the present discrimination. A January 1972 report, done by the respected Battelle Laboratories for the purpose of investigating freight rates for scrap iron, reached the following conclusions:

The results of this study support the following theses:

(1) Present scrap markets are retarded because of transport rates which encourage the usage of iron ore.

(2) Future scrap markets are being affected because new investment that would be logically directed to scrap-intensive steelmaking is diverted because of the existing freight-rate structure to ore-intensive steelmaking.

(3) Iron ore (a limited domestic natural resource) is being exploited when it can and should be conserved.

(4) Some scrap iron that should be recycled is unable to move, thus the environment is despoiled by unnecessary accumulations of solid metallic waste.

The study proposed in my amendment is further justified by the fact that the ICC has admitted that its own information is rather limited in this area. In "Increased Freight Rates, 1970 and 1971," 339 I.C.C. 125, at page 206, the Commission discussed past decisions denying appeals from the scrap materials industries, and said that—

On the basis of very limited information in that record, we concluded that the increases to be allowed on scrap and ore should be the same.

In the past, these decisions may not have seemed vital to the country, but we now recognize that we must do all in our power to preserve and enhance our environment and its scarce resources. Freight rates detrimental to this cause can no longer be allowed to stand unchallenged.

In his February 10, 1970, message on the environment, President Nixon announced it was the goal of the Federal Government to take every action available to it to encourage the reuse and recycling of solid wastes. He stated that methods must be developed whereby a far greater percentage of solid waste products would be utilized. He thus instructed the Council on Environmental Quality to work with all other Federal agencies to develop a recycling strategy and he called upon "industry, private research organizations, and all levels of government to maximize the recycling of solid wastes.

The annual report of the President's Citizen Advisory Committee on Environmental Quality, issued June 1, 1972, makes the following conclusion:

Traditionally, freight rates established by the Interstate Commerce Commission (ICC) for the most part discourage recycling. For example, it costs almost $1.50 per gross ton more on the average to ship ferrous scrap than newly mined ore for domestic use. Similar situations exist for other secondary materials, and they work against recovery of solid waste.

In general, ICC freight rates continue to

discourage use of secondary materials . . . In our 1972 Report, the Committee recommended that the ICC initiate comprehensive remedial action as soon as possible. We urge prompt further action. pp. 40–41.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MOSS. Mr. President, will the Senator yield to me for 2 additional minutes?

Mr. HARTKE. I yield 2 minutes to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. MOSS. Mr. President, the Committee on Commerce considered this matter in one executive session during deliberations on S. 1729. We concluded that it would be proper to ask the ICC for its views on my amendment, which at that time was in a rather different form. Previously, I had called for an immediate adjustment of rates by the ICC. I have now adjusted the amendment so that a study must be conducted, and only those rates found to be discriminatory will then be adjusted. I do not ask for more favorable treatment for recycled materials. This is a matter that the Congress should address at a later date, but presently it is not part of my present amendment.

We must act quickly. Solid waste is growing rapidly and creates more and more problems of land use, resource allocation, and environmental enhancement. Paper is now one-half of the municipal solid waste problem. Yet the paperboard industry, the largest user of recycled paper, has in recent years reduced its use of recycled paper in percentage terms. As long as economic barriers unfairly continue to discourage the growth of recycling, the solid waste problem will continue to mount.

I would hope that my amendment might be accepted by the floor managers of this bill, and that they would insist on its provisions in conference.

Mr. BOGGS. Mr. President, will the Senator yield to me for a half minute?

Mr. MOSS. If I have time remaining, I yield to the Senator from Delaware.

Mr. BOGGS. I thank the Senator. I congratulate the Senator for offering this very significant and important amendment. I associate myself with the remarks he just made. I ask unanimous consent that my name may be added as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOSS. I thank the Senator from Delaware.

Mr. HARTKE. Mr. President, I have discussed this amendment with the Senator from Utah (Mr. Moss). It is a milder form of an amendment he offered in committee which was rejected. The amendment now provides that a study must be conducted and only those rates found to be discriminatory would be adjusted. On behalf of the committee I feel that we can accept the amendment.

I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Utah.

The amendment was agreed to.

Mr. BEALL. Mr. President, I call up my amendment which is at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read as follows:

On page 31, line 17, strike ":" and insert in lieu thereof the following: "without the prior approval of the Secretary, in writing, based on findings that such increase in dividends will not impair obligor's ability to continue to provide improved car service;"

On page 31, line 20, strike ":" and insert in lieu thereof the following: "without the prior approval of the Secretary, in writing, based on findings that such use of railroad assets and revenue will not impair obligor's ability to continue to provide improved car service;"

Mr. BEALL. Mr. President, my amendment has the effect of ameliorating the effect of the absolute prohibition in section 106(b) against:

First, increased dividend, and:

Second, any use of railroad assets, including presumably internally generated cash or tax loss carried forwards for purpose of nonrail operations for 15 years as a precondition to obtain equipment insurance under title I of this bill. Both equity and common sense require these amendments. They in no way affect the security of the United States, as loans it will be guaranteeing will be fully secured for the equipment which is purchased as a result.

Hence, it has been argued that any conditions under this circumstance constitute as unwarranted and unnecessary infrigment upon the perogatives of rail management.

It is also argued that the inclusion of these conditions may well foredoom title I to failure, because rather than submit to dictation with respect to these management perogatives the railroads will simply forego obtaining equipment under the program.

Finally it is contended that the effect of these conditions may well be to make railroads obtaining equipment insurance less attractive investment of private capital.

I find some merit to all of these arguments.

Particularly inasmuch as the inclusion of such conditions is not required, as I have already pointed out, to protect the interest of the United States.

My amendments do not in any way seek to remove those conditions but rather to provide what I would consider to be an equitable exception to the presently stated absolute prohibition. The conditions are to be retained and with them the prohibition unless an exception is granted by the Secretary of Transportation based on findings that granting such an exception would not impair the obligator's ability to provide improved car service.

Clearly such an exception is not only warranted but should serve as an inducement to the railroads to improve their car service so as to be eligible for exception if desired. The Secretary is quite obviously the most appropriate person to be charged with the granting of exceptions as he is basically responsible for the success or failure of the program provided under title I of this bill.

An absolute prohibition is patently shortsighted and assumes that increased dividend, and/or engaging in conglomrate activities is per se bad management. The fact that Penn Central was improvident in both these respects does not, of course, prove that all activities of this nature undertaken by the railroads are, or would be, a mistake. On the contrary, in most cases conglomerate activities have tended to support the rail activities of the parent holding company.

In any event the case for or against conglomeration has not yet been made. I would hope that our committee would confront this issue squarely during the next Congress. In the meanwhile, we should not continue to insert on an ad hoc basis anticonglomerate provisions in individual pieces of railroad legislation as we have been doing throughout this Congress.

Mr. President, I would hope that the chairman of the subcommittee would accept the amendment because the language is drawn almost word for word from his Interstate Railroad Act of 1972 where he said no railroad corporation would receive such a grant for rehabilitation which disburses any dividends or makes investments in railroad transportation unless the Secretary certifies the work has been satisfactorily completed.

In the case now, we are not even talking about grants; we are talking about insurance being guaranteed by the United States, for which the railroads are paying a premium. It seems to me it would be foolhardy for the Congress to tie the hands of railroads for 15 years when we really do not know what the conditions are going to be next year or the year after.

I hope the chairman will accept the amendment.

I yield to the Senator from Kansas (Mr. PEARSON).

Mr. PEARSON. Mr. President, the Rolling Stock Utilization and Financing Act of 1972 is a measured response to the continuing freight car shortage which has plagued shippers—particularly grain shippers in the Midwest—for generations. This legislation provides $2 billion in loan guarantees to the railroad industry for the purpose of acquiring rolling stock to overcome present deficiencies.

The Department of Transportation has estimated that 130,000 cars are needed to meet present car shortages. An investment of $2.3 billion is required to eliminate the immediate car shortage and $8.8 billion will be required to keep up with the demands of the future.

This legislation provides the wherewithal for marginal roads to acquire the necessary rolling stock to serve millions of shippers and hundreds of communities. If service can be measurably improved, these companies will have an opportunity to restore their operations and strengthen their financial position. The railroads, the shippers, and the national economy will benefit.

Mr. President, the documented freight car shortage is but one aspect of the problem which shippers face. Perhaps more critical is the gross underutilization of the existing freight car fleet. The typical general service freight car stands idle 88 percent of its useful life, it moves loaded only 5 percent of the time, and moves empty 7 percent of the time. The Commerce Committee has reported legislation which responds to this problem

by requiring the establishment of a national rolling stock information system—a nationwide, computer-based system to account for the locality and utilization of every car in the country.

Actual experience on lines where the information system has been established demonstrates that utilization can be significantly improved through effective use of the system. The committee bill provides $35 million in authorization for assistance in establishing the information system, and the design of the system must be approved by the Secretary of Transportation before it is established and interconnected among the Nation's railroads.

Mr. President, this bill is designed to provide an incentive to the railroad industry to overcome—once and for all—the chronic freight car shortage. Financial and technical assistance is provided to accomplish this objective within 3 years. The committee has concluded that railroad industry self-help, along with responsible administration of a loan guarantee program, has the capacity to eliminate the freight car shortage problem within the time frame provided.

If the committee has misjudged the capacity of the industry to respond, however, the committee has not failed to develop alternate procedures to relieve the shipping and consuming public. In the event that the car shortage and utilization problems have not been eliminated within 3 years, the committee has provided for the creation—at that time—of a Rolling Stock Authority, a quasi-public corporation, to acquire and maintain a pool of rolling stock. The Authority would be charged with the duty to use innovative concepts in improving service to shippers in car-deficit areas. The Authority, moreover, would have the duty to establish a national rolling stock information system if the industry has failed to implement a system design approved by the Secretary.

Congress may veto the creation of the Authority within 3½ years of enactment of this legislation the Senate considers today. Circumstances could change, of course, and warrant a different approach to the problem in the 94th Congress.

In hearings in Oregon, Washington, D.C., and Dodge City, Kans., the committee has heard the appeals of the shipping public for responsible legislation to relieve the chronic freight car problem and revitalize the economy of chronically affected areas. The committee has heard indisputable evidence that the problem cannot be solved without public assistance in the form of loan guarantees. The committee has studied computer-based information systems, and reviewed the progress made by roads that have installed such systems. The committee is convinced that a nationwide information system could increase—effectively—the capacity of the railroads to provide timely service to shippers.

This legislation is a response to the appeals which the committee has heard, and to the appeals the Interstate Commerce Commission has heard since 1887. I support this legislation strongly, and am pleased to serve as a cosponsor during Senate consideration of the measure today.

Mr. President, let me say to the Senator from Maryland that, as one who has been engaged in trying to participate in some sort of solution to the freight car shortage, which is no longer sectional but national, which is no longer seasonal but constitutes a shortage the entire year now, it was our recognition of the crisis in regard to this problem which really lead us to the point where we are seeking to use every incentive and seeking to use every short of legislative persuasion to get railroads to do more in relation to this problem.

I think the provision the Senator seeks to amend was really a representation of that sort of effort, but it does appear to me that the proposal provides an inflexible sort of arrangement, and that an increase of dividends, if approved by the Secretary, would be a more reasonable and more responsible way to do that which we seek to do.

So while I do not retreat for a moment from seeking every avenue and every means available to get the railroads to do more than they have done—and I am the author of title I of this particular bill—I think this perhaps is a more pragmatic and reasonable approach, and I support the amendment.

Mr. BEALL. I thank the Senator, who is very knowledgeable on this subject matter.

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

Mr. BEALL. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 3 minutes.

Mr. BEALL. I yield 1 minute to the Senator from Rhode Island.

Mr. PASTORE. Is the effect of the Senator's amendment that, if the taxpayers' money is to be used or if certain guarantees are to be made by the Government in order to help a railroad do those things that we want them to do with reference to equipment, in spite of that they can raise their dividends to the stockholders? Is that what the Senator's amendment does?

Mr. BEALL. No. Let me say first that no taxpayers' money is being spent.

Mr. PASTORE. No, but it is the Government's guarantee. If the loan is not paid, the taxpayers have to pay it.

Mr. BEALL. I would not think the Secretary of Transportation, representing the people of the United States, would allow a railroad to pay a dividend if at some time the Government had to honor the guarantee. All I am saying is that some railroads are responsible—I hope more than I think, but some are responsible—and some of them, in the last several years, have reduced dividends to conserve their cash.

We are saying to the railroads, "Even though you are responsible, we are not going to let you increase your dividends for the next 15 years." We are also saying to the railroads, "Even though inflation may increase, with the rate of inflation increasing now at 3 to 5 percent a year, you are not going to be able to increase dividends to your stockholders to reflect that inflation." If there is an inflation rate of 5 percent a year, what we are saying to them is that, in 10 years' time, they are going to have to cut their cash dividends by 50 percent. I do not think we ought to do that. I do not think Congress ought to be so intimately involved in the railroad procedure at this time as to do that sort of thing.

I think we ought to have safeguards. I think, by giving this responsibility to the Secretary of Transportation, we are providing necessary safeguards for the taxpayers' money.

Mr. PASTORE. Mr. President, if the Senator will yield further, it is the principle involved that is distasteful to the senior Senator from Rhode Island. The trouble in the past has been that many of the railroads have been bled dry by paying out dividends to the stockholders and doing other things, instead of taking that money and putting it back into equipment and operational costs. For that reason, many of them have become defunct. I think that is the story with many railroads.

Mr. BEALL. I agree with the Senator. I say, just because some of them have done that, let us not legislate to the lowest common denominator. Let us recognize that some railroads have been good. Let us legislate against those that have been bad. Let us not punish all.

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

Mr. BEALL. I yield.

Mr. MAGNUSON. Of course, if a railroad can afford to raise its dividends, it does not need a guaranteed loan. Does it?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MAGNUSON. This is a bill to build boxcars, and somebody wants to——

The PRESIDING OFFICER. The Senator from Washington is out of order. The time of the Senator has expired.

Mr. HARTKE. Mr. President, I yield some time to the chairman of the committee.

Mr. MAGNUSON. I do not know why they do that. If a railroad is doing as well as the Senator says, it does not need a guaranteed loan, does it?

Mr. BEALL. I do not know.

Mr. MAGNUSON. Of course not. The ones that need the guaranteed loans are the ones that should not be increasing their dividends.

Mr. BEALL. All I can say is that my vision is not good enough to look down the road 15 years from now. I do not know what conditions will be 15 or 10 years from now. I am saying to the Senate that I do not think we ought to tie anybody's hands, whether it be the railroads' or anybody else's, for 15 years. I say we have to protect the taxpayers' money and the public, but I think the Secretary of Transportation is competent to provide the kind of protection necessary. Let us not tie anybody's hands for 10 or 15 years with regard to management decisions.

Mr. MAGNUSON. If they want the loan or need it, nobody ties anything. They want their cake and want to eat, too.

Mr. BEALL. Will the Senator yield?

Mr. MAGNUSON. We are trying to build boxcars. We have been trying to do it for 85 years with railroad financing——

Mr. BEALL. Will the Senator yield?

The PRESIDING OFFICER. The Senator has no time to yield. The time of the Senator from Maryland has expired.

Mr. HARTKE. Mr. President, I yield myself 3 minutes.

We have gone into this question in depth a number of times before. The Penn-Central situation can be pointed out as perhaps an outstanding example of mismanagement. The Senator from Maryland has said, "Do not point out," but all I can say is "I have to." We have to point out, for the reason that the Interstate Commerce Commission and the Department of Transportation, in testimony, stated they were fully conscious of the situation with the Penn-Central. What did they do in the 9 months before they went into financial collapse? They increased their dividends. That was the situation. The Senator says, "Trust the Department of Transportation, trust the Interstate Commerce Commission." I say, in my opinion, I want to trust in the American taxpayer. If the credit of the United States of America is going to be used, we have a sincere obligation to make sure the railroads are not using that credit for the purpose of increasing their dividends.

This is not a prohibition on dividends. Let me read what the bill states:

Dividends that are payable in the discretion of the obligor—

That is the railroad—

will not be increased over the average amount paid during the 5 years preceding enactment of this Act.

Furthermore, if a railroad wants to increase its dividends, all it has to do is refinance its loan.

There is no problem here. What we are saying is that we want them to build boxcars. We are willing to provide them with loan guarantees for that, but we are not going to finance railroads for other purposes like building hotels, restaurants, buying airlines, and other types of operations. We want to make sure that they stay in the business to which they are obligated. One way is to make sure that no increase in dividends are paid when there is a loan guaranteed by the Federal Government.

It is difficult enough for us to justify the continued drain that we probably are going to be faced with in the future on the full faith and credit of the U.S. Government as we will be doing for the transportation industry. We hear a cry of "special favoritism" for the railroads. I want to limit that as much as I can. I want to keep the transportation system going. I am willing to stand on the floor and defend keeping the transportation system going, but not defend increasing dividends. That is the difference.

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

Mr. HARTKE. I yield the Senator 1 minute.

Mr. BEALL. I want to make it clear that I am not in the position of defending the railroads, because I think there have been some reprehensible practices on the part of the railroads. But the purpose of this legislation is to encourage the railroads to invest in freight cars.



All I am saying is, if we are trying to encourage the railroads to invest in freight cars, responsible railroads, if they see the options presented to them, when they see that their hands would be tied for 15 years—15 years—they are not going to get into this program. They will say, "The heck with it; the Federal Government is tying our hands for 15 years, we are not going to buy this insurance and invest in these freight cars," and we will defeat our own purposes.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. HARTKE. There is no requirement that they use the credit of the Federal Government. If they do not want to, that is their business, if they do not want the guaranteed loan they must live up to the obligations and the restrictions put on. These are restrictions any bank that I know of would probably insist upon. They would insist, "If you are going to increase your dividends while you borrow money from us, we are going to make sure there is collateral there to pay that debt."

Mr. BEALL. I say let us give that authority to the Secretary of Transportation, who is the administrator and the officer charged with responsibility for this program.

Mr. HARTKE. Mr. President, all I can say is that the Secretary of Transportation has not inspired that type of confidence in me, when he proposed pouring $750 million down the drain for the Penn-Central in 1970.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. McGEE). All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Maryland. [Putting the question.]

The "noes" appear to have it.

Mr. BEALL. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. McGEE). The question is on agreeing to the amendment of the Senator from Maryland (Mr. BEALL). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Georgia (Mr. GAMBRELL), the Senator from New Mexico (Mr. MONTOYA), the Senator from Maine (Mr. MUSKIE), and the Senator from Oklahoma (Mr. HARRIS) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG) is absent on official business.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL) would vote "nay."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Hampshire (Mr. COTTON), the Senator from Arizona (Mr. FANNIN), the Senator from Michigan (Mr. GRIFFIN), the Senator from Maryland (Mr. MATHIAS), the Senator from Iowa (Mr. MILLER), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Arizona (Mr. GOLDWATER) is detained on official business.

On this vote, the Senator from Iowa (Mr. MILLER) is paired with the Senator from Massachusetts (Mr. BROOKE). If present and voting, the Senator from Iowa would vote "yea," and the Senator from Massachusetts would vote "nay."

The result was announced—yeas 25, nays 56, as follows:

[No. 345 Leg.]

YEAS—25

| | | |
|---|---|---|
| Aiken | Gurney | Smith |
| Beall | Hruska | Stafford |
| Bennett | Javits | Stevens |
| Boggs | Packwood | Taft |
| Brock | Pearson | Thurmond |
| Buckley | Roth | Weicker |
| Cooper | Saxbe | Young |
| Curtis | Schweiker | |
| Fong | Scott | |

NAYS—56

| | | |
|---|---|---|
| Allen | Fulbright | McIntyre |
| Anderson | Gravel | Metcalf |
| Bayh | Hansen | Mondale |
| Bellmon | Hart | Moss |
| Bentsen | Hartke | Nelson |
| Bible | Hatfield | Pastore |
| Burdick | Hollings | Pell |
| Byrd, Harry F., Jr. | Hughes | Proxmire |
| | Humphrey | Randolph |
| Byrd, Robert C. | Inouye | Ribicoff |
| Cannon | Jackson | Sparkman |
| Case | Jordan, N.C. | Spong |
| Chiles | Jordan, Idaho | Stennis |
| Church | Kennedy | Stevenson |
| Cook | Magnuson | Symington |
| Cranston | Mansfield | Talmadge |
| Dole | McClellan | Tower |
| Dominick | McGee | Tunney |
| Ervin | McGovern | Williams |

NOT VOTING—18

| | | |
|---|---|---|
| Allott | Fannin | Mathias |
| Baker | Gambrell | Miller |
| Brooke | Goldwater | Montoya |
| Cotton | Griffin | Mundt |
| Eagleton | Harris | Muskie |
| Eastland | Long | Percy |

So Mr. BEALL's amendment was rejected.

Mr. HARTKE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PASTORE. I move to lay that motion on the table.

The motion was agreed to.

Mr. HUMPHREY. Mr. President, I send to the desk an amendment on behalf of myself and the Senator from Kansas (Mr. PEARSON) and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read, as follows:

On page 37, after line 21, add a new subsection (B): "the Secretary, after consultation with the Secretary of the Interior, shall prepare a study on the use of abandoned railroad trackage and rights-of-way for the purpose of retaining such rights-of-way for use as recreational trails, paths, camp sites, and for other recreational uses. The Secretary shall submit legislative and administrative recommendations based upon such study within one year of the date of this Act."

The PRESIDING OFFICER. Who yields time?

Mr. HUMPHREY. I yield myself 2 minutes.

Mr. DOMINICK. Mr. President, will the Senator from Minnesota be kind enough to add my name as a cosponsor?

Mr. HUMPHREY. I will be pleased to do so.

Mr. President, I ask unanimous consent that the name of the distinguished Senator from Colorado be added as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUMPHREY. Mr. President, this amendment speaks for itself. There are literally thousands of miles of abandoned rights-of-way and railway trackage in this country that go through beautiful countryside. We are desperately in need of additional trails for bicycling or hiking or horseback riding. We are in need of campsites. The areas I speak of—the rights-of-way and abandoned trackage might provide the kind of environment and the kind of terrain that would be very useful.

I simply ask that the Secretary of the Department of Transportation, in consultation with the Park Service of the Department of the Interior, look into this matter and give us some recommendations, the estimates of cost, the problems that might be encountered, and the possibilities for recreational uses, and submit that report to Congress within 1 year.

The PRESIDING OFFICER. The Chair inadvertently omitted the request of the Senator from Minnesota that the name of the senior Senator from Wyoming be added as a cosponsor of the amendment.

Mr. HUMPHREY. That is correct. The Senator from Minnesota was negligent in that.

Mr. JAVITS. Mr. President, will the Senator from Minnesota add my name as a cosponsor?

Mr. PASTORE. I ask that my name be added as a cosponsor, also.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the Senator from Minnesota (Mr. MONDALE) and the names of all those Senators who make the request be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARTKE. Mr. President, I have discussed this matter with the Senator from Minnesota. It is an excellent amendment. I commend him and all the cosponsors for it.

The committee is willing to accept the amendment, and I yield back the remainder of my time.

Mr. HUMPHREY. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Minnesota.

The amendment was agreed to.

Mr. HARTKE. Mr. President, one matter I have to bring up is an amendment by the Senator from Washington (Mr. MAGNUSON) and myself and cosponsored by the Senator from Kansas (Mr. PEARSON) which deals with labor protection. It is customarily and traditionally in the bill. It was inadvertently omitted. I ask that the amendment be stated at this time.

The PRESIDING OFFICER (Mr. PASTORE). The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. HARTKE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and the amendment will be printed in the RECORD.

The text of the amendment is as follows:

LABOR PROTECTIVE ARRANGEMENTS

On page 26, strke out subsection (c) and redesignate subsections (d), (e), (f), and (g) as (c), (d), (e), and (f), respectively.

On page 56, strike out subsection (e) and redesignate subsection (f) as (e).

Beginning on page 58, line 23, strike out all therein through page 61, line 16.

Beginning on page 61, redesignate sections 312, 313, and 314 as sections 311, 312, and 313, respectively.

On page 64, immediately after line 2, insert the following:

"TITLE IV—GENERAL PROVISIONS

"PROTECTIVE ARRANGEMENTS FOR EMPLOYEES

"SEC. 401. (a) In carrying out the provisions of this Act and as a condition to the execution of any contract, or the insurance of any obligation, or the approval or inducement of any other action authorized under the provisions of this Act, the Board, or the Secretary, or the Authority shall be required to include in any of their contracts to which a railroad or a car-pooling company is a party or a beneficiary thereof, fair and equitable arrangements, as certified by the Secretary of Labor, to protect the interests of individual employees affected in their employment by any such contract. Such protective arrangements shall include, without being limited to, the arrangements specified in Sec. 405 of the Rail Passenger Service Act of 1970, as amended (45 U.S.C. 565); in Sec. 13 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1609); and in Sec. 6 of the High Speed Ground Transportation Act of 1965, as amended (49 U.S.C. 1636).

"(b) In awarding contracts for the building or rebuilding of rolling stock under Title III of this Act, the Authority shall take all necessary action to conform to prevailing practices of the railroad industry in distributing such work among railroads and nonrailroads with rolling stock building and rebuilding facilities. The building and rebuilding of rolling stock covered by contracts awarded to the railroads shall be performed with the use of the facilities and employees of such railroads and not subcontracted. In carrying out the provisions of this subsection the Authority shall be guided by the relative proportions of rolling stock building and rebuilding, respectively, performed in railroad and nonrailroad facilities in the five (5) calendar year period preceding enactment of this Act. Any downward variations from these guidelines shall not exceed five (5) per centum. The total number of cars and locomotives built and rebuilt, respectively, in railroad and nonrailroad facilities, respectively, in a calendar year need not exceed the average number of built and rebuilt, respectively, in such facilities during the five (5) calendar year period immediately preceding that calendar year, but the same relative proportions of such building and rebuilding, respectively, shall be maintained as between railroad and nonrailroad facilities in the event of a decrease from such average. Upon failure of the Authority to maintain such proportions in distributing such work to railroad facilities under such contracts, the fair and equitable employee protective arrangements required by subsection (a) hereof shall become effective.

"(c) Employees affected by any action taken pursuant to this Act designed to provide for more effective use and distribution of rolling stock shall be reassigned and, if necessary, retrained to perform the new tasks covering the functions which they had theretofore performed. The performance of such functions shall be considered to be within the same craft or class as that in which such employees were classified prior to such change and the rights of such employees to the same representation shall be preserved. The positions on any railroad affected by these changes may be eliminated as they become vacant through death, resignation or retirement, without adversely affecting the individuals involved, and at a rate not to exceed 2% each year.

"(d) In his administration of the provisions of this Act, the Secretary of Labor shall consolidate the program authorized herein with the companion programs under the Rail Passenger Service Act of 1970, as amended (49 U.S.C. 565f); the Urban Mass Transportation Act of 1964, as amended, (49 U.S.C. 1609) and the High Speed Ground Transportation Act of 1964, as amended (49 U.S.C. 1636) and shall uniformly develop, interpret and apply the procedures and standards under these various laws.

"(e) To the extent practicable, the Authority shall ward contracts for the repair and maintenance of rolling stock to railroads with facilities for performing such work.

"(f) The Board (pursuant to title I), the Secretary (pursuant to title II), and the Authority (pursuant to title III) shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed with the assistance of funds received under any contract or agreement entered into under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Board, the Secretary of Transportation or the Authority shall not enter into any such contract or agreement without first obtaining adequate assurance that required labor standards will be maintained on the construction work. Health and safety standards promulgated by the Secretary of Labor pursuant to section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) shall be applicable to all construction work performed under such contracts or agreements, except any construction work performed by a railroad employee. Wage rates provided for in collective-bargaining agreements negotiated under and pursuant to the Railway Labor Act shall be considered as being in compliance with the Davis-Bacon Act; and such railroad wage rates shall be the applicable standard for all laborers and mechanics employed by nonrailroad contractors and subcontractors in the performance of the building and rebuilding of rolling stock under title III of this Act."

On page 64, redesignate section 315 as section 402.

On page 22 in the Table of Contents, strike "Sec. 311. Protective arrangements for employees." Strike out "Sec. 312", "Sec. 313" and "Sec. 314" and insert in lieu thereof, "Sec. 311", "Sec. 312", and "Sec. 313", respectively. Immediately before "Sec. 315. Separability" insert the following:

"TITLE IV—GENERAL PROVISIONS

"Sec. 401. Protective Arrangements for employees."

Redesignate section 315 as section 402.

Mr. HARTKE. The labor protection amendment which I offer has two principle purposes:

First. To correct an internal inconsistency in the reported bill which was the

result of an inadvertency resulting from the consolidation of a number of versions in various bills to correct freight car shortages.

Second. To set job protection provisions in conformity with concepts, language, interpretations, and applications previously established in prototype legislation and agreements negotiated thereunder. Standards follow exactly those of existing Federal law and established congressional policy as set forth in: the Urban Mass Transportation Act of 1964; the High-Speed Ground Transportation Act of 1965; and the Rail Passenger Service Act of 1970.

The proposed amendment would establish a new title IV consisting of section 311 entitled "Protective Arrangements for Employees" at page 58 of the bill and section 315 entitled "Separability" at page 64 of the bill. Removal of these sections to a separate title, together with language modifications in section 311, has the effect of expanding section 311—section 401 under the amendment—to cover titles I and II of the bill, as well as title III.

The new section 401(a)—derived from section 311(b) of the reported bill—has been modified to broaden its scope to include all programs under the three titles and to provide for general job protection following the model of urban mass transit, and so forth.

The provision for protection of railroad employees affected in their employment by the insurance of obligations under title I is recognition of the fact that an extension of Government financial assistance under the bill could, similar to Government financial grants and aids under, for example, the Urban Mass Transportation Act of 1964, as amended, cause a worsening in the conditions of employment of certain railroad employees. The need for protection for employees affected by the technological innovations provided for by title II and by the provisions under title III applying Federal funds directly to the acquisition of rolling stock is sufficiently explained in the committee report.

Apart from editorial changes that clarify its meaning, the new section 401(b)—formerly section 311(a) at page 58 of the reported bill—has been tightened to prohibit subcontracting and thereby to insure adherence to the allocation formula maintaining the existing ratio of rolling stock building and rebuilding, as between railroad and nonrailroad facilities. These changes carry out the intent expressed at page 29 of the committee report.

A new section 401(c) would insure that affected employees will follow their functions, that is, they will be reassigned to perform new tasks covering the functions which they had therefore performed. Maintenance of status quo with respect to class and craft representation, together with authorization to eliminate positions at a rate not to exceed 2 percent each year is also provided. Thus, present employees would have first priority at retraining in light of technological change with job eliminations restricted by death, resignation or retirement. The work force would continue with presently guaranteed union representation, job security, vacation, and working rights.

A new section 401(d) provides for orderly codification of the prototype job protection programs under prior related legislation—urban mass transit, high-speed ground transportation and rail passenger service. This provision in no sense amends or modifies provisions of the laws to which reference is made.

The proposed additional language, appearing after the words "Davis-Bacon Act," of the new section 401(f) formerly section 311(a) at line 16 of page 61 of the reported bill—is to insure that nonrailroad employees engaged in the building and rebuilding of rolling stock under contracts awarded by the authority will be paid wages at rates equivalent to those paid by the predominant number of railroads, which as stated in the first part of the sentence shall be considered as being in compliance with the Davis-Bacon Act.

The railroads are now engaged in developing some central and regional computer operations through the Association of American Railroads. New jobs are being created; but new employees are being hired to fill those jobs at substandard rates of pay and working conditions. Thus, union jobs and union protection, would be eliminated for many thousands of railroad clerks, shopcraft employees, as well as employees in other classifications, if programs contemplated by the reported bill are successful in stimulating the railroads to improve car supply and utilization and to develop their own central computer system. Union employees adversely affected by the change would not be given these jobs, or be afforded retraining unless the amendment is adopted.

There is a compelling need to correct the inadvertency in omitting from titles I and II of the bill the job protection provisions expressed in title III in accordance with established congressional policy.

All employees affected must be guaranteed that they will have a full opportunity to be retrained for the new work; all employees affected must be assured standard labor protection in accordance with established policy.

Without these corrections, the program under the reported bill would not achieve its intended purposes and would be disastrous for all railroad employees and the communities in which they reside.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Indiana.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute as amended.

The committee amendment as amended was agreed to.

Mr. HARTKE. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the amendment as amended.

The PRESIDING OFFICER. Without objection, it is so ordered.

### RAIL FREIGHT SERVICE CRUCIAL TO RURAL AMERICA

Mr. HUMPHREY. Mr. President, as an original sponsor of S. 1729, the Rolling Stock Utilization and Financing Act, I urge the Senate to adopt this vitally needed legislation to assure an adequate supply and effective utilization of freight cars. Better rail service is crucial right now to millions of people in rural America.

Rail transportation for many of our Nation's smaller communities and industries located in rural areas is the only mode of bulk transportation available. Discontinuance of this service to these communities means their certain demise. In Minnesota, as of May 1972, there were 10 pending railroad abandonments, involving some 248 miles of track serving 28 communities. But even more alarming railroad company plans have prompted the commissioner of agriculture in Minnesota, Jon Wefald, to state bluntly that the rail industry plans to fold up and rip out the vital economic life sustaining transportation arteries of the bulk of the rural community by 1980.

It was for this reason that I introduced Senate Concurrent Resolution 56 and jointly sponsored Senate Resolution 225, calling for the declaration of a moratorium on railroad abandonments until alternatives can be developed to solve the transportation problems of rural America. But the problem is even more immediate and complex, when railroad abandonment is coupled with a total inadequacy of freight car services. Illustrative of this situation has been the inability of the Chicago & North Western Railroad to supply refrigerated cars for on-time deliveries to customers by the Big Stone Canning Co., of Chaska, Minn., while simultaneously requesting ICC approval to abandon trackage linking such small towns in Minnesota as Wanda and Sanborn. For the processing company, any other form of transportation would be prohibitively costly, while for 250 farmers around Wanda, Minn., the isolation of a modern cooperative elevator doing about a million dollars a year in business means they must pay up to 5 cents more a bushel to get their grain to market by truck.

It has been charged that all too often poor service appears to be linked to an intention to abandon railroad lines, the argument being that the consequent reduction of business makes the line unprofitable. However this allegation may be viewed and whatever the claims made by railways as to why rolling stock is unavailable or delayed, the fact is that again and again mountains of sugar beets and corn and other commodities are stored on the ground outside elevators in Minnesota, awaiting freight cars, with consequent spoilage that means heavy losses to farmers and higher prices to consumers. Yet, the repeated answer in Minnesota to the need for an intensive effort to design a balanced transportation system, and to railroad industry problems of limited profit margins and the burden of capital investment in rolling stock, and to the expectation that at least $80 million in highway improvements would be required to reach some

98 farm market communities with truck transportation that already jams major roads during harvest periods, is simply to abandon more railroads. And this negative Federal policy, rubberstamped by the ICC, can only be accelerated under surface transportation legislation proposed by the Nixon administration.

The Rolling Stock Financing and Utilization Act represents a major step toward establishing the affirmative, comprehensive transportation policy that is demanded in America today to address the complexity of problems I have outlined. It ties the establishment of a Federal railroad equipment obligation insurance fund, facilitating the acquisition of rolling stock by railroads, to decisive Federal efforts to improve utilization. The intent of Congress is clear that this shall not be a program to subsidize railroad company inefficiency, but is designed to meet the critical needs of commerce, users, shippers, national defense, and the consuming public. The on-time availability and movement of freight cars is vital to the national economy, mandating direct involvement by the Federal Government. Amended to strengthen financial assistance on behalf of service to rural areas, the legislation before the Senate serves notice that a high priority must now be given to maintaining and improving freight car service across America.

Mr. PACKWOOD. Mr. President, it is with distinct pleasure that I rise today to offer my support for final passage of S. 1729, the Fast Freight Systems Transportation Act of 1971.

The chronic freight car shortage dates back to 1887, when the first complaint was filed before the Interstate Commerce Commission by farmers in the North Dakota Territory, stating that there were not enough boxcars to move the harvest. That year, 1887, the ICC resolved to study the problem. This year 1972, the ICC continues to study, with no solution in sight.

There are a time when this problem only affected western farmers during harvest season. It has now spread to all sectors of the economy and cannot be dismissed as merely affecting a particular industry in a particular region during a particular season. We have seen this dilemma consistently worsen, with absolutely no help whatever from Federal regulatory laws.

As a result, wheat is stacked high in the streets of midwestern towns. Lumber, stuck in Oregon warehouses, warps in February and March rains. Prices skyrocket, simply because a nation that has sent men to the moon cannot move products to the marketplace.

This situation is especially harmful to the economy of my home State of Oregon. Oregon's two leading industries, lumber and agriculture, are based on the production and manufacture of products which must move many miles before they can be sold. Oregon exports about three to four times as much as it imports.

There can be little doubt that a serious problem exists. In order to reach an effective solution, it is essential to understand this basis of the difficulty.

Freight car shortages are the result of two separate and distinct factors:

First, an inadequate supply of boxcars; and

Second, poor utilization of existing cars.

INADEQUATE SUPPLY

During the decades of the sixties, the shortage of boxcars increased from an average of 1,500 to 10,000 per day. Fewer boxcars are operating now than in 1951, although freight traffic has risen nearly 30 percent. Railroads have simply not purchased new cars at a rate equal to that at which obsolete or wrecked cars are junked. To make this matter even worse, the Department of Transportation predicts that there will be a one-third increase in rail freight transportation between 1971 and 1980.

In short, we need more boxcars. But the weak financial condition of many railroads has precluded their acquisition of additional cars.

POOR UTILIZATION

The general problem of inadequate supply is particularly acute in Oregon and other Western States because the pattern of boxcar movement in this country is not uniform. Loaded boxcars move more freely from west to east. Once a western boxcar arrives in the East, the tendency is for it to remain there instead of moving unloaded—and unprofitably—back to the owner. The ICC is empowered to assess penalties under these circumstances, but the demurrage charges are so low that railroads will pay the minimal fee and use the boxcar for storage.

The result is a system in which loaded boxcars are moving only an appalling 7 percent of the time. The average freight car moves only 32 miles per day.

The sad performance of the railroads and the ICC in meeting this problem provides overwhelming evidence that the current system is incapable of meeting the demands required of it. It is my firm conviction that the people of Oregon and the Nation will not receive the relief they deserve unless Congress provides the necessary legislative direction.

The Fast Freight Systems Transportation Act of 1972 represents a meaningful and innovative solution to this dilemma. It establishes an insurance fund to protect the railroad industry in the acquisition of new freight cars. If, despite this action, the industry fails to provide the initiative and imagination to solve the shortage, a public corporation will be established to acquire boxcars and control their distribution.

The concept of a single national freight car pool, under single management and ownership, is not revolutionary. It has been considered in the Senate Commerce Committee for more than a decade. Nonetheless, many Senators are reluctant to involve the Government in this effort. I share their view. The events of the past several years, however, have made Government involvement unavoidable.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Georgia (Mr. GAMBRELL), the Senator from Oklahoma (Mr. HARRIS), the Senator from New Mexico (Mr. MONTOYA), the Senator from Maine (Mr. MUSKIE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG) is absent on official business.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL) would vote "yea."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Hampshire (Mr. COTTON), the Senator from Arizona (Mr. FANNIN), the Senator from Michigan (Mr. GRIFFIN), the Senator from Maryland (Mr. MATHIAS), the Senator from Iowa (Mr. MILLER), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting the Senator from Colorado (Mr. ALLOTT), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Hampshire (Mr. COTTON), the Senator from Illinois (Mr. PERCY), and the Senator from Iowa (Mr. MILLER) would each vote "yea."

The result was announced—yeas 81, nays 0, as follows:

[No. 346 Leg.]

YEAS—81

| | | |
|---|---|---|
| Aiken | Fulbright | Packwood |
| Allen | Goldwater | Pastore |
| Anderson | Gravel | Pearson |
| Bayh | Gurney | Pell |
| Beall | Hansen | Proxmire |
| Bellmon | Hart | Randolph |
| Bennett | Hartke | Roth |
| Bentsen | Hatfield | Saxbe |
| Bible | Hollings | Schweiker |
| Boggs | Hruska | Scott |
| Brock | Hughes | Smith |
| Buckley | Humphrey | Sparkman |
| Burdick | Inouye | Spong |
| Byrd, Harry F., Jr. | Jackson | Stafford |
| | Javits | Stennis |
| Byrd, Robert C. | Jordan, N.C. | Stevens |
| Cannon | Jordan, Idaho | Stevenson |
| Case | Kennedy | Symington |
| Chiles | Magnuson | Taft |
| Church | Mansfield | Talmadge |
| Cook | McClellan | Thurmond |
| Cooper | McGee | Tower |
| Cranston | McGovern | Tunney |
| Curtis | McIntyre | Weicker |
| Dole | Metcalf | Williams |
| Dominick | Mondale | Young |
| Ervin | Moss | |
| Fong | Nelson | |

NAYS—0

NOT VOTING—18

| | | |
|---|---|---|
| Allott | Fannin | Miller |
| Baker | Gambrell | Montoya |
| Brooke | Griffin | Mundt |
| Cotton | Harris | Muskie |
| Eagleton | Long | Percy |
| Eastland | Mathias | Ribicoff |

So the bill (S. 1729) was passed, as follows:

S. 1729

An act to increase the supply of railroad rolling stock and to improve its utilization to meet the needs of commerce, users, shippers, national defense, and the consuming public

*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 "Rolling Stock Utilization and Financing Act of 1972".

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## TITLE 1—NATIONAL ROLLING STOCK INFORMATION SERVICE AND FEDERAL RAILROAD EQUIPMENT OBLIGATION INSURANCE FUND

### PURPOSES

SEC. 101. The Congress hereby declares that the purposes of this Act are—

(a) to improve the utilization and distribution of rolling stock to meet the needs of commerce, users, shippers, the national defense, and the consuming public;

(b) to assist railroads in acquiring additional rolling stock to provide fast and expeditious service to meet the increasing demands of the Nation's economy now and in the years to come; and

(c) to assist in achieving full employment insuring adequate equipment necessary to transport the products of American industry.

### DEFINITIONS

SEC. 102. For the purpose of this Act—

(1) "Authority" means the Rolling Stock Authority which may also be known as RSA.

(2) "Board" means the Federal Railroad Equipment Obligation Insurance Board.

(3) "Car-pooling company" means a company that furnishes rolling stock to three or more railroads on a pooling basis.

(4) "Directors" means the Board of Directors of the Authority.

(5) "Equipment obligations" means bonds, notes, conditional sale agreements, equipment trust certificates, leases, and other obligations issued or guaranteed by railroads or car-pooling companies to finance or refinance rolling stock.

(6) "Holder" means the holder of an equipment obligation, except that where a bank or trust company is acting as agent or trustee for the holder of the equipment obligation, the bank or trust company shall be deemed to be the holder.

(7) "Obligor" includes the original borrower under an equipment obligation and his successors and assigns approved by the Board. An obligor must be a railroad or car-pooling company.

(8) "Railroad" means a common carrier by railroad, as defined in section 1(3) of the Interstate Commerce Act, as amended, and includes, where determined appropriate by the Board, any railroad controlled by a railroad within the meaning of section 1(3)(b) of the Interstate Commerce Act.

(9) "Rolling stock" means any type of new or rebuilt general service railroad freight car whose use is not confined to a specialized purpose by special equipment and design or other limiting features, cabooses, and standard gage locomotives. The Board may designate what types of freight cars are general service freight cars, including, but not limited to, boxcars, gondolas, open top and covered hopper cars, and flatcars.

(10) "Secretary" means the Secretary of Transportation.

### NATIONAL ROLLING STOCK INFORMATION SYSTEM

SEC. 103. (a) The Secretary is authorized to design a national rolling stock information system and to contract with and provide technical and financial assistance to individual railroads or a group of railroads working together, including the sharing of costs and the funding in part of demonstration projects, to assist in the establishment of a national rolling stock information system. Such national rolling stock information system shall use computer and communication techniques and equipment which will facilitate equitable distribution and efficient and economical utilization of rolling stock. Such system shall be capable of furnishing information about all rolling stock owned directly or indirectly by railroads and car-pooling companies with respect to physical characteristics, origin, destination, location, availability for future loadings, and such other information as the Secretary determines to be useful for the equitable distribution and efficient and economical utilization of rolling stock. The Secretary shall consult with shippers, railroads, and the Interstate Commerce Commission before finally approving the design of the system. Information shall be available to shippers, railroads, the Secretary, the Interstate Commerce Commission, and other members of the public subject to such rules as the Interstate Commerce Commission shall prescribe to insure the confidentiality of certain types of competitive information supplied for use in connection with the system.

(b) The Secretary shall report semiannually to the Congress with respect to the progress made in implementing the national system provided for in subsection (a). Such report shall include recommendations for such additional funding as may be necessary to make the national system fully effective.

(c) Persons contracting with the Secretary with respect to the design of a national or individual rolling stock information system or the use of information supplied by such system shall be and are hereby relieved from prohibitions of the antitrust laws of the United States, with respect to such contracts, to the extent necessary to facilitate carrying out the purposes of this Act.

(d) There is authorized to be appropriated to the Secretary out of money in the Treasury not otherwise appropriated, the sum of $10,000,000 for purposes of this section, such amount to remain available for one year after the date of enactment of this Act.

(e) If, not later than one year after such date, the Secretary finds that a practical design for a national rolling stock information system has been completed and that such design can be implemented so as to produce information useful for significantly improved utilization of rolling stock in the near future, there is authorized to be appropriated to the Secretary out of money in the Treasury not otherwise appropriated, the sum of $15,000,000 for the purpose of assisting individual railroads or a group of railroads working together to implement such design, such amount to remain available for one year after the Secretary makes such finding.

(f) If, not later than two years after such date, the Secretary finds that substantial progress has been made toward completion of a national rolling stock information system, there is authorized to be appropriated to the Secretary out of money in the Treasury not otherwise appropriated, the sum of $10,000,000 for the purpose of completing such system, such amount to remain available for one year after such finding.

### FEDERAL RAILROAD EQUIPMENT OBLIGATION INSURANCE FUND

SEC. 104. (a) There is created a Federal Railroad Equipment Obligation Insurance Fund (hereafter in this Act referred to as the "fund") which shall be used by the Board as a revolving fund for the purpose of carrying out sections 105 through 108 of this Act. Moneys in the fund shall be deposited in the Treasury of the United States to the credit of the fund or invested in bonds or other obligations of, or guaranteed as to principal and interest by, the United States for the account of the fund.

(b) The Federal Railroad Equipment Obligation Insurance Board shall have seven members, of whom one shall be elected annually by the Board to serve as Chairman. The Secretary of Transportation and the Secretary of the Treasury, or persons designated by them respectively in writing, shall serve as ex officio members of the Board with the same powers as other members of the Board. The President of the United States shall, within ninety days after enactment of this Act, appoint the remaining members of the Board, by and with the advice and consent of the Senate, on the following basis: (1) three, to be selected from recomemndations of organizations of shippers who shall be representative of different, major shipping interests, including small shippers; (2) one, to be selected from recommendations of organizations of consumers; and (3) one, to be selected from recommendations of the national organization of State Commissions as referred to in sections 202(b) and 205(f) of the Interstate Commerce Act, who shall be a member of a State agency authorized by State law to fix rates for transportation by railroad. Each of the members appointed by the President may receive compensation at a rate not to exceed $300 for each meeting of the Board which he attends and shall be reimbursed for necessary travel and subsistence expense incurred in attending such meetings.

AUTHORIZATION TO INSURE EQUIPMENT OBLIGATIONS

SEC. 105. (a) Upon application by a railroad or carpooling company, the Board is authorized to insure the interest on, and the unpaid principal balance of, any equipment obligation offered to it which it determines is eligible for insurance under this Act. The Board also may make commitments to insure any equipment obligation prior to the date of execution or disbursement thereon. Such insurance and commitments shall be extended in such form, on such terms and conditions, and pursuant to such regulations, as the Board considers appropriate and which are not inconsistent with the provisions of this Act.

(b) Each insurance contract made under this section shall run to and be for the benefit of the holder of the equipment obligation.

(c) The aggregate unpaid principal amount of equipment obligations insured under this title shall not exceed $2,000,000,000 at any one time.

(d) Each equipment obligation insured under this section shall bear interest (exclusive of premium charges for insurance and service charges) at a rate not to exceed such per centum per annum on the principal obligation outstanding which the Board determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar obligations.

(e) Upon receipt of an application from a railroad or car-pooling company, the Board shall publish notice of the receipt of such application in the Federal Register and shall afford interested parties an opportunity to submit comments in accordance with the provisions of section 553 of title 5 of the United States Code.

LIMITATIONS AND CONDITIONS; PREMIUM CHARGES

SEC. 106. (a) Before insuring any equipment obligation under section 105 of this Act, the Board shall find in writing that—

(1) the equipment obligation is secured by rolling stock to be financed or refinanced thereby;

(2) the terms of the equipment obligation require full payment within fifteen years from the date thereof;

(3) the financing or refinancing of the rolling stock is justified by the present and future demand for transportation services to be rendered by the railroad or car-pooling company for which the rolling stock is procured;

(4) the common carrier operations of the railroad or car-pooling company are sufficiently efficient at the date of any such financing or refinancing to assure economic utilization of any rolling stock in which the obligor then has a beneficial interest or in which the obligor may obtain such an interest as a consequence of such financing or refinancing;

(5) the purchase of the rolling stock will serve to insure an adequate national car supply to meet demonstrable demands for rail transportation services, and to provide shippers with equipment suited to their transportation needs;

(6) the probable value of the rolling stock will provide reasonable protection to the United States in the event of repossession of the rolling stock by the holder of any equipment obligation insured under this Act.

(b) Before insuring any equipment obligation under section 105 of this Act, the Board shall obtain in writing an agreement from the obligor that while any principal or interest on such obligation is unpaid—

(1) there will be an increase in the load-carrying capacity of the obligor's rolling stock;

(2) dividends that are payable in the discretion of the obligor will not be increased over the average amount paid during the five years preceding enactment of this Act;

(3) assets and revenue related to, or derived from, railroad operations or property will not be used by the obligor in nonrailroad enterprises;

(4) the obligor will cooperate with the Secretary in programs pursuant to title II of this Act to improve the equitable distribution and efficient and expenditious use of rolling stock; and

(5) such obligation will become immediately due and payable if the Secretary finds that conditions (1), (2), and (3) of this subsection have not been satisfied.

(c) The Board shall fix a premium charge for the insurance of equipment obligations under this Act of not to exceed 1 per centum per annum of the principal amount of such equipment obligation outstanding. Premium payments shall be made when moneys are first advanced by the lender under the equipment obligation and on each anniversary date thereafter.

(d) All money received under sections 104 through 108 of this Act shall be deposited in the fund. Amounts not to exceed 5 per centum of the sums collected each year under subsection (c) of this section may be used to pay administrative expenses incurred by the Board incident to the administration of sections 104 through 108 of this title.

ISSUANCE OF NOTES OR OBLIGATIONS

SEC. 107. (a) If at any time the moneys in the fund are not sufficient to pay any amount the Board is required to pay under an agreement made under section 105 of this Act, the Board is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Board, with the approval of the Secretary of the Treasury. The notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States on comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations to be issued hereunder and for such purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Funds borrowed under this section shall be deposited in the fund and redemptions of such notes and obligations shall be made by the Board from the fund.

(b) Notwithstanding any other provisions of law relating to the acquisition, handling, or disposal of property by the United States, the Board shall have the right in its discretion to perform such acts as may be necessary to complete, recondition, renovate, repair, maintain, and manage, lease, rent, sell, or otherwise dispose of any property or other interests acquired by it under an agreement made under sections 105 and 106 of this Act.

(c) Any contract or commitment of insurance entered into by the Board under the provisions of this Act shall not be terminated, canceled, or otherwise revoked, except as provided by the terms and conditions prescribed by the Board under sections 105 and 106 of this Act; and shall be conclusive evidence that the obligation complies fully with the provisions of this Act and of the approval and legality of the principal amount, interest rate, and all other terms of the obligation; and any contract or commitment of insurance so entered into shall be valid and incontestable in the hands of a holder from the date as of which such contract or commitment is entered into, except for fraud, duress, mutual mistake of fact, or material misrepresentation on the part of such holder.

MODIFICATIONS

SEC. 108. The Board may consent to the modification of the provisions of an equipment obligation as to rate of interest, time of payment of interest or principal, security, or the terms and conditions of any contract or commitment of insurance which it shall have entered into pursuant to this Act whenever it finds in writing that such modification is equitable. However, such consent shall not be given unless any consent of the holder, which may be required pursuant to the provisions of any equipment obligation, shall have first been obtained.

GENERAL ACCOUNTING OFFICE AUDIT

SEC. 109. (a) The transactions of the Board may be audited by the Comptroller General of the United States in accordance with such rules and regulations as may be prescribed by the Comptroller General. The representatives of the Comptroller General shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the Board pertaining to its financial transactions and necessary to facilitate an audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of the Board shall remain in possession and custody of the Board.

(b) To the extent the Comptroller General deems necessary in connection with such audits as he may make of the financial transactions of the Board, pursuant to subsection (a), his representatives shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by any obligor for which the Board has insured an equipment obligation, pertaining to such obligor's financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of such obligor remain in the possession and custody of the obligor.

(c) A report of each such audit shall be made by the Comptroller General to the Congress. The report to the Congress shall contain such comments and information as the Comptroller General may deem necessary to inform Congress of the financial operations and condition of the fund, together with such recommendation with respect thereto as he may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary, and to the Board at the time submitted to the Congress.

## TITLE II—TO IMPROVE UTILIZATION

UTILIZATION INDEX AND REPORT

SEC. 201. Within ninety days after the date of enactment of this Act, the Secretary shall develop an index measuring the degree of utilization of freight cars. The Secretary shall compile data required by such index and shall publish such index at least once each quarter together with a report setting forth the changes in such utilization and the causes thereof.

INTERSTATE COMMERCE COMMISSION REPORT

SEC. 202. The Interstate Commerce Commision shall publish a report on utilization of freight cars thirty days after each report

by the Secretary pursuant to section 201. Each report by the Commission shall give consideration to the latest report by the Secretary.

DEPARTMENT OF TRANSPORTATION STUDY

SEC. 203 (a) The Secretary shall prepare a study on the utilization of freight cars and means to improve such utilization including, but not limited to, consideration of per diem and other car hire charges, demurrage, car service rules and orders of the Interstate Commerce Commission and of the railroads, the practice of assigning cars to specific traffic or shippers, payments for use of privately owned cars, and publicly and privately owned car-pools. The Secretary shall submit legislative recommendations based upon such study within two years of the date of this Act.

(b) The Secretary, after consultation with the Secretary of the Interior, shall prepare a study on the use of abandoned railroad trackage and rights-of-way for the purpose of retaining such rights-of-way for use as recreational trails, paths, camp sites, and for other recreational uses. The Secretary shall submit legislative and administrative recommendations based upon such study within one year of the date of this Act.

USE OF EXISTING LAW

SEC. 204. (a) The Secretary shall make use of existing law to improve the utilization of rolling stock.

(b) For the purposes of this section, the Secretary shall have such standing as is necessary to bring proceedings before the courts and administrative agencies.

## TITLE III—ROLLING STOCK AUTHORITY

ESTABLISHMENT

SEC. 301. (a) Within three years from the date of enactment of this Act, the Secretary shall transmit to the Congress a report stating whether or not he and the Interstate Commerce Commission have found that substantial progress has been made toward eliminating the freight car shortage arising from an inadequate supply of rolling stock and inadequate car service and that there has been a substantial increase in utilization of such rolling stock.

(b) If the Secretary reports that he and the Commission have found that substantial progress in freight car supply and utilization has not been made, Congress may, within three years and six months after enactment of this Act, by affirmative resolution, authorize the establishment of a corporation to be known as the Rolling Stock Authority in accordance with the provisions of this title. Its purposes shall be to acquire, maintain, and provide rolling stock, to manage a pool of such rolling stock, and to employ innovative concepts for equitable distribution and efficient and expeditious use of such rolling stock to meet the needs of the national economy.

(c) The Authority shall not be subject to the provisions of the Interstate Commerce Act, as amended, or of any other law regulating railroads except that it shall be deemed to be a railroad with respect to: (1) sections 1(10) through 1(17) of the Interstate Commerce Act; (2) the representation of its employees for purposes of collective bargaining, the handling of disputes between railroads and their employees, employee retirement, annuity and unemployment systems, liability for injuries to employees, and other dealings with its employees; and (3) safety, subject to the same laws and regulations with respect to safety as any common carrier subject to part I of the Interstate Commerce Act.

(d) The Authority shall be subject to the provisions of this Act, and, to the extent not inconsistent with this Act, to the District of Columbia Business Corporation Act (D.C. Code 29–901 et seq.). The right to repeal, alter, or amend this Act at any time is expressly reserved. The articles of incorporation shall provide for cumulative voting for all stockholders.

ORGANIZING DIRECTORS

SEC. 302. Unless Congress disapproves establishment of the Authority, the Chairman of the Interstate Commerce Commission, the president of the Association of American Railroads, the president of the parent body of the American Federation of Labor and Congress of Industrial Organizations, the president of the National Industrial Traffic League, the Secretary of Agriculture, and the Secretary of Transportation (or their designees) shall, ex officio, become incorporators of the Authority. Such persons shall also serve as the initial Board of Directors. The incorporators shall take whatever actions are necessary to establish the Authority as soon as possible, and within not more than ninety days following the date of their assuming office. The initial Directors shall serve until at least seven of the Directors appointed by the President have been confirmed by the Senate.

DIRECTORS AND OFFICERS

SEC. (a) The Authority shall have a Board of eleven Directors, of whom one shall be elected annually by the Board to serve as Chairman. The Secretary of Transportation and the Secretary of the Treasury, or persons designated by them respectively in writing, shall serve as ex officio members of the Board with the same powers as other members of the Board. Such officials shall assume their directorships when the Senate confirms at least seven of the Directors appointed by the President. The President of the United States shall, within one hundred and twenty days after the incorporators take office, appoint the remaining members of the Board, by and with the advice and consent of the Senate, on the following basis: (1) three, upon recommendation of the Association of American Railroads or its successor, one of whom shall be a representative of the eastern territory railroads, one of whom shall be a representative of the western territory railroads, and the other shall be a representative of the southern territory railroads; (2) one, upon recommendation of the parent body of the American Federation of Labor and Congress of Industrial Organizations or its successor, who shall be representative of labor; (3) one, upon recommendation of the National Academy of Sciences, who shall be a person with expert knowledge of, or practical experience with, data and information systems and of application of computer technology to the management of large-scale systems such as would be involved with the rolling stock fleet of the Authority; (4) three, to be selected from recomendations of organizations of shippers who shall be representative of different, major shipping interests, including small shippers, and satisfactory to the largest number of such shippers; and (5) one, to be selected from recommendations of organizations of consumers, to be satisfactory to the largest number of consumers.

(b) The terms of office of the Directors appointed by the President shall be for four years except that the terms of five of the members, initially appointed, shall expire at the end of two years following their first appointment. A member appointed to fill a vacancy may be appointed only for the unexpired term of the member whom he succeeds. The Directors shall take office immediately upon the expiration of the terms of the initial Board of Directors. Each of the Directors appointed by the President shall receive compensation at the rate of $300 for each meeting of the Board which he attends and shall be reimbursed for necessary travel and subsistence expense incurred in attending such meetings.

(c) So long as any capital stock of the Authority is owned by the United States, Directors, officers, and employees of the Authority shall be deemed to be special Government employees subject to the conflict of interest provisions of title 18, United States Code, sections 201–209. Directors appointed by the President pursuant to section 307(d) shall be deemed to be special Government employees subject to the conflict of interest provisions of title 18, United States Code, sections 201–209. A Director appointed upon recommendations made pursuant to subsection (a) of this section or pursuant to subsection (d) of section 307 may be included for purposes of determining the presence of a quorum at any meeting of the Directors which he attends, may participate in discussions in any such meetings and may vote upon matters, notwithstanding his service as officer, director, trustee, partner, or employee in an organization or corporation which is a member of the organization which made such recommendation.

GENERAL POWERS OF THE AUTHORITY

SEC. 304. (a) In order to carry out the purposes set forth in section 301 the Authority shall have power—

(1) to sue and be sued, complain and defend, in its corporate name;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal bylaws, rules, and regulations as may be necessary for the conduct of its business;

(4) to conduct its business, carry on its operations, and have offices and exercise the powers granted by this Act in any State;

(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Authority;

(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

(8) to appoint such attorneys, employees, and agents as may be required, to define their duties, to fix and to pay such compensation for their services as may be determined: *Provided*, That, except as otherwise specified in this Act, such attorneys, employees, and agents as well as the members of the Board of Directors shall not be subject to the provisions of Federal laws relating to Federal employees with respect to appointments, promotions, adverse actions, hours of work, rates of compensation, allowances, leave, unemployment compensation, compensation for work injuries, and Federal benefits such as retirement, life insurance, and health benefits;

(9) to enter into contracts, to execute instruments, to incur liabilities, and to do all things as are necessary or incidental to the proper management of the affairs and power conduct of its business;

(10) to build, purchase, own, lease, and manage rolling stock to be operated for the purpose of providing modern, efficient freight transportation of goods; to conduct research and development related to the purposes of this Act; and to acquire, or to contract for the use of, physical facilities, equipment, and devices necessary for equitable distribution and efficient and expeditious use of its rolling stock; and

(11) to enter into agreements and contracts necessary for the building, operation, maintenance, and repair of its rolling stock and for the performance of all services and work incidental thereto, consistent with prudent management of the affairs of the Authority and not inconsistent with the provisions of section 311 of this Act.

(b) Persons contracting with the Authority with respect to the operation or maintenance of such rolling stock shall be and are hereby relieved from prohibitions of the antitrust laws of the United States, with respect to such contracts insofar as may be necessary to enable them to enter into such contracts and to perform their obligations thereunder.

FINANCING

SEC. 305. (a) PER DIEM SURCHARGE.—Every railroad, except switching and terminal railroads, shall pay to the Authority a per diem surcharge of 50 cents per car-day on each general service freight car for each day that such a railroad incurs a car-hire charge for the use of such car, except that no one railroad, or group of railroads under common management and control, shall make total payments in excess of 10 per centum of the total amount paid by all railroads. The Authority shall impose the surcharge levy no later than sixty days after the Board of Directors shall have taken office pursuant to section 303, and the levy shall continue until the Board of Directors of the Authority determines that such sum as may be necessary for the purposes of this Act but not less than $10,000,000 nor more than $30,000,000 will be due or will have been paid to the Authority as of a certain date, whereupon the levy of the surcharge will cease as of that date. The surcharge shall be payable on the tenth day of the second month succeeding the month in which the charge accrues. If it should be determined that any one railroad, or any group of railroads under common management and control at the time of payment, has paid in excess of 10 per centum of the total amount paid by all railroads, the Authority shall refund the excess payments.

(b) The Authority shall issue a negotiable debenture to each railroad in the amount of per diem surcharge paid by such railroad. Such debentures shall bear and pay interest at a rate determined by the Secretary of the Treasury to be the current rate for similar debentures in the open market. The par value of such debentures shall be payable the next full business day, be due and payable December 31 of the thirtieth year after the date of issuance unless such date shall be a Saturday, Sunday, or holiday, in which event said par value shall which shall not be either Saturday, Sunday, or holiday. Such debentures shall be debts of the Authority but shall be subordinate to all other debts of the Authority. Neither the par value nor the interest on such debentures shall be guaranteed by the United States of America.

(c) REFUND OF PER DIEM SURCHARGE.—(1) In the event of partial or complete liquidation of the Authority, any assets remaining after payment of the Authority's obligations and expenses will be distributed pro rata to the railroads, not to exceed the amount paid into the Authority as per diem surcharge under paragraph (a) of this section plus accrued interest. if any, and the remainder will be paid into the Treasury of the United States and credited to miscellaneous receipts.

(2) In the event of complete liquidation of any railroad subject to this Act, the Board of Directors of the Authority may, if and when funds are available, refund to the railroad a sum not to exceed the amount paid in as per diem surcharge under the provisions of paragraph (a) of this section plus accrued interest, if any.

(d) INCURRENCE OF DEBT FOR CAPITAL PURPOSES.—The Authority is hereby empowered to incur debt for capital purposes. Such debt may be incurred in the form of bonds, debentures, equipment trust certificates, conditional sale agreements, or any other form of securities, agreements, or obligations. So long as all capital stock of the Authority is owned by the United States, payment of principal and interest on all obligations issued by the Authority, shall be guaranteed by the United States, such guarantee to be expressed on the face thereof. So long as any capital stock is owned by the United States, payment of principal and interest on obligations issued by the Authority may be guaranteed by the United States, such guarantees to be expressed on the face thereof. Guaranteed obligations shall not exceed $1,000,000,000 in principal amount outstanding at any one time. Such obligations may be redeemable at the option of the Authority before maturity in such manner as may be stipulated therein and shall be in such forms and denominations, have such maturities, and be subject to such terms and conditions as shall be determined by the Board of Directors, with the approval of the Secretary of the Treasury. The Authority may also incur debt not guaranteed by the United States in addition to that provided for under subsection (b) of this section.

(e) PURCHASE OF OBLIGATIONS BY TREASURY.—The Secretary of the Treasury may elect to purchase the obligations of the Authority guaranteed by the United States in an amount not to exceed $1,000,000,000 in principal amount outstanding at any one time, under such terms, including rates of interest, as he and the Authority may agree but at a rate or yield no less than the current average yield on outstanding Treasury securities of comparable maturity, as determined by the Secretary of the Treasury.

(f) PUBLIC DEBT TRANSACTION.—For the purpose of any purchase of the obligations of the Authority, and to enable him to carry out his responsibility relating to guarantees made pursuant to this section, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include any purchases of the obligations of the Authority under this Act. The Secretary of the Treasury may at any time sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations of the Authority acquired by him hereunder. All redemptions, purchases, and sales by the Secretary of the obligations of the Authority shall be treated as public debt transactions of the United States.

(g) AUTHORIZATION FOR APPROPRIATIONS.—(1) In order to facilitate the formation and the implementation of the objectives of the Authority, there is hereby authorized to be appropriated, out of money in the Treasury not otherwise appropriated, the sum of $10,000,000 to be used to acquire capital stock of the Authority, such sum to continue to be available until expended.

(2) There are authorized to be appropriated to the Secretary of the Treasury such sums as may be necessary to pay the principal and interest on notes or obligations issued by him as a consequence of any guarantee made under this section.

(3) In the event of any default on any guaranteed obligation, and payment in accordance with a guarantee by the United States, the Attorney General shall take such action as may be appropriate to recover the amount of such payments, with interest, from the Authority or other persons liable therefor.

(h) LAWFUL INVESTMENT AND EXEMPTION FROM REGULATIONS AND RESTRICTIONS.—Securities guaranteed under this section shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof, and shall be deemed to be exempt securities within the meaning of laws administered by the Interstate Commerce Commission. The limitations and restrictions as to a National or State bank dealing in, underwriting, or purchasing investment securities for its own account, as provided in title 12, United States Code, sections 24 and 335, shall not apply to securities guaranteed under this section.

(i) CAPITAL STOCK.—(1) The Authority is authorized to issue and have outstanding capital stock in such amounts and of such classes as it shall determine. At no time shall the aggregate of the shares of the capital stock of the Authority owned by a single railroad or by any person controlling one or more railroads, as defined in section 1(3)(b) of the Interstate Commerce Act, directly or indirectly through subsidiaries or affiliated companies, nominees, or any person subject to its direction or control or by any other stockholder, or any syndicate or affiliated group of such stockholders exceed 5 per centum of such shares issued and outstanding.

(2) The requirement of section 45(b) of the District of Columbia Corporation Act (D.C. Code, sec. 29-920(b)) as to the percent of stock which a stockholder must hold in order to have the rights of inspection and copying set forth in that subsection shall not be applicable in the case of holders of the stock of the Authority, and they may exercise such rights without regard to the percentage of stock they hold.

(3) Capital stock of the Authority offered and sold to the public shall be offered in compliance with all applicable laws of the United States governing the offering and sale of securities by private corporations.

AUDIT AND EXPENDITURES

SEC. 306. (a) So long as any of the capital stock of the Authority is owned by the United States, "Rolling Stock Authority" shall be added to the list of corporations in section 846, title 31, United States Code, and the Authority shall be subject to the provisions of the "Government Corporation Control Act" (31 U.S.C. 841, et seq.).

(b) Except as otherwise provided in paragraph (a) of this section, the Authority is authorized to make such expenditures and to enter into such contracts, agreements, and arrangements, upon such terms and conditions and in such manner as it deems necessary, including the final settlement of all claims and litigation by or against the Authority.

(c) Nothing in this section shall be construed as denying to the Authority the power to obtain audits of the accounts of the Authority and reports concerning its financial condition and operations by certified public accounting firms. Such audits and reports shall be in addition to those required by this section.

CONVERSION BY PUBLIC SALE OF STOCK

SEC. 307. (a) As soon as is practicable, a panel composed of the Secretary of Transportation, the Secretary of the Treasury, the Chairman of the Securities and Exchange Commission, the Chairman of the Interstate Commerce Commission, and the Chairman of the Board of the Authority shall submit to the President and to the Congress a plan for the public sale of stock in the Authority upon finding that a market exists for the sale of such stock and that the purposes of this Act will be served thereby. This plan shall include, among other elements, a program which (1) will require refinancing, or the establishment of a reserve fund or other method, in order to protect the public interest against defaults on obligations of the Authority guaranteed by the United States, and (2) will assure that the sale of the stock will result in a wide dispersion in the ownership of the stock.

(b) The plan for sale of stock to the public shall specify a program for systematically reducing the amount of obligations of the Authority guaranteed by the United

States and shall propose a capital structure for the Authority designed to insure sound financial and operating performance. Unless the Congress disapproves the plan within six months following submission of the plan to it, stock shall be sold in accordance with the plan.

(c) Upon the sale of stock to the public, the Board of Directors may be enlarged by addition of members elected by owners of such stock, but in no event shall the Board of Directors exceed fifteen members while stock is held by the United States. During such period, the rights and privileges of owners of such stock, including determination of the number of Directors to be so elected, shall be as set forth in the bylaws of the Authority.

(d) The proceeds of the sale of stock to the public shall be applied to the retirement of stock held by the United States and, upon retirement of all stock held by the United States, the terms of office of members of the Board of Directors appointed pursuant to section 303(a) shall terminate at such time and in such manner as may be provided by the plan, and all Directors shall thereafter be elected by the owners of the stock; except that the President shall have authority to appoint three Directors by and with the advice and consent of the Senate, one upon recommendation of the parent body of the American Federation of Labor and Congress of Industrial Organizations, one upon recommendation of the Federal Trade Commission, after consultation with organizations of consumers, and one upon recommendation of the Interstate Commerce Commission, after consultation with organizations of shippers, to represent the interest of the public in the deliberations of the Board.

(e) Upon retirement of all stock held by the United States, the Authority shall pay to the United States an annual fee equal to the difference between the amount of interest actually paid and that which the Secretary of the Treasury determines would have been paid upon outstanding guaranteed obligations if they had not been guaranteed, plus one-fourth per centum. The Authority shall make every effort to refinance such obligations in order to terminate the liability of the United States arising from its guarantee of such obligations.

(f) Upon retirement of all stock held by the United States, the Secretary of the Treasury may no longer purchase or guarantee the Authority's notes or other obligations.

(g) Upon default of the Authority in payment of obligations guaranteed by the United States shall have the right to control the Authority and a Board of Directors shall be appointed in accordance with the provisions of section 303 of this Act.

NATIONAL ROLLING STOCK INFORMATION SERVICE

SEC. 308. (a) If a national rolling stock information system as defined in section 103 of this Act is not in operation at the date of incorporation of the Authority, the Authority shall establish such a system within one year from that date.

(b) In the event that the Authority undertakes to establish a national rolling stock information system, the Secretary shall permit the Authority access to, and use of, all information, studies, designs, equipment, facilities, computer programs, and other things acquired or developed pursuant to section 103 of this Act and shall give all possible assistance to the Authority to further the purposes of this section.

(c) Information from the national rolling stock information system shall be made available to the Authority, shippers, railroads, the Commission, the Secretary, and interested members of the public, subject to such rules as the Commission shall prescribe to insure the confidentiality of certain types of competitive information supplied for use in connection with the system.

(d) The Authority shall report semiannually to the Congress with respect to the progress made in implementing the national system. Such report shall include recommendations for such additional funding as may be necessary to make the national system fully effective.

(e) Persons contracting with the Authority with respect to the design of a national rolling stock information system or the use of information supplied by such systems shall be and are hereby relieved from prohibitions of the antitrust laws of the United States, to the extent necessary to facilitate carrying out the purposes of this Act.

CONDITIONS AND CHARGES FOR USE OF ROLLING STOCK

SEC. 309. (a) The Authority shall establish charges for the use of rolling stock supplied by it which, in the judgment of the Board, will at least enable the Authority to meet its operating and administrative expenses, including depreciation and debt-carrying charges, and to provide sufficient earnings to facilitate conversion of the Authority to private ownership pursuant to section 307, except that such charges shall not exceed a maximum of 150 per centum of the cost to the Authority of acquiring, owning, maintaining, and operating the class of rolling stock. In establishing such charges the Authority shall take into account the prevailing rates and conditions for use of similar rolling stock.

(b) The Authority shall not assess charges for rolling stock located on a railroad that is not required for such railroad's use in originating traffic provided that such rolling stock is not the subject of a car service order of the Authority or of the Commission: *And provided further,* That such railroad furnishes appropriate notice to the Authority according to terms and conditions established for use of such rolling stock.

(c) The Authority shall establish reasonable rates of compensation through negotiation with a railroad for storage of any excess rolling stock on the property of such railroad.

(d) The Authority shall establish and may amend from time to time terms and conditions governing the use of its equipment, including requirements for identification of its rolling stock as shall in its judgment be appropriate to effectuate the purposes of this Act.

(e) The Authority, after consulting with railroads and other car distribution agencies, shall establish and may amend from time to time just and reasonable car service rules, regulations, and practices with respect to its rolling stock. Such rules, regulations, and practices, and car distribution directions issued thereunder, shall take precedence over any conflicting rules, regulations, or practices established by any railroad or group of railroads.

(f) Each railroad shall comply with such car service rules, regulations, and practices as may be established, and such car distribution directions as may be issued pursuant to this section.

AUTHORITY OF THE INTERSTATE COMMERCE COMMISSION

SEC. 310. The Authority shall be subject to the car service provisions of the Interstate Commerce Act, section 1(10) through 1(17), and the orders of the Commission thereunder to the extent applicable. Upon petition of any person affected by any charge, rule, regulation, practice, term, condition, or directive of the Authority, or upon its own motion, the Commission shall make an investigation and, after a hearing, shall order any charge, rule regulation, practice, term, condition, or directive which it finds not to be in conformity with this Act, or to be inconsistent with any rule, order, or directive of the Commission pursuant to applicable provisions of section 1(10) through 1(17) of the Interstate Commerce Act to be canceled, annulled, or amended, as the Commission shall find to be appropriate.

ACTIONS TO ENFORCE OBLIGATIONS

SEC. 311. (a) The Authority may by any appropriate civil action apply to any district court of the United States having jurisdiction of the parties to enforce compliance with any obligation owing to it by virtue of or pursuant to any provision of this title of any agreement or regulation made pursuant thereto.

(b) If the Authority, any railroad, or other person fails or refuses to comply with any rules, regulations, charges, or practices established or any car distribution directions and orders issued under this title, or Commission directive to pay charges, any district court of the United States having jurisdiction of the parties shall have jurisdiction, upon petition by the Commission with respect to matters arising under section 310 of this Act or by the Corporation with respect to matters arising under section 309 of this Act to grant such relief as may be necessary or appropriate to prevent or terminate such failure or refusal.

(c) If the Authority or any railroad or other party violates or threatens to violate any provision of this Act, or any order, rule, or regulation issued thereunder, any district court of the United States having jurisdiction of the parties shall have jurisdiction, upon petition, or in a case involving a labor agreement, upon petition by any employee affected thereby, including duly authorized employee representatives, to grant such equitable relief as may be necessary or appropriate to prevent or terminate any such violation.

(d) Nothing contained in this section shall be construed as relieving any person from any punishment, liability, or sanction which may be imposed otherwise than under this Act.

INTERCHANGE OF CARS

SEC. 312. (a) No railroad may refuse to transport general service freight cars owned by the Authority, whether loaded or empty, subject to applicable safety regulations, reasonable interchange rules, reasonable line clearances, reasonable weight limitations, and prevailing charges set pursuant to section 309 of this Act.

(b) No railroad shall be entitled to any compensation from the Authority for the movement of empty Authority-owned freight cars between any points on its line of railroad, between a point on its line of railroad and a point on another line of railroad, or as a bridge carrier between points on two or more other lines of railroad, when moving upon either a car distribution directive (1) issued by the Commission or (2) issued by the Authority for the purpose of distributing Authority-owned cars for loading.

REPORTS TO THE CONGRESS

SEC. 313. The Authority shall transmit to the President and directly to the Congress, annually, commencing one year from the date of enactment of this Act, and at such other times as it deems desirable, a comprehensive and detailed report on its operations, activities, and accomplishments under this Act, the state of rail freight service, including an annual report of the numbers of rolling stock, by classes, acquired and owned by the Authority, and the numbers of such stock, by classes, owned by the railroads, and shall include in such report a statement of receipts and expenditures for the previous year, an explanation of the method by which the amount of rolling stock purchased was determined, and the criteria used in distributing rolling stock.

TITLE IV.—RURAL RAILROAD ASSISTANCE

LOAN AND LOAN GUARANTY AUTHORITY

SEC. 401. (a) The Secretary of Transportation (hereinafter referred to as the "Secretary") is authorized to make loans and loan guarantees pursuant to this title to assist States and local public bodies and agencies thereof in financing the acquisition, construction, reconstruction, and improvement of railroad facilities and equipment for use, by operation or lease or otherwise, in rural areas. Eligible facilities and equipment may include railroad right-of-way, tracks, rolling stock, and other real and personal property needed for an efficient and coordinated rural railroad transportation system.

(b) No such loan or loan guarantee shall be provided unless the Secretary determines that the applicant has or will have—

(1) demonstrated a valid need for the establishment of reestablishment of railroad service in the affected area and

(2) the technical capability to carry out the proposed project.

(c) Any such loan or loan guarantee may be made for not to exceed 80 per centum of the total costs of the proposed project and shall be subject to such other terms and conditions as the Secretary may determine are necessary to carry out the purposes of this title.

AUDIT

SEC. 402. The General Accounting Office shall make a detailed audit of all accounts, books, records, and transactions of any borrower with respect to which an application for a loan or loan guarantee is made under this title. The General Accounting Office shall report the results of such audit to the Secretary of Transportation.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 403. There is authorized to be appropriated not to exceed $25,000,000 to carry out the provisions of this title. Sums so appropriated shall remain available until expended.

DEFINITIONS

SEC. 404. As used in this title—

(1) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States;

(2) the term "local public bodies" includes municipalities and other political subdivisions of States; public agencies and instrumentalities of States, municipalities, and political subdivisions of such States; and other public boards, corporations, and commissions established under the laws of any State;

(3) the term "rural area" means all the territory of a State that is not within the outer boundary of any city having a population of fifty thousand or more and its immediately adjacent urbanized and urbanizing area with a population density of more than one hundred persons per square mile, according to the latest decennial census of the United States.

TITLE V—GENERAL PROVISIONS

PROTECTIVE ARRANGEMENTS FOR EMPLOYEES

SEC. 501. (a) In carrying out the provisions of this Act and as a condition to the execution of any contract, or the insurance of any obligation, or the approval or inducement of any other action authorized under the provisions of this Act, the Board, or the Secretary, or the Authority shall be required to include in any of their contracts to which a railroad or a car-pooling company is a party or a beneficiary thereof, fair and equitable arrangements, as certified by the Secretary of Labor, to protect the interests of individual employees affected in their employment by any such contract. Such protective arrangements shall include, without being limited to, the arrangements specified in section 405 of the Rail Passenger Service Act of 1970, as amended, (45 U.S.C. 565); in section 13 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1609); and in section 6 of the High Speed Ground Transportation Act of 1965, as amended, (49 U.S.C. 1636).

(b) In awarding contracts for the building or rebuilding of rolling stock under title III of this Act, the Authority shall take all necessary action to conform to prevailing practices of the railroad industry in distributing and rebuilding facilities. The building and rebuilding of rolling stock covered by contracts awarded to the railroads shall be performed with the use of the facilities and employees of such railroads and not subcontracted. In carrying out the provisions of this subsection the Authority shall be guided by the relative proportions of rolling stock building and rebuilding, respectively, performed in railroad and nonrailroad facilities in the five-these guidelines shall not exceed 5 per calender-year period preceding enactment of this Act. Any downward variations from centum. The total number of cars and locomotives built and rebuilt, respectively, in railroad and nonrailroad facilities, respectively, in a calender year need not exceed the average number of built and rebuilt, respectively, in such facilities during the five-calendar-year period immediately preceding that calendar year, but the same relative proportions of such building and rebuilding, respectively, shall be maintained as between railroad and nonrailroad facilities in the event of a decrease from such average. Upon failure of the Authority to maintain such proportions in distributing such work to railroad facilities under such contracts, the fair and equitable employee protective arrangements required by subsection (a) hereof shall become effective.

(c) Employees affected by an action taken pursuant to this Act designed to provide for more effective use and distribution of rolling stock shall be reassigned and, if necessary, retrained to perform the new tasks covering the functions which they had therefore performed. The performance of such functions shall be considered to be within the same craft or class as that in which such employees were classified prior to such change and the rights of such employees to the same representation shall be preserved. The positions on any railroad affected by these changes may be eliminated as they become vacant through death, resignation or retirement, without adversely affecting the individuals involved, and at a rate not to exceed 2 per centum each year.

(d) In his administration of the provisions of this Act, the Secretary of Labor shall consolidate the program authorized herein with the companion programs, under the Rail Passenger Service Act of 1970, as amended (45 U.S.C. 565); the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1609); and the High Speed Ground Transportation Act of 1965, as amended (49 U.S.C. 1636); and shall uniformly develop, interpret and apply the procedures and standards under these various laws.

(e) To the extent practicable, the Authority shall award contracts for the repair and maintenance of rolling stock to railroads with facilities for performing such work.

(f) The Board (pursuant to title I), the Secretary (pursuant to title II), and the Authority (pursuant to title III) shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed with the assistance of funds received under any contract or agreement entered into under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Board, the Secretary of Transportation, or the Authority shall not enter into any such contract or agreement without first obtaining adequate assurance that required labor standards will be maintained on the construction work. Health and safety standards promulgated by the Secretary of Labor pursuant to section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) shall be applicable to all construction work performed under and pursuant to the Railway Labor Act shall be considered as being in compliance with the Davis-Bacon Act; and such railroad wage rates shall be the applicable standard for all laborers and mechanics employed by nonrailroad contractors and subcontractors in the performance of the building and rebuilding of rolling stock under title III of this Act.

ESTABLISHMENT OF NONDISCRIMINATORY RATES FOR THE TRANSPORTATION OF RECYCLED SOLID WASTE MATERIALS

SEC. 502. (a) The Congress hereby finds that, in order to accomplish the purposes of the Solid Waste Disposal Act, as amended by the Resource Recovery Act of 1970, it is essential to establish and maintain fair, reasonable, and nondiscriminatory transportation rates which will facilitate and encourage broader utilization of recycled solid waste materials and promote conservation of vital natural resources.

(b) The Interstate Commerce Commission, within the maximum scope of its jurisdiction under the Interstate Commerce Act, as amended, shall, within twenty-four months of the date of enactment of this section and on a continuing basis thereafter—

(1) investigate and formally identify all rates charged by transportation carriers subject to its jurisdiction for the transportation of recycled solid waste materials and shall, in each case, determine whether the rates charged and the terms and conditions of transportation for such materials are fair and reasonable, and whether they unjustly discriminate against the movement or shipment in commerce of recycled solid waste materials in favor of competing virgin natural resource materials or commodities;

(2) issue appropriate orders in all cases where the rates charged for, or terms or conditions of transportation applicable to, recycled solid waste materials are found to be unfair, unreasonable or discriminatory pursuant to which such rates or conditions of transportation will be effectively canceled and repealed and replaced by rates or conditions of transportation which are found to be fair, reasonable and nondiscriminatory;

(3) file a report with the President and the Congress regarding the results of the investigations and all actions taken to establish minimum, fair, reasonable, and nondiscriminatory rates for the transportation of recycled solid waste materials.

(c) For the purposes of this action "recycled solid waste materials" means scrap metals, waste paper and paper products, textiles, rubber, plastics, glass, and other materials recovered or reclaimed from "solid waste" as that term is defined in the Solid Waste Disposal Act (42 U.S.C. 3252(4)).

SEPARABILITY

SEC. 503. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

The title was amended, so as to read: "An Act to increase the supply of railroad rolling stock and to improve its utilization to meet the needs of commerce, users, shippers, national defense, and the consuming public."

Mr. HARTKE. Mr. President, I move to

reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. Senators will please take their seats.

## ORDER FOR CONSIDERATION OF DISASTER RELIEF BILL BEFORE MILITARY CONSTRUCTION BILL

Mr. MANSFIELD. Mr. President, under the order entered by the Senate, the boxcar bill was to be followed by H.R. 15641, the military construction bill, and that in turn was to be followed by H.R. 15692, a bill to amend the Small Business Act to reduce the interest rate on Small Business Administration disaster loans.

I ask unanimous consent that the position of these two bills be reversed.

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

Mr. MANSFIELD. I yield.

Mr. GOLDWATER. Mr. President, reserving the right to object, and I shall not object, what is the order going to be?

Mr. MANSFIELD. For the consideration of the increased Government assistance for disaster relief bill and then the military construction bill.

Mr. GOLDWATER. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

## INCREASED GOVERNMENT ASSISTANCE FOR DISASTER RELIEF

The PRESIDING OFFICER. Under the order previously entered, the Chair will lay before the Senate H.R. 15692, which the clerk will report.

The assistant legislative clerk read as follows:

H.R. 15692 bill to amend the Small Business Act to reduce the interest rate on Small Business Administration disaster loans.

The Senate proceeded to consider the bill which had been reported from the Committee on Banking, Housing and Urban Affairs with an amendment to strike out all after the enacting clause and insert:

That (a) subsection (b) of section 7 of the Small Business Act (15 U.S.C. 636(b)) is amended by striking out the matter following paragraph (6) and inserting in lieu thereof the following:

"No loan under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding thirty years: *Provided*, That the Administrator may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan under this subsection for a period not to exceed five years, if (A) the borrower under such loan is a homeowner or a small business concern, (B) the loan was made to enable (i) such homeowner to repair or replace his home, or (ii) such concern to repair or replace plant or equipment which was damaged or destroyed as the result of a disaster meeting the requirements of clause (A) or (B) of paragraph (2) of this subsection, and (C) the Administrator determines such action is necessary to avoid severe financial hardship: *Provided further*, That the provisions of paragraph (1) of subsection (c) of this section shall not be applicable to any such loan having a maturity in excess of twenty years. Notwithstanding the provisions of any other law, and except as otherwise provided in this subsection, the interest rate on the Administration's share of any loan made under this subsection shall not exceed 3 per centum per annum, except that in the case of a loan made pursuant to paragraph (3), (5), or (6), the rate of interest on the Administration's share of such loan shall not be more than the higher of (A) 2¾ per centum per annum; or (B) the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum per annum. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

"In the administration of the disaster loan program under paragraphs (1), (2), and (4) of this subsection, in the case of property loss or damage or injury resulting from a major disaster as determined by the President or a disaster as determined by the Administrator which occurred after January 1, 1971, and prior to July 1, 1973, the Small Business Administration, to the extent such loss or damage or injury is not compensated for by insurance or otherwise—

"(A) may make any loan for repair, rehabilitation, or replacement of property damaged, or destroyed, without regard to whether the required financial assistance is otherwise available from private sources;

"(B) may, in the case of the total destruction or substantial property damage of a home or business concern, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such property is to be repaired, rehabilitated, or replaced, except that the amount refinanced shall not exceed the amount of the physical loss sustained; and

"(C) shall, notwithstanding the provisions of any other law and upon presentation by the applicant of proof of loss or damage or injury and a bona fide estimate of cost of repair, rehabilitation, or replacement, cancel the principal of any loan made to cover a loss or damage or injury resulting from such disaster, except that the total amount so canceled shall not exceed $5,000, and make the balance of such loan at an interest rate of 1 per centum per annum.

With respect to any loan referred to in clause (C) which is outstanding on the date of enactment of this paragraph, the Administrator shall—

"(i) make such change in the interest rate on the balance of such loan as is required under that clause effective as of such date of enactment; and

"(ii) in applying the limitation set forth in that clause with respect to the total amount of such loan which may be canceled, consider as part of the amount so canceled any part of such loan which was previously canceled pursuant to section 231 of the Disaster Relief Act of 1970.

"Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection shall be civilly liable to the Administrator in an amount equal to one-and-one-half times the original principal amount of the loan."

(b) The last paragraph of the amendment made by subsection (a) shall apply only with respect to loans made on or after the date of enactment of this Act.

SEC. 2. (a) Section 7(b) of the Small Business Act is amended—

(1) by striking out "and" at the end of paragraph (4); and

(2) by striking out the numbered paragraphs following paragraph (4) and inserting in lieu thereof the following:

"(5) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting additions to or alterations in its plant, facilities, or methods of operation to meet requirements imposed by any Federal law, any State law enacted in conformity therewith, or any regulation or order of a duly authorized State or regional agency issued in conformity with such Federal law, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph; and

"(6) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist, or to refinance the existing indebtedness of, any small business concern directly and seriously affected by the significant reduction of the scope or amount of Federal support for any project as a result of any international agreement limiting the development of strategic arms or the installation of strategic arms or strategic arms facilities, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph.".

(b) Section 4(c)(2)(A) of such Act is amended by inserting "7(b)(5), and 7(b)(6)," after "7(b)(4),".

(c) Section 28(d) of the Act of December 29, 1970 (Public Law 91-596) is amended by striking out "7(b)(6)" and inserting in lieu thereof "7(b)(5)".

SEC. 3. The President shall conduct a thorough review of existing disaster relief legislation, and not later than January 1, 1973, he shall transmit to the Congress a report containing specific legislative proposals for the comprehensive revision of such legislation in order to—

(1) standardize the amount of benefits available to persons affected by disasters so as to achieve fairness and consistency with regard to the amount of benefits provided to such persons and to preclude the needs for separate legislation to aid persons affected by future disasters;

(2) improve the execution of the Government's disaster relief program by eliminating unnecessary administrative procedures and reducing the number of agencies involved in disaster relief or increasing individual agency authority and responsibility; and

(3) prevent the misuse of benefits made available under the program.

## EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent, without regard to the time limitation, that the Senate now go into executive session to consider nominations on the Executive Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

## U.S. AIR FORCE

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

Mr. MANSFIELD. Mr. President, I ask

unanimous consent that the nominations be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

U.S. ARMY

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

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

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

U.S. NAVY

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

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

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

U.S. MARINE CORPS

The second legislative clerk proceeded to read sundry nominations in the U.S. Marine Corps.

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

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

ROUTINE NOMINATIONS IN THE AIR FORCE, ARMY, AND MARINE CORPS

The second assistant legislative clerk proceeded to read sundry nominations in the Air Force, Army, and Marine Corps.

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

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

Mr. MANSFIELD. Mr. President, I move that the President be immediately notified of the confirmation of these nominations.

The PRESIDING OFFICER. Without objection, the President will be notified forthwith.

LEGISLATIVE SESSION

On request of Mr. MANSFIELD, and by unanimous consent, the Senate resumed the consideration of legislative business.

INCREASED GOVERNMENT ASSISTANCE FOR DISASTER RELIEF

The Senate resumed the consideration of the bill (H.R. 15692) to amend the Small Business Act to reduce the interest rate on Small Business Administration disaster loans.

Mr. McINTYRE. Mr. President, I yield to the Senator from Pennsylvania for a unanimous-consent request.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SCHWEIKER. Mr. President, I ask unanimous consent that during the debate on my amendments to H.R. 15692, the Disaster Relief Act, floor privileges be given to two members of my staff, David Fiske and Skip Hartquist.

The PRESIDING OFFICER. Without objection, it is so ordered.

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

Mr. McINTYRE. I yield.

Mr. JAVITS. May I have similar approval for one assistant?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I will not object, but will the Senator name his assistant?

Mr. JAVITS. Yes. Charles Warren.

The PRESIDING OFFICER. Without objection, it is so ordered.

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

Mr. McINTYRE. I yield.

UNANIMOUS-CONSENT AGREEMENT TO LIMIT TIME ON VOTES

Mr. MANSFIELD. Mr. President, I ask unanimous consent, after conferring with the distinguished acting minority leader and the distinguished manager of the bill, that there be a time limitation of 10 minutes on all amendments on which there will be votes, and on final passage of the bill. I refer to rollcall votes.

Mr. TOWER. Mr. President, reserving the right to object—and I do not intend to object—may I request that the majority leader make that 15 minutes on the first vote and 10 minutes on all votes thereafter so that Members can come to the Chamber?

Mr. MANSFIELD. Yes. My request was with respect to rollcall votes. We make this request, because there may be a number of amendments and it will help to expedite matters on a Friday afternoon.

Mr. TOWER. Will the majority leader accept the request for 15 minutes on the first vote?

Mr. MANSFIELD. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered.

INCREASED GOVERNMENT ASSISTANCE FOR DISASTER RELIEF

Mr. McINTYRE. Mr. President, the legislation which we are considering today, H.R. 15692, is a bill of major importance.

The legislation as reported out of the committee amends the House-passed bill in a number of areas, several of which incorporate provisions of the administration's disaster relief bill introduced by the distinguished Senator from Pennsylvania (Mr. SCOTT) and several other Members of this body.

Recent disasters, such as the flood in Rapid City, S. Dak., and Hurricane Agnes, vividly illustrate the need for this legislation. Certainly, we can sympathize with the personal suffering and loss to disaster victims who through an act of God must face the loss of loved ones, jobs, homes, and other personal property.

The bill that we are considering today would hopefully provide needed relief to these unfortunate disaster victims. The bill, H.R. 15692, as amended by the committee, would do the following:

First. At the present time, the disaster victim may receive up to $2,500 forgiveness on a disaster loan after he repays the first $500 of principal on the loan. This bill would remove the $500 payback requirement and increase the forgiveness to a maximum amount of $5,000.

Second. At the present time, the interest rate for disaster relief loans is based on the monthly cost of money to the U.S. Treasury which is presently 5⅛ percent. This legislation would provide for a 1-percent interest rate on loans.

Third. This legislation would operate retroactively to January 1, 1971, with regard to the forgiveness factor and would be applied prospectively as of the date of enactment with regard to the lower 1-percent interest rate.

Fourth. This legislation would provide equal treatment with regard to both presidentially declared disasters and disasters declared by the Administrator of the Small Business Administration. At present, with regard to an SBA declared disaster, there is no forgiveness provision. The bill before us would provide forgiveness for SBA declared disasters and would operate retroactively to January 1, 1971.

Fifth. The legislation would strengthen the SBA disaster relief program by requiring a loan applicant to provide to the SBA proof of loss or damage or injury and a bona fide estimate of cost of repair or replacement. If a borrower misapplies the proceeds of an SBA disaster loan, this legislation would make him civilly liable in an amount 1½ times the original amount of the loan.

Sixth. The provisions of this legislation would expire on July 1, 1973. I would say that the committee considers this bill stopgap legislation. We are asking the administration to put together a commission and to really go into the needed remedies for disasters of major proportions.

The bill instructs the President to transmit to Congress no later than January 1, 1973, a report containing specific legislative proposals for a comprehensive revision of disaster relief legislation. The committee included this provision in H.R. 15692 in order to establish on a permanent basis a national disaster relief program. The Disaster Relief Act of 1970 was an attempt by Congress to establish a permanent program. However, the legislation before us today speaks poignantly to the fact that this result has as of yet not been obtained.

The legislation before us today also contains two amendments to the economic disaster program of the Small Business Administration.

This legislation would consolidate several sections of the economic disaster program dealing with the Coal Mine Health and Safety Act, the Wholesome

Meat Act, and the Occupational Safety and Health Act and provide a new section authorizing the SBA to assist small business concerns meeting requirements imposed by any Federal law or any State law enacted in conformity therewith if such concern is likely to suffer substantial economic injury without assistance.

This amendment is part of this bill and is a longstanding effort by the distinguished chairman of the Select Committee on Small Business (Mr. BIBLE) and the Small Business Committee presents this as an excellent piece of legislation.

The legislation also adds a new section to the economic disaster program of the SBA to aid small business men economically injured as a result of the pending SALT agreement. The committee received testimony from officials of the Department of Defense which convincingly showed that the economic disruption to small business men resulting from the sudden decision to stop construction of the ABM site in Montana was of such an unusual nature to warrant assistance.

It should be noted, however, that the two provisions dealing with economic disasters provide for no forgiveness and interest rates on such loans are based on the monthly cost of money to the U.S. Treasury.

It should also be noted that the bill before us today only deals with that disaster relief program administered by the Small Business Administration.

Let me repeat that. The bill before us today only deals with that disaster relief program administered by the Small Business Administration.

Its function, in both a presidentially declared disaster and an SBA declared disaster, is to provide loans to small business men and homeowners. With regard to a presidentially declared disaster, 31 separate agencies of the Federal Government immediately become involved once the Presidential declaration is made; whereas, regarding an SBA declared disaster only that agency deals with the disaster. On both presidentially declared disasters and SBA declared disasters though, there is a ceiling on the maximum amount of a loan which is set administratively by the Small Business Administration. With regard to small business men, this limit is $500,000 and with regard to individual homeowners it is $55,000.

Mr. President, at this time, I request unanimous consent that excerpts from the committee report be printed in the RECORD.

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

HISTORY OF LEGISLATION

H.R. 15692 was passed by the House on June 29, 1972. Hearings were held by the Small Business Subcommittee on July 18 and 19, 1972, on H.R. 15692, S. 3979, S. 3795, and S. 3801, all of which bills would amend Section 7(b) of the Small Business Act which deals with the Small Business Administration's natural disaster relief programs. The Subcommittee also held hearings on S. 3725 and S. 1649, both of which deal with the economic disaster portion of Section 7(b) of the Small Business Act. The Subcommittee met in executive session on July 20, 1972, and reported out an amended bill which contained several provisions of various bills pending before the Subcommittee. The Full Committee met in executive session on Tuesday, July 25, 1972, and reported out the bill, H.R. 15692, with several amendments, including in that bill as amendments, S. 3725 and S. 1649.

PURPOSE OF THE LEGISLATION

The basic purpose of this bill is to supplement the assistance which SBA has provided victims of disasters which occur during the period beginning January 1, 1971, and ending June 30, 1973. The benefits, achieved through liberalization of the existing loan program provide for grants of up to $5,000 and 1% loans on the balance of uninsured losses.

Consistent with your Committee's intent to supplement SBA's existing loan making authority, it has added provisions consolidating existing special disaster-type loan programs for coal mine safety, meat inspection, poultry and egg inspection, occupational safety and health and broadening that section so as to authorize loans to any business which is required to upgrade its facilities pursuant to law.

H.R. 15692 is a disaster relief bill of extreme importance. This legislation was prompted primarily as a result of the severe disasters experienced recently in South Dakota and along the Eastern Seaboard as a result of Hurricane Agnes.

The disaster relief program as administered by the SBA has received Congressional attention recently by both your Committee and the House Banking and Currency Committee, particularly with regard to the manner that this legislation was implemented during the earthquake in California in February of 1971. Your Committee held hearings in April and May of this year regarding the manner in which the Small Business Administration handled the California earthquake, and your Committee was convinced that the record of performance on recent disasters required certain amendments to the Small Business Act.

Your Committee is convinced that the present program not only does not provide sufficient assistance to disaster victims but that it is necessary to provide the Small Business Administration with authority to deal with fraudulent claims and misapplication of disaster relief funds by borrowers. In this regard, the bill provides for civil penalties and requires the borrower to provide the Small Business Administration with proof of loss and a bona fide estimate of damage before obtaining a disaster relief loan.

For more than thirty-five years it has been declared Federal policy to assist victims of natural disasters. Much of this aid has been in the form of loans and grants made by the Small Business Administration and its predecessor agencies. During its eighteen-year existence the SBA has provided assistance to victims of more than nine hundred separate disasters. Since January of 1971, the date of retroactivity to which this measure reaches, more than one hundred thousand disaster loans totalling nearly $350 million have been placed on that agency's books. There follows a list of disasters declared since January 1, 1971.

PRESIDENTIAL DISASTERS FROM JAN. 1, 1971, TO JUNE 30, 1972

[Dollar amounts in thousands]

| Declaration number and State | Type | Date declared | Total Number | Total Amount |
|---|---|---|---|---|
| 0800 Washington | Flood | Feb. 9, 1971 | 43 | $122 |
| 0802 California (Los Angeles) | Earthquake | do | 60,892 | 219,673 |
| 0806 Oregon | Flood | Feb. 18, 1971 | 12 | 85 |
| 0807 Mississippi/Tennessee | Tornado | Feb. 14, 1971 | 453 | 2,256 |
| 0809 Nebraska | Flood | Feb. 25, 1971 | 161 | 1,209 |
| 0822 Kentucky | Tornado | Apr. 30, 1971 | 15 | 139 |
| 0827 Tennessee | do | May 12, 1971 | 10 | 94 |
| 0835 Nebraska | Flood | July 12, 1971 | 2 | 4 |
| 0839 Maryland | do | Aug. 5, 1971 | 838 | 4,157 |
| 0844 New Jersey | do | Aug. 30, 1971 | 6,121 | 23,670 |
| 0845 New York | do | Sept. 3, 1971 | 15,426 | 32,193 |
| 0847 Oklahoma | do | Sept. 9, 1971 | 82 | 313 |
| 0848 Texas (Fern) | do | Sept. 13, 1971 | 12,518 | 35,462 |
| 0849 Pennsylvania | do | Sept. 15, 1972 | 1,627 | 8,552 |
| 0850 Louisiana | Hurricane | Oct. 13, 1971 | 15 | 381 |
| 0867 California | Flood | Jan. 7, 1972 | 25 | 65 |
| 0871 Oklahoma | do | Jan. 18, 1972 | 1 | 58 |
| 0874 Oregon | do | Jan. 28, 1972 | 32 | 144 |
| 0875 Washington | do | Feb. 4, 1972 | 43 | 263 |
| 0877 Texas | do | Feb. 11, 1972 | | |
| 0878 Mississippi | do | do | | |
| 0879 Arkansas | do | do | 1 | 3 |
| 0881 Massachusetts/New Hampshire/Maine | do | Feb. 24, 1972 | 1,580 | 6,557 |
| 0882 West Virginia | do | Feb. 28, 1972 | 578 | 2,744 |
| 0883 Idaho | do | Mar. 7, 1972 | | |
| 0888 Guam | Typhoon | Mar. 9, 1972 | 2 | 32 |
| 0895 Washington | Flood | Mar. 27, 1972 | 103 | 504 |
| 0897 California | do | Apr. 7, 1972 | 5 | 23 |
| 0901 Texas (San Antonio) | do | May 15, 1972 | 733 | 5,444 |
| 0904 Kentucky | Flood | May 18, 1972 | 15 | $46 |
| 0907 Washington | do | June 6, 1972 | 10 | 25 |
| 0908 South Dakota | do | June 12, 1972 | 344 | 1,722 |
| 0909 North Dakota | do | June 13, 1972 | | |
| 0914 New York (Agnes) | Hurricane | June 27, 1972 | | |
| 0915 Florida (Agnes) | do | do | | |
| 0916 Maryland/Pennsylvania/Virginia (Agnes). | do | do | 11 | 779 |
| 0917 California | Flood | June 29, 1972 | | |
| Total | | | 101,698 | 346,719 |

NONPRESIDENTIAL DISASTER DECLARATIONS FOR 2D HALF OF FISCAL YEAR 1971

| | | | | |
|---|---|---|---|---|
| 0796 Mississippi | Fire | Jan. 8, 1971 | 3 | $115 |
| 0797 Iowa | do | Jan. 22, 1971 | 1 | 19 |
| 0798 New Hampshire | do | do | 5 | 98 |
| 0799 Hawaii | Flood | Feb. 9, 1971 | 3 | 1 |
| 0801 Massachusetts | Fire | Feb. 8, 1971 | 4 | 140 |
| 0803 Florida | Tornado | Feb. 16, 1971 | 1 | 6 |
| 0804 New York | Fire | do | | |
| 0805 Louisiana | Tornado | Feb. 18, 1971 | 2 | 73 |
| 0808 North Carolina | do | Feb. 24, 1971 | 12 | 57 |
| 0810 Illinois | Flood | Mar. 1, 1971 | 12 | 47 |
| 0811 Minnesota | Fire | Mar. 3, 1971 | 3 | 98 |
| 0812 Texas | Tornado | Mar. 18, 1971 | 4 | 36 |
| 0813 Iowa | Flood | Mar. 25, 1971 | 2 | 116 |

PRESIDENTIAL DISASTERS FROM JAN. 1, 1971, TO JUNE 30, 1972—Continued

[Dollar amounts in thousands]

| Declaration number and State | Type | Date declared | Total Number | Total Amount |
|---|---|---|---|---|
| 0814 North Carolina | Flood | Mar. 25, 1971 | | |
| 0815 South Dakota | Fire | Apr. 14, 1971 | 4 | $80 |
| 0816 Maine | do | Apr. 15, 1971 | 2 | 154 |
| 0817 Kentucky | do | Apr. 19, 1971 | 1 | 45 |
| 0818 Texas | Tornado | Apr. 21, 1971 | 6 | 19 |
| 0820 Illinois | do | Apr. 30, 1971 | 6 | 22 |
| 0821 Tennessee | Hailstorm | do | 7 | 289 |
| 0823 Texas | Tornado | do | 6 | 34 |
| 0824 Missouri | do | May 7, 1971 | 33 | 350 |
| 0825 Missouri | do | do | 13 | 82 |
| 0826 Iowa | Tornado | May 7, 1971 | 4 | $55 |
| 0828 Massachusetts | Fire | May 20, 1971 | 1 | 25 |
| 0829 Texas | Tornado | May 26, 1971 | 2 | 8 |
| 0830 Kansas | Flood | do | 2 | 63 |
| 0831 Kentucky | Tornado | do | | |
| 0832 New York | Flood | June 4, 1971 | 2 | 72 |
| 0833 Alaska | do | June 8, 1971 | 13 | 139 |
| Total | | | 154 | 2,270 |

NONPRESIDENTIAL DISASTER DECLARATIONS FOR FISCAL YEAR 1972

| Declaration number and State | Type | Date declared | Total Number | Total Amount |
|---|---|---|---|---|
| 0834 Wisconsin | Fire | July 6, 1971 | 3 | $183 |
| 0836 Iowa | Flood | July 16, 1971 | 28 | 123 |
| 0837 New York | Tornado | July 29, 1971 | 5 | 114 |
| 0838 Mississippi | Flood | July 30, 1971 | 9 | 24 |
| 0840 Rhode Island | Fire | Aug. 9, 1972 | 4 | 165 |
| 0841 Alaska | Flood | Aug. 13, 1971 | 57 | 708 |
| 0842 Texas | do | do | 13 | 22 |
| 0843 Georgia | do | Aug. 23, 1971 | 34 | 90 |
| 0846 Arizonia | Tornado | Sept. 7, 1971 | | |
| 0851 North Carolina | Flood | Oct. 5, 1971 | 12 | 32 |
| 0852 Colorado | Fire | Oct. 26, 1971 | 2 | 12 |
| 0853 Missouri | do | do | 3 | 68 |
| 0854 Colorado | Tornado | do | 4 | 14 |
| 0855 Texas | Flood | do | 60 | 340 |
| 0856 Virginia | Fire | do | 3 | 82 |
| 0857 Massachusetts | do | Nov. 12, 1971 | | |
| 0858 Rhode Island | do | Nov. 23, 1971 | 2 | 20 |
| 0859 Alaska | Winds | Dec. 7, 1971 | | |
| 0860 Louisiana | Floods | Dec. 14, 1971 | 4 | 18 |
| 0861 Massachusetts | Fire | Dec. 16, 1971 | 2 | 1 |
| 0862 Missouri | Tornado | do | 8 | 178 |
| 0863 Wisconsin | Fire | Dec. 23, 1971 | 2 | 405 |
| 0864 South Dakota | do | Dec. 28, 1971 | | |
| 0865 Massachusetts | do | do | | |
| 0866 New Hampshire | do | Jan. 5, 1972 | 3 | 3 |
| 0868 Massachusetts | do | Jan. 10, 1972 | 2 | 51 |
| 0869 Georgia | Tornado | Jan. 13, 1972 | | |
| 0870 Colorado | Wind and fire | Jan. 14, 1972 | 20 | 171 |
| 0872 Alabama | Tornado | Jan. 18, 1972 | 6 | $54 |
| 0873 Illinois | Gas explosion | Jan. 26, 1972 | | |
| 0886 Massachusetts | Fire | Feb. 8, 1972 | 3 | 440 |
| 0880 West Virginia | do | Feb. 11, 1972 | 3 | 9 |
| 0884 Alaska | do | Mar. 3, 1972 | 7 | 15 |
| 0885 Vermont | do | Mar. 6, 1972 | | |
| 0886 Massachusetts | do | Mar. 7, 1972 | | |
| 0887 Montana | do | do | 1 | 9 |
| 0889 New Hampshire | do | Mar. 10, 1972 | | |
| 0890 New York | Flooding | Mar. 16, 1972 | 10 | 24 |
| 0891 North Dakota | do | Mar. 20, 1972 | | |
| 0892 Illinois | Hail and wind | Mar. 22, 1972 | 1 | 4 |
| 0893 New Hampshire | Fire | Mar. 23, 1972 | 1 | 1 |
| 0894 Texas | Flood | do | 172 | 542 |
| 0896 Washington | Tornado | Apr. 7, 1972 | 1 | 342 |
| 0898 Illinois | do | Apr. 13, 1972 | 4 | 18 |
| 0899 Ohio | Flood | Apr. 18, 1972 | 1 | 4 |
| 0900 Tennessee | Tornado | Apr. 19, 1972 | | |
| 0902 Indiana | do | May 16, 1972 | 5 | 21 |
| 0903 New York | Flood | May 17, 1972 | 5 | 16 |
| 0905 New Hampshire | Fire | May 26, 1972 | 4 | 8 |
| 0906 Alaska | Flood | June 2, 1972 | | |
| 0910 Massachusetts | Fire | June 13, 1972 | | |
| 0911 New York | Flood | June 21, 1972 | | |
| 0912 Massachusetts | do | do | | |
| 0913 Connecticut | do | June 22, 1972 | | |
| Total | | | 654 | 6,589 |

The Committee notes that there have been 37 Presidentially designated disasters, and 84 administratively declared disasters since January 1, 1971, including the disasters associated with Agnes and the Rapid City flood. The Committee agrees that the victims of all of these disasters should be treated in the same manner insofar as disaster relief legislation is concerned, and that it would be wrong and unfair to accord victims of particular disasters special treatment.

Moreover, the Committee notes that in the future other disasters may occur. For example, while this legislation was being discussed in the Committee, a serious new flood occurred in central Minnesota devastating as many as ten counties and the same number of large towns. The Committee agreed that victims of future disasters, like this one in Minnesota, should receive the same measure of relief under Disaster Relief legislation, which is accorded to victims of disasters which already have been declared. In no case, should people sustaining comparable injury be afforded lesser relief because of their location in different disaster areas.

Additionally, the measure provides for a consolidation of several existing special disaster loan programs and also includes a special provision under which the SBA will be able to extend disaster loan benefits to businesses adversely affected as a result of certain international agreements.

NEED FOR THE LEGISLATION

The Message of the President wherein he transmitted his proposal to aid the victims of Hurricane and Tropical Storm Agnes poignantly portrays the plight of disaster victims and the ensuing need for enactment of the measure. The President's message follows:

*"To the Congress of the United States:*

"Tropical Storm Agnes has caused unparalleled destruction in many areas of the eastern United States. More than 128,000 homes and businesses have been damaged or destroyed, and whole communities have been dealt a heavy blow. The losses to so many individuals cannot be measured only in terms of destruction of property and belongings; they must also be counted in terms of loss of jobs, disruption of families, personal privation, and anxiety about the future. In the whole history of our Nation, we have not before encountered such massive destruction over so widespread an area as a result of natural disaster.

"Individuals, private groups and governments have responded magnificently to this calamity in the finest tradition of neighbor helping neighbors. The stamina, the courage and the spirit to fight back and recover are already evident throughout the devastated areas. My statement of July 12, 1972 summarized these impressive efforts. I also pointed out at that time, however, that an unparalleled disaster requires extraordinary measures to help in recovery. I announced my intention to recommend to the Congress supplementary and massive measures aimed at short and long-term recovery. I herewith transmit those recommendations, and the proposed legislation to carry them out.

"My proposals are in three parts.

"First, I propose the Agnes Recovery Act of 1972. This measure deals with disaster loans for homeowners, farmers and businessmen. Because of the unprecedented scope of the destruction, unprecedented measures to deal with it are required. Under the provisions of this proposal, disaster loans for Agnes victims would be changed from present law in the following ways:

"The maximum amount of principal which can be cancelled or forgiven would be increased from $2,500 to $5,000 on loans made by the Small Business Administration or the Farmers Home Administration.

"The forgiveness feature would be applicable to the first dollar of a loan rather than after the repayment of the first $500 of principal as is now the case.

"The interest rate on the loans would be dropped to 1 percent instead of its current rate of 5⅛ percent.

"This liberalized assistance to individual homeowners and small businessmen can mean the difference between recovery and bankruptcy or ruin. The situation is urgent. Individual people are now making decisions on whether to rebuild or not. While my proposal would apply retroactively to all victims of Agnes, it is important to them to know now the terms of assistance which will be available to them.

"Therefore, I call on the Congress to respond to this emergency by acting on the Agnes Recovery Act so that it can become law within one week.

"Second, I recommend supplemental appropriations totaling $1,569,800,000 for this emergency, the largest single request of its kind in our history. The vast majority of these funds would be used for disaster loans, with $1.3 billion for the Small Business Administration and $1.8 million for the Farmers Home Administration. The SBA funds would be used to provide loans for homeowners and small businessmen in disaster areas whose property has been damaged or destroyed. The FHA funds would provide sufficient personnel to process expeditiously loan requests in rural areas, for which adequate loan funds now exist. Also included in my supplemental request are:

"An additional $200 million for the President's Disaster Relief Fund, to speed repair and reconstruction of public facilities and to provide temporary housing, food and unemployment compensation.

"$40 million for the Economic Development Administration, $16 million for the Appalachian Regional Commission and $12 million for the Corps of Engneers, all to assist in the recovery of damaged communities. The funds for the Corps of Engineers would go toward flood control projects in the Susquehanna River Basin.

"Third, I recommend that the existing authorization for appropriations for highway emergency relief he increased by $200 million. Current authority limits amounts to $50 million per year, which is clearly not adequate to cope with a disaster of this magnitude.

"I urge that the Congress also act promptly on these second and third proposals.

"The Federal Government must act quickly and decisively to do its part in providing relief and aiding recovery in a cooperative effort with the States and communities struck by Agnes. We can do no less. I am confident that the Congress will share this view."

EXPLANATION OF THE LEGISLATION

The disaster relief program administered by the Small Business Administration has been amended in the following manner:

1. Under the present law, disasters declared by the President or by the Administrator of the Small Business Administration both carry the same interest rate on the loan. However, only in a Presidentially declared disaster does the loan forgiveness feature apply. At present, disasters declared by the Administrator of the Small Business Administration are made for 30 years at an interest rate on the loan that is set monthly by the Secretary of the Treasury based on the cost of money to the United States Government and which is currently 5⅛%. In a Presidentially declared disaster, the interest rate is the same. However, after the borrower repays the first $500 of a disaster loan the next $2,500 is forgiven. The legislation today changes this by providing the same interest rate and forgiveness amount to both Presidentially declared disasters and those declared by the Administrator of the Small Business Administration.

2. The House-passed bill, H.R. 15692, contained a retroactive date of July 1, 1971. Your Committee amended the House-passed version to apply retroactively to January 1, 1971 and added an expiration date. H.R. 15692 as amended by your Committee would apply retroactively with regard to both Presidentially declared disasters and those declared by the Administrator of the Small Business Administration and will expire on July 1, 1973. It is obvious that a retroactive feature in legislation such as this will increase the burden that the Small Business Administration staff presently has in dealing with natural disasters. In fact, testimony received during the Committee hearing indicated that particularly with regard to disaster relief loans to homeowners that SBA's responsibility in disasters often results in the agency's inability to efficiently handle its primary duty of assisting small business. This situation prompts your Committee to feel that the function of handling homeownership disaster loans might well be placed as the responsibility of an agency that has more expertise in that area.

With regard to this legislation, the Committee's intention is that retroactive adjustments to existing loans should not be given priority over pending applications. Further, it is your Committee's belief that the Small Business Administration in applying the retroactive provisions of this Act would accept new applications based on prior disasters that were not previously filed or approved. Your Committee also feels that the retroactive feature of this bill would allow previously approved applications to be adjusted to a larger total amount. However, applications previously rejected would not be reconsidered by the SBA. It is your Committee's position with regard to new applications submitted or adjustments to previously accepted applications that the provisions of the legislation requiring proof of loss and bona fide estimate of repairs would definitely apply.

Your Committee included in this legislation a provision requiring the President to conduct a thorough review of existing disaster relief legislation and to report to Congress not later than January 1, 1973 on specific legislative proposals for comprehensive revision of disaster relief legislation. It is the feeling of your Committee that previous attempts by Congress to establish a comprehensive disaster relief program have not been successful as is evidenced by the legislation before us today. The Disaster Relief Act of 1970 was passed by Congress to establish a permanent ongoing program. However, as has happened so often in the past when extremely severe disasters strike there is an immediate reaction to pass additional disaster relief legislation. Your Committee is concerned that this is not the proper and best intentioned approach and by terminating this legislation at the end of this fiscal year the Committee intends that a national disaster relief program could be established on a permanent basis that would improve the execution of the program by eliminating unnecessary administrative procedures and reducing the number of agencies involved in disaster relief programs and prevent the misuse of benefits.

Your Committee concludes that a permanent disaster relief program is of utmost importance. Disaster victims must be assured that they will receive the same type of assistance as is granted to other victims and only a comprehensive program can bring about that result.

3. Under the present law, interest rates on disaster loans are established monthly on the cost of money to the United States Treasury. H.R. 15692 as passed by the House contained a variable interest rate. Under the House-passed bill if the borrower elected to receive forgiveness then the interest rate on the outstanding loan would be at 3%. If, however, he elected not to receive the forgiveness feature then the entire loan would be at 1%. Your Committee amended the interest rate provision of the House-passed bill by establishing a single interest rate of 1%. The legislation provides that for loans made previous to enactment but are included retroactively that the 1% interest rate would apply only to the outstanding balance as of the date of enactment of this legislation.

4. Under present law, a forgiveness of $2,500 of the total amount of the loan is provided after the borrower repays the initial $500 of the loan. H.R. 15692 as passed by the House removed the initial $500 repayment amount but left the forgiveness at the present $2,500. Your Committee amended the House-passed bill by providing for a forgiveness of $5,000 without an initial repayment requirement. With regard to the forgiveness part of the legislation, this section would also apply retroactively to January 1, 1971 but in no case would the total amount of forgiveness exceed $5,000. Also, by granting to the Administrator of the Small Business Administration similar authority for Small Business Administration declared disasters as for Presidential the $5,000 forgiveness feature of the bill would also apply retroactively to January 1, 1971.

5. The bill also tightens up on the requirements for obtaining a loan. It requires that the borrower must provide SBA with proof of loss, damage or injury and a bona fide estimate of the cost of repair, rehabilitation or replacement. And to make certain that the borrower uses the proceeds of the loan as intended, in addition to the criminal penalties available under existing law, the legislation provides that if the proceeds of the loan are misapplied, the borrower shall be liable to the Small Business Administration in an amount equal to 1½ times the amount of the loan.

6. Your Committee also amended the House-passed bill by including two sections. Section 2 incorporates the provisions contained in S. 1649 and S. 3725. This bill would repeal Sections 5 and 6 of Section 7(b) of the Small Business Act dealing with economic disasters and replace these sections with a new consolidated Section 5 which covers the repealed parts of the Act. This section has been prompted because of several amendments dealing with issues such as the Coal Mine Safety Act, the Wholesome Meat Act, and the Occupational Safety and Health Act which provide loans to small businessmen with an interest rate based on the monthly cost of money to the United States Treasury, The new Section 2 of H.R. 15692 does not change the interest rate but only provides language authorizing SBA to assist small business concerns meeting requirements imposed by any Federal law or any State law enacted in conformity therewith if such concern is likely to suffer substantial economic injury without assistance.

Section 2 also amends the House-passed bill by adding a new section designed to assist small businessmen economically injured as a result of the recent SALT agreement. This section also provides loans at an interest rate based on the monthly cost of money to the United States Treasury. Your Committee is convinced that the impact that the President's announcement of the SALT agreement had on small businessmen is of a type that justifies this action.

COST OF THE LEGISLATION

Inasmuch as there is no way of predicting either the number or scope of disasters which will occur prospectively, no definitive cost figures can be projected for the 30-month liberalization; however, SBA officials have carefully analyzed loans heretofore made which will be affected. Expenditures, in the form of loss of income to the Treasury, aggregating more than $150 million and administrative costs of $75,000 are anticipated as follows:

| | Period of disaster declaration | | |
|---|---|---|---|
| | Jan. 1, 1971, to June 30, 1971 | July 1, 1971, to May 30, 1972 | Jan. 1, 1971, to May 30, 1972 |
| Number of loans | 61,685 | 40,616 | 101,301 |
| Dollar value of loans | $225,662,000 | $125,705,000 | $351,367,000 |
| Existing forgiveness | 114,849,000 | 36,405,000 | 151,254,000 |

| | Period of disaster declaration | | |
|---|---|---|---|
| | Jan. 1, 1971, to June 30, 1971 | July 1, 1971, to May 30, 1972 | Jan. 1, 1971, to May 30, 1972 |
| Incremental cost: | | | |
| Incremental forgiveness (Presidential and SBA) | $87,125,000 | $58,398,000 | $145,525,000 |
| Interest lost (prospectively) | 7,645,000 | 6,682,000 | 14,327,000 |
| Total incremental cost | 94,772,000 | 65,080,000 | 159,852,000 |

SUPPLEMENTAL TO COST ESTIMATE SUMMARY OF DISASTER LOANS APPROVED ON DISASTERS DECLARED BETWEEN JAN. 1, 1971, AND JUNE 30, 1971

| | Presidentially declared disaster areas | Non-Presidentially declared disaster areas | All areas |
|---|---|---|---|
| Number of loans | 61,531 | 154 | 61,685 |
| Dollar value of loans | $223,392,000 | $2,270,000 | $225,662,000 |
| Existing forgiveness | 114,849,000 | ---------- | 114,849,000 |
| Incremental cost: | | | |
| Incremental forgiveness | $86,421,000 | $706,000 | $87,127,000 |
| Interest lost | 7,587,000 | 58,000 | 7,645,000 |
| Total incremental cost | 94,008,000 | 764,000 | 94,772,000 |

CORDON RULE

In the opinion of the Committee, it is necessary to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate in connection with this report.

SUPPLEMENTAL VIEWS ON H.R. 15692

In view of the catastrophic floods which occurs in June, and the coming elections in November, we can understand the Committee's decision to increase substantially the benefits available under the disaster assistance program. In addition, we applaud the extension of uniform benefits to victims of SBA-declared and Presidentially-declared disasters. Disaster victims will no longer have to live in an area which has suffered enough damage to merit the aid of 32 federal agencies before they can receive substantial help for repairing their homes or small businesses.

We cannot support, however, the specific terms of the increased assistance or the time period for which those terms will apply. In particular, we object to the fixed forgiveness grant of $5000 and the bill's effective date of January 1, 1971.

The proposed forgiveness arrangement does not speak to the differing amounts of damage suffered by disaster victims nor to their differing ability to pay for repairs. Everyone is eligible to receive the same $5000 grant and 1% loan, regardless of whether he is rich or poor and irrespective of the amount of damage suffered. The government pays the $5000 just as readily to a millionaire for repairing his tennis court as it does to low-income families who need it to put their silt-covered homes back into livable condition.

To make matters worse, the generous grant provisions have in the past encouraged homeowners to inflate their estimates of property damage and to seek government assistance when they have little or no legitimate claim. It is no accident that in the first 9 months after last year's California earthquake. 14% of the applicants for assistance asked for exactly $3,000 or less, thereby having to repay only the minimum $500 loan. Far too many of these people used government money to remodel their homes, buy a new boat, or take a vacation.

We believe it would be far more equitable to adjust the amount of forgiveness according to the amount of damage sustained and the individual's ability to absorb the loss. Such a proposal would also substantially reduce the incentive for fraud which plagues the present program and the proposed legislation. Senator Taft's motion for such an amendment was defeated in Committee by a 7–7 vote.

Under this approach, homeowners and small businessmen affected by SBA-declared or a Presidentially-declared disaster would have been offered a low-interest loan, with between 20 and 100% of the principal forgiven up to a maximum of $5000. The percentage of principal forgiven would be determined on a sliding scale related to the borrower's last year's income (or for a borrower who retires or becomes disabled in that year or in the year of the disaster, his next year's income as estimated by the Administrator of SBA). The percentage forgiveness would be 100% for those people with incomes of $6000 or less, and would drop by 4% for each additional thousand dollars of income which the person made in the last taxable year. This approach would apportion government subsidies according to a person's ability to pay for repairs and the absolute amount of damage suffered.

The Administration took account of the importance of correlating disaster benefits with financial need when several months ago they sent to Capitol Hill a bill abolishing forgiveness and substituting low-interest loans with benefits varying according to the adjusted gross income of the victim. That philosophy, and the one we espouse here, would have provided maximum forgiveness to people who have suffered real hardship. By reducing the forgiveness available to those whose suffering has not been extensive, it would save the government considerable money while still providing such people with a heavily subsidized interest rate and, in some cases, a rather large grant. Lower grants to wealthier people would help the government bear the expense of increasing assistance to the people who really need it. In addition, the requirement to pay back most of the loan principal would reduce the incentive for fraud by people who have suffered little hardship.

We feel that the effective date of January 1, 1971 causes severe problems. There is no equitable way to provide retroactive relief to some disaster victims and deny it to others. For example, why should we provide further assistance to victims of Hurricane Doria, which occured one year ago, and not provide that same additional assistance to the victims of Texas Hurricane Celia of 2 years ago? For that matter, why not cover the Cleveland windstorm of 1969, the Alaska earthquake of 1964, the Delaware hurricane of 1962, or the San Francisco earthquake of 1906? Proponents of retroactivity have failed to give any reasonable explanation for choosing any date prior to one which covers only the Agnes and Rapid City disasters that prompted the legislation.

In addition, the effective date of January 1, 1971, would place a major administrative burden on the SBA. The agency would be required to review over 102,000 disaster loans which were made as a result of 36 Presidentially-declared disasters and 87 SBA-declared disasters during the last 19 months. This task would include reinterviewing many of these borrowers and receiving additional certification of their property damage. Nor should we forget that with limited manpower, SBA will be handicapped in carrying out its major responsibility of assisting fledgling businesses.

Even if one makes the unfounded assumption that no new loans will be made nor outstanding loans augmented for damages related to disasters which have already occurred, the cost of the government's retroactive generosity has been estimtaed to be approximately $160,000,000.

It has taken two of the worst castastrophes in our history to prod the government into considering the kind of relief measures that disaster victims really need. The legislation reported from the Committee, perpetuates the deficiencies in present law and creates some additional ones. Let us hope that changes along the lines we are suggesting will be made on the Senate Floor, so that the tragedies will instead result in the kind of legislation that will provide disaster relief on a fair rational and efficient basis.

BILL BROCK.
ALAN CRANSTON.
BOB PACKWOOD.
WILLIAM V. ROTH, JR.
ROBERT TAFT, JR.

Mr. McINTYRE. Mr. President, I wish to read the section of the bill which deals with the cost of the legislation:

COST OF THE LEGISLATION

Inasmuch as there is no way of predicting either the number or scope of disasters which will occur prospectively, no definitive cost figures can be projected for the 30-month liberalization; however, SBA officials have carefully analyzed loans heretofore made which will be affected. Expenditures, in the form of loss of income to the Treasury, aggregating more than $150 million and administrative costs of $75,000 are anticipated.

The PRESIDING OFFICER. The Sentor from Texas is recognized.

Mr. TOWER. Mr. President, I yield myself such time on the bill as I may require.

Mr. President, I believe that the disaster assistance bill we have reported from the Banking, Housing and Urban Affairs Committee is a most important and necessary piece of legislation, and I urge my colleagues in the Senate to give it their support. Our country has been ravished in the last couple of years by an unusually lengthy procession of hurricanes, tornados, floods, fires, explosions, hail and wind storms, and earthquakes. Our people have been battered about by these forces from one end of the country to the other. Our existing disaster assistance programs have helped victims to recoup something of the property damage they have suffered, but the scale of the damage done by the recent Hurricane Agnes and by the Rapid City flood have shown the inadequacy of the existing assistance programs to do a satisfactory job of helping people to rebuild their lives and communities after major disasters strike. The damage done by Hurricane Agnes has shown many people in areas rarely hit by major winds and flooding what a hurricane can do, and hence we seem to have stronger support in Congress now for a more realistic disaster relief loan interest rate and related assistance. My State has borne the brunt of more hurricanes probably than any other area of the country, and my constituents have been long and frequently familiar with the type of devastation that people of other areas have experienced in these recent disasters.

The principal provisions of the new bill will be the increasing of forgiveness on disaster loans from $2,500 to $5,000

and expansion of this aid to SBA-declared disasters as well as to Presidential disasters; the lowering of interest rates on disaster loans to 1 percent from the present Treasury-bill rate—around 5 percent—and the retroactive coverage of this legislation to January 1, 1971. In setting this date, we have pushed the limits of fiscal feasibility in trying to make as many disaster victims as possible eligible for this increased assistance.

There is no other distinction that we can offer to the Senate in this regard than financial feasibility; certainly everyone recognizes that the victims of disasters prior to January 1, 1971, suffered as much as victims of disasters after that date, and are equally deserving of assistance. Our only problem is, how much retroactive expense can the Government bear and still be responsible in its management of the budget. There is simply a feasible limit on the degree to which we can backdate this aid, and the committee chose January 1, 1971, as that date. The House bill chooses July 1, 1971, to which I am inclined myself, in view of the already too great deficits we are running.

In my State of Texas alone, there have been three major disasters in recent months, and a number of smaller tornado-caused disasters in that same period. In May of this year, we had a major flooding problem in the San Antonio area of Texas which caused serious property damage to homeowners, farmers, and businessmen. In December 1971 we also had a flood in northeast Texas which similarly caused serious property damage. In the fall of 1971 we were hit by a severe hurricane—Fern—which did considerable damage along the Texas coast and was among the largest disasters in recent years. The people of my State know something of the damage and suffering that accompany these terrible natural phenomena, and I can speak for the thousands of them who have been through these disasters by advocating to this body the need for more and better disaster assistance. The earlier we can act on and approve this measure, the sooner such aid can be helping these people restore their homes and businesses.

I think that the idea which has been advanced by the distinguished Senator from New Hampshire (Mr. McINTYRE), that we have to have some comprehensive study and review leading to some kind of new disaster relief that will remove all the nefarious character and multiplicity that goes with some 31 different agencies that are now involved in disaster relief, has merit. I hope at some time this will come into being and that we can come to the Senate with comprehensive disaster legislation, rather than have to legislate every time a disaster occurs.

TO RESTORE AMERICAN COMMUNITIES

Mr. McGOVERN. Mr. President, it has been 8 weeks since the flood hit Rapid City, S. Dak.

In a population area of less than 100,000 people, it took 240 lives, left 1,500 families homeless, damaged or destroyed hundreds of businesses, threw more than a thousand people out of work, and worked more than $150 million in property damage.

The dead have been buried, the missing located, for the most part—and now the people of that area are settling in for the long job of rebuilding.

The shock is beginning to wear off. People are beginning to take stock of the staggering blow which has been dealt.

And now we are learning some things that our friends on the east coast will also realize as time passes and the early wreckage is cleared away.

At first, after the flood, there was a wave of heroism—not only on the part of the flood victims, but by everyone else in the community.

That heroism, that spirit, that courage is still there. But it is being tested to its extreme limits.

Cold weather is only a few months away, Mr. President, and we have hundreds of families still living doubled over in the homes of family and friends. Many are living in tents, in camp trailers. Some, even, are living in their cars.

It puts a strain on the community.

People, quite frankly, are becoming frustrated.

They realize now what they have lost, and they realize that even if our Federal programs worked to the optimum, it would not be enough.

They are frustrated with Government indecision. My mail from the flood area now reveals frustration about buck-passing, about indifference, and it reveals a fear by many people that so very much has been lost that it will take 10 years, if not more, before the community gets back to normal.

The people running the emergency housing program are confident that they will have provided everyone with emergency housing within a few more weeks. That would be a record, and we should be grateful.

But then they look at the long term, and they begin to worry.

They worry because they have now realized that the flood not only cut a swath through the town—it bludgeoned the local economy.

And so they are asking for 1 percent disaster money. And they are asking for the maximum amount of forgiveness that Congress will find reasonable.

It is asked on behalf of the man who hand-builds furniture for a living, who quite nearly had his small shop paid for, who returned the morning after the flood to find his shop completely gone, who could not find so much as a drawer board, who could not find a single one of his precious hand tools, and who now must rebuild. There are hundreds like him. Some were a little luckier, but many got it worse.

We are asking for this aid on behalf of the families who lost a son or a brother or a mother or a breadwinner—and who also lost their homes and everything in them.

We are asking on behalf of the young married couple soon to have a second child—but no home to bring him to.

We are asking on behalf of the elderly who lost all they had to show for a lifetime of work.

We are asking on behalf of the thousands of homeless—who now must start over—in whole or in part—not only on the house but on everything in it.

They will work hard to rebuild, Mr. President, but remember that they are doing it in an economy which has been dealt a devastating blow.

At first glance something like 90 percent forgiveness, or even 50 percent, seems like a lot.

But to the family that owes a mortgage of tens of thousands of dollars on what is now a hole in the mud, or a heap of rubble, it means the one real chance to get a new home and get on with the business of rebuilding.

To the senior citizen, it means shouldering a loan he can reasonably hope to repay.

To the businessman, it means the chance to get going full scale again—to start over with inventory, equipment, plant, and payroll, somewhere near what, it used to be.

To all of them, and to the community at large, it means the chance to get on with a huge task without the leg irons of debt, of life's work washed down the creek.

It means expanding the credit available to our community—and we will need a dramatic expansion. Mostly it means wiping the slate clean for people and businesses who, through no fault of their own, have been saddled with grief and destruction, and terrible loss.

Mr. President, we are talking here about the bread-and-butter people of a community. We are talking about those who keep a community going—who earn their livings, and who provide the substance of what makes an average American community tick.

I have heard so many of them say, "I work for a living. I do my part. I have never asked for anything, but now I must."

Mr. President, the tools we have provided for disaster relief are woefully, tearfully, shamefully inadequate.

We can afford to do better.

H.R. 15692 will provide both individual homeowners and small business entrepreneurs—those hit hardest by the flooding—with increased disaster relief by raising the loan ceiling to $5,000, lowering the interest rate to 1 percent, and accepting loan requests retroactive to January 1, 1971. Thus, this legislation will greatly affect the ability of the small businessman and the private homeowner to recover from the disastrous losses which resulted from the recent flooding.

The courage of Rapid City Mayor Don Barnett, and of his fellow citizens, must be matched by our full commitment to the reconstruction of the Black Hills area. Only if this funding is approved will the residents of Rapid City return to lives of domestic prosperity—while the citizens of the remainder of the Nation will once again have the opportunity of visiting and savoring the beauty and history unique to this part of our great country.

If we can afford to send on the range of $45 million to these good people, it would mean that they could wipe the slates clean—they could start over fresh.

It would be less than a third of what we have given to other countries for disaster relief in the last 6 years.

And it would be for our own people, and to bring our own communities back to life and health.

Mr. BIBLE. Mr. President, may I direct my remarks particularly to section 2 of the pending bill which incorporates my bill, S. 1649, and was cosponsored by Senators CANNON, HUMPHREY, MCGOVERN, NELSON, and SPARKMAN, to authorize Small Business Administration economic disaster loans. The purpose would be to bring small firms into compliance with mandatory Federal environmental, sanitary, and safety laws, as well as regulations of State, regional, and local governmental authorities based on Federal statutory authority.

Since 1968, the Select Committee on Small Business has proposed a mechanism on the law to permit small firms have access to the capital they need to adjust to the standards imposed by laws in these cases. Such laws often have short term deadlines, which can create crisis for business every bit as serious as natural emergencies.

This interest was prompted by action that Congress has taken in the last 7 years in enacting legislation for the protection of our national environment and the American consumer. These and related bills constitute an enviable record of achievement for Congress in coping with problems arising in an urbanized and highly technological society. But with this, it became apparent that these new statutes called for further rounds of substantial investment by businesses for improvement, and frequently new and costly plant equipment.

In explanation, section 2 of the pending bill would consolidate three subsections of the Small Business Act, which are now on the statute books, into a single action. It would provide general authority to SBA to make loans so that small businesses can comply with requirements imposed by any Federal environmental, consumer, health, and sanitary law—or any State, regional, and other laws enacted pursuant to such Federal authority in these fields.

Section 2 of the pending bill was first introduced 3 years ago to provide "compliance loans" authority. Subsequently, it has been written into three laws, the Coal Mine Safety Act of 1969, the Occupational Safety and Health Act of 1970, and the Eggs Product Inspection Act of 1970, the later likewise extending loan compliance eligibility to small businesses affected by the Wholesome Meat Act of 1967 and the Wholesome Poultry Products Act of 1968.

However, this covered only part of the field, and a piecemeal approach could not give Congress the assurance that it would ever be fully covered. Further, the Small Business Administration was not encouraged by this approach to take an overall view of the subject, or to act in a comprehensive manner. The present section 2 of the bill would promote uniformity, in administration, and would provide a basis for planning, to the end that small businesses may become true partners in national progress rather than its victims.

SBA and the administration will have to move rapidly to implement this section, because plant closings are rapidly occurring all over the country under air and water pollution and other environmental and disaster deadlines. The action must be more rapid than that which occurred in 1970, when it took nearly a half-year before SBA was prepared to accept meat plant loan applications. The American people deserve something better than this tardy response.

This legislation will increase the responsibility of the administration to provide adequate funds for study, for planning, and for loans. We must prevent a massive exodus of small businessmen from many branches of industry in which they have helped to keep prices low, and services at a high level and innovation flourishing.

This pressure of being "legislated out of business' is very serious for thousands of small firms, and our select committee intends to follow the situation closely.

I believe that the Banking Committee should be commended for calling attention to the problems created for the small business community and the SBA concerning mobilization of SBA personnel to operate in natural disaster areas. Despite its small size as a Federal agency, SBA can be proud of its principal role in the disaster relief programs of the Federal Government, and of its emergency responses to the business, property, and human needs of disaster victims.

The committee report on this bill points out that there have been 37 Presidential and 84 SBA declared disasters since January 1, 1971. SBA was on the job each time, and so far over 102,000 loans have been dispersed in these areas.

Another wise feature of this bill is its call for comprehensive review of disaster relief legislation during the period prior to June 30, 1973.

I applaud this recommendation, and hope that serious consideration will be given to removal of the SBA's current function of handling homeownership disaster loans to an agency that has more expertise in the housing area, such as the Department of Housing and Urban Development. I hope the inquiry will extend to such estimates as may be readily available to determine the man-hours spent on these duties, because these are hours not devoted to the financial, management, and technical assistance on small business for which SBA was established.

Accordingly, I feel that H.R. 15692 is in the best interest of small businesses which have suffered in recent natural disasters and for those others who are under compliance deadlines of Federal statutes.

Mr. CHILES. Mr. President, I am voting today to support H.R. 15692, the bill to amend the Small Business Act to reduce the interest rate on Small Business Administration disaster loans.

Tropical Storm Agnes, causing unparalelled destruction in many areas of the United States, including my own home State of Florida, clearly defined for us the need for enactment of a law which would supplement the assistance which SBA has provided victims of disasters in the past. Liberalization of the existing loan program became an obvious need when we encountered the massive destruction, some of which I saw firsthand, over much of the eastern portion of the country in June of this year.

I share the President's views as outlined in his message to the Congress when he commented on the stamina, courage, and spirit to fight back and recover that have already been evident throughout the devastated areas.

The measures included in the bill before the Senate today would provide the extraordinary assistance needed to help in recovery when an extraordinary disaster such as Tropical Storm Agnes occurs. Homeowners, farmers, and businessmen need help beyond that so generously and spontaneously offered by individuals, private groups, and local governments. And the Federal Government must respond to the calamity in proper proportion to the extent of the damage inflicted.

It is unfortunate that it takes terrible catastrophes to prod the Government into considering the kind of relief measures that the victims of disaster really need. But I am hopeful this legislation will put an end to the deficiencies in the present law and provide the best possible relief on an equitable basis.

Mr. BEALL. Mr. President, we consider today a bill of extreme and urgent importance, H.R. 15692. It is a bill that is designed to turn despair into hope, and disaster into reconstruction. It is legislation that promises the opportunity of a new life to those who have had, and will have to bear the terrible burden of disaster. It is much needed legislation, and I am proud to support it.

Unfortunately, it took two of the worst catastrophes in our history to point out the critical need for a reform of disaster assistance. I do not need to remind anyone here of the terrible consequences of the South Dakota floods, nor of the destructive fury of tropical storm Agnes as she wrought havoc upon the eastern seaboard. Since my State was among the victims of Agnes, and declared a disaster area by the President, I know all too well of its almost unbelievable impact.

In Maryland the devastation was almost beyond comprehension.

Only now are the figures beginning to come in, and the estimates tragically attest to the storm's force. Damages to roads and bridges have been estimated by State civil defense authorities at $34 million. Approximately 3,000 homes and 300 to 400 small businesses were damaged or destroyed. Agriculture losses to crops and farms will reach the $24 million mark. About $12 million damage was done to water and sewer systems. Debris clearance has already reached $9 million. The statistics go on and on. My State is but one example of the effects of natural disasters. But it clearly indicates the magnitude of Agnes, and the potential of other disasters on the people of this Nation.

The losses as a result of Agnes and other disasters cannot be measured solely in terms of lives lost, or dollars of destruction. It must also be assessed in terms of human suffering. When one calculates the effect of a natural disaster, one must remember the countless families who were displaced. He must remember those who experienced long periods of unemployment, disruption,

and deprivation. It is to all of these needs that we concern ourselves with today.

This legislation supplements the assistance which the Small Business Administration has provided victims of disasters which occur from the period beginning January 1, 1971, and ending June 30, 1973.

It provides benefits of up to $5,000 in grants and 1 percent on the balance of uninsured losses. Clearly, it is a major step in the liberalization and improvement of disaster relief.

This legislation will retroactively include the more than 100,000 disaster loans totaling nearly $350 million that have been placed since January 1, 1971, in the books on the Small Business Administration. Since that date, there have been 37 Presidentially designated disasters and 84 administratively declared disasters. This bill would bring under coverage all the victims of these disasters, allowing them the support they so urgently need.

Mr. President, the Congress cannot delay a moment longer. The victims of natural disasters desperately need the assistance that this measure provides. This help will mean the difference between success and failure for many thousands of people. It will be a valuable boost in helping these victims get back on their feet and repair the damage that nature has left. I, therefore, urge favorable action of H.R. 15692.

Mr. ROBERT C. BYRD. Mr. President, I wish to express my appreciation to the chairman of the subcommittee, Mr. McINTYRE, and other members of the Senate Committee on Banking, Housing and Urban Affairs for their diligence and perseverance in developing and reporting H.R. 15692, to amend the disaster relief section of the Small Business Act.

On July 18, 1972, I wrote to the committee and requested it to include a retroactive provision in this legislation in order that the SBA forgiveness feature and other expanded assistance to disaster victims would include those unfortunate victims of the Buffalo Creek Valley flooding disaster which occurred in Logan County, W. Va., on February 26, 1972. I also talked with Mr. McINTYRE by telephone about this matter.

The Buffalo Creek Valley disaster left over 500 homes destroyed, 118 dead, over 1,000 persons injured, and many schools and businesses totally destroyed or badly damaged. This was the worst flood disaster in the history of the State of West Virginia.

When I requested that this legislation be made retroactive, I did so because it would be totally unfair to further victimize these unfortunate citizens, adversely affected by that disaster, by using an arbitrary calendar date to determine which American citizens deserve what percentage of Federal disaster assistance. I believe then, and I still believe that it is both just and fair that all disaster assistance be determined on an equitable and uniform basis.

I support H.R. 15692, and urge its passage. I am convinced that existing legislation does not provide the Small Business Administration with sufficient authority to provide the degree of assistance needed, nor does it provide SBA with power to deal with fraudulent claims or misappropriations of funds by SBA borrowers. This legislation contains the necessary civil penalties to deal with those situations, when they arise.

This bill also amends existing law to provide that the interest rate and the forgiveness feature will be the same for both Presidentially declared disasters and those declared by the Administrator of the Small Business Administration and establishes a uniform interest rate of 1 percent for both types of disaster loans. Presently, a disaster victim may borrow $3,000 and receive forgiveness on $2,500 provided that he repays an initial $500. This legislation removes the initial payment requirement and increases the amount which will be forgiven to $5,000.

I believe this is a fair and equitable bill, and I urge its passage.

AMENDMENT NO. 1382

Mr. TAFT. Mr. President, I call up my amendment No. 1382 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will read the amendments.

The assistant legislative clerk read as follows:

On page 7, strike lines 8 through 16 and insert in lieu thereof the following:

"(C) shall, notwithstanding the provisions of any other law and upon presentation by the applicant of proof of loss or damage or injury and a bona fide estimate of cost of repair, rehabilitation, or replacement, cancel 100 per centum of the principal of any loan made to cover a loss or damage or injury resulting from such disaster, except that—

"(i) the total amount so canceled shall not exceed $5,000, and

"(ii) the per centum of the principal of the loan to be canceled shall be reduced by 4 for each $1,000 by which the borrower's income exceeds $6,000, but in no case shall such per centum be less than 20, and make the balance of the loan at an interest rate of 1 per centum per annum up to a maximum loan of $10,000: *Provided*, That on loans in excess of $10,000, the interest rate shall be 2 per centum on that amount of the loan over $10,000.

For the purpose of this clause (C), 'income' means—

"(i) except in the case of a borrower who retires or becomes disabled in either the taxable year in which the loss or damage is sustained or the preceding taxable year, or in the case of a borrower which is a corporation, adjusted gross income, as defined in section 62 of the Internal Revenue Code of 1954, reduced by $300 for each deduction for personal exemptions allowable to the borrower under section 151 of such Code, for the taxable year preceding the taxable year in which the loss or damage is sustained,

"(ii) in the case of a borrower who retires or becomes disabled in the taxable year in which the loss or damage is sustained or in the previous taxable year, adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, reduced by $300 for each deduction for personal exemptions allowable to the borrower under section 151 of such Code, as estimated by the Administrator for the taxable year after the taxable year in which the loss or damage is sustained, and

"(iii) in the case of a corporation, taxable income, as defined in section 63 of the Internal Revenue Code of 1954, for the taxable year preceding the taxable year in which the loss or damage is sustained."

On page 8, after line 10, insert the following:

"(c) any person who (A) suffers any loss or damage as a result of a major disaster as determined by the President which occurred prior to the date of enactment of this Act, (B) is eligible for assistance under the amendment made by subsection (a), and (C) is eligible under existing law for benefits greater than those provided by the amendment made by subsection (a), may elect to receive such greater benefits."

Mr. TAFT. Mr. President, Hurricane Agnes has left over $1.9 billion in destroyed property and more than 150,000 of our citizens homeless. In Pennsylvania, damage exceeded $1 billion. Even my own State of Ohio, which was on the periphery of the storm, suffered over $3.3 million in property damages.

In view of the tremendous needs of so many victims of Hurricane Agnes and the Rapid City floods, as well as the proximity of election day, the Senate is under great pressure to increase the level of disaster assistance as quickly as possible. Without question, we are legislating "under the gun." I, nevertheless, offer my amendment to restructure the assistance available to disaster victims at this time, because I believe that despite all the pressure to simply increase the benefits across the board, the Senate should not miss this opportunity to enact a more rational approach to disaster relief than the one presently in effect.

I share the feelings of the chairman of the subcommittee that it is desirable to take a hard look at this question, but I see no reason why, after the study that went on and the protracted discussions in the Committee on Banking, Housing and Urban Affairs, we should hesitate at least to take a step in the correct direction to eliminate some of the problems that have occurred in regard to the administration of the disaster relief program in the past.

I do not say the amendment I offer is an answer to the total problem, but I think it is a feasible step, and a step in the right direction.

My amendment would offer homeowners and small businessmen affected by an SBA-declared or presidentially declared disaster a low-interest loan with between 20 and 100 percent of the principal forgiven up to a maximum of $5,000. The percentage of principal forgiven would be determined on a sliding scale related to the borrower's last year's income—or for a borrower who retires or becomes disabled in that year or in the year of the disaster, is next year's income as estimated by the Administrator of SBA. The percentage for forgiveness would be 100 percent for those people with incomes of $6,000 or less, and would drop by 4 percent for each additional thousand dollars of income, which the person made in the last taxable year. The interest rate would presently be 1 percent on the first $10,000 of the loan principal, and 2 percent on the remaining principal.

I say "presently" because it is my intention, at the close of my remarks, to modify my amendment to eliminate the 2-percent requirement. Certain applications have been called to my attention, particularly in Wilkes-Barre, Pa., in which the amount of loans for personal residences apparently will be extremely heavy and the burden of the additional

1 percent in those cases might under present circumstances be unduly harsh and unjustified. I think, however, that a 2-percent rate on principal over $10,000 might be desirable when we get down to reconsidering the matter and getting into permanent legislation.

This approach would apportion Government subsidies according to a person's ability to pay for repairs and the absolute amount of damage suffered.

My amendment also includes a provision to insure that those few victims of disasters occurring before the enactment of this legislation who would be worse off under the provisions of my amendment than under present law can claim the benefits presently available.

It is, in effect, a grandfather clause.

Some illustrations of how my amendment would work may be helpful at this point. Under my amendment a person with $5,000 damage will receive a $5,000 grant if his income is $6,000 or less, a $4,000 grant and a $1,000, 1 percent loan if his income is $11,000, and a $1,000 grant with a $4,000, 1 percent loan if his income is $26,000 or more.

If his income were in between those amounts, then it would be apportioned accordingly.

A person with $12,500 damage will receive a $5,000 grant and a $7,500, 1 percent loan if his income is $21,000 or less, and a $2,500 grant with a $10,000, 1 percent loan if his income is $26,000 or more.

The committee proposal which provides $5,000 grants and 1-percent loans regardless of income, recognizes the necessity for increasing the assistance available to victims of floods and other disasters. I wholeheartedly agree with this position. I have therefore structured my amendment to provide benefits greatly exceeding those which the Congress felt were adequate in less disastrous times. For example, under my proposal a person with $10,000 in property damage would receive at least $3,075 more as a subsidy than under present law if his property is located in a presidentially declared disaster area. If his property is located in an SBA-declared disaster area, he would receive at least $7,076 more than under present law. The only people who would be worse off under my legislation than under present law would be victims of future disasters with relatively high incomes and relatively little property damage. If the necessity to assume loan payments immediately after the disaster occurred would cause a substantial hardship to any of these people, under the provisions of H.R. 15692 they could defer such payments for up to 5 years.

Both my proposal and the committee's proposal call for a substantial increase in disaster assistance. I believe that my proposal, however, would be an improvement over the committee's proposal for apportioning disaster relief in these three ways:

First, by relating the amount of forgiveness to the amount of hardship inflicted, it distributes benefits in a more equitable manner.

Under the $5,000, 1-percent approach, a millionaire could obtain a grant of up to $5,000 for any needed repairs to his tennis courts, and a 1-percent loan for any such expenses exceeding $5,000. He is given the same amount of help as a low-income family whose home has been washed away.

I believe that the provision of this much assistance for people who have suffered little real hardship is an overly generous utilization of Government money. By limiting the forgiveness available to these people, we would be saving the Government considerable money while still providing them with a heavily subsidized interest rate and, in some cases, a rather large grant. These savings would make the expense of drastically increasing assistance to the people who really need it more bearable.

Second, the requirement to pay back most of the loan principal will reduce the incentive for fraud by people who have suffered little hardship.

The widespread fraud which resulted in California from the $2,500 forgiveness provision has been well documented. Fourteen percent of the applicants for assistance asked for exactly $3,000, thereby receiving the maximum forgiveness and the minimum required loan. Far too many of these people used Government money to remodel their homes, buy a new boat, or take a vacation. There might still be some incentive for inflating claims under my approach, but the limitation on forgiveness should reduce this incentive considerably.

Third, the 2-percent interest rate rather than a 1-percent rate on principal over $10,000 would save the Government considerable money that often does not help those most in need.

The bill's 1 percent overall rate would only help significantly those who have large loan principals. In many cases a large loan principal is an indication that an applicant owned considerable property in the first place, and therefore probably has the resources so that the disaster did not leave him helpless. The chairman of the Small Business Subcommittee, which first considered H.R. 15692, recognized this factor when he introduced legislation calling for 1 percent interest rate on the first $10,000 of loan principal, a 3-percent rate on the second $10,000, and the cost of money to the U.S. Treasury on any principal exceeding $20,000.

In any case, on a $20,000, 25-year loan the provision of a 2 percent interest rate rather than a 5-percent rate would result in a reduction of interest costs of $9,866—the present rate is 5⅛ percent. When coupled with the increase in forgiveness over present law, this means that on a $25,000 loss we would be in most cases providing a $12,500 deeper subsidy than under present law even with a flat 2 percent interest rate. In other words, my proposal would be similar to the committee proposal in providing an extremely generous interest subsidy, even if I chose to retain the 2-percent rate on loan principal over $10,000.

The approach I am advocating has been suggested by many observers of the disaster relief program. The bill which the administration sent to the Public Works Committee several months ago contained provisions relating benefits to financial need and eliminating forgiveness grants in an effort to reduce fraud. In addition, my staff has worked closely with Internal Revenue Service officials to insure that my proposal has been constructed in a way that can be easily administered.

I believe that my amendment would fulfill the need for increasing the assistance to the unfortunate, and in many cases destitute, victims of tropical storm Agnes, the Rapid City flood, and other disasters. In addition, it would apportion the benefits more equitably than the committee bill, and reduce substantially the expenditure of Government money on fraudulent claims and people who have suffered little real hardship. It is simple, and it i· workable.

Two of the worst disasters of our history have prodded the Government into considering the kind of relief measures that disaster victims really need. I hope that out of these tragedies may come legislation that does not perpetuate the problems of present law, but instead provides adequate disaster relief on a fair, rational, and efficient basis. I believe that my amendment would do this, and I urge its adoption.

I might advise the Senate that the amendment was brought up in the committee and considered very thoroughly, and at that time it failed to pass by a tie vote of 7 to 7.

At this time, as I have indicated, I wish to modify my amendment as follows: At the end of line 8 on page 2, delete the words "up to a" and delete lines 9, 10, 11, and 12.

The PRESIDING OFFICER. The Senator has a right to modify his amendment. Will he send his modification to the desk?

Mr. TAFT's amendment (No. 1382), as modified, is as follows:

On page 7, strike lines 8 through 16 and insert in lieu thereof the following:

"(C) shall, notwithstanding the provisions of any other law and upon presentation by the applicant of proof of loss or damage or injury and a bona fide estimate of cost of repair, rehabilitation, or replacement, cancel 100 per centum of the principal of any loan made to cover a loss or damage or injury resulting from such disaster, except that—

"(i) the total amount so canceled shall not exceed $5,000, and

"(ii) the per centum of the principal of the loan to be canceled shall be reduced by 4 for each $1,000 by which the borrower's income exceeds $6,000, but in no case shall such per centum be less than 20, and make the balance of the loan at an interest rate of 1 per centum per annum.

"For the purpose of this clause (C), 'income' means—

"(1) except in the case of a borrower who retires or becomes disabled in either the taxable year in which the loss or damage is sustained or the preceding taxable year, or in the case of a borrower which is a corporation, adjusted gross income, as defined in section 62 of the Internal Revenue Code of 1954, reduced by $300 for each deduction for personal exemptions allowable to the borrower under section 151 of such Code, for the taxable year preceding the taxable year in which the loss or damage is sustained.

"(ii) in the case of a borrower who retires or becomes disabled in the taxable year in which the loss or damage is sustained or in the previous taxable year, adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, reduced by $300

for each deduction for personal exemptions allowable to the borrower under section 151 of such Code, as estimated by the Administrator for the taxable year after the taxable year in which the loss or damage is sustained, and

"(iii) in the case of a corporation, taxable income, as defined in section 63 of the Internal Revenue Code of 1954, for the taxable year preceding the taxable year in which the loss or damage is sustained."

On page 8, after line 10, insert the following:

"(c) any person who (A) suffers any loss or damage as a result of a major disaster as determined by the President which occurred prior to the date of enactment of this Act, (B) is eligible for assistance under the amendment made by subsection (a), and (C) is eligible under existing law for benefits greater than those provided by the amendment made by subsection (a), may elect to receive such greater benefits."

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

The PRESIDING OFFICER. Who yields time?

Mr. TAFT. Mr. President, I believe I have control of the time, do I not?

The PRESIDING OFFICER. The Senator has half the time.

Mr. TAFT. I yield 10 minutes to the Senator from Delaware.

Mr. ROTH. Mr. President, I rise to support the fine efforts of my able colleague from Ohio (Mr. TAFT).

Everyone here has, by now, had an opportunity to read about and perhaps witness the damage caused at Rapid City and throughout parts of the East as the result of Hurricane Agnes. There is certainly no question that many victims of these calamities face significant hardship in the months ahead as they work to restore their battered homes and businesses. In my own State of Delaware, an estimated $5 million in crop damage was sustained by farmers in all three counties. These people deserve Government assistance—to help them over the immediate crises and to give them a financial base from which to begin rebuilding and replanting for the future.

But, regrettably a major inequity exists in the current law. Because these good people, and many like them in other States were on the periphery of the storm's path, they are not eligible for the same protection as others who live and work within the boundaries of the presidentially declared areas. Yet, I fail to see how we can logically discriminate between victims by maintaining a two-tiered system of benefits. A family whose livelihood is severely damaged, albeit from only a locally harmful storm, suffers no less than a family several miles away which receives the mantle of Government protection under Presidential declaration.

It is for this reason that I argued strongly in committee that any amendments to existing law start with one which will make benefits uniform, regardless of how the disaster is categorized. It is certainly high time that we provide uniform SBA and FHA grants and loans to anyone who has been injured by a natural disaster which is recognized by an agency of the Federal Government.

And, because I feel that equity between disaster relief programs is so important, I also argue for Senator TAFT's amendments now. First, we must examine the provisions of this committee bill to see that all individuals, regardless of their wealth, will become eligible for a grant which doubles the current forgiveness of $2,500. It seems totally illogical to me that the committee chose to apply no means test whatsoever to prospective applicants for SBA or FHA loans. I dare say few Members here would support a similar clause in welfare legislation, for example.

Past examples of fraud have focused public attention on the need for tighter administration of these grant and loan programs. The House passed bill (H.R. 15692) included a strict requirement for proof of loss. I thoroughly support this movement which has been incorporated into our committee's bill. Though this new statute will help to insure that only legitimate damage is covered, it cannot, without the Taft amendment, distribute these benefits in relation to a person's ability to absorb the loss.

Mr. President, I also want to urge the Senate to act responsibly on the date at which this legislation will become effective. The administration's latest proposal called for June 9—covering Rapid City and Agnes. But, committee members have looked retrospectively for dates which would provide more generous benefits to their constituents. The argument for January 1, 1971, has no more logical validity, as far as I can see, than any arbitrary date determined by lottery. If we do not stick to the current disasters and shape our legislation prospectively, then why not go back to Hurricane Celia in Texas during 1970. Or for that matter, why not cover the Cleveland windstorm of 1969, Hurricane Hazel in Delaware in 1964, or the San Francisco earthquake of 1906?

We should not forget, furthermore, that this retroactive date will cost the Government more than just the estimated $160 million. SBA will be required either to hire new personnel to review over 100,000 loan cases, already on the books, or to cut into the man-hours now devoted to vital programs intended to assist fledgling businesses. These dollar and caseload figures are based on the asumption that only existing loans will be reviewed and adjusted where appropriate. If the legislation requires SBA to entertain new applications from past disasters, the cost in money and man-hours could approach runaway proportions.

Let me close by pointing out that other agencies have available programs to assist future flood victims. HUD has just recently lowered the rates on insurance from $40 to $25 for a $10,000 residential policy. This subsidized insurance program is a much neglected vehicle to indemnify people who live in flood prone areas. In addition, HUD has planning money available to help states and communities establish flood plain zoning. Rather than relying on emergency measures, communities most susceptible to flooding should work to take advantage of these Government activities.

We should also note, Mr. President, that to the extent that we increase the disaster relief available to everyone, we decrease the incentive to purchase federally subsidized flood insurance or to establish flood plain zoning. The committee felt that, in the long run, flood insurance and flood plain zoning is a better solution than disaster relief for the damages inflicted by natural disasters. It would make good sense to provide benefiits in a manner that encourages the purchase of flood insurance and flood plain zoning; one of the best methods of doing that is to lessen the belief that whenever and wherever natural disaster strikes, the Federal Government will assume the burden of paying for the damages.

I would strongly urge this body to recognize the inequity in providing "across the board" benefits to everyone, regardless of their wealth, and to resist the temptation of retroactive dates. We can be compassionate in helping recent victims without being reckless in our largess. The Taft amendment would certainly help accomplish these ends.

Mr. President, I yield back the remainder of my time.

Mr. CRANSTON. Mr. President, will the Senator from Ohio yield some time to me?

The PRESIDING OFFICER. Who yields time?

Mr. TAFT. Does the Senator from New Hampshire wish to make a statement on the amendment?

Mr. McINTYRE. Yes.

Mr. TAFT. I would be glad to yield time to the Senator from California at this time.

Mr. McINTYRE. I seek recognition, Mr. President.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. McINTYRE. Mr. President, the amendment of the distinguished Senator Ohio to change the method by which forgiveness is determined for disaster victims was considered by the full committee during executive session and was rejected.

The Taft amendment represents a new approach to determine forgiveness. A number of members of the committee seriously question whether we should change the basic philosophy behind forgiveness at this time. The past history of forgiveness has been based solely on loss to victims rather than on earned income. The bill reported by the committee provides for the same forgiveness as was requested by the President in the proposed legislation he sent to Congress.

Mr. President, the suggestion of the Senator from Ohio represents a constructive approach, but the committee position is that it should be considered by the administration in conjunction with the part of the proposed legislation requiring the President to report to Congress by the end of this year his recommendations for permanent disaster relief legislation.

The position of the Senator from Ohio is constructive, but it is not timely, and it goes more to a whole appraisal of national disaster. I would hope that it would be one of the inputs that would be taken up by the Presidential commission.

The committee opposes the amendment of the distinguished Senator from Ohio.

Mr. President, I yield 5 minutes to the distinguished Senator from Pennsylvania.

Mr. SCHWEIKER. Mr. President, I also rise in opposition to this amendment.

Pennsylvania, of course, has suffered the brunt of the flood damage. To give Senators an idea of exactly how serious it was, I have requested a hundred copies of the Wilkes-Barre paper that has picture after picture after picture of flood damage, and I hope the pages soon will be passing this out.

One cannot understand or feel or know the flood unless one has seen the flood. This was the worst natural disaster in the history of the country. My source comes from no one other than General Clark, the Chief of Army Engineers, with whom I had the privilege of flying over the flood at the height of the flood and who made that judgment without any qualifications and without any reservations, and he has reconfirmed it.

It was the worst natural disaster in the history of the United States; 70 percent of the flood damage was in Pennsylvania. Of that percentage, 70 percent of the Pennsylvania damage was in the area of the city of Wilkes-Barre. I shall cite a few statistics to show why I think the amendment of the distinguished Senator from Ohio is a step backward, far less generous than the proposal of the President and the committee.

Some 20,000 homes were severely damaged in the city of Wilkes-Barre—21,000 to be exact. In those 21,000 homes, the average damage was approximately $20,000.

Here we are talking about a $5,000 grant, and the Senator from Ohio proposes to take away part of that, based on income, when in fact the average loss to the people who bore the brunt of this damage, in which 50 percent of the damage apparently was in the Wilkes-Barre area, was $20,000; and it is proposed to take away from them some of the $5,000 that the President has proposed. So we would only be scratching the surface by doing what the Senator from Ohio suggests, albeit well intentioned and sincere, and I know he is very interested in attacking this problem.

I point out another fact: The average mean income in the city of Wilkes-Barre is $8,100. This proposal provides that anyone with an income of more than $6,000 would get far less than the full amount of $5,000. They would be reduced by 4 percent of the $5,000 for every $1,000 of income. So we are not even putting it at the average person's schedule of income. We are far below that.

I think this is an inadequate amendment. It does not meet the problem at all. It is far less generous than the Nixon administration's proposals. It really does not touch the heart of the problem.

We have people who have been wiped out completely. I hold up this paper to the Senate. I hope Senators will take the time to look at it. I would like to have invited the entire membership of the Senate to see it for themselves, because seeing is believing. I realize that it was not possible to do so. Here is the next best thing. I hope that all Senators, before they make up their minds as to how they are going to vote on this matter, will take the time to leaf through the hundreds of pictures taken at the height of the flood and after, to see some of the horrendous damage that has been caused to Wilkes-Barre and to other parts of Pennsylvania.

I strongly oppose this amendment. I support the committee in this regard. I will offer an amendment of my own later which will supplement their proposal.

I feel strongly that the pending amendment would be a step backward and would not come anywhere near the concept of helping a city that has been totally washed out. Some 30,000 jobs were eliminated. The business district of Wilkes-Barre, the central area, was 10 feet under water. I went up there at the height of the flood and saw a refugee operation, people coming up in motorboats, elderly people being rescued. The driver of one of the motorboats happened to be the president of Wilkes College. I asked him about his college and he told me that it was wiped out, the laboratory and the library were under water, that $10 million worth of damage had been done by the flood.

There was 50 percent more water volume than the record flood of 1936, 50 percent more than the all time high of the Susquehanna River. So we are not talking about another flood, or another disaster, we are talking about the disaster. This is the high watermark of all floods that have occurred in this century. There were 14 inches of rain which fell during that period.

Agnes crossed, crisscrossed, and triple crossed the State of Pennsylvania. The storm that was supposed to go out to sea stopped in New Jersey, came back into Pennsylvania sweeping through the State and then went up to New York City. Pennsylvania got 14 inches of rain. The storm hit hardest in Pennsylvania. That is where most of the damage was. The pending amendment, I feel, would be totally inadequate.

Mr. TAFT. Mr. President, I certainly want to express my deep sympathy to the citizens who have been so seriously damaged and hurt in Pennsylvania and elsewhere in the Nation. I am sure there is no Member of the Senate who does not feel a similar sentiment. I hope that we can help in any way possible.

Nevertheless, the question is whether, at this time, we are adopting a formula that is sound for the future. The proposal I made in the amendment I am offering differs only in a minor degree with regard to the actual payout on the $20,000 average loss that the Senator from Pennsylvania mentioned. In either case, the benefits are substantially increased, more than doubled over the present program.

At the present time, the maximum grant or loan forgiveness is $2,500 and the interest rate is 5⅛ percent. We are cutting that 5⅛ percent to 4⅛ percent to a 1-percent loan insofar as the grants are concerned. In the $20,000 loan case, my amendment's minimum provision for loan forgiveness of 20 percent would mean that everyone gets a $4,000 loan forgiveness in any event, regardless of income. The maximum difference between the two proposals is whether the additional $1,000 between the $4,000 and the $5,000 that would be granted under the committee bill compared to the Taft amendment would be granted by a way in which there is a total loan forgiveness of the additional $1,000, or whether a rather wealthy borrower might have to pay back part of this $1,000 in the case that the Senator from Pennsylvania cites.

The amount we are talking about is really a minor one, but the principle involved is a very important one. That principle is that there shall be an incentive against making a blanket application, as was done in so many cases in California. That is what the difference is here and it should be pointed out at this time.

Mr. President, I shall be happy now to yield to the Senator from California (Mr. CRANSTON). How much time does he require?

Mr. CRANSTON. Six minutes.

Mr. TAFT. I yield 6 minutes to the Senator from California.

The PRESIDING OFFICER (Mr. TUNNEY). The Senator from California is recognized for 6 minutes.

Mr. CRANSTON. Mr. President, today we are considering H.R. 15692, a bill to amend the Small Business Act. I have grave concerns about this bill in its present form. It would provide a $5,000 forgiveness grant for all SBA loans in Presidentially declared disaster areas, and a 1-percent interest rate for repayment of the amount of a loan exceeding the first $5,000.

I would like to address myself briefly to the forgiveness provisions in the bill reported by the committee.

As Thomas Kleppe, the Small Business Administrator, has pointed out the forgiveness clause as presently constituted is both inequitable and serves as an inducement to fraud.

Several weeks after the San Fernando earthquake, the administration submitted legislation which would have completely eliminated the forgiveness clause and replaced it with an interest subsidy.

The administration's memorandum in support of this legislation stated:

*The present cancellation feature is obviously and seriously inequitable.* [Emphasis added.]

A fixed amount of forgiveness simply does not respond to the differing amounts of damage persons suffer, nor to the differing abilities of persons to rebuild. What possible justification is there for a millionaire with $2,500 damage rebuilding at the total expense of the Government, while the moderate income family who lost their entire home worth $20,000 must repay with interest a loan of $17,500?

The fixed amount of forgiveness also acts as an inducement to fraud. Charles Herzberg, one of the project managers who administered the SBA disaster loan program in Los Angeles after the earthquake, said:

The principal problem is that everybody is making a grab for $2,500 free. Everybody.

Without the forgiveness clause, there would have been 10,000 to 20,000 loan applications instead of 100,000, he said. And they would have been fairly reasonable because nobody is going to borrow more money, and pay it back, than they're actually going to need.

SBA Administrator Kleppe testified at a Senate Small Business Subcommittee hearing 3 months ago. At that time he stated:

Without the availability of the forgiveness, the demand for loans in California would have been but a fraction of what it was. The combination of the type of damage produced by an earthquake and the availability of a sizable loan cancellation encouraged borrowing for minor or marginal repairs. It encouraged irresponsibility in estimates and application amounts. And it encouraged people to borrow where there was little need.

For these reasons, Mr. Kleppe stated that the administration had designed legislation to strike the $2,500 loan cancellation provision from the 1970 Disaster Relief Act.

The administration is now completely reversing its position and asking the Congress to double the forgiveness clause.

Doubling the fixed amount of forgiveness solves none of the problems Mr. Kleppe described. Doubling the forgiveness will increase the demand for loans. Doubling the forgiveness encourages borrowing for minor and marginal repairs. Doubling the forgiveness does nothing to reduce irresponsibility in estimates of damage and application amounts. Doubling the forgiveness encourages borrowing by people with little need.

In order to eliminate the inducement to fraud and correct the inequities, the forgiveness clause must be modified.

SENATOR TAFT'S ALTERNATIVE PROPOSAL ON FORGIVENESS

As I already made plain, I do not favor a flat forgiveness which is both inequitable and fosters fraud. I do, however, favor Senator TAFT's proposal for a graduated forgiveness based on a percentage of total property damage and the adjusted gross income of the disaster victim.

Under the committee-reported bill, there is a standard forgiveness of $5,000 regardless of the amount of damage suffered or the ability to pay. Inherently, this causes unfair treatment to the low-income individual who suffers any substantial damage. The Government pays the $5,000 just as readily to a millionaire for repairing his tennis court as it does to low-income laborers who need it to put their silt-covered homes back into livable condition.

I feel that if we are to provide for any forgiveness at all, it should be based on the needs of the victims. The surest way to do this is to tie forgiveness into income.

A graduated forgiveness will also reduce the incentive for fraud.

Under the present law, the 100 percent free ride, as noted above, understandably invited much fraud. The committee bill proposes simply increasing this free grant to $5,000. Doubling the forgiveness that will increase the incentive for fraud and abuse.

The Taft amendment provides a 100-percent forgiveness for some, but only for those who earn less than $6,000 per annum and whose damage exceeds $5,000. Everyone else who would be obligated to pay back a certain percentage of the money granted them, the amount being determined by their ability to pay. For each $1,000 of family income above $6,000, the forgiveness would be reduced by 4 percent. The incentive for fraud would thus be reduced. But individuals who suffered large losses, and whose income is limited, would still receive nearly the maximum amount of forgiveness.

Therefore, I support Senator TAFT's provision which at least graduates forgiveness with the amount of damage suffered and the ability to pay.

The PRESIDING OFFICER. Who yields time?

Mr. TOWER. Mr. President, the administration opposes the amendment proposed by the Senator from Ohio because of the complexity it would build into the forgiveness formula and the administrative burdens it would impose on an already hard-pressed SBA. The amendment seeks to base the amount of forgiveness on the income of the victim, with a ceiling of $5,000.

The question of how to determine the amount of forgiveness seems to me to be one that we should decide here in Congress and apply equally to all victims of disasters.

In the bill, we place a $5,000 flat forgiveness feature on all loans, which will be understandable by the people whom we are trying to help and will be simple for the Government to administer. It is simply too much additional redtape and cost to administer an income test in order to determine qualification for forgiveness, and we want to make this program as straightforward and direct as possible.

Therefore, I urge that we reject the amendment of the Senator from Ohio. I think it would create an administrative nightmare. And the administration objects to it largely, I think, for this reason.

Mr. TAFT. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Ohio has 3 minutes. The Senator from New Hampshire has 20 minutes.

Mr. TAFT. Mr. President, I understand that there is an amendment to my amendment that may be offered very shortly. However, before that occurs I would like to take 2 minutes to reply to the questions raised by the distinguished Senator from Texas.

With regard to the workability of the formula in the Taft amendment, the Internal Revenue Service, with whom we worked, estimates that after establishing one new program for the computer, they could certify the income for any given disaster assistance application in 1½ to 2 weeks. There would be a nonrecurring cost of less than $1 million for doing the initial programing. This estimate is based on the probability that IRS might receive 700 or so of these applications per week at some times.

It should be pointed out that people who have suffered damages greater than $25,000 would not need to bother with the income test, since they would get $5,000 forgiveness in any case, and that during the 1½ to 2 weeks the SBA can continue to process the application, do the appraisal, and so forth.

Although Mr. Kleppe testified recently before the Banking Committee that he was worried the means test would be too difficult to administer, it should be pointed out that such a means test is an integral part of the administration bill to amend the Disaster Relief Act of 1970, which has before the Public Works Committee in draft form for several months, and which the Director of the SBA supported when the legislation was brought up before the committee.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. It will not be in order except through unanimous consent until the time is used or yielded back.

Mr. TAFT. Mr. President, I ask unanimous consent that there be a quorum call, and that the time be charged to neither side.

The PRESIDING OFFICER. Is there objection?

Mr. McINTYRE. Mr. President, I understood the Senator from Ohio to say that he knew of an amendment pending to his amendment and that is why he wants time. The time may be charged against the bill.

Mr. TOWER. Mr. President, the time may be equally divided between the two sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SCHWEIKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHWEIKER. Mr. President, earlier I had mentioned photographic pictures of the flood. I understand that there is a technicality whereby I would have trouble in putting the papers on the desks of my Democratic colleagues. I ask unanimous consent, therefore, that I may be allowed to have the Pages put one set of newspapers on each of my colleagues' desks so that they may see at first-hand the pictures of the flood.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. TAFT. Mr. President, I suggest the absence of a quorum and I ask unanimous consent that the time be charged on the bill equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The legislative clerk proceeded to call the roll.

Mr. McINTYRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McINTYRE. Mr. President, I ask unanimous consent that we may lay aside temporarily the amendment offered by the Senator from Ohio, amendment

No. 1382, and proceed to another amendment to be offered by the Senator from Ohio and then resume amendment No. 1382 at a later time, the amendment currently under discussion, in order to expedite the legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TAFT. Mr. President, I call up amendment No. 1390 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

On page 6, line 19, strike "January 1, 1971" and insert in lieu thereof the following: "June 1, 1972".

Mr. TAFT. Mr. President, the effect of this amendment is very simple. On the other hand, it is one that is quite controversial.

At the present time the committee bill contains the date January 1, 1971, as the effective date for the new benefits and procedures. The committee had a prolonged discussion on this subject as to what date would or would not be selected. I think the committee voted on three separate dates before finally selecting the one that was selected. The votes were quite close and related quite obviously to what disasters were or were not to be covered.

I might say at this time, having called up this amendment, that I ask unanimous consent that the name of the Senator from California (Mr. CRANSTON) be withdrawn as a sponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TAFT. Mr. President, the feeling I had with regard to this issue was that there really is no fair date to choose if we are going to be going back at all beyond the date of enactment. Yet, we do recognize, as the Senator from Pennsylvania so well documented, the tremendous nature of the loss that occurred as a result of Hurricane Agnes. We recognize the loss on a really widespread basis resulting from Hurricane Agnes and also the loss to people involved in the Rapid City disaster. The primary purpose of our legislation would relate to those two disasters. If we look beyond that, we can find disasters in some part of the United States, either SBA-recognized or Presidentially-recognized, going back to the early days of our country's history.

I wish to make the decision as to where the cutoff would be on an equitable basis. For that reason, I thought the fairest thing to do would be to change the date to June 1, 1972, as the effective date of the legislation, so that only the two more recent disasters are covered.

My amendment to change the effective date to June 1, 1972, would relieve the SBA of a major financial and administrative burden which would result from forcing them to grant increased assistance related to all Presidential and SBA disasters during the last fiscal year. There were 37 Presidentially-declared disasters and 84 SBA-declared disasters during that time.

Over 102,000 disaster assistance loans were made. The SBA has estimated that even if no new loans are made nor outstanding loans augmented for disasters which have already occurred, it would cost approximately $160 million to provide the required additional assistance to victims of all disasters since January 1, 1971. In addition, the SBA would be forced to reinterview many of the borrowers and receive additional certification of their property damage.

Mr. President, for that reason I have taken the position we should provide a cutoff date of June 1, 1972 which would take us back to include only the Rapid City and Hurricane Agnes disasters.

Mr. HUMPHREY. Mr. President, I I think I understand the full impact and import of the amendment of the Senator from Ohio. What it means, as far as the State of Minnesota is concerned, is to wash it down the river. That is not about to happen here if I can prevent it.

Hurricane Agnes was a major tragedy and hurricane, and I want to do everything I can as a Senator and as a member of this Government to be of assistance to the people adversely affected and the communities that have been so terribly hard hit by the force of that hurricane. I know of the many tragedies that have taken place as a result of Hurricane Agnes. I am fully aware of the degree of destruction, the pain and suffering that came as a result of the downpour of rain and the floods in the Rapid City area of South Dakota. That part of the country is well known to me. I was born and raised in South Dakota.

But I remind the Senator from Ohio and this body that there were 14 counties in Minnesota that were inundated by torrential rains in the harvest period of 1971.

Mr. President, you know, it does not make much difference whether you get 2 feet or 14 inches of rain—if you are flooded out, you are flooded out. It is sort of like what we were talking about here this week on nuclear weaponry. If you have enough weapons to destroy the other party, then overkill means little. You can only be killed once. And you can only be destroyed once. If destruction is complete, it does not make any difference whether it is destruction by wind or rain, or wind at 100 miles an hour or wind at 90 miles an hour; the effect is the same.

This disaster relief reform program has long been needed; for there is a great need for its revision and updating. But, as usual, it took a major tragedy like Hurricane Agnes to bring this Nation to our senses to get this Congress and this administration to reexamine what is called disaster relief. We have learned too late that much of what we call disaster relief was no relief at all. At best it was a palliative, a temporary measure that gained little assistance.

So if you change the date from January 1, 1971, to June 1, 1972, Mr. President, what you are doing, insofar as I am concerned, is to simply say to thousands of people in my State, the 14 counties in the State of Minnesota, that we do not care about them.

I did not come here as a U.S. Senator to see the Senator from Ohio or any other Senator design legislation that would neglect the needs of the people of the State I am privileged in part to represent. I am sure my distinguished senior colleague will want to be heard on this matter. We are not trying to cut anybody out; we are trying to include people in.

I am going to use every means I can to see that at least the bill as reported by committee after hearings as a result of careful consultation, after examining the facts, that the body of that bill is maintained intact.

The Committee on Agriculture and Forestry has an amendment to the bill that relates to rural areas of America—and the rural areas suffer just as do the urban areas. We are going to have that amendment attached to the bill. The amendment will be offered by the Senator from Georgia (Mr. TALMADGE).

I oppose the amendment of the Senator from Ohio. I think it is an amendment that discriminates against my part of the country. I think it denies us due justice. I think it would be unfair and if we are going to start to trim back on this legislation I say that we are going to be here a long time, because we are going to have an awful lot of amendments. I believe I understand the rules of this body well enough so that it will be quite awhile before we vote on the Taft amendment.

Mr. McINTYRE. Mr. President, I yield myself 7 minutes.

Before the Senator from Minnesota leaves the floor, let me say I was glad to have him point out that the National Disaster Relief Act needs a thorough going over. We had testimony in the 2 days of hearings before our subcommittee which revealed the magnitude of this matter and how we need to rethink the whole business. The Representative from South Dakota talked about the Rapid City disaster and was talking about 90 percent forgiveness of loans. I believe the junior Senator from Pennsylvania suggested a $15,000 forgiveness. That is subject to being corrected by the Senator from Pennsylvania.

So this legislation is being presented to be effective only until June 30, 1973. Hopefully, by that time the Presidential Commission will do something constructive and determine how the whole problem of disasters can be improved.

Mr. President, I only have a few comments with regard to the amendment offered by Senators TAFT, CRANSTON, and other Senators.

There is no doubt that when you attempt to apply any legislation retroactively that one of the greatest problems is to determine the effective date, and this is exactly what happened during the committee's consideration of the legislation presently before us.

This legislation substantially liberalizes the disaster relief program administered by the Small Business Administration. The obvious question regarding legislation like this is who will receive the liberalized benefits and who will be excluded.

This same question received considerable attention by the House when that body passed H.R. 15692. The effective date contained in the House-passed bill is July 1, 1971, and I personally felt that,

since the House had already resolved this question, the best approach would be for the Senate to concur with the date in the House bill.

However, during the full committee executive session, Senator CRANSTON, who, by the way, is also a cosponsor of Senator TAFT's amendment, offered an amendment moving the effective date back to January 1, 1971, which date was accepted by the committee.

The normal legislative procedure regarding effective dates on legislation is, as a general rule, that the legislation will take effect on the date of enactment or at some future date. The logic of this would certainly indicate that if we were going to concern ourselves with the individual question of legislative appropriateness, then it would seem that this bill should take effect only upon date of enactment.

However, as Senator TAFT points out, this legislation was prompted by two extremely severe recent disasters which occurred in June. His amendment would only apply the benefits in this legislation to those victims who suffered damage as a result of disasters occurring after June 1, 1972, but it should be noted that thousands of applications are presently pending at the Small Business Administration for disasters dating back several months. In fact, during the committee's executive session on this legislation, Senator CRANSTON pointed out that there are still thousands of applications pending on the earthquake in California in February of 1971.

The question here is how you can tell a victim who suffered substantial damage from a flood in Texas in May of 1972, or a flood in Washington in March of 1972, or a flood in New England in February of 1972, whose applications are still pending with the Small Business Administration that when their applications are approved they will still receive less benefits than victims of disasters occurring in close proximity in time.

The question is really not the enormity of the disaster but the severity of the individual loss. If you, as a disaster victim, have completely lost your home and possessions, then to you as an individual the question of the number of other victims becomes secondary. If you are one out of five victims with a loss or one of 5 million victims, the severity of your loss remains constant.

Certainly, it is extremely difficult, as I said earlier, to set a retroactive date, but the point raised by Senator CRANSTON regarding pending applications still with the SBA was of great concern to the committee and prompted the majority who voted for Senator CRANSTON's amendment to do so to assure that applications on previous disasters that are subsequently approved would receive the same benefits.

Mr. HUMPHREY. Mr. President, will the Senator yield at that point?

Mr. McINTYRE. I am happy to yield.

Mr. HUMPHREY. I wanted to point out that those of us in the Committee on Agriculture and Forestry put the date for the agricultural part of the bill at June 30, 1971, but we are well aware of what the Committee on Banking, Housing and Urban Affairs did with respect to the date of January 1. It seems to be that is a better cutoff point, a better base point, and of course the bill, as I understand, runs until July 1, 1973, and it calls upon the President to make recommendations, the Senator from New Hampshire just noted, for the total revision of the disaster relief program of the Congress and of the Government.

So we are not opening the floodgates here. We are not simply saying, "Come and take it." We are saying that this is emergency action. We are going to deal with problems on our desks right now, and on the desks of Government agencies right now, and we have a time frame until January 1, 1973.

Mr. TUNNEY. Mr. President, will the Senator yield to me for a question, and then perhaps a statement based on the answer to the question?

Mr. McINTYRE. I yield to the Senator from California.

Mr. TUNNEY. It is my understanding that if this bill did not contain language changing the relief provisions, the victims of the flood in Pennsylvania would receive the $2,500 forgiveness. Is that correct?

Mr. McINTYRE. That is correct.

Mr. TUNNEY. So what we are doing by making the legislation retroactive is to give to the victims in Pennsylvania and other victims of catastrophe around the country an opportunity to share in a larger sum of money which would be paid to those for losses that they have sustained? Is it correct it is to take care of a special situation for the victims of the Pennsylvania flood?

Mr. McINTYRE. That is the general thrust of it.

I want to correct the previous answer I gave. The present law provides for a $2,500 exemption, but the victim must pay the first $500.

Mr. TUNNEY. If he borrows $3,000, $2,500 is forgiven, as I understand, and he has to pay back the $500?

Mr. McINTYRE. That is correct.

Mr. TUNNEY. If we are talking about giving added benefits to a special category of victims, it seems to me only fair that we give those same added benefits to the victims of the California earthquake who were unfortunate enough to have that disaster occur in February 1971. I think once the bill is made retroactive, it should be made retroactive to take care of——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. McINTYRE. I yield the Senator 2 minutes more.

Mr. TUNNEY. All the victims of recent catastrophes. I feel personally there is great danger in opening legislation up to retroactivity. I do not think this legislation should be retroactive because of the precise problem I am raising now. I do not know why the victims in California should receive less attention than the victims in Pennsylvania.

As a matter of fact, as I urge this point, I am in my mind developing an amendment to eliminate this retroactive clause because I feel if there is a bill on the floor in which we are trying to help victims of a natural disaster with their financial problems and financial hardships then we have to treat everybody alike.

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

Mr. TUNNEY. I yield.

Mr. TOWER. The pending amendment now before us would make the cutoff date June 1 of this year.

Mr. TUNNEY. Well, I think it ought to be as of the time the bill is signed by the President. When the President signs the bill at that point in the future, the added benefits are given, but to move it to June 1 and say we take care of the flood victims in Pennsylvania is not fair. There is no reason at all why we should not move it back to January 1, 1971 to take care of the earthquake victims in California.

Mr. McINTYRE. That is what happened. We did go back to January 1, 1971, in the bill, and that did embrace the victims of the earthquake in California, and the committee was informed that the Small Business Administration still had applications pending from the earthquake victims. That was the reason that led the committee to go back to January 1.

Mr. TUNNEY. I am enough of a representative of my people that I would like to see that kept in the legislation; but if the amendment of the Senator from Ohio passes, I intended to offer an amendment to strike all retroactivity and have it apply as of the date the President signs the bill.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. MATHIAS). Does the Senator from Ohio seek recognition?

Mr. TAFT. Mr. President, I yield myself 1 minute.

I take this time merely to reply to the distinguished Senator from Minnesota, and say that any time you provide a cutoff it is going to lead to trouble. I have the same situation the Senator from California is describing. I had in my own district a devastating tornado in the summer of 1969, which struck Cleveland and all the cities and towns along Lake Erie, and which wiped out quite a number of houses and did tremendous damage. But you cannot start back without having to choose some cutoff point.

I do not mind the Senator from Minnesota standing up for his own people, because they happen to have had very disastrous floods in the spring in parts of Minnesota, but I think that still begs the question; it does not face up to the principle in the question that is involved here, which is, When are we going to set the cutoff date? I think it ought to be set on the issue of the disasters that prompted the present legislation. There were only two, Rapid City and Agnes.

Mr. McINTYRE. Mr. President, I yield 10 minutes to the senior Senator from Minnesota.

Mr. MONDALE. Mr. President, I support the pending legislation and oppose the amendment which would change the cutoff date agreed upon by the Senate Banking Committee of which I am a member. We consider all of the various considerations which bore upon that

date, and agreed on the date now found in the pending legislation.

I wish to extend my deepest thanks to the distinguished chairman of the Committee on Banking, Housing and Urban Affairs (Mr. SPARKMAN) and the distinguished manager of the bill (Mr. MCINTYRE) for their leadership in extending aid to homeowners and small businessmen victimized by the recent natural disasters which have stricken the eastern seaboard, South Dakota, my own State of Minnesota, and other areas. As a member of the committee I deeply appreciate his sympathetic cooperation in my own efforts to assure relief to victims of the two disasters in my own State of Minnesota—where floods have devastated much of north central Minnesota, and 2-month rains have destroyed western Minnesota crops throughout nearly the whole of a 24-county area, with an utterly and totally disastrous impact on not only the farmers, but the rural communities and the small businessmen whose activities make up the economy of that entire area.

I wish to extend equal thanks to the distinguished chairman of the Committee on Agriculture (Mr. TALMADGE) for his work in providing assistance for farm damage resulting from these disasters, and for his cooperation with the efforts of my distinguished colleague from Minnesota (Mr. HUMPHREY), a member of his committee, for his work in assuring coverage of the Minnesota disasters.

The efforts of these two committees have resulted in a strong bill extending low-cost, long-term loans to homeowners and small businessmen through the Small Business Administration, and to farmers through the Farmers Home Administration. Important features include:

One-percent interest rate; forgiveness of up to $5,000 of principal, amounting to a disaster grant; deferred repayment of principal and interest where necessary to avoid hardship; refinancing of existing loans or mortgages in case of total destruction or substantial property damage.

Mr. President, the plight of many farmers, small businessmen, and homeowners in western and north central Minnesota is truly tragic. Earlier this spring, crop destruction in west central Minnesota was declared a natural disaster by the Secretary of Agriculture. And last Tuesday north central Minnesota was declared a major disaster area in the wake of floods which ravaged the area over the week of July 21.

WET FIELDS

Beginning with the spring thaw last March, and continuing through April and May, unprecedented rainstorms afflicted farmlands in 23 counties in the west central area of our State. These rains were comparable to the storm last month that stifled activities in the Washington, D.C., area. Here, in Washington, an overnight rain caused flooding. In the farmlands of Minnesota, for over 2 months there were rains of 4 to 6 inches every week. But because the land is as flat as a table, no dramatic flash flooding occurred. The water just saturated the soil and flooded the fields. Farmers could not work their land. Some planted crops; the crops drowned out. They planted again, if they could. On many farms crops have drowned out twice—but they keep trying.

Even where farmers have finally been successful in getting crops planted, the yield will be only a fraction of what is needed to make a profit. These farmers need assistance desperately, as do the small businesses who rely on the area's rural economy.

Early in June, when the planting was already late and it was apparent that it would be delayed even further due to the continued wet conditions, my distinguished colleague from Minnesota (Mr. HUMPHREY) and I joined Congressman BERGLAND and several other midwestern Senators and Congressmen in a letter to Secretary Butz, urging a reopening of the set-aside program.

Mr. President, I ask unanimous consent that the letter be printed in the RECORD at this point.

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

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
*Washington, D.C., June 1, 1972.*

Hon. EARL L. BUTZ,
*Secretary of Agriculture,*
*Washington, D.C.*

DEAR MR. SECRETARY: Farmers in large areas of Minnesota, North Dakota and South Dakota have encountered serious delays in spring planting due to wet field conditions caused by heavy and frequent rain storms.

Reports from some counties indicate that as little as 20 percent of the crop has been planted and much of this has been destroyed by the water. During a normal spring season, planting would be 80 percent complete by this date. Unfortunately, too, this same general area suffered from too much rain last fall resulting in some corn never being harvested.

In announcing the set aside program goals early this year, you cited 38 million acres diverted from feed grains as a reasonable objective. Actual diversion was 600,000 acres short of this goal.

In order to provide some help to those hard pressed farmers and the merchants who serve these communities, we respectfully ask you to re-open the feed grain and wheat program sign up. Not only would it allow an increase in total acres setaside under the feed grain program, it would allow those producers who had signed up under these programs a chance to modify their agreements by setting aside all the acreage the law will allow.

Many cornfields are still unharvested but beaten to the ground due to heavy winter snows and the fall and spring rains. Consequently, we further ask that you grant farmers permission to turn livestock into these fields until July 1 and give these fields eligibility for set aside program benefits.

Sincerely,

Bob Bergland, M.C.; James Abourezk, M.C.; Mark Andrews, M.C.; Frank E. Denholm, M.C.; Arthur A. Link, M.C.; Ancher Nelsen, M.C.; John M. Zwach, M.C.; Quentin N. Burdick, U.S.S.; Hubert H. Humphrey, U.S.S.; George McGovern, U.S.S.; Walter F. Mondale, U.S.S.; Milton R. Young, U.S.S.

Mr. MONDALE. Mr. President, the Secretary turned down our request. Later in June, Senator HUMPHREY and I supported an appeal by Minnesota's Governor, the Honorable Wendell R. Anderson, asking that 23 counties of western Minnesota be declared a major disaster.

Surveys made by the Minnesota Civil Defense officials showed losses of over $72 million to private property in the wet fields area. Although damage to public property was not widespread, three of the counties suffered losses totaling $360,000.

Mr. President, I ask unanimous consent that Governor Anderson's request for disaster assistance be printed in the RECORD at this point.

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

STATE OF MINNESOTA,
OFFICE OF THE GOVERNOR,
*St. Paul, Minn., June 30, 1972.*

Re Gov. Ltr Dtd June 13, 1972.

Hon. RICHARD M. NIXON,
*President of the United States,*
*White House, Washington, D.C.*
Through
Mr. GEORGE A. LINCOLN,
*Director, Office of Emergency Preparedness, Executive Office of the President, Washington, D.C.*
Through
Mr. ROBERT CONNOR,
*Director, Region 5, Office of Emergency Preparedness, Chicago, Ill.*

DEAR MR. PRESIDENT: The high water has now receded in most parts of the flooded areas and preliminary damage estimates to public and private property in 20 of the 23 counties listed in the original request have now been completed and are furnished as an amendment to my letter of June 13, 1972.

TYPE OF ASSISTANCE NEEDED

*Department of Agriculture*

A. Preventative planting on base crop acres.

B. Expedite payment on set aside acreage.

C. Provide long term-low interest loans to farmers for 1972–1973 operating and living costs. Request forgiveness of $2,500.00 on loans.

D. Preserve base crop acreage even though not planted through certification of farmer.

E. Food stamp program for farmers in disaster counties.

*Department of Labor*

A. Unemployment compensation for farmers qualifying.

*Department of Transportation*

A. Assistance for county roads that are part of Federal Aid System.

*Office of Emergency Preparedness*

A. Financial assistance for repair and restoration of public facilities.

Damage to public property except in three counties was light, as indicated in Table No. 2.

Damage to private property, primarily crops, was extremely heavy and constitutes a disaster of major proportions, both to the individual farmer and to the general public as well. The economic impact on the entire area will become progressively greater as the loss of personal income becomes more evident.

The area affected involves some of the best farms in the State. Scores of the farmers involved are young people just getting started. The impact of this disaster will render them unable to continue unless financial assistance is available. Their situation today is aggravated because many were not able to harvest their 1971 crops due to heavy fall rains. There are literally thousands of acres of corn and soybeans that are still in the fields from last year. Following is current damage estimates as of June 26, 1972. This covers in Column A, Estimate of Loss on Acreage Not Planted and Acreage Planted But 100% of the Crop Lost. Column B covers

the Loss in Dollars to the Farmers Resulting from Partial Crops, because of too much moisture or late planting and excessive costs of working the ground under adverse conditions.

TABLE 1

| County | Col. A | Col. B | Total |
|---|---|---|---|
| Becker | 114,320 | 2,394,400 | 2,508,720 |
| Big Stone | 1,665,000 | 2,400,000 | 4,065,000 |
| Blue Earth | 200,000 | 150,000 | 350,000 |
| Brown | 35,280 | 248,044 | 283,324 |
| Chippewa | 2,620,000 | 6,345,000 | 8,965,000 |
| Clearwater | 259,400 | 244,500 | 503,900 |
| Douglas | 1,091,000 | 1,270,000 | 2,361,000 |
| Kandiyohi | 540,000 | | 540,000 |
| Lac qui Parle | 2,358,500 | 8,030,000 | 10,388,500 |
| Lincoln | 266,000 | 370,000 | 636,000 |
| Lyon | 336,000 | 550,000 | 886,000 |
| Pope | 500,000 | 2,340,000 | 2,840,000 |
| Renville | 834,000 | 4,500,000 | 5,334,000 |
| Stevens | 4,050,000 | 2,187,000 | 6,237,000 |
| Swift | 5,015,000 | 6,020,000 | 11,035,000 |
| Traverse | 3,260,000 | 4,152,000 | 7,412,000 |
| Watonwan | 312,500 | 121,500 | 434,000 |
| Wilkin | 841,500 | 1,114,245 | 1,955,745 |
| Yellow Medicine | 775,000 | 4,830,000 | 5,605,000 |
| Total | 25,073,500 | 47,266,680 | 72,340,189 |

Public damage estimates contained in Table No. 2 are not included in the estimates of June 13, 1972.

TABLE 2

| County | Type of damage | | Total damage |
|---|---|---|---|
| | Road and bridge | Ditches | |
| Blue Earth | 50,000 | | 50,000 |
| Brown | 80,000 | | 80,000 |
| Watonwan | 130,680 | 100,000 | 230,680 |
| Total | 260,680 | 100,000 | 360,680 |

It is estimated that approximately $204,000.00 of the $360,680.00 would be eligible for Federal Financial Assistance.

Again, I cannot emphasize too strongly the very critical need of the farmers for prompt, meaningful assistance.

Sincerely,

WENDELL R. ANDERSON.

Mr. MONDALE. Mr. President, Governor Anderson, Congressman BERGLAND, and I toured the flooded areas in mid-June and talked to farmers whose fields were so saturated that anyone walking the muddy soil sank in up to his knees. With those conditions, working the land with heavy machinery was out of the question. In some areas farmers hired agricultural pilots to sow the seeds with aircraft generally used to apply chemicals and fertilizer. But even then much of the resulting crop drowned out.

Farmers suffering these losses are financially distressed. Without emergency assistance many will be forced to sell out. Others will go bankrupt. The desperately low wheat and feed grain prices they received for last year's crop were not enough to carry them through a year with no crop. And there is little promise that prices this year will be improved.

Mr. President, we are often told that what we should do in this country is reward work, reward effort; and yet those people who are trying to be self-sufficient, who have worked night and day, but who nevertheless, because of a disaster, are threatened with loss of their farms. Whole communities are threatened with having to spend years to work themselves out of the crisis, and all they ask is that the Government show a little interest and give them a little bit of help to keep going.

It seems to me that if our Government is incapable of such steps, some of the cynicism we hear in some quarters may be well placed; because these are the kind of hard working people who need our help. None of them want a lot of it, but they do need some assistance, and it seems to me we should take the reasonable steps proposed in the pending legislation to assist them.

The President's Office of Emergency Preparedness spent a month processing the Governor's request for assistance and eventually turned it down.

The Secretary of Agriculture has authorized emergency Farmers Home Administration loans in 14 of the hardest-hit counties in the farm flood area; but this is not very helpful. It simply allows distressed farmers to apply for loans at 5⅛-percent interest. More credit would not help farmers much. They need real financial assistance to cover the severe losses they have suffered through no fault of their own. Certainly they deserve the same forgiveness and low interest benefits accorded the victims of other disasters.

The pending bill would entitle farmers in those 14 counties to that $5,000 forgiveness, and that low—1 per cent—rate of interest. And it is my hope that "natural disaster" or "major disaster" clarification will be extended to additional flooded areas.

NORTH CENTRAL MINNESOTA FLOODING

In addition to the long-term, wet fields disaster in western Minnesota, my State suffered a second tragic disaster only 3 weeks ago. On July 21 and 22, heavy rains of 10 to 12 inches fell on an area 30 miles wide across central Minnesota. The Knife, St. Croix, Rum, Crow, Minnesota and even the Upper Mississippi Rivers rose over their banks. Eleven counties suffered severe flooding. An area as big as the State of Maryland was inundated.

Hundreds of miles of roads were washed out.

Over 100 homes were totally destroyed and many others were damaged.

A large dam broke near the village of Mora in Kanabec County, Minn., sending flood waters into several towns.

Total losses, estimated by the State Civil Defense office, amount to more than $20.5 million.

This recent flood has been declared a major disaster, and the 11 counties hit by the primary flooding will soon be receiving disaster aid authorized under present law—including Federal assistance in debris removal, temporary housing assistance, special unemployment compensation and reemployment assistance, and other aid.

Two more flood counties have suffered losses as a result of the flood waters downriver from the primary flood area. The Governor has sent in a supplemental request and I am hopeful that these counties—Benton and Chisago—will be added to the list qualified to receive disaster aid.

As with the wet fields disaster, the pending bill will provide long-term Small Business and Farmers' Home loans—with $5,000 forgiveness and 1 percent interest—to homeowners, farmers, and small businessmen damaged by the flooding. And a special appropriation will soon be enacted for the emergency highway relief fund for repair of damaged highways, bridges, and related structures, a measure which I think is primarily the result of the activities of Representative BLATNIK of the House Public Works Committee. These actions can provide essential help to the courageous citizens of the disaster area, in their efforts to overcome the terrible effects of the flood.

Mr. President, I have received a flood disaster report from the civil defense director in the State of Minnesota summarizing the recent disaster. Since the report, additional flooding has occurred in Benton and Chisago Counties, bringing the total loss estimate to $20,586,366. I ask unanimous consent that the report be placed in the RECORD at this point.

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

FLOOD DISASTER REPORT NO. 6

GENERAL

Recovery operations are continuing. Damage estimates are increasing as the receding water uncovers more property and allows closer inspection. The additional rains the night of Friday, July 28th, did not add appreciably to the problem, since this water replaced to some extent in some areas, the water from the original flooding of July 21 and 22.

All Federal and State agencies are preparing to respond to the Presidential Proclamation as soon as it is announced.

STATE AGENCY ACTIONS

*Civil Defense Division*

Representatives of the Governor's Office, Civil Defense Division and the Department of Military Affairs met to review the procedures previously established for processing project applications received from political subdivisions requesting Federal financial assistance under the provisions of Public Law 91-606. The procedures were found to be adequate to meet the requirements of the present flood emergency and will be used for that purpose.

State Civil Defense Area Commander reported Pine County had not received the predicted amount of rain and that the water did not adversely affect the county. He also reported that high water and high winds on Mille Lacs Lake are causing additional flooding and damage to wells in that area. Additional sandbagging of the lift station at Sauk Rapids is being accomplished.

On the advice of the Dakota County Civil Defense Director, State Civil Defense recommended to sheriffs of Dakota, Hennepin, and Scott Counties to discourage weekend boaters on the Minnesota River between Savage and Mendota, because of the past water and anticipated heavy barge traffic.

*Department of Economic Development*

The Assistant Director of the Rural Bureau reported the following business and industrial damages and losses in Todd County:

Bertha

The Henry Harms Service Station lost a few tires and one gasoline storage tank.

Eagle Bend

The Ernest Nordland Service Station lost a gasoline storage tank, and some gasoline and furnace fuel oil.

Clarissa

The Host Auto Sales estimated damage of $21,000.00 and Bill Kullick Dance Hall estimated $6,000.00 damage to that facility.

Long Prairie

Estimated damages to Metro Meats is from $40,000.00 to $60,000.00.

FEDERAL AGENCIES

*Department of Agriculture*

University of Minnesota Agricultural Extension Division representative surveyed the area and is providing agricultural recovery information to the rural communities through the County Agents.

*National Weather Service*

The Meteorologist-in-Charge of the Forecast Office, Minneapolis, reported that the heaviest of the rains predicted for the night of July 27–28, 1972, in north central Minnesota fell in a very narrow band from north of Brainerd to Libby in the Big Sandy Lake area. This rainfall was northeast of the area where heavy rain fell a week ago. Sheriffs in Crow Wing and Aitkin Counties reported that little or no road damage occurred in these two counties. The flash flood alert previously announced for the area has been lifted, however, caution was advised for local areas and low spots in the two counties:

The National Weather Service reported the following river levels and crests:

| | Flood stage | Today's stage | Crest |
|---|---|---|---|
| Mississippi River: | | | |
| Aitkin | 15.0 | 9.6 | 11.5 on July 30. |
| Fort Ripley | 10.0 | 10.0 | Occurred on July 26. |
| Hastings | 15.0 | 15.1 | 15.3 on July 28. |
| Wabasha | 12.0 | 11.0 | 12.5 on July 31. |
| Crow River: | | | |
| Delano | 8.0 | 6.0 | Past. |
| Rockford | 10.0 | 6.5 | Do. |
| Rum River: St. Francis. | 8.0 | 10.4 | Do. |
| St. Croix River: Stillwater. | 87.0 | 86.5 | 86.5 on July 28. |
| Minnesota River: Savage. | 69.8 | 69.8 | 69.8 on July 28. |

*Office of Emergency Preparedness*

A representative from the National Office of Emergency Preparedness, Mr. Richardson arrived in St. Paul, preparatory to inspecting the disaster area July 29.

*The American Red Cross*

The Red Cross reported no new problems, however, their family assistance teams are continuing their work in the affected areas.

DAMAGE ESTIMATES AS OF 8 A.M., JULY 29, 1972

*Aitkin County*

| | |
|---|---|
| Roads, streets and highways | $495,900 |

*Benton County*

| | |
|---|---|
| Debris and wreckage clearance | 2,400 |
| Roads, streets and highways | 50,000 |
| Crop loss | 680,000 |
| Business loss | 50,000 |
| Total | 782,400 |

*Carlton County*

| | |
|---|---|
| Roads, streets, and highways | 310,000 |

*Chisago County*

| | |
|---|---|
| Roads, streets, and highways | 10,000 |

*Crow Wing County*

| | |
|---|---|
| Debris and wreckage clearance | 2,500 |
| Roads, streets, and highways | 1,500,000 |
| Crop loss | 417,500 |
| Business loss | 2,505,200 |
| Total | 4,425,000 |

*Douglas County*

| | |
|---|---|
| Roads, streets, and highways | $25,000 |

*Isanti County*

| | |
|---|---|
| Roads, streets, and highways | 177,000 |
| Crop loss | 352,000 |
| Total | 529,000 |

*Kanabec County*

| | |
|---|---|
| Roads, streets, and highways | 1,290,000 |
| Crop loss | 110,000 |
| Home loss | 500,000 |
| Business loss | 100,000 |
| Total | 2,000,000 |

*Mille Lacs County*

| | |
|---|---|
| Roads, streets, and highways | 624,000 |
| Crop loss | 250,000 |
| Total | 874,000 |

*Morrison County*

| | |
|---|---|
| Debris and wreckage clearance | 15,000 |
| Emergency protective measures | 23,000 |
| Roads, streets, and highways | 1,529,000 |
| Crop loss | 3,750,000 |
| Home loss | 2,247,386 |
| Business loss | 1,131,968 |
| Total | 8,696,354 |

*Otter Tail County*

| | |
|---|---|
| Roads, streets, and highways | 20,000 |
| Home loss | 125,000 |
| Total | 145,000 |

*Pine County*

| | |
|---|---|
| Roads, streets, and highways | 150,000 |
| Crop loss | 635,512 |
| Home loss | 100,000 |
| Business loss | 50,000 |
| Total | 935,512 |

*Todd County*

| | |
|---|---|
| Roads, streets and highways | 350,000 |
| Crop loss | 100,000 |
| Home loss | 265,000 |
| Business loss | 155,000 |
| Total | 870,000 |

*State Highway Department*

| | |
|---|---|
| Roads, streets and highways | 270,000 |
| Grand total estimated loss | 20,368,366 |

Mr. MONDALE. Mr. President, the pending bill is badly needed to relieve farmers, homeowners, and small businessmen in Minnesota, in Rapid City, S. Dak., and in eastern seaboard States where Hurricane Agnes did so much harm. I urge its adoption by the Senate.

I urge the defeat of amendments proposed by the Senator from Ohio (Mr. TAFT). Amendment No. 957 would limit disaster relief to damage suffered after June 1, 1972. This amendment would jeopardize the eligibility of many Minnesota small businessmen who will suffer from crop damage of over $72 million from heavy rains throughout this spring. How anyone can say that June 1 makes a rational termination date, I simply do not know.

When farm income declines in even a small area, the entire rural economy suffers. I have received calls and letters from hundreds of small businessmen expressing concern over the potential economic hardship to communities which will occur if the farmers do not have the income to pay their bills.

Rural businesses are already suffering losses from added costs due to the disaster. A survey by the Minnesota Department of Agriculture shows that unusually high demurrage charges have been paid this year by fertilizer dealers in Minnesota. Ordinarily these companies order carloads of bulk fertilizer early in the season, scheduling shipments to arrive over a period of time during the spring planting season. Ordinarily, as boxcars arrive, bulk fertilizer ingredients are placed in storage. But they are blended and dispensed to farmers soon after arrival. This spring, shipments kept arriving although farmers could not apply fertilizer to their fields because of the wet field conditions. When storage facilities were filled, the dealers had to keep the fertilizer in the boxcars in which they arrived—incurring sizable demurrage charges which these farm-related businesses had to pay.

I cite this as only one example of the hardship and expense suffered by rural communities and rural businessmen as an indirect result of the wet field disaster.

Mr. President, I ask unanimous consent that a list of demurrage charges compiled by the Minnesota Department of Agriculture be printed in the RECORD at this point.

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

*Demurrage Charges Paid by Individual Firms—1972*

(Partial listing)

| | |
|---|---|
| Big Stone County: Johnson Grain Co., Johnson | $18.17 |
| Blue Earth County: Sellman Feed, Mapleton | 350.00 |
| Brown County: Cargill, Inc., Comfrey | 270.00 |
| Chippewa County: | |
| Farmers Union Oil Co., Montevideo | 8,640.00 |
| Clara City Coop, Clara City | 885.15 |
| Wegdahl Coop Elevator, Montevideo | 2,200.00 |
| Clay County: | |
| U.S.S. Agri Chemicals, Averill | 330.00 |
| Cominco American, Dilworth | 350.00 |
| Ed Moe, Hitterdal | 550.00 |
| Home Gas Company, Barnesville | 110.00 |
| Northland Chemical, Moorhead | 50.00 |
| Cottonwood County: | |
| U.S.S. Agri Chemicals, Windom | 50.00 |
| Windom Coop Association, Windom | 40.00 |
| Delft Farm Chemical, Delft | 689.00 |
| Dakota County: | |
| Farmers Union Coop Oil Association, Hampton | 120.00 |
| Farm Service Association, Farmington | 430.00 |
| Hastings Farmers Coop Elevator, Hastings | 2,058.91 |
| Faribault County: | |
| Land O'Lakes Ag Center, Bricelyn | 30.00 |
| Frank Brothers Feed & Grain, Wells | 530.00 |

| | |
|---|---|
| Wells Farmers Elevator, Wells | $830.00 |
| U.S.S. Agri Chemicals, Blue Earth | 552.00 |
| Fillmore County: | |
| Tri County Coop Oil, Rushford | 230.00 |
| Humble Fertilizer Co., Rushford | 110.00 |
| Fillmore Coop Services, Harmony | 1,220.00 |
| Freeborn County: Standard Farm Center, Albert Lea | 10.50 |
| Goodhue County: | |
| Phillips Petroleum, Kenyon | 52.40 |
| Grant County: | |
| Midland Fertilizer Plant, Herman | 2,553.36 |
| Wendell Farmers Elevator, Wendell | 110.00 |
| Farmers Equity Association, Ashby | 120.00 |
| Hoffman Coop Association, Hoffman | 1,510.00 |
| Grant County Fertilizer Center, Elbow Lake | 2,360.00 |
| Kanabec County: Land O'Lakes, Mora | 220.00 |
| Lyon County: | |
| Farmers Coop Oil, Balaton | 30.00 |
| Cottonwood Coop Oil, Cottonwood | 2,720.00 |
| USS Agri Chem, Minnesota | 970.00 |
| McLeod County: Brownton Coop Cry. Association, Brownton | 20.00 |
| Marshall County: Farmers Union Oil Co., Oslo | 1,480.00 |
| Martin County: | |
| Truman Farmers Elevator, Truman | 700.00 |
| Custom Farm Services, Granada | 4,930.00 |
| Welcome Farm Chem., Welcome | 620.15 |
| Meeker County: | |
| Cominco American, Eden Valley | 20.00 |
| Cominco American, Grove City | 2,169.85 |
| Mower County: Land O'Lakes, Waltham | 750.00 |
| Nobles County: | |
| Batchellers, Worthington | 3,071.95 |
| Consolidated Co-ops, Worthington | 1,630.00 |
| Norman County: | |
| Halstad Elevator, Halstad | 700.00 |
| Shelly Farmers Co-op Cry. Association, Shelly | 170.00 |
| Standard Farm Center, Ada | 753.91 |
| Gary Creamery Association, Gary | 6,425.28 |
| Olmsted County: U.S.S. Agri Chemicals, Stewartville | 20.00 |
| Pine County: Fine City Co-op., Rush City | 240.00 |
| Pipestone County: Cominco American, Pipestone | 898.58 |
| Polk County: | |
| Farmers Union Oil Co., Climax | 170.00 |
| McIntosh Farm Service, McIntosh | 120.00 |
| Cargill, Inc., Crookston | 1,279.25 |
| Pope County: Cyprus Farmers Elevator, Cyprus | 230.00 |
| Renville County: Renville Co. Soil Service, Bird Island | 710.00 |
| Rice County: Nerstrand Elevator Co., Nerstrand | 40.00 |
| Sibley County: Custom Farm Services, Gibbon | 1,250.00 |
| Stearns County: | |
| Farmers Coop Elevator, Sauk Centre | 490.00 |
| John Swanson Fertilizer, Brooten | 170.00 |
| St. Martin Coop Creamery, St. Martin | 1,080.00 |
| Paynesville Farmers Union Coop Oil, Paynesville | 190.00 |
| Steele County: | |
| Four County Ag Service, Faribault | 3,310.00 |
| Prairie Farm Service, Blooming Prairie | 290.00 |
| Stevens County: | |
| Donnelly Coop Cry., Donnelly | 189.02 |
| Morris Coop Association, Morris | 1,066.08 |
| Swift County: | |
| Swift Coop Oil Co., Benson | $2,408.21 |
| Munson Seed Co., Benson | 160.00 |
| Farmers Union Oil Co., Montevideo | 8,640.00 |
| Swift Coop Oil, Benson | 1,090.00 |
| Traverse County: | |
| Cominco American, Dumont | 4,570.00 |
| Tri County Coop., Browns Valley | 310.00 |
| Wabash County: | |
| Peoples Coop., Plainview | 1,550.72 |
| Waseca County: | |
| Richland Coop. Service, New Richland | 80.00 |
| Janesville Cry. Association, Janesville | 720.00 |
| Watonwan County: Watonwan Farm Service, St. James | 1,740.00 |
| Wilkin County: Kent Doran Grain, Doran | 730.00 |
| Winona County: Lewiston Coop Association, Lewiston | 1,610.00 |
| Yellow Medicine County: | |
| Equity Elevator and Trading, Wood Lake | 80.00 |
| Clarkfield and Boyd Farm Chemical, Clarkfield | 769.00 |

Mr. MONDALE. Many Minnesota businessmen will lose their businesses if this amendment should be adopted. I am confident the Senate will not take so arbitrary and unwarranted an action.

Amendment No. 1382 would impose a sliding scale on the $5,000 forgiveness. Full forgiveness of up to $5,000 would be available only to homeowners, farmers, or small business corporations with adjusted gross incomes under $6,000. Families, farmers, and small businessmen with adjusted gross incomes of $17,000, for example, would be entitled to forgiveness of only 56 percent of the full damage, not to exceed $5,000. This is a most ungenerous approach to small businessmen whose economic lives are often tough enough without natural disasters. This is a wholly unwarranted limitation of aid to hard-pressed homeowners, small businessmen, and farmers. A family with an income of $17,000—which has just suffered major economic loss as a result of a natural disaster—is not a wealthy family. I ask the Senate to reject this amendment, and I hope the proposal of the Committee on Banking, Housing and Urban Affairs will be adopted.

There is an old story by Will Rogers, who told about his local banker. He said:

The banker is a good man, but he has one fault. He has a glass eye. But no one knows which one it is.

If the Senate turns down the kind of good faith, decent appeals for help such as those appeals from Minnesota, I think we will be like Will Rogers' banker.

Mr. President, I have made a selection of newsstories and correspondence concerning the farm flooding in Minnesota. I ask unanimous consent that they be printed in the RECORD at this point.

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

Senator MONDALE,
*Washington, D.C.:*

Whereas weather conditions in the counties of Swift, Stevens, Pope, Grant, Traverse, Big Stone, Lyon, Lincoln, Chippewa, Kandiyohi, Lac qui Parle, Wilkin, and Yellow Medicine in west central Minnesota have prevented a substantial number of farmers from harvesting their 1971 crop and continued adverse weather conditions have prevented planting for a majority of farmers and whereas the present debt load of farmers is such that more credit in the form of low interest plans will not solve the farmers income situation now there be it resolved that we the undersigned farmers and businessmen in the respective counties of Stevens, Swift, Big Stone, Grant, Pope, and Kandiyohi do urge and recommend that the Secretary of Agriculture reopen signup for the feed grain and wheat program to allow producers to participate to the extent of 100 percent of their feed grain base and wheat allotment.

MILTON W. RAASCH,
(And 148 others).

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FARMERS & MERCHANTS
STATE BANK,
*Clarkfield, Minn., June 9, 1972.*

Hon. WALTER MONDALE,
*U.S. Senator,*
*Washington, D.C.*

DEAR SIR: I am writing you to inform you of the conditions in our agricultural area. It is of great concern both to the farmers, to the businessmen, and lending agencies in Yellow Medicine County.

We have received excessive moisture since September of 1971. Because of all of the added moisture, a severe condition has arisen by not allowing the farmers to harvest many acres of 1971 crop and also keeping them from the fields for the 1972 planting. It is real hard to estimate the number of unplanted acres, but would estimate well over 60% of the ground is still unplanted and of the planted fields, an estimated figure of 25% has been ruined by washing out and drowning out. This has created an extremely large additional expense to the farmers, and we would feel that if there is any governmental assistance that can be had for the farmers to help them in this time of need, we would greatly appreciate your efforts in this matter.

I have been in the financing business for over twenty-five years, and this is my first experience with this type of condition.

Again may I say that help is needed, and we are calling upon you for your assistance in this matter.

Yours truly,

D. R. NELSON, *President.*

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MAYNARD, MINN., *June 22, 1972.*

Hon. Senator MONDALE.

DEAR SIR: I write to you in frustration and with mixed emotions. We know that our local USDA program officials are being helpful and keeping you informed, but it is difficult for anyone to realize fully how desperately we need assistance. We have been plagued for years with low farm prices and increasing debts at higher interest rates. And now the bottom seems to have fallen out. Any number of us face financial disaster and bankruptcy if needed programs are not initiated in the immediate future. The standard disaster loan provisions are not adequate and could benefit only a select few. Most of us need a supplemental income now and long term financing at a reasonable rate of interest.

Some of us have little or no crop planted. Continuing rains have made planting impossible, and forecasts of additional rain are most disheartening. Much less than the average corn crop is planted in this area, and much of this has rotted or cannot come through the crust and has had to be reworked and seeded to an earlier variety of corn or soybeans when fields became workable. The only hope for much of the corn now is for silage and roughage.

We had hoped that the Feed Grain Set Aside Program should be reopened, allowing us to set aside all of our corn base if need be. But it sounds as though that has been definitely denied.

The financial repercussions of this crisis

will be almost unbelievable when applied to our tax structure and its effect on our schools, local governments, cooperatives and rural main streets. We sincerely believe that to avoid irreparable harm to our area, the Presidential Emergency Area legislation will need to be activated. We know that you are aware that up to $2,500 of loans made under these provisions are marked off This would ease our problems until many of us could be refinanced properly. Most of our financing is short term at unfavorable interest rates and needs to be changed. We are asking for the same privileges extended to other segments of our economy. This could be legislated by direct or guaranteed loans by our Farmers Home Administration.

We believe it is exceedingly important to our nation to preserve our Family Farm operation. Believe us when we say that any number of us in this area will be liquidated next fall if immediate assistance is not available.

We know we can depend on you in this time of need and will be looking forward to hearing from you.

Sincerely yours,

HERMAN BOIKE.

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MAYNARD, MINN.

Senator WALTER MONDALE,
*Washington, D.C.*

DEAR FRIEND: I'm writing to you because I'm disgusted with the way things are going. We know officials are keeping you informed, but no one can fully realize the problems we are faced with except the farmer himself. For years we've had low farm prices and increasing debt at higher interest rates and now things have gone too far. We simply can not make it on our own. We need the help of farm programs. We need a supplemental income now and long term financing at a reasonable rate of interest. With the unfavorable weather causing late planting, the yield of the crops will be reduced. To ease our immediate needs we believe our Feed Grain Set Aside Program should be reopened allowing us to set aside all of our corn base if needed. We sincerely believe that to avoid irreparable harm to our area, the Presidential Emergency Area legislation will need to be activated. We know that you are aware that up to $2500 of loans made under these provisions are marked off. These two programs would help us cope with our problems at least until many of us could be refinanced properly. Most of our financing is short term at unfavorable interest rates and needs to be changed. We are asking for the same privileges extended to other segments of our economy. This could be legislated by direct or guaranteed loans by our Farmers Home Administration.

These should provide adequate refinancing on a long term 20 year basis at a realistic rate of interest.

We believe it very important to our nation that our family farm operation be preserved. If immediate assistance isn't available, many of us in this area will be liquidated next fall.

We know we can depend on you in our time of need and will be looking forward to hearing from you.

Sincerely,

EVERETT HELLIN.

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BERKLEY, MINN., *June 15, 1972.*

DEAR SENATOR MONDALE: I wish to appeal to you as a Big Stone Co. farmer about our problem. Situation of excessive rain. Many farmers are just starting planting, and this is much too late in the season to expect much of a crop. We are asking you to help us to declare this a Disaster Co. and make eligible for Presidential Disaster Area, and also activate the Cap. program for 1 year and possible double the set aside acreage.

Yours truly,

Mr. JOHN STALLMAN.

BENSON, MINN., *June 2, 1972.*

Senator WALTER MONDALE,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR MONDALE: Enclosed you will find a copy of a Resolution passed by our Chamber of Commerce Board of Directors. We are very concerned with the seriousness of the situation in western Minnesota caused by the excessive moisture conditions. Our farmers and our rural communities are in serious trouble due to this situation.

We would appreciate any action that you can take to help alleviate the problem.

Yours sincerely,

ROBERT KLINGLE, *Manager.*

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A RESOLUTION

Whereas, the West Central area of Minnesota has received from two to three feet of precipitation from October 1, 1971, to May 1, 1972, and

Whereas, the normal rainfall for the same period, computed on an 86-year average, is between 10 and 11 inches, and

Whereas, this unusual amount of moisture has kept many farmers from their fields, and washed out crops already planted, and

Whereas, prices for commodities sold by farmers in recent years have left many without adequate reserves to weather a year of no crop or only a partial crop, and

Whereas, most banks and other lending institutions in the area have gone about as far as is possible in financing farm operations, we

Now therefore, request that the United States Department of Agriculture allow farmers in this disaster area double the amount of acres they can divert under the Federal Feed Grain Program.

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MAYNARD, MINN.

SENATOR WALTER MONDALE: I write to you in frustration. We desperately need assistance. We have been plagued with low farm prices for years now with no crops or very little in, we face financial disaster if needed programs are not initiated, the standard disaster loan provisions are not adequate, most of us need a supplemental income and long term financing at a reasonable rate of interest. Many of us have very little planted, much of the seed in the ground is rotted or cannot come through the hard crust, this will have to be reworked and seeded to soybeans. To ease our immediate needs we believe our Feed Grain Set Aside Program should be reopened allowing us to set aside all of our corn base if need be. Where planting looks fairly good only the difference between these acres would need to be set aside. We sincerely believe that to avoid irreparable harm to our area, the Presidential Emergency Area legislation will need to be activated. These two programs would ease our problems until many of us could be refinanced properly. We are asking for the same privileges extended to other segments of our economy. We believe it exceedingly important to our nation that our family farm operation be preserved. Believe us when we say more than ½ of us in this area will be liquidated next fall if immediate assistance is not available.

Sincerely yours,

LARRY TOMES.

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MONTEVIDEO, MINN.,
*June 6, 1972.*

Hon. WALTER F. MONDALE,
*U.S. Senate,*
*Washington, D.C.*

I am enclosing a certified copy of the resolution of the Board of County Commissioners of Chippewa County, Minnesota, adopted on June 2, 1972, in which the Board requests that Chippewa County be declared a Presidential Disaster Area.

Yours very truly,

NEIL G. MILLER,
*County Auditor, Chippewa County.*

RESOLUTION

Whereas excess rainfall has made it impossible for the farmers to plant only a small portion of their 1972 crop, and

Whereas it appears at this time thousands of acres will not be planted to any crop.

Be it resolved by the Board of County Commissioners of Chippewa County, Minnesota, that Chippewa County be declared a Presidential Disaster Area.

Be it further resolved that the Board of County Commissioners of Chippewa County recommends that the 1972 feed grain program be opened to allow 100% diversion of the corn base acres and also recommends a 100% parity price support program to improve farm income.

Be it further resolved that copies of this resolution be sent to the following:

The Honorable Richard M. Nixon, President of the United States

The Honorable Earl L. Butz, United States Secretary of Agriculture

The Honorable Hubert H. Humphrey, United States Senator from Minnesota

The Honorable Walter F. Mondale, United States Senator from Minnesota

The Honorable John Zwach, United States Representative from the Sixth District of Minnesota

The Honorable Wendell R. Anderson, Governor of the State of Minnesota

The Honorable Jon Wefald, Commissioner of Agriculture for the State of Minnesota

State Disaster Committee for the State of Minnesota

Dated at Monteviedo, Minnesota, this 2d day of June, 1972.

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FRATERNITY OF PRIESTS,
*Graceville, Minn., July 5, 1972.*

Senator WALTER MONDALE,
*Old Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR MONDALE: The Senate of Priests of the Diocese of New Ulm met on Monday, June 19, 1972. At this meeting a resolution was passed unanimously that the Secretary write a letter to President Nixon, Secretary Butz, Senator Humphrey, Representative Zwach and you to take action to relieve the plight of the farmers in the hard-stricken, wet counties of western Minnesota and the eastern Dakotas. (I realize that you have already toured some of this area and know first hand the plight of the farmers in this area.) According to an ASC survey 40,000 crop acres in Big Stone County and 80,000 crop acres in Swift County will not produce a crop because it was too wet to plant or has drowned out. The low prices on grains last year along with this disaster will drive some farmers from the land. The announced granting of federal loans is not enough. More action is needed. Hence we propose that:

1. the affected areas be declared a Presidential disaster area;

2. the already available Agriculture Department funds be made available to aid these farmers;

3. and the CAP program be activated for one year.

This meeting took place at Beardsley in Big Stone County. Hence most of the Senators saw first hand the sad situation with which these farmers are faced. Their vote, hence, was not based on hearsay!

Natural disasters were not enough! The farmers suffered another blow the other day when the restrictions on imported meat were lifted by the President. It is true that livestock prices are higher now and have given the farmer some hope. But the price of meat in the store has climbed steadily for quite some time, even when the price of livestock dropped. Most of the farmers in this area are already in the poverty bracket. The President's action will only drive them deeper in this bracket. Why does the poor farmer always have to be the whipping boy?

We thank you for your efforts already and for anything you can do for the farmer that is really helpful.

Sincerely Yours,

REV. DAROLD R. LEHMAN,
*Secretary.*

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[From the Minneapolis Star, July 24, 1972]

DISASTER RELIEF COMPLEXITIES

Floods in Rapid City, Eastern seaboard states and then in Minneasota produced a flood of official statements and stories about disaster relief. It is not surprising, then, that the average person assumes the federal role is a kind of an automatic, super centralized, official Red Cross effort.

The federal role in disaster relief, however, is fragmented, and bewildering even to experts. Administration spokesmen say that it works. But Minnesota farmers in the "wet counties," who failed to get under the disaster-declaration tent, may be less enthusiastic.

This is the standard procedure, more or less: The governor of a state suffering a calamity (backed, of course, by the state's congressional delegation) appeals to the President. Technically, his SOS goes to the Office of Emergency Preparedness, which is part of the White House apparatus. One may be sure that whatever the OEP says, the President is able to make up his own mind. If he declares there is a "disaster area," he makes it eligible for a shopping list of help from all kinds of agencies. Some is automatic, but much must be requested on the basis of need. Most important of the agencies are the Small Business Administration and the Farm Home Administration.

The administration sponsored a bill to increase by $1.8 billion the aid going to victims of the Rapid City flood and Hurricane Agnes. It would also double the "forgiveness" features on the loans from $2,500 to $5,000 and cut interest from 5⅛ to 1 percent. In other words, successful applicants would get $5,000 as a flat payment.

Amendments by Sens. Humphrey and Mondale would have the effect of getting Minnesota into the same tent, even without a presidential disaster declaration. This is most important, both economically and politically, for the "non disaster" 23 "wet counties" where heavy spring rains washed out hopes of decent crops. This condition is in contrast to the later sudden floods in the central part of the state, a more typical disaster area, for which the Minnesota senators are working to get a special $25 million extra for road and bridge repair.

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[From the St. Paul Pioneer Press, July 26, 1972]

STORM AID BILL INCLUDES MINNESOTA

(By Lee Egerstrom)

WASHINGTON.—Minnesota homes and businesses damaged by floods and wet weather were included for eligibility in liberalized Small Business Administration (SBA) benefits Tuesday in the Senate's tropical storm Agnes bill.

The Banking, Housing and Urban Affairs Committee accepted an amendment by Sen. Walter Mondale, D-Minn., that wrote the past weekend's flooding in central Minnesota and the wet western part of the state into the bill.

It completed an amendment process started Monday which could bring to Minnesota the same economic assistance programs designed to help victims of the Rapid City flood and Hurricane Agnes of last month.

Under the Mondale amendment and an amendment to the agricultural part of the bill offered Monday by Sen. Hubert Humphrey, Minnesotans whose homes, farms and businesses were damaged will qualify for one per cent emergency loans and as much as $5,000 of the loans can be forgiven to offset personal losses.

The SBA and the Farm Home Administration will provide the loans under the Disaster Relief Act.

Mondale and Humphrey succeeded in having the effective date for qualifying for assistance set back to include farmers in western Minnesota who are faced with zero to little income from crops this fall. Several areas of 23 eastern Minnesota counties could not plant crops this spring because of excessive rain.

Mondale said the amendments to the disaster relief bill have the effect of declaring Minnesota a national disaster area. The forgiveness of loans feature has only applied to areas that have been declared disaster areas by the President in the past.

However, the new bill increases the forgiveness feature from $2,500 to $5,000, and includes Minnesota in the coverage, he said.

Mondale said the bill may be delayed until next week, and a third part of the emergency legislation still needs committee approval.

Then measures designating $25 million to repair and replace Minnesota roads and bridges washed out and damaged by the floods, will be offered by Mondale and Humphrey to a public works bill.

House emergency funds were approved Monday in a bill presented by Public Works Committee Chairman John Blatnik, D-Minn.

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[From the Minneapolis Tribune, July 26, 1972]

SENATE UNIT ASKS U.S. FUNDS FOR STATE FLOOD LOANS

WASHINGTON, D.C.—The Senate Banking Committee Tuesday enlarged the Hurricane Agnes recovery bill to make emergency loans available to small businessmen affected by last weekend's Minnesota floods.

The legislation, which may come to the Senate floor next week, provides forgiveness of the first $5,000 of emergency federal loans and repayment of the balance at 1 percent interest.

Sens. Walter Mondale and Hubert Humphrey, both Minnesota Democrats, are seeking business and farm relief in the bill for victims of the flood as well as farmers in 10 western Minnesota counties hit hard by spring rains.

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[From the Worthington (Minn.) Daily Globe, July 25, 1972]

GOVERNOR ASKS DISASTER STATUS FOR FLOOD AREA

(By Gerry Nelson)

Gov. Wendell R. Anderson says flood damage in central Minnesota was "worse than I expected" and plans to ask President Nixon today to designate the region a federal disaster area.

Damage to public property in the flood stricken area, which Anderson toured by helicopter Monday, was estimated at "around $5 million" by James Erchul, state Civil Defense director.

The governor said he hopes an amendment can be attached to the disaster bill in Congress, adding central Minnesota to the bill which provides relief to victims of June floods in Rapid City, S.D., and Eastern states.

Sens. Walter F. Mondale and Hubert H. Humphrey also urged Nixon to declare the stricken central Minnesota region a disaster area, and introduced legislation to provide up to $25 million in highway emergency funds for the region.

Torrential thunderstorms Friday night and Saturday dumped between 10 and 12 inches of rain on some areas within 12 hours, ripping out sections of roads, flooding homes and swelling creeks and rivers.

Vacationers were asked by the state Natural Resources Department to stay out of all state parks in the flooded region, which included Morrison, Aitkin, Crow Wing, Isanti, Todd, Mille Lacs, Kanabec and Pine counties.

A department spokesman said some of the parks are not accessible and others were damaged by the flooding rivers.

But an official for the Department of Economic Development said the flooding caused only minor disruption for resorters in the region, which includes the largest resort community of Brainerd.

"The area's open. There's plenty of room," said Donald E. O'Brien, the department's director of tourism. "It's a little extra strain to get there (because of closed roads). It takes an hour longer."

The Natural Resources Department, however, painted a more gloomy picture.

"We are not advising any travel into state parks in the flooded region," said Clarke Anderson, a department spokesman.

Anderson said state parks affected by the flooding included St. Croix State Park near Hinckley; Banning State Park on the Kettle River north of Sandstone; Interstate Park at Taylors Falls; Crow Wing State Park on the Mississippi River below Brainerd; Charles Lindberg State Park at Little Falls; Father Hennepin State Park on Mille Lacs Lake, and Mille Lacs Kathio State Park west of Mille Lacs Lake.

A spokesman for the Brainerd area Chamber of Commerce said no resorts were washed out or closed due to the flooding.

Anderson, in his tour of the flood area, praised county and city officials for the work they had done.

The governor also commended a decision by Little Falls officials to blow a gap through Minn. 371 to allow rising waters to flow around the community, without waiting for state Highway Department approval.

Mayor Kenneth Fiolid said if the road had not been dynamited, the flood waters would have gone through Little Falls en route to the Mississippi River, causing more damage.

Some residents of Clarissa blamed the state for damage done when the swollen Eagle Creek washed out part of U.S. 71, contending the state had been warned repeatedly that a bridge should have been built on the road, which had washed out three times before. Only a culvert is there now.

Warren Solen, who estimated damage to his house at about $7,000, said he holds the state "absolutely responsible for the damage to his home and said the state should make full restitution for his loss."

Oscar Nelson, a retired service station owner, reflected the feelings of some community residents "This has been bothering the town for a long time, and the people are pretty upset about it."

Among the homes in the Clarissa area inspected by Gov. Anderson were those of Glenn Jedlicka and Don Bain. The Jedlicka family was gone on vacation when their home toppled into Eagle Creek. About half the basement collapsed on the Bain home, but he managed to get some steel beams under it to prevent all the house from dropping.

Anderson also inspected damage at the village of Randall, where 25 families were evacuated and dozens of other houses had basements full of water.

Jack Kleinbaum, St. Cloud, central Minnesota disaster chairman for the American Red Cross, said at least 40 Randall homes were heavily damaged. He said he hoped to have some mobile homes moved into the village to replace the damaged structures.

Meanwhile, the community of Mora north of Minneapolis became the focal point of the flood area for a time Monday when a dam holding back Knife Lake burst.

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[From the St. Paul Pioneer Press, July 28, 1972]

BILL INCLUDES FLOOD RELIEF

(By Lee Egerstrom)

WASHINGTON.—The Senate Agriculture Committee rewrote the administration's tropical storm Agnes disaster relief bill Mon-

day to include the newly flooded areas in Minnesota.

The action will greatly expand disaster programs of the Farm Home Administration to the 10 counties of central Minnesota inundated by heavy rainfall this past weekend, and to 23 counties in western Minnesota economically hampered by fall and spring wet croplands.

A second part of the emergency effort to bail out flood and rain disaster victims will be aired today in the Senate Banking, Housing and Urban Affairs Committee. Emergency programs of the Small Business Administration (SBA) will be expanded along similar lines as adopted by the Agriculture committee.

The House, meanwhile, authorized spending $200 million for emergency highway repair in a surprise move Monday. This action will allow emergency federal support to Minnesota, South Dakota and Eastern Seaboard States rebuilding from enormous flooding over the past two months.

Congress is hurriedly trying to pass the emergency legislation for flood and rain victims this week. Sponsors of the legislation are shooting at a timetable that would have Senate floor action on disaster relief bills on Wednesday, and the House to act on the Senate bill a day later.

The Senate Agriculture Committee, faced with several amendments increasing programs of the Farm Home Administration and Sen. Hubert Humphrey's amendment to include Minnesota in the coverage, voted to scrap the administration's bill presented by Republican minority leader Hugh Scott of Pennsylvania.

The bill will allow up to $5,000 of the principle of farm home emergency loans canceled or forgiven, with the interest rate dropped from 5½ per cent to one per cent on the remaining loan.

Sen. Walter Mondale, D.-Minn., will seek to amend the SBA loan part of the disaster relief bill today in committee to include the same benefits added to the Farm Home Administration.

In addition to increases in the cancellation limit to assist persons with great losses, the new Senate bill will provide up to $25 million for Minnesota in emergency highway funds to replace and repair washed out roads and bridges.

The same highway funds were provided for Monday as House Public Works Chairman John Blatnik, D-Minn., and the floor manager for the committee bills, Rep. Robert Jones, D.-Ala., asked unanimous consent to bring up the emergency fund measure.

The House passed both the highway bill and another bill calling for dam inspections authored by Blatnik's committee which seeks to prevent recurrences of the dam disasters at Rapid City and Buffalo Creek, W. Va.

The Mondale-Humphrey amendment virtually assures Farm Home and SBA disaster assistance will be made available to Minnesota, even though the state has not been designated an official disaster area yet by the President.

An inspection team from the Office of Emergency Preparedness (OEP) was sent to Minnesota Monday. They will tour the flooded areas today and report estimates of damage to the President.

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[From the Minneapolis Tribune, July 25, 1972]

MONDALE, H. H. H. SEEK FLOOD RELIEF

(By Frank Wright)

WASHINGTON, D.C.—Members of Minnesota's congressional delegation moved quickly Monday to seek federal aid for victims of recent rainstorms and heavy flooding in the north-central part of the state.

Sens. Walter Mondale and Hubert Humphrey, both Democrats, sent a telegram to President Nixon asking him to declare a disaster area govering 10 counties. Such action by the President would make the counties immediately eligible for various types of assistance.

The counties are Todd, Douglas, Morrison, Crow Wing, Mille Lacs, Aitkin, Kanabec, Pine, Isanti and Otter Tail.

The senators also introduced legislation which would provide up to $25 million in expended emergency highway construction funds to replace damaged and destroyed roads and bridges.

It was understood also that 10 counties would be covered by a bill introduced earlier by Mondale and Humphrey to help farmers in 14 western counties who have been hard hit by excessive rains. That legislation passed yesterday by the Senate Agricultural Committee, would allow recipients to write off the first $3,000 of emergency federal loads and to repay the balance at a 1 percent interest.

In the House, Rep. John Blatnik, 8th District Democrat, sought help from the Army Corps of Engineers and the Office of Emergency Preparedness (OEP). The corps sent an eight-man team into the ravaged areas to survey the damage with local officials. An OEP team was dispatched yesterday morning from Washington and is scheduled to reach the area today.

Rep. Bob Bergland, 7th District Democrat, and Rep. John Zwach, 6th District Republican, said they are prepared to offer the Humphrey-Mondale legislation in the House if it fails in the Senate.

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[From the Minneapolis Tribune, July 26, 1972]

SENATE CONSIDERS FLOOD-RELIEF BILL

(By Al McConagha)

WASHINGTON, D.C.—The Senate is expected to finish work Monday on the second of two bills that may provide some financial relief for victims of Minnesota floods and spring rains.

The House is prepared to take up the measure Wednesday in whatever form they arrive from the Senate, where a floor fight is anticipated over some of the provisions.

To be debated Monday is legislation for small business and home loans to disaster victims. The terms now in the bill call for forgiveness of the first $5,000 and imposition of 1 percent interest on the balance.

Sen. Robert Taft, R-Ohio, will try to amend these provisions on the Senate floor to give forgiveness on half of the disaster loan and a charge of standard commercial interest rates on the remainder.

Sen. Walter Mondale, D-Minn., has helped lead the effort to provide forgiveness and interest conditions included in the bill approved by the Senate Banking Committee. He is a member of the panel.

The Senate already has passed by voice vote, subject to reconsideration, a Rural Disaster Recovery Act. It provides Farmers Home Administration loans to victims of recent disasters.

The precise amount of forgiveness and interest in this legislation will be determined by the specifics of the small business and home owner legislation to be acted upon Monday.

Sen. Hubert Humphrey, D-Minn., added an amendment to the rural disaster bill in committee that extends the dates involved to include Minnesota's wet fields and the recent flooding.

In both cases, provisions which may benefit Minnesotans were tacked on to bills that were designed basically to help victims of Hurricane Agnes and the Rapid City, S.D., flood.

The legislation defines two kinds of disasters—major and natural. The president is authorized to declare major disasters and the agriculture secretary or small business administrator may declare natural ones.

Basically, natural disasters are seen as localized occurrences and major disasters include the destruction of public works such as roads that require help from the Office of Emergency Preparedness.

The White House has indicated that it is considering a veto of the relief bills as they presently are written on the ground that they are inflationary.

Gov. Wendell Anderson of Minnesota has asked Mr. Nixon to declare 11 counties affected by the weekend flooding as a major disaster area under existing legislation.

Agriculture Secretary Earl Butz already has declared that 14 western Minnesota counties where planting was set back by spring rains are entitled to emergency Farm Home Administration Loans.

These loans differ from the federal credit now under consideration in Congress in that they are harder to get, the interest rates are higher and less money is available.

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[From the Minneapolis Star, Aug. 2, 1972]

RAINS, "AID DROUGHT" CREATE CROP CRISIS

(By Douglas Drake)

Record rainfall in west-central Minnesota has turned early July's dangerous, but hopeful, situation into an outright August crisis.

Federal assistance for the water-logged region, however, seems as far away as ever.

Many farmers in the area, who battled standing water and muddy fields to plant their crops, can't get into the fields to cultivate or harvest and will be lucky to break even this year, according to Swift County agent James Edman.

Other farmers never got their crops in the ground.

"The situation is much more desperate than it was in June," said Larry Inman, who holds a Ph.D. in agriculture from the University of Minnesota and has been farming in Swift County for two years.

"In June you could still plant late crops and get something. But there's nothing you can plant now," he said. "It's been raining continuously. You hardly have a chance to get into the field. It just never has dried up."

Edman predicted three or four times as many bank foreclosures on Swift County farms as last year, unless the farmers' luck changes drastically or they receive help from the federal government.

"It's too early to tell definitely, there are still too many variables," he said. "But I expect an unusual number of failures this year."

Early in June, when rain was preventing farmers in west-central Minnesota from planting their crops on time, Gov. Wendell Anderson asked that the President declare a 16-county area a disaster area. That request was denied, but emergency loans from the Farmers' Home Administration (FHA) were authorized for 14 of the counties.

"But," as Inman put it, "those loans aren't much better than you could do at the bank." The FHA loans have carried about a 5 percent interest rate this summer.

Numerous attempts on the part of Minnesota senators and congressmen to get approval for relief programs have been rebuffed by federal agencies, the office of Sen. Walter Mondale reported.

"Besides a national disaster we have a bureaucratic disaster," an aide to Mondale said.

The only glimmer of hope on the horizon is a bill expected to be considered by the Senate within a week, according to Mondale's office.

The bill would authorize loans at 1 percent interest for disaster areas, including west-central Minnesota. The loans also would include a "forgiveness clause" which would excuse the borrower from paying back up to $5,000 of the loan if he becomes unable to afford it.

But even if the measure, part of a "Disaster Recovery Act," passes the Senate, it will have

to go to the House and then to the President before it would take effect.

As Leonard Voorhees, another Swift County farmer, put it, "We need help now, not a couple of years from now. We won't be here then."

Voorhees is typical of the hardest-hit farmers, most of whom, Edman says, are in parts of Swift, Stevens and Chippewa Counties.

The Voorhees farm includes a 25-acre cornfield in which the weeds are taller than the corn and a hayfield so wet the hay can't even be cut.

"I got all my crops planted, but now I sort of wish I hadn't," Voorhees said. "I planted 110 acres this year, and a good half of it is gone. The rest is only fair.

Edman said rainfall in Swift County totaled about three times the normal amount last month. And in Morris, county seat of nearby Stevens County, it was nearly twice the normal level.

Rain was predicted in the area of the rest of this week.

Some farmers, whose fields are on high ground, have excellent crops, but others will be lucky to harvest a crop at all, Edman said.

"Most of my farm is as flat as a floor, and it's all waterlogged," said Edman. There's just not much growth out there."

Inman, who taught agriculture in five countries before he started farming in Swift County, has almost exhausted his savings trying to keep his farming operation above water.

He said he might be able to harvest a crop if the area has a late frost this fall, "but if we have an early and wet fall, it will be a complete bust."

"At best, we'll have half of the usual crop in this neighborhood," said Henry Erdahl, who farms near Donnelley in Stevens County. "And a lot will settle for less than that."

Without federal help, the farmers' only chance will be an unusually late frost this fall, according to Orville Gunderson, an extension agent in crops and soils for a nine-county area of west-central Minnesota.

"It all depends on what happens this fall," said Gunderson, "Normally the first frost is around the end of September. A two week extension of that would help like the dickens. But if it comes two weeks earlier, they'll be in real trouble."

Gunderson said the only crop in the area which could be salvaged after an early frost is soybeans. Other crops would provide little more than silage for livestock.

And even if the farmers get a late frost, their crops will be low in both yield and quality. Edman said.

Inman acknowledged that low interest federal loans, if approved in time, might save a number of farmers in the area. But, he added, "We don't really count on any help."

"Most of the people out here think the best helping hand is the one at the end of your arm," he said. "I don't think there are many optimists around here."

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[From the Minneapolis Tribune, July 23, 1972]

HEAVY RAINS CAUSE FLOODING

Rain fell again Saturday in north-central Minnesota, adding to the up to 10 inches that fell Friday night from St. Cloud to Brainerd and left highways and bridges washed away and towns stranded.

At 6 p.m. yesterday, Minnesota's director of civil defense, F. James Erchul, reported to Gov. Wendell Anderson that a state of emergency exists in Todd, Morrison, Crow Wing, Mille Lacs and Aitkin counties.

Anderson said he will tour the damaged areas "as soon as weather permits"—probably on Monday. At that time he said he will declare a disaster area and request federal help.

In the flood area, National Guardsmen rescued flood victims from the tops of cars after a series of five thunderstorms Friday night.

"It's a disaster—the worst Morrison County has ever had," said Felix Kuajawa, a county commissioner from Buckman who viewed the damage from a Guard helicopter.

Kuajawa and thre other members of the county board estimated the damage to roads alone at $500,000 in the county.

"We will need help. We can mobilize everyone we have and that's not enough," Kuajawa said.

Only one storm-related death was reported. Robert DeBlieck, 53, of rural Clarissa, was discovered in his car early Saturday after he struck a washout on a county road near Eagle Bend and died from the impact.

Hwy. 371, the main artery from Little Falls to Brainerd, was reported under water for seven miles.

Business on Hwy. 371 betwen Little Falls and Camp Ripley were being sandbagged by volunteers yesterday as the waters continued to rise.

The National Weather Service in Minneapolis said late Saturday that the rains had not yet ended. An additional 2 to 4 inches was predicted to fall last night over the Rum River from Mille Lacs southward to St. Francis and over the St. Croix River drainage upstream from St. Croix Falls.

"Flash flooding and overflowing will occur, washing out county and state highways," the service said.

Hwy. 371 as well as Hwys. 10, 115, 25, 169, and other routes were closed at points due to high water or holes as deep as 10 feet gouged in the pavement by the water.

Brainerd-bound motorists were being advised to detour through Alexandria or even Duluth to avoid the flooded roads.

Hardest hit by the water were the Morrison County towns of Randall, Lincoln, and Lastrup. Communications were severed, and the towns could be reached only by amphibious vehicles or by air.

In Randall, 10 miles northwest of Little Falls, National Guard amphibious vehicles rescued motorists stranded in their cars as the Little Elk River spilled over its banks and ran four to five feet deep through the town.

Some homes that were evacuated, a heart-attack victim was taken by helicopter northwest of Little Falls, to a hospital, and five youths were rescued after clinging for nearly two hours to a highway sign at the end of a flooded bridge.

A mudslide inundated Burlington Northern tracks and part of Hwy. 10 near Lincoln, according to county authorities.

In Lastrup, a village of 160, Mrs. Richard Yorek said, "Everything is under water. In some places it is four feet deep."

Mrs. Yorek said a few residents were forced from their homes and were living with friends or relatives in the village.

Morrison County's storm damage from wind and water was estimated at $1.8 million by Civil Defense Director Lee McKinnon.

Three miles southwest of McGrath, east of Mille Lacs Lake, a tornado touched down at 4 p.m. yesterday at the Edward Miller farm, according to Allan Kastner, a weather service observer. Kastner and McGrath was isolated, with washouts reported on Hwy. 65 and Aitkin County Rd. 18, which serve the town.

In Little Falls, Mayor Kenneth Flolid ordered workmen to cut a culvert under U.S. Hwy. 10 at 13th Av. on the north edge of town to divert water running down a drainage ditch through the culvert and into the Mississippi River.

The emergency culvert was opened at 9 p.m. and succeeded in diverting water which had previously flowed to 9th Av. and then backed up, flooding homes.

About 450 people, mostly from Little Falls, assisted in the effort, filling sandbags which were used to control the flow of the water.

The Todd County towns of Bertha, Eagle Bend, Clarissa, Browerville, and Long Prairie were reported to have flooded homes, and the sheriff's office said every road in the county was impassable, except Hwy. 71 south from Long Prairie to Sauk Centre.

In Browerville, the fire department rescued one man whose pickup truck was washed off a county road into a creek.

Although Todd and Morrison Counties appeared hardest hit, heavy rains, flooding, and road washouts were reported over a wide area, ranging roughly from St. Cloud on the south to Brainerd on the north, and from Pine County west to Douglas County.

About 9,400 National Guard troops yesterday ended 15 days of training at Camp Ripley, north of Little Falls and began moving their convoys home to bases in Minnesota, Iowa, and Illinois.

About 2,500 of the troop were evacuated from their tin-hut barracks during the night to concrete mess halls and headquarters buildings.

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FORT RIPLEY RAIN TOPS 10 INCHES

Following is a list of some of the Minnesota towns located in and near the area affected by Friday's rain storms and the amount of rain that fell in those towns during the 24-hour-period ending at 8:30 a.m., Saturday.

Ft. Ripley, 10.84 inches; Parkers Prairie, 10; Long Prairie, 8.90; Onamia, 8.10; McGrath, 5.55; Brainerd, 4.80; Alexandria, 2.43; Duluth, 1.89; St. Cloud, .76.

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FLOODING CUTS ROADS, ISOLATES TOWN OF 500

(By Clifford Simak)

"This is the Spiess indoor swimming pool," said Mrs. Conrad Spiess when she answered her phone in Randall, Minn., late Saturday afternoon.

"The living room is still dry," she said, "but there is water running in the kitchen. Out in the front yard it is above my knees. What is more, it is raining again. It is simply pouring down."

Randall, a community of 500 on Hwy. 10 ten miles northwest of Little Falls, caught the brunt of the flooding resulting from a storm that dumped more than 10 inches of water on central Minnesota Friday night.

The town was isolated.

Hwy. 10 was covered by up to four feet of water in some areas and was washed out in others.

DeWayne Schwanke, Randall fire chief, estimated that 60 to 75 residents had been evacuated to higher ground when the Little Elk River, ordinarily a trickle, suddenly inundated many of the homes in low-lying sections.

Five young people, attempting to cross a bridge over the Little Elk, were rescued after clinging to a highway sign for nearly two hours.

A retired banker, F. A. Schwanke, about 80, was stricken with a heart attack after the flood struck the town and was cut off. He was taken to St. Gabriel's Hospital in Little Falls by a National Guard helicopter.

Four National Guard amphibious vehicles arrived early Saturday and rescued people stranded in flooded areas. One of the vehicles, called ducks, was disabled when it ran into a fire hydrant concealed by the flood waters.

To the north. Hwy. 10 was covered by about four feet of water near Randall. To the south, the highway was impassible because of washouts and flood areas. All county and secondary roads were impassible.

The five young people who were rescued were identified by Fire Chief Schwanke as Janet Lenore, Charles Kay, Donna Taylor, Perry Carver and Viola Hanson. Ages were

not available, but the chief said all are in their teens.

They had been in Brainerd for the evening, and upon returning to Randall, found the bridge flooded too deeply to use a car to get to their homes in the section of town across the river.

Hanging onto the bridge railing, they made their way safely across. But when they came to the approach of the bridge, the current caught them and started to sweep them away.

They managed to grab hold of a newly installed highway sign. "Luckily," said Chief Schwanke, the sign held under their weight.

Residents of the village heard their calls for help, and an attempt was made to rescue them by boat.

Alfred Bjorness, operating a boat belonging to Conrad Spiess and powered by a 3½-horsepower engine, made the first attempt. The boat could not buck the current.

A boat with a 10-horsepower engine, owned by Don Mueller and operated by Richard Mueller with Chief Schwanke riding as a passenger, also failed in a rescue attempt.

Finally a road grader, operated by Don Mueller and carrying Chief Schwanke and John Cabot, reached the five.

The retired banker was taken to Little Falls in a helicopter piloted by Maj. Gen. Paul V. Meyer, commander of the 47th Viking Infantry Division which has been camped at Camp Ripley for the past 15 days.

Gerald Nye of Robbinsdale, a son-in-law of Schwanke, was staying at a cabin at nearby Lake Alexander. When he got word of his father-in-law's heart attack, he tried to reach Randall by car. He got within two miles of the village and was unable to go farther.

He then borrowed a tractor from a farmer, but again was unable to complete the trip. He then phoned the National Guard for help.

Meyer, who was aloft at the time, got word of Nye's phone call, picked up Nye and then made a hazardous landing between two power lines at Randall to pick up the stricken man. The ride to the hospital was the first time that Schwanke had ever flown.

Meyer said that when he flew over Randall, he saw a number of people standing on the roofs of their cars, which were stranded in flood water. It was then that he sent the amphibious vehicles.

Evacuees were being fed in St. Peter's Lutheran Church, with the women of the village banding together to provide and cook food.

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STAGNANT-AIR MASS BLAMED FOR DOWNPOURS

A series of thunderstorms that "all moved along the same track and dumped rain in the same spot," was the cause of Friday's heavy rains in central Minnesota, according to a spokesman for the National Weather Service.

The unusually heavy downpours occurred when warm moist air flowing up from the south made contact with a stagnant mass of air positioned across central Minnesota and northern Wisconsin.

'The biggest factor was that nothing was moving," the weather service said. The stagnant air—a stationary front of a low pressure weather system centered in central South Dakota—served as a barrier to the storm systems moving through the area and held them in nearly the same position for about 10 hours.

As a result, an area 25 to 30 miles wide across the central part of the state from near Alexandria in the west to Hinckley near the Wisconsin border was saturated with up to 10 inches of rain.

An 80-mile-long area between Parkers Prairie, which is 20 miles north of Alexandria, and Onamia, Minn., south of Mille Lacs Lake, was particularly hard-hit. About 10 inches of rain fell at Parkers Prairie. Ft. Ripley received almost 11 inches and other towns in the area also received heavy amounts of rain.

According to the weather service, the average annual precipitation across the central portion of the state is 25 to 28 inches. Normal precipitation in the area for the month of July is about three inches.

The area of heavy rainfall was within a wider band of storm activity that reached from a 40-mile-wide area in the western part of the state to a 75-mile-wide area over northern Wisconsin. Rainfall of two or more inches was common in this area.

By Saturday afternoon, the weather picture for the area was relatively unchanged. Intermittently heavy rains fell across the area and the forecast was for more of the same.

The weather service spokesman characterized yesterday's rainfall as "very unusual." He said it was "somewhat analagous" to the heavy rain and consequent flooding in Rapid City, S.D., in early June. In both situations, he said, a series of storms developed and moved the same area, spilling rain as they ran up against masses of stagnant air.

Mr. McINTYRE. I thank the distinguished Senator from Minnesota for his statement and for his strong effort in committee.

Mr. President, I yield 5 minutes on the bill to the distinguished Senator from Texas (Mr. BENTSEN).

Mr. BENTSEN. I thank the chairman of the subcommittee.

Mr. President, I rise in opposition to the pending amendment of the distinguished junior Senator from Ohio (Mr. TAFT). This amendment would have a seriously damaging effect on the State of Texas by striking the January 1971 retroactivity clause and inserting the date of June 1, 1972.

Mr. President, a tragedy struck Caldwell, Comal, Guadalupe, Hays, and Webb Counties, Tex., the night of May 11, 1972, as the waters of the Guadalupe River, swollen by heavy rains, surged over its banks and inundated the surrounding countryside. These counties, later declared a disaster area by President Nixon, suffered damages of approximately $18.4 million. Three hundred and thirty homes were devasted to such an extent as to be no longer habitable while over 3,400 homes suffered serious damages. Over 150 mobile homes were either totally destroyed or significantly damaged.

Mr. President, $18.4 million represents not only the physical extent of the damage done by the floods but also the urgent need for Federal assistance to this area. Adoption of the amendment would preclude such Federal assistance to Texas under the pending legislation. I do not believe this body will provide relief and recovery assistance to other disaster areas and fail to provide similar aid to such hard-hit areas as Caldwell, Comal, Guadalupe, Hays, and Webb Counties—the very counties which President Nixon himself declared a disaster area. I do not believe that Texas property owners are any less important or deserving of Federal aid than property owners in South Dakota and Pennsylvania.

If the amendment by the distinguished junior Senator from Ohio were to be adopted, these Texas counties would fail by a mere 20 days to be eligible for Federal assistance. I do not believe this is equitable; I do not believe this is just; and I do not believe the Senate will vote to accept this amendment. Retaining the language of the committee recommendation will bring much-needed relief to the stricken citizens of the Guadalupe River area. I urge the Senate to vote against the pending amendment.

Mr. President, I yield back the remainder of my time.

Mr. McINTYRE. Mr. President, I yield to the distinguished senior Senator Texas (Mr. TOWER).

Mr. TOWER. Mr. President, I associate myself with the remarks of my distinguished colleague from Texas.

What the Senator from Ohio proposes to do here would wipe out benefits to disaster victims in some 30 States. These have been very real disasters.

I look with interest at the newspaper circulated by the Senator from Pennsylvania (Mr. SCHWEIKER), showing the disaster effects in Pennsylvania. I might say that in wandering around in the rubble of New Braunfels and Seguin, Tex., the day after the disaster there, we could have taken some pictures equally horrible.

I think that for reasons of compassion to disaster victims of the past 18 months, the amendment of the Senator from Ohio should be rejected.

CONGRESS MUST RESPOND TO NEEDS OF PEOPLE CAUSED BY MAJOR DISASTER

Mr. RANDOLPH. Mr. President, during the first 6 months of 1972 there were nearly as many declared disasters as occurred in the United States in all of 1971. These unexpected devastations caused millions of dollars worth of damage and brought death, injury, and extreme hardship to thousands of our fellow citizens.

While 1972 has been an unusually high number of disasters, they, unfortunately, are a regular occurrence. Every year there are many Americans who require assistance as the result of disasters of all kinds.

In 1970 the Committee on Public Works, through a special subcommittee chaired by the able Senator from Indiana (Mr. BAYH), examined in greater depth than ever before the legislative requirements for a relief program that would respond quickly and effectively when these disasters strike. We recognized that in the past we had responded individually to disasters as they took place. This was an unsatisfactory procedure that resulted in lost time and frequently in inadequate and unevenly distributed aid.

By enacting the Disaster Relief Act of 1970 we believed we had provided a mechanism capable of responding to all disasters. Mr. President, the experience under this law for the past 2 years has been good. It has allowed the Federal and State governments to act at once following a disaster and to marshal the resources needed to alleviate human suffering.

As with any new program, however, experience has shown that some modifications are needed. The Committee on Public Works has closely watched the implementation of the Disaster Relief Act. We are aware that refinements are needed in some areas and have begun work to bring these about. That is why I welcome suggestions from any source.

The act may need amending, but I

caution the Senate, however, about returning to the old practice of responding on a disaster-by-disaster basis.

In this connection, I fear that the amendment offered by the Senator from Ohio (Mr. TAFT) represents just such an approach. Increased benefits and lower interest rates are, I believe, needed. But we must make them available to victims of disasters other than Hurricane Agnes and the dam collapse at Rapid City.

Early this year, a coal mine water impoundment collapsed in Buffalo Creek, W. Va., killing at least 118 people and virtually wiping out a valley 17 miles long. Recovery from this disaster of monumental proportions will be a long, difficult and expensive task. Those involved in rebuilding the valley will need all the help we can provide, including that proposed in the bill now before the Senate.

The amendment of the Senator from Ohio, however, would deny this aid to these people and to the victims of other disasters that occurred prior to June of this year. The hardships suffered by the West Virginians who live on Buffalo Creek are just as great as those whose homes and property were in the path of Hurricane Agnes or below the dam in Rapid City.

Mr. President, simple fairness and human decency demands that we make assistance available evenly and without discrimination to all who need it. For this reason, I urge the Senate to reject the amendment of the Senator from Ohio.

Mr. McINTYRE. Mr. President, how much time remains on the amendment?

The PRESIDING OFFICER. (Mr. BEALL). The proponents have 24 minutes. The opponents have 1 minute.

Mr. McINTYRE. The proponents of the amendment have 24 minutes?

The PRESIDING OFFICER. The proponents of the amendment.

Mr. McINTYRE. I am prepared to yield back the remainder of my time if the Senator from Ohio is willing to do the same.

Mr. TAFT. I yield myself 3 minutes.

Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. TAFT. Mr. President, before taking that step, I had considered modifying my amendment to make the point as to what the issue on this amendment is. I have considered modifying my amendment to go back to the beginning of fiscal year 1970. In the case of my own State, this would have brought under the coverage for additional benefits some applicants with 204 loans resulting from presidentially declared disasters in my own State of Ohio. I am very tempted to do so. There is, as I indicated previously, no fair date except an ongoing date from the date of the passage of the legislation on which we can make a cutoff. No lack of sympathy for those in Texas, Minnesota, Ohio, or any other area of the country has this led me to point this out to the Senate but, rather, to point out that they are, in effect, establishing discrimination between those who come before the cutoff date and those who come after the cutoff date.

Insofar as the benefits are concerned, I feel that Ohio, even if we included all of these, would be pretty well shortcut on many disasters because the Small Business Administration's policies, with which I have not agreed in many instances, have led to a refusal to declare disasters in situations where I thought they were justified.

This amendment takes into consideration a disaster in 30 States, therefore, if we vote with our constituencies in mind, I suppose that the amendment would fail and that the date in the committee bill would prevail.

I suggest to the Senate that I do not believe that is a sound basis on which to make this decision, nor is it equitable for the people of the country generally.

Mr. President, I am ready to yield back the remainder of my time.

Mr. McINTYRE. Mr. President, I yield back the remainder of our time.

The PRESIDING OFFICER (Mr. BEALL). All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Ohio (Mr. TAFT).

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Georgia (Mr. GAMBRELL), the Senator from Oklahoma (Mr. HARRIS), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Maine (Mr. MUSKIE) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG) is absent on official business.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL) would vote "nay."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Hampshire (Mr. COTTON), the Senator from Arizona (Mr. FANNIN), the Senator from Michigan (Mr. GRIFFIN), the Senator from Iowa (Mr. MILLER) and the Senator from Illinois (Mr. PERCY) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Illinois (Mr. PERCY) would vote "nay."

On this vote, the Senator from Iowa (Mr. MILLER) is paired with the Senator from Massachusetts (Mr. BROOKE). If present and voting, the Senator from Iowa would vote "yea" and the Senator from Massachusetts would vote "nay."

The result was announced—yeas 25, nays 58, as follows:

[No. 347 Leg.]

YEAS—25

| | | |
|---|---|---|
| Allen | Fulbright | Proxmire |
| Anderson | Goldwater | Roth |
| Bellmon | Gurney | Saxbe |
| Boggs | Hansen | Taft |
| Brock | Hollings | Thurmond |
| Curtis | Hruska | Weicker |
| Dole | Jordan, Idaho | Young |
| Dominick | Nelson | |
| Fong | Packwood | |

NAYS—58

| | | |
|---|---|---|
| Aiken | Hart | Pastore |
| Bayh | Hartke | Pearson |
| Beall | Hatfield | Pell |
| Bennett | Hughes | Randolph |
| Bentsen | Humphrey | Ribicoff |
| Bible | Inouye | Schweiker |
| Buckley | Jackson | Scott |
| Burdick | Javits | Smith |
| Byrd, Harry F., Jr. | Jordan, N.C. | Sparkman |
| Byrd, Robert C. | Kennedy | Spong |
| Cannon | Magnuson | Stafford |
| Case | Mansfield | Stennis |
| Chiles | Mathias | Stevens |
| Church | McClellan | Stevenson |
| Cook | McGee | Symington |
| Cooper | McGovern | Talmadge |
| Cranston | McIntyre | Tower |
| Ervin | Metcalf | Tunney |
| Gravel | Mondale | Williams |
| | Moss | |

NOT VOTING—16

| | | |
|---|---|---|
| Allott | Fannin | Montoya |
| Baker | Gambrell | Mundt |
| Brooke | Griffin | Muskie |
| Cotton | Harris | Percy |
| Eagleton | Long | |
| Eastland | Miller | |

So Mr. TAFT's amendment was rejected.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. McINTYRE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on amendment No. 1382 of the Senator from Ohio (Mr. TAFT).

Mr. TOWER. Would the Senator yield?

Mr. TAFT. Mr. President, I do not know whether I have time remaining.

The PRESIDING OFFICER. The Senator from Ohio has 1 minute remaining.

Mr. TOWER. Mr. President, I yield myself 1 minute on the bill.

The PRESIDING OFFICER. The Senator from Texas is recognized for 1 minute.

Mr. TOWER. Mr. President, I merely want to advise our colleagues that all subsequent votes will be of only 10 minutes duration. I am not sure that every Senator understood that.

Mr. BAYH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAYH. Mr. President, if the Senator from Indiana had an amendment to the Taft amendment, would it be appropriate to send it to the desk at this time and thus have a very short discourse with the Senator from Ohio on my time?

The PRESIDING OFFICER. It is not in order for the Senator from Indiana to offer an amendment until all time has been used or yielded back on the pending amendment, except by unanimous consent.

Mr. TAFT. Mr. President, I am ready to yield back my time so that the Bayh amendment can be taken up.

Mr. McINTYRE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. BAYH. Mr. President, I send to the desk an amendment. And may I say that I appreciate the courtesy of my friends, the Senator from New Hampshire and the Senator from Ohio, for making this possible.

Mr. PASTORE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

The amendment will be stated.

The amendment was read as follows:

On page 2, line 6, strike "$6,000" and insert "$10,000".

The PRESIDING OFFICER. The time for debate on this amendment will be 30 minutes, to be divided between the Senator from Indiana and the manager of the bill.

The Senator from Indiana is recognized.

Mr. BAYH. Mr. President, in making an explanation of this particular amendment, which I am hopeful will be accepted by my friend from Ohio, I feel compelled to preface these remarks with a bit of explanation of previous work done in the disaster relief area.

I rise in a position almost of hiatus, in which my colleagues on the steering committee have appointed me to the Committee on Appropriations, and with that honor and privilege. I am compelled to give up a position on the Committee on Public Works. But having served on that committee for 10 years under the distinguished chairman of the committee, the Senator from West Virginia (Mr. RANDOLPH), and having been given the responsibility by him of being chairman of the ad hoc Subcommittee on Disasters of the Committee on Public Works, I would like to suggest for the RECORD that some of the language in the report is not well taken and I would like to place in the RECORD at this time the present Disaster Relief Act, Public Law 91-606. I ask unanimous consent, Mr. President, to have that public law printed in the RECORD at this point.

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

TITLE I—FINDINGS AND DECLARATIONS; DEFINITIONS

FINDINGS AND DECLARATIONS

SEC. 101. (a) The Congress hereby finds and declares that—

(1) because loss of life, human suffering, loss of income, and property loss and damage result from major disasters such as hurricanes, tornadoes, storms, floods, high waters, wind-driven waters, tidal waves, earthquakes, droughts, fires, and other catastrophes; and

(2) because such disasters disrupt the normal functioning of government and the community, and adversely affect individual persons and families with great severity;

special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency welfare services, and the reconstruction and rehabilitation of devastated areas, are necessary.

(b) It is the intent of the Congress, by this Act, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by—

(1) revising and broadening the scope of existing major disaster relief programs;

(2) encouraging the development of comprehensive disaster relief plans, programs, and organizations by the States; and

(3) achieving greater coordination and responsiveness of Federal major disaster relief programs.

DEFINITIONS

SEC. 102. As used in this Act—

(1) "major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other catastrophe in any part of the United States, which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of States, local governments, and relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby, and with respect to which the Governor of any State in which such catastrophe occurs or threatens to occur certifies the need for Federal disaster assistance under this Act and gives assurance of the expenditure of a reasonable amount of the funds of such State, its local governments, or other agencies for alleviating the damage, loss, hardship or suffering resulting from such catastrophe;

(2) "United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands;

(3) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands;

(4) "Governor" means the chief executive of any State;

(5) "local government" means any county, city, village, town, district, or other political subdivision of any State, and includes any rural community or unincorporated town or village for which an application for assistance is made by a State or political subdivision thereof;

(6) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, except the American National Red Cross; and

(7) "Director" means the Director of the Office of Emergency Preparedness.

TITLE II—THE ADMINISTRATION OF DISASTER ASSISTANCE

FEDERAL COORDINATING OFFICER

SEC. 201. (a) Immediately upon his designation of a major disaster area, the President shall appoint a Federal coordinating officer to operate under the Office of Emergency Preparedness in such area.

(b) In order to effectuate the purposes of this Act, the coordinating officer, within the designated area, shall

(1) make an initial appraisal of the types of relief most urgently needed;

(2) establish such field offices as he deems necessary and as are authorized by the Director;

(3) coordinate the administration of relief, including activities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations which agree to operate under his advice or direction, except that nothing contained in this Act shall limit or in any way affect the responsibilities of the American National Red Cross under the Act of January 5, 1905, as amended (33 Stat. 599); and

(4) take such other action, consistent with authority delegated to him by the Director, and consistent with the provisions of this Act, as he may deem necessary to assist local citizens and public officials in promptly obtaining assistance to which they are entitled.

EMERGENCY SUPPORT TEAMS

SEC. 202. The Director is authorized to form emergency support teams of Federal personnel to be deployed in a major disaster area. Such emergency support teams shall assist the Federal coordinating officer in carrying out his responsibilities pursuant to section 201(b) of this Act. Upon request of the Director, the head of any Federal department or agency is authorized to detail to temporary duty with the emergency support teams on either a reimbursable or nonreimbursable basis, as is determined necessary by the discretion of the Director, such personnel within the administrative jurisdiction of the head of the Federal department or agency as the Director may need or believe to be useful for carrying out the functions of the emergency support teams, each such detail to be without loss of seniority, pay, or other employee status.

COOPERATION OF FEDERAL AGENCIES IN RENDERING EMERGENCY ASSISTANCE

SEC. 203. (a) In any major disaster, Federal agencies are hereby authorized, on direction of the President, to provide assistance by—

(1) utilizing or lending, with or without compensation therefor, to States and local governments, their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any Act;

(2) distributing or rendering, through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations, or otherwise, medicine, food, and other consumable supplies, or emergency assistance;

(3) donating or lending equipment and supplies determined in accordance with applicable laws to be surplus to the needs and responsibilities of the Federal Government to State and local governments for use or distribution by them for the purposes of this Act; and

(4) performing on public or private lands or waters any emergency work essential for the protection and preservation of life and property, including—

(A) clearing and removing debris and wreckage in accordance with section 224;

(B) making repairs to, restoring to service, or replacing public facilities (including street, road, and highway facilities) of State and local governments damaged or destroyed by a major disaster, except that the Federal contributions therefor shall not exceed the net cost of restoring each such facility on the basis of the design of such facility as it existed immediately prior to the disaster in conformity with current codes, specifications, and standards;

(C) providing emergency shelter for individuals and families who, as a result of a major disaster, require such assistance; and

(D) making contributions to State or local governments for the purpose of carrying out the provisions of paragraph (4).

(b) Emergency work performed under subsection (a) (4) of this section shall not preclude Federal assistance under any other section of this Act.

(c) Federal agencies may be reimbursed for expenditures under this Act from funds appropriated for the purposes of this Act. Any funds received by Federal agencies as reimbursement for services or supplies furnished under the authority of this section shall be deposited to the credit of the appropriation or appropriations currently available for such services or supplies.

(d) The Federal Government shall not be liable for any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this section.

(e) In carrying out the purposes of this Act, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government. Any Federal agency, in performing any activities under this section, is authorized to appoint and fix

the compensation of such temporary personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of such title relating to classification and General Schedule pay rates, to employ experts and consultants in accordance with the provisions of section 3109 of such title, and to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communication, and for the supervision and administration of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by an agency in such amount as may be made available to it by the President.

(f) In the interest of providing maximum mobilization of Federal assistance under this Act, the President is authorized to coordinate in such manner as he may determine the activities of Federal agencies in providing disaster assistance. The President may direct any Federal agency, with or without reimbursement, to utilize its available personnel, equipment, supplies, facilities, and other resources in accordance with the authority, herein contained. The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this Act, and he may exercise any power or authority conferred on him by any section of this Act either directly or through such Federal agency as he may designate.

(g) The President, acting through the Office of Emergency Preparedness, shall conduct periodic reviews (at least annually) of the activities of Federal and State departments or agencies providing disaster assistance, in order to assure maximum coordination of such programs, and to evaluate progress being made in the development of Federal, State, and local preparedness to cope with major disasters.

(h) The Director of the Office of Emergency Preparedness is authorized and directed to make in cooperation with the heads of other affected Federal and State agencies, a full and complete investigation and study for the purpose of determining what additional or improved plans, procedures, and facilities are necessary to provide immediate effective action to prevent or minimize losses of publicly or privately owned property and personal injuries or deaths which could result from fires (forest and grass), earthquakes, tornadoes, freezes and frosts, tsunami, storm surges and tides, and floods, which are or threaten to become major disasters. Not later than one year after the date of enactment of this subsection, and from time to time, the Director of the Office of Emergency Preparedness shall report to Congress the findings of this study and investigation together with his recommendations with respect thereto.

USE OF LOCAL FIRMS AND INDIVIDUALS

SEC. 204. In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster assistance activities which may be carried out by contract with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals who reside or do business primarily in the disaster area.

FEDERAL GRANT-IN-AID PROGRAMS

SEC. 205. Any Federal agency charged with the administration of a Federal grant-in-aid program is authorized, if so requested by the applicant State or local authorities, to modify or waive, for the duration of a major disaster proclamation, such administrative procedural conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the disaster.

STATE DISASTER PLANS

SEC. 206. (a) The President is authorized to provide assistance to the States in developing comprehensive plans and practicable programs for preparation against major disasters, and for relief and assistance for individuals, businesses, and local governments following such disasters. Such plans should include long-range recovery and reconstruction assistance plans for seriously damaged or destroyed public and private facilities.

(b) The President is authorized to make grants of not more than $250,000 to any State, upon application therefor, for not to exceed 50 per centum of the cost of developing such plans and programs.

(c) Any State desiring assistance under this section shall designate or create an agency which is specially qualified to plan and administer such a disaster relief program, and shall, through such agency, submit a State plan to the President, which shall—

(1) set forth a comprehensive and detailed State program for preparation against, and relief following, a major disaster, including provisions for emergency and long-term assistance to individuals, businesses, and local governments; and

(2) include provisions for the appointment of a State coordinating officer to act in cooperation with the Federal coordinating officer appointed under section 201 of this Act.

(d) From time to time the Director shall make a report to the President, for submission to the Congress, containing his recommendations for programs for the Federal role in the implementation and funding of comprehensive disaster relief plans, and such other recommendations relating to the Federal role in disaster relief activities as he deems warranted.

(e) The President is authorized to make grants not to exceed 50 per centum of the cost of improving, maintaining, and updating State disaster assistance plans, except that no such grant shall exceed $25,000 per annum to any State.

USE AND COORDINATION OF RELIEF ORGANIZATIONS

SEC. 207. (a) In providing relief and assistance following a major disaster, the Director may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of community services and essential facilities whenever the Director finds that such utilization is necessary.

(b) The Director is authorized to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations under which the disaster relief activities of such organizations may be coordinated by the Federal coordinating officer whenever such organizations are engaged in providing relief during and after a major disaster. Any such agreement shall include provisions conditioning use of the facilities of the Office of Emergency Preparedness and the services of the coordinating officer upon compliance with regulations promulgated by the Director under sections 208 and 209 of this Act, and such other regulations as the Director may require.

DUPLICATION OF BENEFITS

SEC. 208. (a) The Director, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as the result of a major disaster, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program.

(b) The Director shall assure that no person, business concern, or other entity receives any Federal assistance for any part of a loss suffered as the result of a major disaster if such person, concern, or entity received compensation from insurance or any other source for that part of such a loss. Partial compensation for a loss or a part of a loss resulting from a major disaster shall not preclude additional Federal assistance for any part of such a loss not compensated otherwise.

(c) Whenever the Director determines (1) that a person, business concern, or other entity has received assistance under this Act for a loss and that such person, business concern or other entity received assistance for the same loss from another source, and (2) that the amount received from all sources exceeded the amount of the loss, he shall direct such person, business concern, or other entity to pay to the Treasury an amount, not to exceed the amount of Federal assistance received, sufficient to reimburse the Federal Government for that part of the assistance which he deems excessive.

NONDISCRIMINATION IN DISASTER ASSISTANCE

SEC. 209. (a) The Director shall issue, and may alter and amend, such regulations as may be necessary for the guidance of personnel carrying out emergency relief functions at the site of a major disaster. Such regulations shall include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status prior to a major disaster.

(b) As a condition of participation in the distribution of assistance or supplies under section 207, relief organizations shall be required to comply with regulations relating to nondiscrimination promulgated by the Director, and such other regulations applicable to activities within a major disaster area as he deems necessary for the effective coordination of relief efforts.

DISASTER WARNINGS

SEC. 210. The President is authorized to utilize or to make available to Federal, State, and local agencies the facilities of the civil defense communications system established and maintained pursuant to section 201(c) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. app. 2281(c)), for the purpose of providing needed warning to governmental authorities and the civilian population in areas endangered by imminent major disasters.

PREDISASTER ASSISTANCE

SEC. 221. If the President determines that a major disaster is immiment, he is authorized to use Federal departments, agencies, and instrumentalities, and all other resources of the Federal Government to avert or lessen the effects of such disaster before its actual occurrence.

EMERGENCY COMMUNICATIONS

SEC. 222. The Director is authorized during, or in anticipation of, an emergency to establish temporary communications in any major disaster area in order to carry out the functions of his office, and to make such communications available to State and local government officials and other persons as he deems appropriate.

EMERGENCY PUBLIC TRANSPORTATION

SEC. 223. The Director is authorized to provide temporary public transportation service to meet emergency needs in a major disaster area. Such service will provide transportation to governmental offices, supply centers, stores, post offices, schools, major employment centers, and such other places as may be necessary in order to enable the community to resume its normal pattern of life as soon as possible.

DEBRIS REMOVAL

SEC. 224. (a) The President, whenever he determines it to be in the public interest, is authorized—

(1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters.

(2) to make grants to any State or local government for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.

(b) No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.

FIRE SUPPRESSION GRANTS

SEC. 225. The President is authorized to provide assistance, including grants, to any State for the suppression of any fire on publicly or privately owned forest or grassland which threatens such destruction as would constitute a major disaster.

TEMPORARY HOUSING ASSISTANCE

SEC. 226. (a) The Director is authorized to provide temporary housing or other emergency shelter, including, but not limited to, mobile homes or other readily fabricated dwellings for those who, as a result of such major disaster, require temporary housing or other emergency shelter, except that for the first twelve months of occupancy no rentals shall be established for any such accommodations, thereafter rentals shall be established, based upon fair market value of the accommodations being furnished, adjusted to take into consideration the financial ability of the occupant. Notwithstanding any other provision of law, any such emergency housing acquired by purchase may be sold directly to individuals and families who are occupants thereof at prices that are fair and equitable. Any mobile home or readily fabricated dwelling shall be placed on a site complete with utilities provided by State or local government, or by the owner or occupant of the site who was displaced by the major disaster, without charge to the United States. However, the Director may elect to provide other more economical and accessible sites at Federal expense when he determines such action to be in the public interest.

(b) The President is authorized to provide assistance on a temporary basis in the form of mortgage or rental payments to or on behalf of individuals and families who, as a result of financial hardship caused by a major disaster, have received written notice of dispossession or eviction from a residence by reason of foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease, entered into prior to the disaster. Such assistance shall be provided for a period of not to exceed one year or for the duration of the period of financial hardship, whichever is the lesser. The President is authorized for the purposes of this subsection and in furtherance of the purposes of section 240 of this Act, to provide reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster.

SMALL BUSINESS DISASTER LOANS

SEC. 231. In the administration of the disaster loan program under section 7(b) (1), (2), and (4) of the Small Business Act, as amended (15 U.S.C. 636(b)), in the case of property loss or damage or injury resulting from a major disaster as determined by the President or a disaster as determined by the Administrator, the Small Business Administration—

(1) to the extent such loss or damage or injury is not compensated for by insurance or otherwise, (A) shall, on that part of any loan in excess of $500, cancel the principal of the loan, except that the total amount so canceled shall not exceed $2,500, except that this clause (A) shall apply only to loans made to cover losses and damage and injury resulting from major disasters as determined by the President, and (B) may defer interest payments or principal payments, or both, in whole or in part, on any loan made under this section during the first three years of the term of the loan except that any such deferred payments shall bear interest at the rate determined under section 234 of this Act.

(2) to the extent such injury, loss, or damage is not compensated for by insurance or otherwise, may grant any loan for repair, rehabilitation, or replacement of property damaged, or destroyed, without regard to whether the required financial assistance is otherwise available from private sources.

(3) may, in the case of the total destruction or substantial property damage of a home or business concern, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such property is to be repaired, rehabilitated, or replaced, except that the amount refinanced shall not exceed the amount of the physical loss sustained. And such refinancing shall be subject to the provisions of clauses (1) and (2) of this section.

FARMERS HOME ADMINISTRATION EMERGENCY LOANS

SEC. 232. In the administration of the emergency loan program under subtitle C of the Consolidated Farmers Home Administration Act of 1961, as amended (7 U.S.C. 1961–1967), and the rural housing loan program under section 502 of title V of the Housing Act of 1949, as amended (42 U.S.C. 1472), in the case of loss or damage, resulting from a major disaster as determined by the President, or a natural disaster as determined by the Secretary of Agriculture—

(1) to the extent such loss or damage is not compensated for by insurance or otherwise, (A) shall, on that part of any loan in excess of $500, cancel the principal of the loan, except that the total amount so canceled shall not exceed $2,500, except that this clause (A) shall apply only to loans made to cover losses and damage resulting from major disasters as determined by the President, and (B) may defer interest payments or principal payments, or both, in whole or in part, on any loan made under this section during the first three years of the term of the loan, except that any such deferred payments shall bear interest at the rate determined under section 234 of this Act.

(2) to the extent such injury, loss, or damage is not compensated for by insurance or otherwise, may grant any loan for repair, rehabilitation, or replacement of property damaged or destroyed, without regard to whether the required financial assistance is otherwise available from private sources.

(3) may, in the case of the total destruction or substantial property damage of homes or farm service buildings and related structures and equipment, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such property is to be repaired, rehabilitated, or replaced, except that the amount refinanced shall not exceed the amount of the physical loss sustained. Any such refinancing shall be subject to the provisions of clauses (1) and (2) of this section.

LOANS HELD BY THE VETERANS' ADMINISTRATION

SEC. 233. (1) Section 1820(a)(2) of title 38, United States Code, is amended to read as follows:

"(2) subject to specific limitations in this chapter, consent to the modification, with respect to rate of interest, time of payment of principal or interest or any portion thereof, security or other provisions of any note, contract, mortgage or other instrument securing a loan which has been guaranteed, insured, made or acquired under this chapter;"

(2) Section 1820(f) of title 38, United States Code, is amended to read as follows:

"(f) Whenever loss, destruction, or damage to any residential property securing loans guaranteed, insured, made, or acquired by the Administrator under this chapter occurs as the result of a major disaster as determined by the President under the Disaster Assistance Act of 1970, the Administrator shall (1) provide counseling and such other service to the owner of such property as may be feasible and shall inform such owner concerning the disaster assistance available from other Federal agencies and from State or local agencies, and (2) pursuant to subsection (a) (2) of this section, extend on an individual case basis such forebearance or indulgence to such owner as the Administrator determines to be warranted by the facts of the case and the circumstances of such owner."

DISASTER LOAN INTEREST RATES

SEC. 234. Any loan made under sections 231, and 232 of this Act shall not exceed the current cost of repairing or replacing the disaster injury, loss, or damage in conformity with current codes and specifications. Any loan made under sections 231, 232, 236(b) and 237 of this Act shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of ten to twelve years reduced by not to exceed 2 per centum per annum. In no event shall any loan made under this section bear interest at a rate in excess of 6 per centum per annum.

AGE APPLICATION FOR LOANS

SEC. 235. In the administration of any Federal disaster loan program under the authority of section 231, 232, or 233 of this Act, the age of any adult loan applicant shall not be considered in determining whether such loan should be made or the amount of such loan.

FEDERAL LOAN ADJUSTMENTS

SEC. 236. (a) In addition to the loan extension authority provided in section 12 of the Rural Electrification Act, the Secretary of Agriculture is authorized to adjust and readjust the schedules for payment of principal and interest on loans to borrowers under programs administered by the Rural Electrification Administration, and to extend the maturity date of any such loan to a date not beyond forty years from the date of such loan where he determines such action is necessary because of the impairment of the economic feasibility of the system, or the loss, destruction, or damage of the property of such borrowers as a result of a major disaster.

(b) The Secretary of Housing and Urban Development is authorized to refinance any note or other obligation which is held by him in connection with any loan made by the Department of Housing and Urban Develop-

ment or its predecessor in interest, or which is included within the revolving fund for liquidating programs established by the Independent Offices Appropriation Act of 1955, where he finds such refinancing necessary because of the loss, destruction, or damage (as a result of a major disaster) to property or facilities securing such obligations. The Secretary may authorize a suspension in the payment of principal and interest charges on, and an additional extension in the maturity of, any such loan for a period not to exceed five years if he determines that such action is necessary to avoid severe financial hardship.

AID TO MAJOR SOURCES OF EMPLOYMENT

SEC. 237. (a) The Small Business Administration in the case of a nonagricultural enterprise, and the Farmers Home Administration in the case of an agricultural enterprise, are authorized to provide any industrial, commercial, agricultural, or other enterprise, which has constituted a major source of employment in an area suffering a major disaster and which is no longer in substantial operation as a result of such disaster, a loan in such amount as may be necessary to enable such enterprise to resume operations in order to assist in restoring the economic viability of the disaster area. Loans authorized by this section shall be made without regard to limitations on the size of loans which may otherwise be imposed by any other provision of law or regulation promulgated pursuant thereto.

(b) Assistance under this section shall be in addition to any other Federal disaster assistance, except that such other assistance may be adjusted or modified to the extent deemed appropriate by the Director under the authority of section 208 of this Act. Any loan made under this section shall be subject to the interest requirements of section 234 of this Act, but the President, if he deems it necessary, may defer payments of principal and interest for a period not to exceed three years after the date of the loan. Any such deferred payments shall bear interest at the rate determined under section 234 of this Act.

FOOD COUPON AND DISTRIBUTION

SEC. 238. (a) Whenever the President determines that, as a result of a major disaster, low-income households are unable to purchase adequate amounts of nutritious food, he is authorized, under such terms and conditions as he may prescribe, to distribute through the Secretary of Agriculture coupon allotments to such households pursuant to the provisions of the Food Stamp Act of 1964 and to make surplus commodities available pursuant to the provisions of section 203 of this Act.

(b) The President, through the Secretary of Agriculture, is authorized to continue to make such coupon allotments and surplus commodities available to such households for so long as he determines necessary, taking into consideration such factors as he deems appropriate, including the consequences of the major disaster on the earning power of the households to which assistance is made available under this section.

(c) Nothing in this section shall be construed as amending or otherwise changing the provisions of the Food Stamp Act of 1964 except as they relate to the availability of food stamps in a major disaster area.

LEGAL SERVICES

SEC. 239. Whenever the Director determines that low-income individuals are unable to secure legal services adequate to meet their needs as a consequence of a major disaster, consistent with the goals of the programs authorized by this Act, the Director shall assure that such programs are conducted with the advice and assistance of appropriate Federal agencies and State and local bar associations.

UNEMPLOYMENT ASSISTANCE

SEC. 240. The President is authorized to provide to any individual unemployed as a result of a major disaster, such assistance as he deems appropriate while such individual is unemployed. Such assistance as the President shall provide shall not exceed to maximum amount and the maximum duration of payment under the unemployment compensation program of the State in which the disaster occurred, and the amount of assistance under this section to any such individual shall be reduced by any amount of unemployment compensation or of private income protection insurance compensation available to such individual for such period of unemployment.

COMMUNITY DISASTER GRANTS

SEC. 241. The President is authorized to make grants to any local government which, as the result of a major disaster, has suffered a substantial loss of property tax revenue (both real and personal). Grants made under this section may be made for the tax year in which the disaster occurred and for each of the following two tax years. The grant for any tax year shall not exceed the difference between the annual average of all property tax revenues received by the local government during the three-tax-year period immediately preceding the tax year in which the major disaster occurred and the actual property tax revenue received by the local government for the tax year in which the disaster occurred and for each of the two tax years following the major disaster but only if there has been no reduction in the tax rates and the tax assessment valuation factors of the local government. If there has been a reduction in the tax rates or the tax assessment valuation factors then, for the purpose of determining the amount of a grant under this section for the year or years when such reduction is in effect, the President shall use the tax rates and tax assessment valuation factors of the local government in effect at the time of the disaster without reduction, in order to determine the property tax revenues which would have been received by the local government but for such reduction.

TIMBER SALE CONTRACTS

SEC. 242. (a) When an existing timber sale contract between the Secretary of Agriculture or the Secretary of the Interior and a timber purchaser does not provide relief from major physical change not due to negligence of the purchaser prior to approval of construction of any section of specified road or of any other specified development facility and, as a result of a major disaster, a major physical change results in additional construction work in connection with such road or facility by such purchaser with an estimated cost, as determined by the appropriate Secretary, (1) of more than $1,000 for sales under one million board feet, (2) of more than $1 per thousand board feet for sales of one of three million board feet, or (3) of more than $3,000 for sales over three million board feet, such increased construction cost shall be borne by the United States.

(b) If the Secretary determines that damages are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement authorized by subsection (a) of this section, the Secretary may allow cancellation of the contract notwithstanding contrary provisions therein.

(c) The Secretary of Agriculture is authorized to reduce to seven days the minimum period of advance public notice required by the first section of the Act of June 4, 1897 (16 U.S.C. 476), in connection with the sale of timber from national forests, whenever the Secretary determines that (1) the sale of such timber will assist in the construction of any area of a State damaged by a major disaster, (2) the sale of such timber will assist in sustaining the economy of such area, or (3) the sale of such timber is necessary to salvage the value of timber damaged in such major disaster or to protect undamaged timber.

(d) The President, when he determines it to be in the public interest, and acting through the Director of Emergency Preparedness, is authorized to make grants to any State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster, and such State or local government is authorized upon application, to make payments out of such grants to any person for reimbursement of expenses actually incurred by such person in the removal of damaged timber, not to exceed the amount that such expenses exceed the salvage value of such timber.

MINIMUM STANDARDS FOR RESIDENTIAL STRUCTURE RESTORATION

SEC. 243. No loan or grant made by any relief organization operating under the supervision of the Director, for the repair, restoration, reconstruction, or replacement of any residential structure located in a major disaster area shall be made unless such structure will be repaired, restored, reconstructed, or replaced in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable building codes and specifications.

FEDERAL FACILITIES

SEC. 251. The President may authorize any Federal agency to repair, reconstruct, restore, or replace any facility owned by the United States and under the jurisdiction of such agency which is damaged or destroyed by any major disaster if he determines that such repair, reconstruction, restoration, or replacement is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing legislation or the making of an appropriation for such purposes. In order to carry out the provisions of this section, such repair, reconstruction, restoration, or replacement may be begun notwithstanding a lack or an insufficiency of funds appropriated for such purpose, where such lack or insufficiency can be remedied by the transfer, in accordance with law, of funds appropriated to that agency for another purpose.

STATE AND LOCAL GOVERNMENT FACILITIES

SEC. 252. (a) The President is authorized to make contributions to State or local governments to repair, restore, reconstruct, or replace public facilities belonging to such State or local governments which were damaged or destroyed by a major disaster, except that the Federal contribution therefor shall not exceed 100 per centum of the net cost of repairing, restoring, reconstructing, or replacing any such facility on the basis of the design of such facility as it existed immediately prior to such disaster and in conformity with applicable codes, specifications, and standards.

(b) In the case of any such public facilities which were in the process of construction when damaged or destroyed by a major disaster, the Federal contribution shall not exceed 50 per centum of the net costs of restoring such facilities substantially to their prior disaster condition and of completing construction not performed prior to the major disaster to the extent the increase of such cost over the original construction cost is attributable to changed conditions resulting from a major disaster.

(c) For the purposes of this section "public facility" includes any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility, any non-Federal-aid street, road, or highway, and any other public build-

ing, structure, or system, other than one used exclusively for recreation purposes.

PRIORITY TO CERTAIN APPLICATIONS FOR PUBLIC FACILITY AND PUBLIC HOUSING ASSISTANCE

SEC. 253. In the processing of applications for assistance, priority and immediate consideration may be given, during such period, not to exceed six months, as the President may prescribe by proclamation, to applications from public bodies situated in major disaster areas, under the following Acts:

(1) title II of the Housing Amendments of 1955, or any other Act providing assistance for repair, construction, or extension of public facilities;

(2) the United States Housing Act of 1937 for the provision of low-rent housing;

(3) section 702 of the Housing Act of 1954 for assistance in public works planning;

(4) section 702 of the Housing and Urban Development Act of 1965 providing for grants for public facilities; or

(5) section 306 of the Consolidated Farmers Home Administration Act.

RELOCATION ASSISTANCE

SEC. 254. Notwithstanding any other provision of law, no person otherwise eligible for any kind of relocation assistance payment authorized under section 114 of the Housing Act of 1949 shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to reoccupy property from which he was displaced by such disaster.

TITLE III—MISCELLANEOUS

TECHNICAL AMENDMENTS

SEC. 301. (a) Section 701(a)(3)(B)(ii) of the Housing Act of 1954 (40 U.S.C. 461(a)(3)(B)(ii) is amended to read as follows: "(ii) have suffered substantial damage as a result of a major disaster as determined by the President pursuant to the Disaster Relief Act of 1970."

(b) Section 8(b)(2) of the National Housing Act (12 U.S.C. 1706c(b)(2)) is amended by striking out of the last proviso "section 2(a) of the Act entitled 'An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes' (Public Law 875, Eighty-first Congress, approved September 30, 1950)" and inserting in lieu thereof "section 102(1) of the Disaster Relief Act of 1970".

(c) Section 203(h) of the National Housing Act (12 U.S.C. 1709(h)) is amended by striking out "section 2(a) of the Act entitled 'An Act to authorize Federal assistance to States and local governments in major disasters and for other purposes' (Public Law 875, Eighty-first Congress, approved September 30, 1950), as amended" and inserting in lieu thereof "section 102(1) of the Disaster Relief Act of 1970".

(d) Section 221(f) of the National Housing Act (12 U.S.C. 17151(f)) is amended by striking out of the last paragraph "the Act entitled 'An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes', approved September 30, 1950, as amended (42 U.S.C. 1855–1855g)" and inserting in lieu thereof "the Disaster Relief Act of 1970".

(e) Section 7(a)(1)(A) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress, a amended; 20 U.S.C. 241–1(a)(1)(A)), is amended by striking out "pursuant to section 2(a) of the Act of September 30, 1950 (42 U.S.C. 1855(a))" and inserting in lieu thereof "pursuant to section 102(1) of the Disaster Relief Act of 1970".

(f) Section 16(a) of the Act of September 23, 1950 (79 Stat. 1158; 20 U.S.C. 646(a)) is amended by striking out "section 2(a) of the Act of September 30, 1950 (42 U.S.C. 1855(a))" and inserting in lieu thereof "section 102(1) of the Disaster Relief Act of 1970".

(g) Section 408(a) of the Higher Education Facilities Act of 1963 (20 U.S.C. 758(a)) is amended by striking out "section 2(a) of the Act of September 30, 1950 (42 U.S.C. 1855a(a))" and inserting in lieu thereof "section 102(1) of the Disaster Relief Act of 1970".

(h) Section 165(h)(2) of the Internal Revenue Code of 1954, relating to disaster losses (26 U.S.C. 165(h)(2)) is amended to read as follows:

"(2) occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Disaster Relief Act of 1970".

(i) Section 5064(a) of the Internal Revenue Code of 1954 (26 U.S.C. 5064(a)), relating to losses caused by disaster, is amended by striking out "the Act of September 30, 1950 (42 U.S.C. 1855)" and inserting in lieu thereof "the Disaster Relief Act of 1970".

(j) Section 5708(a) of the Internal Revenue Code of 1954 (26 U.S.C. 5708(a)), relating to losses caused by disaster, is amended by striking out "the Act of September 30, 1950 (42 U.S.C. 1855)" and inserting in lieu thereof "the Disaster Relief Act of 1970".

(k) Section 3 of the Act of June 30, 1954 (68 Stat. 330; 48 U.S.C. 1681), is amended by striking out of the last sentence "section 2 of the Act of September 30, 1950 (64 Stat. 1109), as amended (42 U.S.C. 1855a)" and inserting in lieu thereof "section 102(1) of the Disaster Relief Act of 1970".

(l) Whenever reference is made in any provision of law (other than this Act), regulation, rule, record, or document of the United States to the Act of September 30, 1950 (64 Stat. 1109), or any provision of such Act, such reference shall be deemed to be a reference to the Disaster Relief Act of 1970 or to the appropriate provision of the Disaster Relief Act of 1970 unless no such provision is included therein.

REPEAL OF EXISTING LAW

SEC. 302. The following Acts are hereby repealed:

(1) the Act of September 30, 1950 (64 Stat. 1109);

(2) the Disaster Relief Act of 1966, except section 7 (80 Stat. 1316); and

(3) the Disaster Relief Act of 1969 (83 Stat. 125).

PRIOR ALLOCATION OF FUNDS

SEC. 303. Funds allocated before the date of enactment of this Act under a Federal-State Disaster Agreement for the relief of a major disaster as defined in the Act of September 30, 1950 (Public Law 875, Eighty-first Congress), and not expended on the date of enactment of this Act may be used by the State to make payments to any person for reimbursement of expenses actually incurred by such person in the removal of debris from community areas, but not to exceed the amount that such expenses exceed the salvage value of such debris, or in otherwise carrying out the purposes of such Act of September 30, 1950, or this Act.

EFFECTIVE DATE

SEC. 304. This Act shall take effect immediately upon its enactment, except that sections 226(b), 237, 241, 252(a), and 254 shall take effect as of August 1, 1969, and sections 231, 232, and 233 shall take effect as of April 1, 1970.

Mr. BAYH. Mr. President, this act is a product of about 5 or 6 years of study by members of the Public Works Committee. The Senator from Indiana was stimulated by a terrible disaster that struck our State on Palm Sunday 1965, in which almost 150 people were killed in dryland farm country in which we normally do not get disasters of that type.

With the leadership of the distinguished Senator from West Virginia we took the ad hoc committee into Indiana; after Camille we went into Biloxi, Miss.; we went into the area represented by the Senator from West Virginia and the Senator from Virginia (Mr. SPONG) in pursuit of our study; we went to the west coast following the terrible tragedy of that last earthquake; and as a result, this measure was passed. It has been strengthened and the whole thrust of the efforts of the Committee on Public Works, and I must say over serious objection by our friends on the House side, was to establish for the first time in history permanent ongoing disaster relief legislation.

I salute my friend from New Hampshire and the members of his committee for the fact that as I understand this $5,000 forgiveness provision, it is not just an effort to respond to this particular disaster, but to provide permanent ongoing legislation and authority which can be applied to any subsequent disasters so that we do not have to come to the floor of the Senate and rush in with a Betsy bill or a Beulah bill, whatever it might be, because the legislation will already be there.

Mr. President, I bring this to the attention of the Senate because some of the language in the report is rather harsh language when it refers to past efforts that have been made, and at least by inferences, suggests that it is not an ongoing program now. There is an ongoing program that provides a number of things that were never provided before.

We provide for temporary housing; we provide for food in time of a disaster; we provide for transportation facilities, we provide for income assistance to those unemployed; we provide grants to communities to enable them to provide public service; we go into areas to rebuild county roads. I see the senior Senator from California and the junior Senator from California in the Chamber. We provided hospital relief, after looking at the hospital in California. We provided aid for private as well as public hospitals for the first time. And now I understand that this bill would deal with private as well as public schools.

I want to say on behalf of the Committee on Public Works, on which committee I was pleased to serve and that I regret leaving, that we had permanent ongoing legislation and I am glad to see some officials in the administration supporting this type of loan forgiveness section.

I remember sitting out in the Santa Rosa Church in California, and I remember sitting over here in the caucus room of the Old Senate Office Building and having some of those same officials saying this program would not be workable. They said we could afford to give money to foreign countries but that we could not afford loans to our own citizens as a result of disasters.

I say to my friend from Ohio, in all respect, that this would change the level at which the forgiveness formula would be initiated pursuant to his bill from $6,000 to $10,000. Some Members of the Senate may feel that is high. But I would like to suggest that if they study the overall disaster problem, they would

have to take into consideration that those at the low end of the economic totem pole receive significant relief from organizations such as the Red Cross, the Salvation Army, and other organizations. But if we then go into that income area where a person has a fairly decent home, mortgaged up to the hilt, and they are struggling to make mortgage payments, with a child in college, they are hit by a disaster, and we come along and say, "We are going to help. We are going to give you another SBA loan to add onto the one you already have, which is now secured by a hole in the ground," then we would not have helped very much. I think those people with incomes up to $10,000 need help when they are hit by disasters as much as those who are in the lower income group.

Mr. TAFT. Mr. President, I thank the Senator for his contribution to the debate. I recognize the Senator's leadership over a period of years in connection with this study of the problem, and the prospect of making some really meaningful improvements in the present bill.

The suggestion the Senator from Indiana has made for increasing the triggering level of the application of the "sliding scale" family income from $6,000 to $10,000 is a matter of judgment. I think there probably is much to be said for the position he has taken, inasmuch as the average income of families in the United States has increased considerably. The most recent figures show that the average income in the United States is in the neighborhood of $10,000.

Just a few moments ago the Senator from Pennsylvania (Mr. SCHWEIKER) related that in Wilkes-Barre the figure is about $8,000.

I believe that the difference in cost between a triggering level of $6,000 and $10,000 would be relatively small. It is only the difference between the loan forgiveness and a 1-percent loan, which would make up the balance.

Mr. President, I feel agreeable to the proposal of the Senator from Indiana, and I defer to his proposal. I would be willing to suggest this as a modification to the Taft amendment.

Mr. President, have the yeas and nays been ordered on the amendment?

The PRESIDING OFFICER. They have not been.

Mr. TAFT. Mr. President, if the yeas and nays have not been ordered I would at this time ask to modify my amendment to change the $6,000 to $10,000, the figure suggested by the Senator from Indiana.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

The amendment is so modified.

Mr. BAYH. Mr. President, I thank my colleague from Ohio and I am prepared to yield back the remainder of my time, so that I might send one other perfecting amendment to his amendment to the desk at this time.

Mr. TAFT. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is time yielded back?

Mr. BAYH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAYH. Mr. President, is it true that once the yeas and nays are ordered that perfecting amendments cannot be accepted?

Mr. TAFT. Mr. President, I will withdraw my request.

The PRESIDING OFFICER. Once the yeas and nays have been ordered, it takes unanimous consent to modify an amendment, but amendments can always be offered.

Mr. BAYH. Mr. President, can they be accepted? I did not want the Senator from Ohio to do anything he did not want to do.

Mr. TAFT. No; I withdraw my request for the yeas and nays at this time. I had forgotten that the Senator from Indiana desired to offer a perfecting amendment.

Mr. McINTYRE. Mr. President, is it not true that I have 15 minutes in opposition to the amendment as amended?

The PRESIDING OFFICER. The Bayh amendment has been incorporated into the Taft amendment and is no longer before us, so there is no time on it.

Mr. McINTYRE. Mr. President, I will take time off the bill.

With reference to the amendment being offered by the Senator from Indiana, as I have said, these are constructive ideas, but it is an entirely new philosophy to start giving relief based on a man's income, and the idea as espoused in the amendment by the Senator from Ohio was defeated in committee. Therefore, the committee will oppose the Bayh amendment to the Taft amendment.

It is interesting to note what the Senator from Indiana says. At one time he was chairman of an ad hoc Committee on Public Works dealing with disaster relief. We knew that the 1970 Disaster Relief Act was inadequate, and the testimony before our subcommittee bears this out. The Senator from Pennsylvania and the Representative from South Dakota were talking in terms of 90 percent and 50 percent forgiveness of the loss incurred.

So I want to say to the Senator from Indiana I feel that what the Small Business Subcommittee of the Committee on Banking, Housing and Urban Affairs has done is bring in a bill which will terminate on July 1, 1973, and we are saying to the President to put together a commission to study the whole problem of natural disaster relief and face up to the realities, because the permanent legislation just does not do the job. The Small Business Administration, which is an arm of the Government to help free enterprise, finds itself heavily involved in disaster work, and it has to pull men off its regular work in the free enterprise system.

While I want to say that the ideas of the Senator from Indiana and the Senator from Ohio may be fine, I think they are more subject to the grist of the full mill, where we would have all the agencies of government acting on the program. As the Senator from Indiana well knows, in a presidentially declared disaster, 31 agencies are brought in to help. All we are talking about here is the Small Business Act. So we do not encompass all matters that would properly be given attention by a Presidential Commission studying this serious problem.

Mr. BAYH. Mr. President, will the Senator yield for a question?

Mr. McINTYRE. I am happy to yield.

Mr. BAYH. Would the Senator point out the shortcomings of the 1970 act that were referred to by the various Senators he mentioned? I want to suggest that we are talking about two different things, and there can be little question about the inadequacies of the loan provisions of the act to which he is referring, but in the report, and indeed in asking the President to study the problem, he is pointing out that there are basic shortcomings in the Disaster Relief Act, which I have not seen criticized heretofore.

Mr. McINTYRE. We are just saying the Natural Disaster Relief Act of 1970 is inadequate. Also, the Senator from Indiana has indicated he proposed more generous provisions, and at that time they were opposed by the administration. Is that correct?

Mr. BAYH. Yes; but we persevered until we got them written into law in the 1970 act.

What I am pointing out is that if this Presidential Commission starts doing what we have been doing since 1965, we are talking about two different things. One, we are talking about grants and the forgiveness of loans, which come within the jurisdiction of the Senator from New Hampshire and his committee. That is where the real shortcomings have been. If there is to be a Presidential study into other facets of the problem, that matter should be referred to the Committee on Labor and Public Welfare, which has been studying it for a great many years, and as to which I have not seen any criticism. I have not seen any complaints that we cannot get highways replaced or schools replaced or debris removed or other places made clean and safe. I want to be sure the act clarifies this matter, and that these shortcomings are studied when the Commission, as well as this body, studies it.

Mr. McINTYRE. I agree with what the Senator has said. We are dealing today with the Small Business Act.

Mr. BAYH. I do not want to take any more time of the Senator, but when he is through I would like to make observations on my own time, if I have any time left.

Mr. McINTYRE. I have no more to say.

Mr. BAYH. Mr. President, if I do have any time, I am glad to yield to the Senator from Ohio.

Mr. TAFT. Mr. President, I want to comment on the technical difficulties the Senator from New Hampshire is discussing. The burden being discussed by the Senator relates to the tremendous job of processing claims that are to be acted on, going back a year and a half, and processing new claims, but the burden the Senator from New Hampshire is talking about, insofar as my amendment is concerned, relates to the Internal Revenue Service. As was stated earlier, the Internal Revenue Service has indicated that it takes only a week and a half to make a determination under the system once it is set up.

The PRESIDING OFFICER. The Chair would point out that the only amendment pending is the Taft amendment, as modified, and there is no time remaining on the Taft amendment, as modified. Once the modification was adopted, the time on the Bayh amendment expired.

Mr. BAYH. Mr. President, I am going to offer another amendment.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk proceeded to read the amendment to the amendment of Mr. TAFT.

Mr. BAYH. Mr. President, I ask unanimous consent that the amendment be considered as having been read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment to the amendment is as follows:

On page 2, line 24, insert the following: after "sustained," add: "*Provided however*, That if the Administrator finds that because of the disaster the income of the borrower in the next succeeding 24 months is likely to decline substantially from the level of the borrower's income in the preceding taxable year, 'income' means adjusted gross income as defined in Section 62 of the Internal Revenue Code of 1954, reduced by $300 for each deduction for personal exemptions allowable to the borrower under Section 151 of such Code, as estimated by the Administrator for the taxable year after the taxable year in which the loss or damage is sustained,".

Mr. BAYH. Mr. President, I have discussed this matter briefly with the Senator from Ohio. It goes to what I hope he will consider to be an effort to strengthen his amendment, which I am inclined to support.

What this amendment says is that we should give to the Administrator not just authority to look at the income a man has made in the year prior to the disaster in determining whether there is going to be loan forgiveness or how much, but that we should let him go ahead and look at the next 2 years and see what the disaster has done to decrease his income in the succeeding years, because that is the true test of the damage, that is the true test of how much that loan should be forgiven. We use the same formula in the amendment as the Senator from Ohio has used in applying to those who are disabled or those who retire. A man can be disabled by a serious loss of income as well as by physical injury.

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

Mr. BAYH. I yield.

Mr. TAFT. Mr. President, I have discussed this matter with the Senator from Indiana. It would be discretionary for the administrator to make his choice between the methods to be used. If he thinks the method of using previous income would not accurately reflect an applicant's financial situation, he can use the estimate of his forthcoming income. I think that is fair. I am quite willing to accept the modification.

Mr. BAYH. Mr. President, would the Senator be kind enough not to accept the amendment for just another moment?

Mr. TAFT. I will be glad to withhold that request. I have not asked to modify my amendment yet.

Mr. BAYH. I hate to bite the hand that feeds me. I am extremely grateful to the Senator from Ohio.

I would like to say a word in support of his general approach in the time that remains. I apologize to my colleagues who normally think that a disaster loan would automatically be considered carte blanche.

Mr. President, one last word. On reflection, I do not want to beat this to death on details, but I think we are talking a little more than details; I think we are talking about general philosophy.

When I first introduced, following natural disasters in 1965, what ultimately became the 1970 act, we wrote in the first grant provision ever. It was not until after Hurricane Camille, after the Labor Day recess in which Camille hit, that we were finally able to get our colleagues in the House of Representatives to accept an $1,800 forgiveness provision in the 1969 act. Then, after thorough study of the problem, we were able to increase the forgiveness to $2,500 in the 1970 act.

I enthusiastically support the $5,000 forgiveness figure, I am tired of us being so niggardly in the way we treat our citizens when they are affected by disasters, when at the same time we do not ask any questions when we pour funds into Chile, Iran, and other places. Now I support foreign aid, but we just cannot shortchange our own people.

But we are going to have to sell this, to our colleagues in the House of Representatives as well as to the public generally. I suggest that the formula of the Senator from Ohio as now amended, which says that if you are a low- or low-middle-income earner, we are going to give you $5,000 forgiveness, by the formula that is triggered by his amendment, says that if you are in a high-income bracket and you are hit by a disaster, you are just not going to get the same kind of treatment, the same forgiveness as if you were making $5,000, $6,000, $7,000, $8,000, $9,000, or $10,000.

That, as I see it, is the real equity of the amendment of the Senator from Ohio. Some place we have to draw the line on one side of which we do not forgive but on the other side of which we are generous about the amount of the forgiveness and the public assistance we are offering. I know of no better way to make this determination than to look at the income the man is making, and that is the provision contained in the amendment of the Senator from Ohio. For that reason, I enthusiastically support it.

Mr. FULBRIGHT. Mr. President, will the Senator yield for a question?

Mr. BAYH. I am glad to yield to the Senator from Arkansas.

Mr. FULBRIGHT. I heard just recently about the experience after the earthquake in Los Angeles. Is the Senator acquainted with the degree to which they determined the claims were not justified?

Mr. BAYH. Yes; the Senator from Indiana had the responsibility of holding hearings out there in two or three places, and touring the disaster area.

Mr. FULBRIGHT. Is there any safeguard against that in this bill?

Mr. BAYH. The only safeguard is to have an administrator who is going to get up off the seat of his pants and crack the whip over the local people who have the responsibility for doing the job.

Mr. FULBRIGHT. Would this bill insure that?

Mr. BAYH. As far as I can see, the present act would do it; but I think everyone has learned something from what happened in California, because the very administrators who testified before our committee that we should abolish this whole section altogether have now suggested that we ought to raise the limit to $5,000.

I am suggesting that we ought to raise it to $5,000, but we should not treat a man making a million dollars a year the same way as we treat a man making $1,000 to $10,000; and if the Senator believes as I do, he will vote to accept the amendment of the Senator from Ohio.

Mr. TAFT. Mr. President, I ask that my amendment be modified by appending to it the amendment of the Senator from Indiana.

The PRESIDING OFFICER. The Senator has a right to modify his amendment, and it is so modified.

Mr. TAFT. I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. BEALL). The question is on agreeing to the amendment of the Senator from Ohio (Mr. TAFT), as modified. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Oklahoma (Mr. HARRIS), the Senator from New Mexico (Mr. MONTOYA), the Senator from Maine (Mr. MUSKIE), and the Senator from Georgia (Mr. GAMBRELL) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG) is absent on official business.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL) would vote "nay."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Hampshire (Mr. COTTON), the Senator from Arizona (Mr. FANNIN), the Senator from Michigan (Mr. GRIFFIN), the Senator from Iowa (Mr. MILLER), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Illinois (Mr. PERCY) would vote "yea."

On this vote, the Senator from Iowa (Mr. MILLER) is paired with the Senator from Massachusetts (Mr. BROOKE). If present and voting, the Senator from Iowa would vote "yea" and the Senator from Massachusetts would vote "nay."

The result was announced—yeas 47, nays 36, as follows:

[No. 348 Leg.]

YEAS—47

| | | |
|---|---|---|
| Allen | Fulbright | Pearson |
| Bayh | Goldwater | Pell |
| Bellmon | Gravel | Proxmire |
| Boggs | Gurney | Randolph |
| Brock | Hart | Roth |
| Burdick | Hartke | Saxbe |
| Byrd, Robert C. | Hatfield | Stafford |
| Cannon | Hollings | Stennis |
| Case | Hruska | Stevenson |
| Church | Javits | Symington |
| Cooper | Kennedy | Taft |
| Cranston | Magnuson | Thurmond |
| Curtis | McGee | Tunney |
| Dole | Metcalf | Weicker |
| Dominick | Packwood | Young |
| Fong | Pastore | |

NAYS—36

| | | |
|---|---|---|
| Aiken | Hughes | Nelson |
| Anderson | Humphrey | Ribicoff |
| Beall | Inouye | Schweiker |
| Bennett | Jackson | Scott |
| Bentsen | Jordan, N.C. | Smith |
| Bible | Jordan, Idaho | Sparkman |
| Buckley | Mansfield | Spong |
| Byrd, Harry F., Jr. | Mathias | Stevens |
| | McClellan | Talmadge |
| Chiles | McGovern | Tower |
| Cook | McIntyre | Williams |
| Ervin | Mondale | |
| Hansen | Moss | |

NOT VOTING—16

| | | |
|---|---|---|
| Allott | Fannin | Montoya |
| Baker | Gambrell | Mundt |
| Brooke | Griffin | Muskie |
| Cotton | Harris | Percy |
| Eagleton | Long | |
| Eastland | Miller | |

So Mr. TAFT's amendment, as modified, was agreed to.

## NATIONAL ENVIRONMENTAL DATA SYSTEM AND STATE ENVIRONMENTAL CENTERS ACT OF 1972

Mr. JACKSON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 56.

The PRESIDING OFFICER (Mr. BEALL) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendments of the Senate to the bill (H.R. 56) to amend the National Environmental Policy Act of 1969, to provide for a national environmental data system, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. JACKSON. I move that the Senate insist upon its amendment and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. JACKSON, Mr. BIBLE, Mr. MOSS, Mr. HATFIELD, and Mr. BELLMON conferees on the part of the Senate.

## INCREASED GOVERNMENT ASSISTANCE FOR DISASTER RELIEF

The Senate continued with the consideration of the bill (H.R. 15692) to amend the Small Business Act to reduce the interest rate of Small Business Administration disaster loans.

Mr. TALMADGE. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER (Mr. TAFT). The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. TALMADGE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 10, after line 17, insert the following:

SEC. 4. Subtitle C of the Consolidated Farmers Home Administration Act of 1961, as amended (7 U.S.C. 1961–1967), is amended by adding at the end thereof the following new section:

"SEC. 328. (a) Notwithstanding any other provision of law, in the administration of this subtitle and the rural housing loan program under section 502 of title V of the Housing Act of 1949, as amended (42 U.S.C. 1472), in the case of property loss or damage or injury resulting from a major disaster as determined by the President or a natural disaster as determined by the Secretary of Agriculture which occurred after June 30, 1971, and prior to July 1, 1973, the Secretary—

"(1) to the extent such loss or damage or injury is not compensated for by insurance or otherwise, (A) shall cancel the principal of the loan, except that the total amount so canceled shall not exceed the greater of (i) 50 per centum of the original principal amount of such loan but not more than $5,000; or (ii) the per centum that would be canceled of a loan of the same size by the Small Business Administration under section 7(b) of the Small Business Act, as amended (15 U.S.C. 636(b)), and (B) may defer interest payments or principal payments, or both, in whole or in part, on any loan made under this section during the first three years of the term of the loan except that any such deferred payments shall bear interest at a rate per annum to be determined by the Secretary of the Treasury under section 234 of the Disaster Relief Act of 1970 (42 U.S.C. 4453), or that established by the Small Business Administration under section 7(b) of the Small Business Act, as amended (15 U.S.C. 636(b)), whichever is lower: *Provided*, That no one borrower shall be eligible to receive more than one such cancellation for any single disaster.

"(2) to the extent such loss or damage or injury is not compensated for by insurance or otherwise, may grant any loan for repair, rehabilitation, or replacement of property damaged or destroyed, without regard to whether the required loan is otherwise available from private sources.

"(3) may, in the case of the total destruction or substantial property damage of homes or farm service buildings and related structures and equipment, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such property is to be repaired, rehabilitated, or replaced, except that the amount refinanced shall not exceed the amount of the physical loss sustained. Any such refinancing shall be subject to the provisions of clauses (1) and (2) of this section.

"(b) Notwithstanding any other provision of law, the provisions of subsection (a) of this section shall also apply to the administration of the programs referred to in such subsection in the case of any property loss or damage or injury, including loss or damage to agricultural crops, resulting from flood or excessive prolonged rain, drought, or other natural disaster occurring on or after June 30, 1971, and prior to July 1, 1973, in any area determined by the President to be a major disaster area or in any area determined by the Secretary of Agriculture to have suffered a natural disaster during such period.

"(c) Any loan made under this section shall not exceed the current cost of repairing or replacing the disaster loss or damage or injury in conformity with current codes and specifications. Any loan made under this section shall bear interest at a rate per annum to be determined by the Secretary of the Treasury under section 234 of the Disaster Relief Act of 1970 (42 U.S.C. 4453), or that established by the Small Business Administration under section 7(b) of the Small Business Act, as amended, (15 U.S.C. 636(b)), whichever is lower.

"(d) In the administration of any Federal disaster loan program under the authority of this section, the age of any adult loan applicant shall not be considered in determining whether such loan should be made or the amount of such loan.

"(e) The benefits provided under this section shall be applicable to all loans qualifying hereunder, whether approved before or after the date of enactment of this section.

"(f) The President shall conduct a thorough review of existing disaster relief legislation as it relates to emergency loans and housing loans administered by the Farmers Home Administration of the United States Department of Agriculture, and not later than January 31, 1973, he shall transmit to the Committee on Agriculture and Forestry of the Senate and the Committee on Agriculture of the House of Representatives a report containing specific legislative proposals for the comprehensive revision of such legislation in order to—

"(1) adjust the benefits and the coverage available to persons affected by disasters;

"(2) improve the execution of the program by simplifying and eliminating unnecessary administrative procedures; and

"(3) prevent the misuse of benefits made available under the program."

Mr. TALMADGE. Mr. President, Senators will recall that on July 17, 1972, the Senate received a message from the President on disaster legislation asking for quick action by the Congress.

The same day a bill, S. 3795, was introduced and was referred jointly to the Committee on Banking, Housing and Urban Affairs and to the Committee on Agriculture and Forestry.

That bill concerned both Small Business Administration and Farmers Home Administration disaster loans. Other bills relating to disasters were also introduced on the same day.

In order to comply with the President's wishes for expeditious treatment of this legislation, the Committee on Agriculture and Forestry met on Monday, July 24, 1972, to consider the bills that were before it.

After discussion, the committee decided to report an original bill which would amend the Consolidated Farmers Home Administration Act of 1961, as amended, to provide for disaster emergency loan relief and for other purposes.

In discussions with the leadership and with the chairman of the Senate Banking, Housing and Urban Affairs Committee, it was decided that when the bill reported by the latter committee was brought before the Senate for consideration, the original bill reported by the

Committee on Agriculture and Forestry would be offered as an amendment to that bill.

Mr. President, this amendment is identical, except for several technical corrections, to the bill S. 3840, as reported by the Committee on Agriculture and Forestry on July 24.

The amendment provides: First, for loans, to the extent that such loss, injury, or damage is not compensated by insurance or otherwise, to victims of any major disaster declared by the President or natural disaster declared by the Secretary of Agriculture occurring during the period June 30, 1971, to July 1, 1973.

Second, for cancellation of part of the original principal amount of such loan: the amount of the cancellation would not exceed the greater of 50 percent of the original principal of a loan but not more than $5,000; or the percent of the original principal that would apply to loans of the same size made by the Small Business Administration under the authority of section 7(b) of the Small Business Act, as amended, (15 U.S.C. 636(b)); no borrower would be eligible to receive more than one cancellation with respect to any single declared disaster.

Third. The loans minus the cancellation made under this section would bear a formula interest rate set by the Secretary of the Treasury or that established for disaster loans made by the Small Business Administration under section 7(b) of the Small Business Act, as amended (15 U.S.C. 636(b)), whichever is lower.

Fourth. For deferral of interest payments or principal payments, or both, in whole or in part, during the first 3 years of the term of such loans, except that such deferred payments shall bear interest at a formula rate established by the Secretary of the Treasury or established by the Small Business Administration under the provisions for disaster relief cited above whichever is lower.

Fifth. In the case of total destruction or substantial property damage for the refinancing of any mortgage or lien to the extent of the physical loss sustained.

Sixth. That loans may be made without regard to whether the required loan is otherwise available from private sources.

Seventh. For the submission of a report by the President to the Committee on Agriculture and Forestry of the Senate and the Committee on Agriculture of the House of Representatives by January 31, 1973, concerning specific legislative proposals for the comprehensive revision of existing disaster relief legislation as it relates to emergency loans and housing loans administered by the Farmers Home Administration.

Mr. President, the Committee on Agriculture and Forestry acted first on disaster legislation and only as it concerns the FHA authorities. Changes were made in the President's proposal first, as to the amount of the loan to be canceled; second, the level of interest to be charged; and third, the period of time to be covered.

This committee felt that the amount of the loan cancellation authorized should not exceed 50 per centum of the original principal of loans of less than $10,000 and on loans of $10,000 or more, not more than $5,000.

Further, this committee felt that interest rates charged should be those established by the Secretary of the Treasury under the Disaster Relief Act of 1970 (42 U.S.C. 4453).

Notwithstanding the decision of the committee, they also felt that the cancellation and interest rate charges on loans made by Farmers Home Administration under its authorities should in no event be different than those same benefits applicable to disaster loans made by the Small Business Administration. The attitude was strongly held that benefits should be exactly the same, no more, no less, as between the two agencies.

In order to assure that the disaster benefits provided under our bill, S. 3840, and this amendment were comparable to those authorized under a bill still to be reported when S. 3840 was approved, the committee included language to accomplish this purpose. Simply stated, that language requires that disaster loans made by the Farmers Home Administration under the bill S. 3840, and this amendment, shall receive the same cancellation and interest rate benefits as provided under the disaster loan provisions of the bill reported by the Banking, Housing and Urban Affairs Committee. That bill, H.R. 15692, as amended, is now before the Senate for consideration.

The Committee on Agriculture and Forestry also felt that the time period to be covered for disaster benefits should be the same. We had thought that the period to be covered would be June 30, 1971 to July 1, 1973 and so provided in S. 3840 and in this amendment. However, the bill H.R. 15692 provides for disasters occurring between January 1, 1971, and July 30, 1973. And so, Mr. President, while there is this difference, there is nothing I can do since the Committee on Agriculture and Forestry has already made its decision.

As explained by the distinguished floor manager of the bill, H.R. 15692, authorizes disaster loans and cancellation of the principal of such loan not in excess of $5,000. It also provides for an interest rate on such loans of 1 per centum per annum and that such interest rate will apply on the balance of such loans outstanding effective as of the date of enactment of this bill.

Since it is the intention of the Committee on Agriculture and Forestry to obtain the same benefits for Farmers Home Administration disaster loans as those provided by the Small Business Administration borrowers for disaster purposes, the provisions relating both to cancellation and interest rates contained in H.R. 15692 must also apply to FHA loan cancellation and interest rates on such loans.

Mr. President, I have discussed this amendment, which is a bill reported by the Committee on Agriculture and Forestry, with the distinguished chairman of the parent committee, the distinguished senior Senator from Alabama, and also the distinguished manager of the bill the chairman of the subcommittee on Banking, Housing and Urban Affairs, and my understanding is that the bill is completely acceptable to the committee.

I move adoption of the amendment.

Mr. JORDAN of North Carolina. Mr. President, will the Senator from Georgia yield?

Mr. TALMADGE. I yield.

Mr. JORDAN of North Carolina. I am also a member of the Committee on Agriculture and Forestry and I want thoroughly to concur and endorse the pending amendment because I think those engaged in agricultural and farming operations should have exactly the same treatment as anyone else.

Mr. TALMADGE. That was the feeling of the committee, that agriculture and rural areas should have the identical treatment with a law passed to affect the Small Business Administration and the rules and regulations thereof. Our bill was drafted accordingly.

Mr. JORDAN of North Carolina. I understand that. There was a disaster in my own State, not included in this, which completely wiped out a big portion of our crops, and this would provide great relief to them. Those who were raising, for instance, cabbages, when they were ready to harvest them, they found them to be rotten.

Mr. TALMADGE. The Senator is eminently correct.

Mr. JORDAN of North Carolina. I therefore lend my full support to this bill and I am delighted that they will accept it.

Mr. TALMADGE. I thank my distinguished colleague for his contribution.

Mr. McINTYRE. Mr. President, I want to commend the distinguished Senator from Georgia, the chairman of the Committee on Agriculture and Forestry, for having moved as expeditiously as they have. Of course, as he has already stated, we discussed this matter and we are perfectly willing to accept the amendment because it puts the Farmers Home Loan Administration in tandem with the Small Business Administration. However, I have been informed that there are some amendments to be offered to the amendment of the Senator from Georgia.

Mr. TALMADGE. My understanding is that the Senator from Oklahoma (Mr. BELLMON) has two perfecting amendments which he will offer.

So far as I am concerned, as chairman of the committee, I have no objection to the amendments. I think they will improve the bill and carry out the intention of the committee. I am perfectly prepared to accept the amendments which I have seen and which will be offered by the distinguished Senator from Oklahoma, who is a member of the committee.

Mr. HUMPHREY. Mr. President, I support the amendment being offered by the distinguished chairman of our Committee on Agriculture and Forestry, Senator TALMADGE, and the bill it amends, H.R. 15692, as reported by the Senate Banking, Housing, and Urban Affairs Committee.

I believe the action that has been taken by these two committees concerning improvement in the benefits provided un-

der our Federal emergency programs is needed as well as more equitable than the provisions contained in the President's Agnes Recovery Act bill. The President recommended expansion of benefits under these programs would have been limited to only the victims of the Agnes Hurricane. The action taken both by the Agriculture Committee and by the Banking Committee would extend the Agnes provisions nationwide. Both committee's actions also would make these benefits retroactive to 1971. While the Agriculture Committee amendment retroactive date is June 30, 1971, the Banking Committee bill goes back to January 1, 1971. I would support the Banking Committee's date. Both bills also contain termination dates for providing these improved benefits which is July 1, 1973. Both bills also call on the President to review and study all existing disaster relief legislation and to submit his recommendations to Congress as to what permanent changes in these programs should be made. I am sure most of us in Congress are getting a little tired of having to consider special and emergency bills concerning such needs every time a major disaster occurs.

It is time for the President and Congress to decide what permanent improvements in benefits should be made under these programs so we can avoid having to deal with each disaster separately.

I should also like to point out that although some of the benefit provisions in the Agriculture Committee amendment differ somewhat from those in the Banking Committee's bill, the FHA provisions in the Agriculture Committee amendment are tied to the SBA provisions in the Banking Committee bill. That is to say if the SBA provisions concerning the "forgiveness" and interest rate features are better than what we provide for the FHA in the Agriculture Committee amendment, the SBA provisions regarding these two items in the bill would prevail and be applied to FHA emergency loans.

In short, Mr. President, it is my understanding that the $5,000 forgiveness feature and the 1-percent loan feature contained in the Banking Committee's bill—as it would apply to SBA emergency loans—would also apply to FHA emergency loans. This is due to the manner in which the Agriculture Committee's amendment is worded regarding those provisions.

The committee bill, amended by the Agriculture Committee's amendment, will help tens of thousands of Americans, including many of my Minnesotans whose farms, farmland, houses, and businesses were severely damaged by a series of heavy rains which began actually last fall. Senator MONDALE and I tried to gain some additional relief for many of these people, particularly many of our farmers who were prevented from harvesting or planting their crops last fall and this spring. The Department of Agriculture would not let us reopen the set-aside program to put much of the acreage affected by these rains into the program. USDA turned us down on this request. I ask unanimous consent to have printed in the RECORD at this point the letter from the USDA.

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

U.S. DEPARTMENT OF AGRICULTURE,
*Washington, D.C., July 19, 1972.*

Hon. HUBERT H. HUMPHREY,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR HUMPHREY: Your June 16 letter concerning disaster-stricken farmers in west central Minnesota has been referred to us by the Farmers Home Administration in order that we may respond to the request by Mrs. Henry Straus, Montevideo, Minnesota, that signup in the feed grain and wheat programs be reopened.

Careful consideration has been given to numerous requests that signup in the programs be reopened and that increases in intentions be approved for farmers who suffered from adverse weather in Minnesota, North Dakota, and South Dakota. We feel the requests should not be approved for a number of reasons, including the following:

1. The set-aside programs are primarily production adjustment programs designed to encourage farmers to take acreage out of crop production. Payments are made to farmers to compensate them for loss of income from crops which would otherwise be produced on such acreage. The payments could not be justified for land placed in the program after a crop has already failed or cannot be planted because of weather conditions. Accepting this land would not result in reduced production.

2. The Agricultural Act of 1970 provides that producers may earn payments only when they set aside an acreage on the farm equal to the number of acres which they agree to set aside. We feel it would be a violation of the intent of the Act to pay farmers for land which they planned to have in production but could not do so because of adverse weather. Set-aside programs are not intended to serve as disaster-assistance programs.

3. Reopening the signup period in one area would be an inequity to other farmers in the Nation who may lose their crops because of adverse weather or other reasons during the growing season.

Producers have a great deal of protection in the face of unfavorable weather. Where it has remained impossible to plant feed grains or wheat, they can request and receive "prevented planting" credit to protect their bases and allotments for 1973. They need not plant any grain to earn program payments for minimum as well as additional set-aside on participating farms.

Sincerely,

CHARLES M. COX,
*Acting Deputy Administrator, State and County Operations.*

Mr. HUMPHREY. Mr. President, we were, however, able to get these areas declared disaster areas, thereby qualifying them for emergency Farmers Home Administration and Small Business Administration loans. This included 14 counties that were adversely affected by heavy rains last fall and early this year and an additional 10 counties that suffered from a 10- to 14-inch rainfall on the weekend of July 21 this year.

In marking up our FHA amendments in the Agriculture Committee I was able to include language to insure that our Minnesota counties and other areas in the Nation affected by heavy and prolonged rain, drought, or other natural disaster would be covered by these programs. I was successful in including a provision making these benefits retroactive to June 30, 1973. This move will help not only our Minnesota farmers who were rained out last fall, but also those farmers in Texas and throughout the Southwest who were hit by severe drought last summer and fall.

Mr. President, I support the bill and amendment and wish to compliment the Senator from New Hampshire (Mr. McINTYRE) and our distinguished chairman (Mr. TALMADGE) for their leadership and the contribution they have provided concerning this important legislation.

Mr. BELLMON. Mr. President, I have an amendment at the desk and ask it be stated.

The PRESIDING OFFICER (Mr. TAFT). The Chair would inform the Senator from Oklahoma that all time must be yielded back on the amendment first, in order for the Senator from Oklahoma to offer his amendment.

Mr. TALMADGE. Mr. President, I yield back my time.

Mr. McINTYRE. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time on this amendment has been yielded back. The clerk will now state the amendment of the Senator from Oklahoma.

The legislative clerk read as follows:

On page 3, line 6 of the amendment offered by Mr. TALMADGE add the following: *"Provided,* in the case of any loan for refinancing, either under clause (a) (3) of this section or under Section 322 of this subtitle, require the borrowers to demonstrate that they are unable to obtain sufficient credit elsewhere to finance their actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time."

Mr. BELLMON. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 5 minutes.

Mr. ROBERT C. BYRD. Mr. President, will the Senator from Oklahoma yield to me for 1 minute for a unanimous-consent request?

Mr. BELLMON. I yield.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that time on each of the amendments to be offered by the Senator from Pennsylvania (Mr. SCHWEIKER) and time on the amendment to be offered by the Senator from Pennsylvania (Mr. SCOTT) and time on each of the amendments to be offered by the Senator from Oklahoma (Mr. BELLMON) be limited to 30 minutes, to be equally divided, rather than 1 hour.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

Mr. BELLMON. Mr. President, the amendment is short. I read it again:

*Provided,* in the case of any loan for refinancing, either under clause (a) (3) of this section or under Section 322 of this subtitle, require the borrowers to demonstrate that they are unable to obtain sufficient credit elsewhere to finance their actual needs at reasonable rates and terms, taking into

consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

Mr. President, the effect of this amendment is to require that any individual seeking to refinance a present loan with an emergency loan for which he has become eligible as a result of a disaster designation for his county or area must demonstrate that they are unable to obtain sufficient credit elsewhere to finance their actual needs at reasonable rates and terms.

This amendment would not affect the provisions of the bill which allow original loans to persons affected by a disaster without regard to whether or not credit may be obtained elsewhere.

Mr. TALMADGE. Mr. President, as I understand it, the intent of the Senator's amendment is to prevent someone who now has a loan with the Farmers Home Loan Administration to use the refinancing provision to refinance his loan so as to get a cheaper rate when he could get credit elsewhere.

Mr. BELLMON. The Senator is correct.

Mr. TALMADGE. Mr. President, I have no objection. I hope that the amendment will be agreed to.

Mr. BELLMON. Mr. President, I yield back the remainder of my time.

Mr. TALMADGE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Oklahoma to the amendment of the Senator from Georgia.

The amendment was agreed to.

Mr. BELLMON. Mr. President, I have an amendment at the desk and I ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 3, line 16, insert the following:

Add a new clause to Sec. 328(a): as follows:

"(4) Shall require the recipient of any Emergency loan made under this section to execute the agreement to refinance required by Section 333(c) of this title. *Provided*, that such loans made under Sec. 328(a) shall be reviewed at no less than two year intervals to determine if the agreement to refinance shall become applicable."

Mr. BELLMON. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 5 minutes.

Mr. BELLMON. Mr. President, the purpose of this amendment is to make the emergency loan provisions of the Consolidated Farmers Home Administration Act of 1961 conform to other loans made under the act by requiring a periodic review of the financial condition of the borrower to determine if he is able to obtain credit from conventional sources.

This amendment provides that the review of financial condition may occur no more frequently than every 2 years in order to allow the borrower to make his financial plans for a specific length of time.

Mr. TALMADGE. Mr. President, as I understand it, this amendment merely clarifies the existing law so that if an individual's economic progress is such as to enable him to repay his loan to the Farmers Home Loan Administration, by obtaining credit elsewhere he will be required to do so. Is that the intent of the amendment?

Mr. BELLMON. The Senator is correct.

Mr. TALMADGE. Mr. President, I have no objection to the amendment.

Mr. BELLMON. Mr. President, I yield back the remainder of my time.

Mr. TALMADGE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Oklahoma to the Senator from Georgia, as amended.

The amendment was agreed to.

The PRESIDING OFFICER. The question recurs now on the question of the amendment of the Senator from Georgia, as amended.

The amendment was agreed to.

Mr. TALMADGE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. McINTYRE. Mr. President, I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. TOWER. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time consumed be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McINTYRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McINTYRE. Mr. President, I yield 2 minutes on the bill at this time to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 2 minutes.

Mr. SPONG. Mr. President, I thank the floor manager of the bill.

Initially, I wanted to add a word to what the Senator from Indiana has previously said in that the amounts to be forgiven and the amounts to qualify for low-interest loans in the past were as much as the Public Works Committee of the Senate was able to get the House to agree to.

I participated, I believe, in two conferences. And I want to say that the Senator from Indiana was quite correct in pointing that out.

In the hearings, which the distinguished Senator from New Hampshire (Mr. McINTYRE) chaired, I testified with regard to the situation in Virginia where we have several persons who had SBA loans as a result of Hurricane Camille 3 years ago. They now have been damaged again by Hurricane Agnes.

We have had situations where the businesses had one loan and we now find that they have been greatly damaged and are in need of additional loans.

My concern was whether the loans from the first storm can be consolidated with loans which are now being applied for to allow those people who have suffered, not once but twice, from disasters to take advantage of the more favorable terms on interest rates which are permissible under this legislation.

Mr. McINTYRE. Mr. President, may I say in response to my good friend, the Senator from Virginia, that I asked the Administrator of SBA about the need for amending the Disaster Relief Act to allow people to consolidate loans to cover two separate disasters.

Mr. Kleppe, Administrator of the SBA, informed the committee that he could presently do this administratively and, in fact, had recently done so in regard to a loan made in the Richmond, Va. area.

So the question can be answered in the affirmative.

Mr. SPONG. Mr. President, I thank the Senator.

Mr. SCOTT. Mr. President, I call up my amendment No. 1393.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

At the end of the Act, add the following new section:

SEC. 4. (a) The Congress hereby finds and declares that there has been substantial damage to educational institutions as a result of hurricane and tropical storm Agnes; that disaster relief for public educational institutions is adequately covered by legislation heretofore enacted; that nonprofit private educational institutions are not provided disaster relief benefits comparable to those provided to public educational institutions; that nonprofit private educational institutions have a secular educational mission; that students attending nonprofit private educational institutions that have been damaged or destroyed will have to be provided for in public institutions if the former institutions are not restored; and that these facts compel enactment of special measures designed to provide nonprofit private educational institutions which were victims of this catastrophe with disaster relief benefits comparable to those provided for public educational institutions.

(b) To the extent such loss or damage or destruction is not compensated for by insurance or otherwise, the President may make grants to nonprofit private educational institutions in areas declared a major disaster by the President for the repair, restoration, reconstruction, or replacement of educational facilities, supplies, or equipment which have been lost, damaged, or destroyed as a result of hurricane and tropical storm Agnes if such facilities, supplies, or equipment were owned on the date of such loss, damage, or destruction by an organization exempt from taxation under section 501(c), (d), or (e) of the Internal Revenue Code of 1954 and the facilities, supplies, or equipment were being used to carry out the exempt purposes of such organization; except that no grant may be made under this section for the repair, restoration, reconstruction, or replacement of any facility for which disaster relief assistance would not be authorized under Public Law 81-815, title VII of the Higher Educational Act of 1965, or the Disaster Relief Act of 1970 if such facility were a public facility.

(c) The amount of a grant made under this section shall not—

(1) exceed 100 per centum of the cost of—

(A) repairing, restoring, reconstructing, or replacing any facility on the basis of the design of such facility as it existed immediately prior to such disaster and in conformity with applicable codes, specifications, and standards; or

(B) repairing, restoring, or replacing equipment or supplies;

as they existed immediately prior to such disaster;

(2) in the case of any facility which was under construction when so damaged or destroyed, exceed 50 per centum of the cost of restoring such facility substantially to its condition prior to such disaster, and of completing construction not performed prior to such disaster to the extent that the cost of completing construction is increased over the original construction cost due to changed conditions resulting from such disaster;

(3) be used to pay any part of the cost of facilities, supplies, or equipment which are to be used primarily for sectarian purposes; and

(4) be used to restore or rebuild any facility used or to be used primarily for religious worship; replace, restore, or repair any equipment or supplies used or to be used primarily for religious instruction, or restore or rebuild any facility or furnish any equipment or supplies which are used or to be used primarily in connection with any part of the program of a school or department of divinity.

(d) For the purposes of this section—

(1) the term "educational institution" means any elementary school (as defined by section 801(c) of the Elementary and Secondary Education Act of 1965), and secondary school (as defined by section 801(h) of the Elementary and Secondary Education Act of 1965), and any institution of higher education (as defined by section 1201(a) of the Higher Education Act of 1965); and

(2) the term "school or department of divinity" means a school or department of divinity as defined by section 1201 of the Higher Education Act of 1965.

(e) Funds appropriated to the President in the appropriation "Disaster relief" are hereby made available for carrying out the purposes of this section.

Mr. SCOTT. Mr. President, I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 15 minutes.

Mr. SCOTT. Mr. President, I ask unanimous consent that the distinguished senior Senator from New York (Mr. JAVITS) and the distinguished junior Senator from New York (Mr. BUCKLEY) be added as cosponsors of my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCOTT. Mr. President, I had printed in the RECORD yesterday, at pages 26656–26657 certain comments together with a message from the President and the letter from Mr. Carlucci, of the Office of Management and Budget in support of the amendment.

The amendment is offered on behalf of the administration pursuant to the message of the President to Congress, and pursuant to the conversation I had with him while I was in Wilkes-Barre when I went up there to view the severity of the damage. The damage was inconceivable to some of us up there.

I talked to the President on the phone in the presence of a number of Wilkes-Barre citizens and explained to him that the present law did not permit Federal grants to private educational institutions, whereas it was possible to repair, reconstruct, and rehabilitate elementary and secondary schools, and federally supported schools of higher education. But in Wilkes-Barre, Wilkes College, which is a private school, sustained so much damage as to put the school entirely out of business. Damage was estimated at several million dollars. Main buildings such as the library are completely uninhabitable. The college is small. It is one of the major educational facilities of the whole Wyoming Valley. The same thing happened to King's College, another private educational facility, and the Wyoming Valley Seminary.

This amendment would provide grants in aid to these nonprofit private educational institutions, which include elementary, secondary, and higher educational facilities. It does not provide aid for any operating expenses; it is simply for material aid.

The amendment is carefully drafted, bearing in mind the constitutional requirements of the church-state relationship. Specifically excluded are facilities, equipment, and supplies used primarily for religious purposes.

Damage to these nonprofit private educational institutions is estimated at $19 million. I said there were several million dollars damage with respect to Wilkes College. It may be somewhat over $2 million at Wilkes College alone. Thirty-five schools are affected with a total enrollment of 17,000 students.

I submit that this is an entirely worthwhile amendment which would correct what would otherwise be a highly discriminatory situation where nearby public schools equally severely damaged have the ability to function and to be reconstructed, whereas the private schools which educate many of the students going to institutions of higher education in the Wyoming Valley are without means to rehabilitate themselves. They do not have an endowment to do it and they do not have the funds to do it. Relief measures are being taken. Pleas are made on local radio stations for private funds. The Red Cross telethon conducted by Bob Hope was a success in raising money, but none of this goes to meet this particularly difficult and harsh situation.

Mr. President, I wish others could see this damage as I have seen it. Senator SCHWEIKER and I are familiar with the severity of the situation and with the need for immediate help.

I do hope the manager of the bill, the Senator from New Hampshire (Mr. MCINTYRE), can accept the amendment. I am aware of the fact that in the other body certain points of order could be raised. I hope they will not be raised. I understand in the other body the matter will be handled by a distinguished member of the Committee on Appropriations there, Representative FLOOD, in whose district more damage occurred than in any other congressional district of which I am aware. Thousands of homes were rendered uninhabitable in the Wilkes-Barre area alone.

I hope the Senator from New Hampshire can accept the amendment, realizing that there is a responsibility in the other body to meet that problem there.

Mr. MCINTYRE. Mr. President, an examination of the amendment indicates substantially that it is a good amendment, and along with the Senator from Texas, who is also a member of the Committee on Banking, Housing and Urban Affairs, I am willing to accept the amendment and take it to conference.

Mr. SCOTT. I thank the Senator.

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

Mr. MCINTYRE. I yield.

Mr. TOWER. Mr. President, as a member of the boards of trustees of two private colleges I have very great sympathy with the measure. The Senator from Pennsylvania has raised the possibility that the House may raise a point of order against the amendment, which may be the case, but for my part I am willing to accept the amendment and take it to conference.

Mr. SCOTT. I thank the Senator and I hope that the point of order will not be raised in the House of Representatives. This is a matter of compassion and understanding. This is a situation which confronts a stricken community. I have great confidence in the distinguished Representative from that district, Mr. FLOOD. I expect him to be as persuasive in this matter as he is in other matters.

The PRESIDING OFFICER. Who yields time?

Mr. MCINTYRE. Mr. President, I yield 2 minutes to the Senator from Pennsylvania, who supports the amendment.

Mr. SCHWEIKER. Mr. President, I thank the chairman for yielding. I rise in support of the amendment. I am a cosponsor of the amendment offered by my distinguished senior colleague from Pennsylvania (Mr. SCOTT). I think it is a good amendment. I had a similar amendment and a bill—S. 3804—prepared earlier that was not quite as broad as this amendment. I think this is a better amendment. I agreed to cosponsor my colleague's amendment, the administration's amendment, because this is a very much-needed measure.

Mr. President, this amendment would provide that private colleges and universities, and private nonprofit elementary and secondary schools would all be eligible for disaster relief funds for tropical storm Agnes. Under existing law, public educational institutions are eligible for such aid, but private ones are not.

Public school districts can receive disaster funds for current school expenditures, and for the restoration and replacement of school buildings. Public colleges and universities can receive construction funds to restore and replace physical facilities. However, unless existing law is expanded, none of this aid can go to private, nonprofit elementary and secondary schools or to private colleges and universities.

In Pennsylvania, Mr. President, public and private education suffered alike from tropical storm Agnes. When such a disaster strikes, it strikes public schools and private schools, without any partiality. Either way, students are affected, education is affected and the economy of the region is affected.

If this amendment is not made, then Federal aid will go to some of the schools in the disaster area that need help, but will miss completely some schools in Pennsylvania that are probably most in need.

For example, take the two colleges in Wilkes-Barre, Wilkes College and King's College.

Wilkes, with a full-time undergraduate enrollment of 2,500 and hundreds more part-time and graduate students, alone had $10 million in physical damage.

King's, with 2,000 undergraduates, suffered $4 million in damage.

Both Wilkes and King's happen to be private colleges and are not eligible for aid as educational institutions under existing law unless this amendment or a similar one is adopted.

As a matter of fact, the 17 private colleges in Pennsylvania affected by Agnes suffered a total flood damage of more than $15 million—most of it accounted for by the losses at Wilkes and King's Colleges.

The public colleges in Pennsylvania harmed by the flood, No. 8, and their combined damage was only $4 million. Thus, as a group, the private colleges suffered far more than did the public colleges.

Beyond the damage to colleges, the flood caused additional millions of dollars in damage to private elementary and secondary schools. The estimated loss, for Catholic schools alone, is $2,270,000. Over $500,000 of this was at one brand new Catholic high school in Wilkes-Barre.

It is essential, Mr. President, to the recovery of the disaster areas, in Pennsylvania and other States, that the private schools rebuild along with the public schools. This is why we should expand the Federal laws we have to guarantee that the private schools can be rebuilt with Federal help, the same as the public schools will be.

Mr. President, I think it would help at this point for me to recite in more detail the extent of the damage to colleges in the Wilkes-Barre area.

Wilkes College, Mr. President, was one of the first casualties of the flooding Susquehanna River in Wilkes-Barre. On Saturday, June 24, when I toured the flood-stricken Wilkes-Barre area, I saw a man in his motorboat helping to evacuate elderly people from a housing project where the waters had reached to the second floor. When the man introduced himself, I realized it was Dr. Francis Michelini, the president of Wilkes College. He then gave me a first-hand report on the devastation at this college. Since that time, officials at Wilkes College have tallied up the destruction and have come up with an overall figure of $10 million in damage to the 58 buildings on the campus.

The 4-year-old Eugene S. Farley Library building at Wilkes lost at least 60,000 of its 200,000 volumes, and suffered total damage worth $1,250,000.

The men's dormitory and dining hall, completed in 1966, had damage worth $1,000,000.

The Stark Hall of Science, containing ed equipment for the teaching of physics laboratories, classrooms and sophisticated equipment for the teaching of physics and engineering, had $1,500,000 in damage.

The Darte Center for the Performing Arts at the college, situated directly on the Susquehanna River bank, had its auditorium completely filled with water except for the top six rows of seats. The adjacent music building has two Steinway concert grand pianos, valued at $12,000 each, standing on their sides and completely ruined. The total damage to the two buildings was $1,750,000.

The college bookstore, in the basement of the men's dormitory, is completely ruined, a loss of $500,000.

A short distance away is King's College. The principal loss there was to the library, where it will cost $2,000,000 to replace the 60,000 ruined books and restore the building itself. The damage to other buildings at King's, such as the Sheehy Student Center, the gymnasium, the main building, East Hall, Northampton Hall, ran the total damage to a $4 million figure.

Just to complete the local picture in Wilkes-Barre, the Luzerne County Community College, a publicly supported institution, was hit by flood damage of $1.5 million—but, of course, would qualify for aid already under the law because it is a public institution.

These schools and colleges are more than just places where many thousands of area students are receiving higher education. They are also among the city's principal employers. Their recovery as institutions is essential both to their students and to the whole economy of the flood-torn Wilkes-Barre area.

With these changes made in the law, Mr. President, my distinguished senior colleague from Pennsylvania (Mr. SCOTT) and I are prepared to go to the Committee on Appropriations to urge that it vote funds in a supplemental appropriations bill to restore these two private colleges in Wilkes-Barre and other private schools in need in our State back to their preflood condition, along with the public institutions.

Mr. President, I feel it is time for Congress to act to extend disaster relief funds to private as well as public schools and colleges. This amendment would authorize this. I urge that the Senate promptly adopt this amendment.

As the Senator mentioned, Wilkes College had some $10 million in damage and King's College had some $4 million in damage. Many other institutions have been hard hit. They have no other way to get on their feet. Without this relief there is no promising outlook for them. Therefore, I thank the distinguished chairman of the subcommittee for accepting the amendment.

Mr. SCOTT. Mr. President, I yield back the remainder of my time and ask for a vote.

Mr. McINTYRE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment of the Senator from Pennsylvania.

The amendment was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SCOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SCHWEIKER. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. SCHWEIKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with and that the amendment be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

On page 8, after line 10, insert the following:

"(c) In the case of loss or damage not compensated for by insurance or otherwise in an amount in excess of the part of a loan which is canceled under the disaster loan program under section 7(b)(1), (2), or (4) of the Small Business Act or under section 232 of the Disaster Relief Act of 1970, the Administrator of the Small Business Administration or the Secretary of Agriculture, as the case may be, shall make a cash grant in an amount equal to the amount of such excess or $2,500, whichever is less. The amount of any Federal grant under the preceding sentence shall be reduced by 4 per centum for each $1,000 by which the grantee's income exceeds $10,000. For the purpose of this subsection, the term 'income' means—

"(1) except in the case of a borrower who retires or becomes disabled in either the taxable year in which the loss or damage is sustained or the preceding taxable year, or in the case of a borrower which is a corporation, adjusted gross income, as defined in section 62 of the Internal Revenue Code of 1954, reduced by $300 for each deduction for personal exemptions allowable to the borrower under section 151 of such Code, for the taxable year preceding the taxable year in which the loss or damage is sustained.

"(2) in the case of a borrower who retires or becomes disabled in the taxable year in which the loss or damage is sustained or in the previous taxable year, adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, reduced by $300 for each deduction for personal exemptions allowable to the borrower under section 151 of such Code, as estimated by the Administrator for the taxable year after the taxable year in which the loss or damage is sustained, and

"(3) in the case of a corporation, taxable income, as defined in section 63 of the Internal Revenue Code of 1954, for the taxable year preceding the taxable year in which the loss or damage is sustained."

Mr. SCHWEIKER. Mr. President, I had intended to offer another form of this amendment but in view of the amendment of the distinguished Senator from Ohio (Mr. TAFT) being adopted, it is more feasible and logical at this point to offer this particular amendment which has been revised.

Mr. President, to recapitulate a little bit about what the amendment of the Senator from Ohio did and how my amendment would relate to it, my amendment, which is at the end of the bill, would be an add-on to the approach of the Senator from Ohio. In essence the Senator from Ohio dispensed with the flat $5,000 grant that the Nixon administration had proposed and which was in the bill. Instead of the flat grant, there would be a means test beginning at

$10,000 and graduated on $1,000 increments, reducing the $5,000 grant above $10,000. This, of course, took away much of the money that the President had proposed, because people above the $10,000 will not get as much.

If this approach is going to be used, and it is obviously the will of the Senate at this point that it is the approach to be used, then I feel we must more accurately and fairly meet the problem.

Therefore, my amendment changes the forgiveness to $7,500, an increase of $2,500, but it leaves intact the means test that the Senator from Ohio and the Senator from Indiana included. So we are following the course the Senate decided on, that there would be a means test on forgiveness. I feel that the cost of this will not be much more than the cost of the Nixon proposal.

When the Taft amendment was accepted it immediately diminished the cost of the proposal. Under my amendment the cost would go up but it would not be substantial. The amount of the cost would not far exceed, if it did exceed, the original proposal of the President.

I think the most important thing of all is that it gives the person with an income up to $10,000 an opportunity to recoup $7,500 of his loss. So it goes where the need is; the person earning less than $10,000, if he has a loss up to $7,500 can secure exactly that.

The principle we are arguing about today is very important. I realize this is a specific interest, a specific period of time, and a specific disaster.

As I mentioned in my remarks earlier in the day, which I think bear repeating for the benefit of some Senators who may have missed them, Hurricane Agnes was the greatest natural disaster ever to hit the country, bar none. This estimate comes from the commanding general of the Corps of Engineers, General Clark, who flew over the disaster area at the height of the flood, as I did, and who made that statement not only at the time of the flood but since. The Corps of Engineers has stated that the Susquehanna Valley got 14 inches during the 7- or 8-day period when Hurricane Agnes zigzagged across Pennsylvania. Pennsylvania received 70 percent of the damage when Agnes landed in Pennsylvania, and 70 percent of Pennsylvania's damage occurred in the unfortunate city of greater Wilkes-Barre. Some 250,000 people were made homeless by the floods.

In the State of Pennsylvania alone, in the manufacturing sector, there was $311 million worth of damage and $248 million of nonmanufacturing damage. In addition, some 30,000 jobs were eliminated at least temporarily in the Wilkes-Barre area.

As I pointed out earlier, some 21,000 homes were severely damaged. The average damage—and this is my point—to those 21,000 homes was about $20,000.

When we talk about $5,000 on a $20,000 damage, we are not doing very much for the person on the other end of it.

So this is a very modest increase that is proposed.

In view of the success of the amendment of the Senator from Ohio (Mr. TAFT), I think that is a logical test. Since we are going to use the means test, I think we should raise the forgiveness provision in the area where it would do the most good.

We seem to have trouble with one point in this country, and that is, whom to give our money to.

I have compiled some statistics of some of the money we have have used very generously in giving away to others.

Since the end of World War II we have given away $210 billion in foreign aid and Marshall plan aid, in helping Japan and other areas like that, not only rebuild their economy, but do such a good job of it that they are manufacturing goods so that some of the very people we are talking about have been put out of jobs.

We have put $43 billion into foreign military aid since World War II.

All of this is exclusive of Vietnam. Of course, if we calculate Vietnam costs, we have to put another $102 billion into that.

It is a little hard to go up to the city of Wilkes-Barre and tell the people up there that we can pay only one-quarter of their loss, or one-twentieth of their loss, or one-tenth of their loss, and yet we can go and rebuild Japan from its fires and ashes and help it rebuild its steel mills so they compete with ours.

This is a very critical point. Are we going to look around in our own country and decide that charity begins at home? It is hard to go to Wilkes-Barre and explain why we are talking about $5,000 on a $20,00 or $25,000, or $30,000 loan, when, at the drop of a hat, we will decide to spend $100 billion to rebuild Europe and rebuild the industries of Japan. I think it is about time that we paid attention to our own people when they get hit with the greatest natural disaster in the history of the United States of America.

I think that is what the amendment is all about. If we are going to go the route of the Senator from Ohio (Mr. TAFT), if we are going to apply the means test, let us change it a little bit so that the person who needs it most has a fighting chance. It is fine to talk about loans, but many older citizens of Wilkes-Barre lived in the flood area. Go to them, when they have lost a $20,000 or $30,000 or $40,000 house and say, "We will lend you all the money you want." How can a man who is 60 or 65 years of age pay back that loan unless he works the rest of his life? He cannot do it. Some of them are only a year or two away from being retired. They would find they have no equity in the house, nothing to work for, and would have a 1-percent loan that is not transferrable. To say to a senior citizen of 65 or 68 that he gets a 1-percent loan does not mean anything to him, because he has to start from scratch, and unless he works the remainder of his life, he is never going to be out of debt or have a chance.

So the issue is quite simple. It is whether we are going to turn inward when disaster strikes, whether we are going to treat the citizens of this country with the same degree of respect and attention and financial concern that we have displayed for citizens of other countries.

That is what the argument today is all about. It seems to me we have not even made that fundamental decision.

The Taft proposal in toto was a less generous proposal than originally the President had proposed. So we can equate some of that back, not in a spendthrift way, because the amount is very close to the same, but by keeping the means test which we have adopted at the $10,000 level, and graduated from that point, keep it exactly intact, but turn around and raise the forgiveness provision to $7,500.

I really think it is very difficult for any Member of this body to explain to the people who have been wiped out that we can do all these things for other countries, that we can go and help them in their economic troubles, and when a really serious disaster hits this country, we put our people at the bottom of the list and put them below the other areas we have considered.

I would like to highlight some of the damage that was suffered. I have had placed on the desk of each colleague a photo section of one of the papers in that area, which, I might say, was put out of operation a number of days, since the presses were underwater, and this, obviously, had to be done some time after. The damage illustrated is, as the paper says, unbelievable, but it goes to show the situation these people faced. Approximately 150 manufacturing firms were affected by the flood, and a minimum of 3,726 commercial establishments.

I might say that this is the Wilkes-Barre area. This not Harrisburg. I do not mean in any way to imply that serious damage did not occur outside of Wilkes-Barre. Harrisburg is another good case in point. I am pointing out Harrisburg as well as many other communities up and down the Susquehanna River Basin.

There was a minimum of 3,726 commercial establishments involved, comprising 1,605 retail stores, 278 wholesale stores, 845 service units. These plants and stores had an employment of 12,312.

The most recent and available data on unemployment from the Pennsylvania Bureau of Employment Security indicates that 49,500, or 33 percent of the total civil work force of 149,000 people, were still unemployed on July 7, some time after the disaster. This compares with an unemployment figure of 6 percent preceding the disaster.

As recently as several weeks ago, the unemployment figure was 33 percent.

The impact on housing loss is heightened by the higher than average age of the population. That is the point I was making. Twenty-eight percent of those affected were over 55 years of age, in the lower income area, averaging about 80 percent of the U.S. per capita figure.

That is why I am glad to see that the Senator from Indiana did change the original Taft proposal and raised the means test from $6,000 to $10,000, because, as I pointed out, the average income in the area is about $8,100, and that is 20 percent below the U.S. average.

So here we have a population that is unbalanced in favor of the elderly. We have a population that is unbalanced in favor of the lower-income group. We

have a population that has been dealt the hardest blow of any town, village, city or area in the country. It just seems to me we can begin to do a little bit for them, as we have done so much for many of our foreign friends, with a lot fewer excuses, and with a lot less reason, and with a lot less viability, in terms of explaining to the people who are paying the taxes, why we cannot take care of the people at home.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Pennsylvania. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, on behalf of the manager of the bill (Mr. McINTYRE), I yield such time as he may require to the distinguished Senator from Texas (Mr. TOWER).

Mr. TOWER. Mr. President, the amendment of the Senator from Pennsylvania substitutes a grant program, apparently, for a loan forgiveness program. I think perhaps we might be getting into unchartered waters if we start the business of making direct grants to people who are victims of these natural disasters.

In addition, the amendment would raise the cost considerably. It seems that we have already made a quantum jump in going from $2,500 in the House bill to $5,000 in this bill. To add another $2,500 would make this program extremely costly. The administration has expressed its opposition to this measure on the basis of its cost and, therefore, I feel constrained to oppose the amendment of the Senator from Pennsylvania.

The PRESIDING OFFICER. Who yields time?

Mr. TOWER. I yield back the remainder of the time for the committee.

The PRESIDING OFFICER. The Senator from Pennsylvania has 2 minutes remaining.

Mr. SCHWEIKER. Mr. President, I ask for the yeas and nays on this amendment.

The yeas and nays were ordered.

Mr. SCHWEIKER. Mr. President, I yield myself the 2 minutes I have remaining.

I just want to sum it up by saying this: This amendment tries to redress some of the changes that were made by the acceptance of the Taft amendment. The cost is not substantial, and may well not be much different from President Nixon's original proposal of $5,000, in view of the changes.

We are putting the money where it can most be used, because the means test is left in it—the very means test that the Senator from Ohio and the Senator from Indiana have worked out. So only people whose income is under $10,000 will qualify for that amount, that is all; and believe me, if you are suffering $20,000 or $30,000 damage, are 55 years of age, and are earning less than $10,000 you really need it. And that is what this amendment provides.

I urge its adoption, and I yield back the remainder of my time.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time on the amendment to be offered by the Senator from Alaska (Mr. STEVENS) and the amendment to be offered by the Senator from New York (Mr. JAVITS) be limited each to 30 minutes.

Mr. TOWER. Mr. President, will the Senator modify that to make it apply to all further amendments?

Mr. ROBERT C. BYRD. It does apply to all except the Buckley amendment.

Mr. TOWER. Mr. BUCKLEY is willing to have the time on his amendment thus limited, and Mr. CASE is willing to have his time limited; so I think that covers the rest of them.

Mr. ROBERT C. BYRD. Very well, Mr. President, I modify the request to apply to all further amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER (Mr. TAFT). All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Pennsylvania (Mr. SCHWEIKER). On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Georgia (Mr. GAMBRELL), the Senator from Oklahoma (Mr. HARRIS), the Senator from New Mexico (Mr. MONTOYA), the Senator from Maine (Mr. MUSKIE), and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG) is absent on official business.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL) would vote "nay."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Hampshire (Mr. COTTON), the Senators from Arizona (Mr. GOLDWATER and Mr. FANNIN), the Senator from Michigan (Mr. GRIFFIN), the Senator from Iowa (Mr. MILLER), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Iowa (Mr. MILLER) and the Senator from Illinois (Mr. PERCY) would each vote "nay."

The result was announced—yeas 12, nays 69, as follows:

[No. 349 Leg.]

YEAS—12

| | | |
|---|---|---|
| Bayh | Kennedy | Randolph |
| Beall | Mathias | Ribicoff |
| Byrd, Robert C. | McGovern | Schweiker |
| Gravel | Pastore | Scott |

NAYS—69

| | | |
|---|---|---|
| Aiken | Chiles | Hatfield |
| Allen | Church | Hollings |
| Anderson | Cook | Hruska |
| Bellmon | Cooper | Hughes |
| Bennett | Cranston | Humphrey |
| Bentsen | Curtis | Inouye |
| Bible | Dole | Jackson |
| Boggs | Dominick | Javits |
| Brock | Ervin | Jordan, N.C. |
| Buckley | Fong | Jordan, Idaho |
| Burdick | Fulbright | Magnuson |
| Byrd, Harry F., Jr. | Gurney | Mansfield |
| Cannon | Hansen | McClellan |
| Case | Hart | McGee |
| | Hartke | McIntyre |
| Metcalf | Smith | Talmadge |
| Mondale | Sparkman | Thurmond |
| Moss | Spong | Tower |
| Nelson | Stafford | Tunney |
| Packwood | Stennis | Weicker |
| Pearson | Stevens | Williams |
| Proxmire | Stevenson | Young |
| Roth | Symington | |
| Saxbe | Taft | |

NOT VOTING—18

| | | |
|---|---|---|
| Allott | Fannin | Miller |
| Baker | Gambrell | Montoya |
| Brooke | Goldwater | Mundt |
| Cotton | Griffin | Muskie |
| Eagleton | Harris | Pell |
| Eastland | Long | Percy |

So Mr. SCHWEIKER's amendment was rejected.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 1329

Mr. JAVITS. Mr. President, on behalf of myself and my colleague from New York, Senator BUCKLEY, the Senator from Kentucky (Mr. COOPER), and the Senator from Pennsylvania (Mr. SCOTT), I call up my amendment No. 1329 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read, as follows:

On page 7, between lines 7 and 8, insert the following:

"(C) may, in the case of a loan made under subparagraph (A) or a mortgage or other lien refinanced under subparagraph (B) in connection with the destruction of, or substantial damage to, property owned and used as a residence by an individual who by reason of retirement, disability, or other similar circumstances relies for support on survivor, disability, or retirement benefits under a pension, insurance, or other program, consent to the suspension of the payments of the principal of that loan, mortgage, or lien during the lifetime of that individual and his spouse for so long as the Administration determines that making such payments would constitute a substantial hardship."

Mr. JAVITS. Mr. President, I modify the amendment to provide that the interlineation which is referred to on line 1 should refer to page 7, between lines 7 and 8.

The PRESIDING OFFICER. The amendment is so modified.

Mr. JAVITS. Mr. President, the explanation of this amendment may be rather brief.

It responds to a problem which affects, generally speaking, older people who rely for support upon—and I use that word advisedly; it is found on line 8 of my amendment—survivor, disability, or retirement benefits. It gives the Administrator of the Small Business Administration the authority—it is not mandatory—to suspend the payment of principal on a disaster relief loan during the lifetime of any borrower for so long as the administrator determines that to make such payments would constitute a substantial hardship for the borrower.

What has happened is that many retired people concerned depend upon very small incomes. They have paid off their homes and one of the elements in their ability to stay afloat is that they have their homes free and clear.

When a disaster strikes they have to rebuild the premises with a mortgage on the home and the question of repayment

of principal may become really pressing in many cases.

The incentive for this amendment came out of on-the-ground, on-the-spot reports from Elmira, Corning, and other cities in the so-called Southern Tier of New York, which I visited and which were directly affected.

I hope very much that the Senate will look with favor on this amendment. There is no question about the humanity and desirability involved.

We have taken two precautions to prevent misuse of this provision: First, it is completely discretionary; second, instead of establishing a means test, we will accept a factual status to determine eligibility. In other words, an eligible borrower is one who relies for support on survivor disability or retirement benefits, and so forth, thereby confining it, ipso facto, to people of modest means.

I hope very much that, under the circumstances, the Senate will see fit to approve the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. McINTYRE. I yield myself 1 minute.

Mr. President, the committee has examined this amendment. We find it to reach a real need, and we are willing to accept it.

Mr. TOWER. Mr. President, I think that the amendment proposed by the Senator from New York is an excellent one and I am willing to accept it. It provides for the suspension of payments of principal on disaster loans of those who are retired or disabled and who are on limited pension or other similar incomes. Their ability to repay a new loan on their property is severely restricted by their fixed-income situation, and I think that this amendment will be of great assistance to these very deserving people. The Government's financial interest in the principal will be recovered from the borrower's estate eventually, and the interest payments will have been made during the life of the borrower.

Thus we would be providing some vital relief from the financial impact of a disaster to that sector of the population least able to bear the burden of repaying even the generous loans we are providing in this legislation, and yet we should incur little, if any, cost in so doing.

Mr. McINTYRE. Mr. President, I yield back the remainder of my time.

Mr. JAVITS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment, as modified, of the Senator from New York.

The amendment, as modified, was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PASTORE. I move to lay that motion on the table.

The motion was agreed to.

Mr. JAVITS. Mr. President, I thank the manager of the bill and the ranking Republican member of the committee very much for their consideration.

AMENDMENT NO. 1378

Mr. SCHWEIKER. Mr. President, I call up my amendment No. 1378 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. SCHWEIKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and the amendment will be printed in the RECORD.

The text of the amendment is as follows:

At the end of the bill insert the following:

SEC. —. Section 231 of the Disaster Relief Act of 1970 is amended by—

(1) inserting "(a)" before the first word of text; and

(2) adding at the end of such section the following new subsection:

"(b) Loans to which this section applies may also be made for the purpose of providing working capital, the payment of operating expenses, and any purpose for which loans may be made under section 7(a) of the Small Business Act (15 U.S.C. 636(a))."

Mr. SCHWEIKER. Mr. President, the purpose of this amendment is to permit the Small Business Administration to make loans for working capital and operating expense purposes to businesses which are disaster victims.

Under existing disaster legislation, low-interest loans are limited to the repairing, reconstruction, and rebuilding of damaged or destroyed property. Loans may be made to assist a business in rebuilding damaged real property, replacing equipment, and replacing damaged inventory. However, no provisions are made for working capital or operating expense loans.

Under its regular lending programs, SBA can make loans for working capital purposes. I am advised by SBA that they occasionally will make such loans under their normal lending programs to disaster victims.

It seems to me, however, that we should permit such loans, particularly to smaller businesses under the favorable terms allowed under the disaster legislation. We now help small businesses to get back in shape structurally and to replace lost inventory. However, small businesses, more than larger companies, operate on a very narrow cash flow basis and they need money for working capital purposes. We should recognize this in disaster legislation and allow these firms to get loans for working capital under the same favorable conditions which now apply to loans for real property, equipment and inventory.

For many small businesses, the availability of substantial Federal assistance after a disaster strikes can mean the difference between opening up again or just going out of business. Small businesses have a tremendous impact on local economies, particularly smaller communities. We need to give them all the help we can.

Mr. President, I hope the committee will accept the amendment.

Mr. TOWER. Mr. President, I have discussed this amendment with my distinguished colleague (Mr. McINTYRE) and he seems to be prepared to accept it on behalf of the majority of the committee and I am prepared to accept it on behalf of the minority of the committee. However, I should like to make one point in colloquy with the Senator from Pennsylvania. Would the distinguished Senator assure me that his amendment would not make this program available to big business which has free access to private money markets where they can get adequate funding?

Mr. SCHWEIKER. I thank the distinguished Senator from Texas. Let me say to him that I am sure it will not in any way open up small business loans to big business. The amendment, in section (b) thereof states:

For which loans made be made under section 7 (a) of the Small Business Act.

That defines and limits it to small business only, and that is the intention of my amendment, to confine it to small businesses only.

Mr. TOWER. With that assurance, and thanking the Senator from Pennsylvania, I am prepared to accept the amendment.

Mr. President, I yield back my time.

Mr. SCHWEIKER. I yield back my time.

The PRESIDING OFFICER (Mr. TAFT). All time on the amendment has been yielded back.

The question is on agreeing to the amendment, No. 1378, of the Senator from Pennsylvania.

The amendment was agreed to.

Mr. TOWER. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1392

Mr. BUCKLEY. Mr. President, I call up my amendment No. 1392 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. BUCKLEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and the amendment will be printed in the RECORD.

The text of the amendment is as follows:

On page 7, line 6, after "that" insert "(1) in the case of a business concern,".

On page 7, line 7, before the semicolon, insert ", and (2) in the case of a home, the aomunt of each monthly payment of principal and interest on the loan after refinancing under this clause shall be not less than the amount of each such payment made prior to such refinancing".

Mr. BUCKLEY. Mr. President, in the wake of the severe flood damage that occurred in the eastern part of the Nation in late June, thousands of homeowners have been thrust into a personal and fi-

nancial crisis of the most desperate kind. In some cases, homes and their entire contents have simply disappeared. Homes representing a lifetime of investment and homes for which there was a commitment to a near-lifetime of debt have been reduced to uninhabitable shells.

Within their limitations, Federal programs and personnel have done an excellent job of responding to the needs of the people and the communities that have suffered these devastating losses. The bill before us today will do much to further alleviate the burden of restoration, but despite generous responses by our public and private institutions, the heaviest personal and financial losses will still be borne by the immediate victims of the disaster.

A study of the most pressing needs of these people and a review of the existing and proposed Federal aid programs suggests that there are several unusual hardship situations for which adjustments should be made in H.R. 15692. I am particularly concerned about the homeowner who has suffered substantial damage to a home for which he was already obligated to pay a relatively large predisaster mortgage.

Under section 231(3) of the Disaster Relief Act of 1970 and under the provisions of H.R. 15692, a homeowner may borrow from the SBA the money needed to repair his home; and if he has suffered damages exceeding 50 percent of the value of his home, he may borrow to refinance a prior existing mortgage. However, the funds granted for this refinancing are limited to the amount of the physical loss sustained in the disaster. My amendment would expand the authority of the SBA to refinance these mortgages for homeowners.

For many homeowners, the burden of repaying a large SBA loan, even at a 1 percent interest rate, combined with the necessary payments on the balance of a high-interest, predisaster mortgage, can be a genuine hardship. Very often, the total debt owed on the home will significantly exceed its fair market value.

Mr. President, I ask unanimous consent to have printed in the RECORD a table of actual cases in the State of New York which illustrate the plight of these individuals.

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

| Predisaster home value | Disaster damage | Predisaster mortgage balance at bank (7½ percent/ 25 years) | Predisaster principal and interest payment (per month) | Maximum SBA loan under present law | Monthly payments at 1 percent interest | Balance of mortgage due to bank after SBA refinancing | Terms at 7½ percent | | Total debt | Total payment to SBA (1 percent) and bank (7½ percent) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Years | Monthly payment | | |
| $28,000 | $18,500 | $20,000 | $148 | $37,000 | $142 | $1,500 | 3 | $47 | $38,500 | $189 |
| $28,000 | 18,000 | 25,000 | 185 | 36,000 | 135 | 7,000 | 10 | 83 | 43,000 | 218 |
| $18,000 | 9,000 | 13,000 | 96 | 18,000 | 67 | 4,000 | 5 | 80 | 22,000 | 163 |
| $12,000 | 9,000 | 7,000 | 52 | 16,000 | 60 | None | None | None | 16,000 | 60 |
| $20,000 | 11,000 | 15,500 | 115 | 22,000 | 82 | 4,500 | 5 | 90 | 26,500 | 172 |

Mr. BUCKLEY. Please note, Mr. President, in each case that after generous SBA loans have been made, the homeowner still would be required to make monthly payments that exceed his predisaster monthly payments by 15 percent to 65 percent. I am sure that examples of even more onerous situations must exist.

To help ease the debilitating debt load on these individuals, I propose that we remove the present statutory limit on SBA refinancing assistance for homeowners. In brief, the homeowner who has suffered substantial or total damage to his dwelling could rebuild and totally refinance his home with the aid of a consolidating SBA loan. In some cases, a total refinancing of the old mortgage, combined with the funds needed for restoration of the damage, could result in a somewhat lower total monthly payment of principal and interest than was being paid prior to the disaster. To preclude the occurrence of any "windfall" situation, my amendment provides that in any refinancing arrangement the monthly payment for the combined total of principal and interest shall not be less than the total of such payments made by the homeowner before the disaster occurred.

Many homeowning victims of a national disaster will be required to repay loans which often exceed by a substantial margin the value of their restored homes. Under present law, these people are, in effect, chained to their homes for many years and denied genuine job mobility until the outstanding loans are paid back to a reasonable level which either can be assumed by a buyer or paid off upon the sale of the house. My amendment would restore the disaster victim's monthly mortgage payments to a level which is more reasonably affordable, and would hasten the day when the outstanding debt on his home will be reduced to such a point that he could seriously consider moving on to a better and more productive job.

I ask support of the Senate for an amendment that will bring to many a realistic hope of recovery from disaster.

Mr. JAVITS. Mr. President, I am honored to join my colleague from New York (Mr. BUCKLEY) in this amendment. Again it arises from practical, on-the-ground situations developed from the experience of the local authorities and business concerns in the badly afflicted areas in the southern part of the State of New York.

Senator BUCKLEY and I both inspected the area personally. I would wish to add my testimony to that of my colleagues as to the facts on-the-ground.

This is a really pressing situation. The idea for these amendments originated not with us but with our constituencies who were so heavily afflicted by the disaster. In proposing this amendment, Senator BUCKLEY proposes it for us both in response, to an expression of an urgent local need. It is in that sense that I hope the Senate will see fit to approve the amendment.

Mr. BUCKLEY. Mr. President, I yield myself 1 minute. I merely want to say that this amendment is not going to create windfalls; it will create a mechanism by which existing mortgages can be refinanced and consolidated. They will be extended by the SBA so as to prevent a doubling up of heavy interest and principal obligations on people who have to reconstruct their lives.

I would also point out that it is quite similar to a provision designed to help farmers, a provision included in the amendment which the chairman of the Committee on Agriculture and Forestry (Mr. TALMADGE) submitted and which was adopted.

Mr. McINTYRE. Mr. President, will the distinguished Senator from New York yield to me for a minute?

Mr. BUCKLEY. I am delighted to yield.

Mr. McINTYRE. First, I should like to know whether the Senator has any cost estimates on this amendment.

Mr. BUCKLEY. I do not have cost estimates; no.

Mr. McINTYRE. As I understand—correct me if I am wrong—the amendment would apply only to homeowners?

Mr. BUCKLEY. It would apply only to homeowners. It would not cover the situation of small businesses. I might also point out that the Administrator has overall discretion to limit this kind of aid to hardship cases, and I assume he would do so.

Mr. McINTYRE. As I recall, the Senator in his remarks in support of the amendment stated that to refinance mortgages there must be substantial damage, which administratively is set at 50 percent.

Mr. BUCKLEY. Yes.

Mr. McINTYRE. Does the Senator understand that the SBA would act only with respect to actual damage?

Mr. BUCKLEY. I do.

Mr. McINTYRE. Even though we do have a few reservations on the question of cost—we would like to know about the cost—we will accept the amendment.

Mr. BUCKLEY. I thank the distinguished Senator from New Hampshire for so doing.

Mr. JAVITS. Mr. President, I join in thanking the managers of the bill very much. These two amendments are highly essential to the State of New York.

The PRESIDING OFFICER. Does the Senator from New York yield back the remainder of his time?

Mr. BUCKLEY. I do.

Mr. McINTYRE. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. BUCKLEY. I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, for myself and my colleague from Alaska (Mr. GRAVEL), I call up our amendment which is at the desk. I ask unanimous consent that the reading of the amendment be dispensed with but that it be printed in the RECORD.

The PRESIDING OFFICER. Without objection, the reading of the amendment will be dispensed with; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

At the end of the bill add a new section—:

SEC. —. That in the case of any loan made pursuant to section 7(b)(1) of the Small Business Act, as amended (15 U.S.C., 636(b)), as a result of the Good Friday earthquake, which occurred on March 27, 1964, the Small Business Administration shall, at the borrower's option, on that part of any loan in excess of $500, cancel (i) the interest due on the loan, (ii) the principal of the loan, or (iii) any combination of such interest or principal except that the total amount so canceled shall not exceed $1,800.

Mr. STEVENS. Mr. President, if I may have the attention of the manager of the bill, I shall take a few seconds to explain the amendment.

The largest earthquake that ever hit the North American Continent was in Alaska in 1964. The only major natural disaster that has not been covered by the forgiveness provisions of the Small Business Administration is the Good Friday earthquake of 1964.

This amendment would merely apply to those persons who have loans from the Small Business Administration, and which contain the same cancellation provisions that have been applied to every other major natural disaster. For some reason—and it is beyond my ken—the 1964 earthquake was not subject to the forgiveness section.

I would urge the managers of the bill to examine the amendment.

Mr. President, in the 91st Congress I introduced S. 4058, a bill extending partial forgiveness for Small Business Administration loans made as a result of the Good Friday earthquake, which devastated large areas of my State on March 27, 1964. This bill was considered as an amendment to the Disaster Assistance Act of 1970, S. 3619, in the 91st Congress. That bill was debated on the Senate floor on September 9, 1970, as many of my colleagues will recall. I introduced the identical bill in the 92d Congress on January 26, 1971. The bill is presently numbered S. 45.

I am today introducing the identical amendment to H.R. 15692, a bill amending the Small Business Act to reduce the interest rate on Small Business Administration disaster loans. The amendment would add a new section at the end of the bill.

With the passage of the Disaster Relief Act of 1969, Congress recognized "that a number of States have experienced extensive property loss and damage as a result of recent major disasters and that there is a need for special measures designed to aid and accelerate the efforts of these affected States to reconstruct and rehabilitate the devastated areas."

The Disaster Relief Act of 1969 provided this special measure of aid by partial forgiveness of SBA loans incurred from disasters since July 1, 1967.

I am informed that approximately 50 disaster areas have become eligible for the forgiveness feature of the 1969 Disaster Relief Act:

State, SBA Declaration Date, Counties/Parishes, and Cause:

NORTHEASTERN AREA

Maine, December 31, 1969, All areas.

NEW YORK AREA

New York, October 3, 1967, Cattaraugus.

New Jersey, June 3, 1968, Bergen, Essex, Middlesex, Morris, Passaic, Somerset, Union.

New York, August 1, 1969, Sullivan.

MIDDLE ATLANTIC STATES

Kentucky, April 25, 1968, Bracken, Greenup, Jessamine, Mason, Pendleton (with Ohio).

Ohio, April 25, 1968, Brown, Scioto (with Kentucky).

Ohio, May 29, 1968, Athens, Butler, Clinton, Gallia, Hocking, Jackson, Ross, Warren.

Kentucky, June 25, 1969, Allen, Warren.

Ohio, July 11, 1969, All areas.

Pennsylvania, August 8, 1969, Carbon, Schuylkill.

Virginia, August 21, 1969, All areas, Rains (Camille).

West Virginia, August 22, 1969, All areas, Rains (Camille).

Kentucky, January 2, 1970, Harlan County, Flood.

SOUTHEASTERN AREA

Florida, October 21, 1968, All areas (Gladys).

Tennessee, June 25, 1969, Macon.

Mississippi, August 18, 1969, All areas, (Camille).

Alabama, August 18, 1969, All areas, (Camille).

Alabama, March 27, 1970, All areas affected, Tornado.

MIDWESTERN AREA

Iowa, May 17, 1968, All areas.

Illinois, May 17, 1968, all areas.

Iowa, July 19, 1968, Black Hawk, Bremer, Buchanan, Butler.

Minnesota, August 12, 1968, Blue Earth.

Minnesota, April 15, 1969, all areas (with Iowa, North & South Dakota, and Wisconsin).

Iowa, April 15, 1969, all areas (with Wisconsin, North & South Dakota, Iowa, and Minnesota).

Wisconsin, April 15, 1969, all areas (with Iowa, North & South Dakota, and Minnesota).

Illinois, May 5, 1969, Rock Island.

Minnesota, July 2, 1969, Nobles.

Iowa, July 15, 1969, Marshall, Tama.

Illinois, July 8, 1969, Jo Daviess, Stephenson.

SOUTHWESTERN AREA

Texas, September 20, 1967, all areas (Beulah).

Arkansas, April 22, 1968, Sebastian.

Arkansas, May 15, 1968, Garland, Pulaski, Sebastian, Sevier.

Arkansas, May 17, 1968, all areas.

Oklahoma, May 21, 1968, LeFlore.

Texas, June 25, 1968, all areas (Storm Candy).

Louisiana, August 18, 1969, All areas (Camille).

Texas, April 18, 1970, Northwest areas, tornado; May 12, 1970, Lubbock County, tornados; May 15, 1970. Hayes County, flood.

ROCKY MOUNTAIN AREA

Kansas, June 2, 1967, Ness.

Kansas, June 26, 1967, Garden City, Finney.

Nebraska, June 16, 1967, All counties through which 183 passes, etc.

North Dakota, April 15, 1969, All areas (with Minnesota, South Dakota, etc.)

South Dakota, April 15, 1969, All areas (with North Dakota, etc.)

Kansas, June 25, 1969, Saline.

Colorado, December 26, 1969, Boulder and Jefferson Counties, Flood.

North Dakota, June 2, 1970, Ransom County, Flood.

PACIFIC COASTAL AREA

Alaska, August 16, 1967, Fairbanks, etc.

California, January 1, 1969, San Luis Obispo; January 23, 1969, Los Angeles; January 27, 1969, Riverside; January 29, 1969, Fresno, Tulare, Stanislaus; March 3, 1969, Contra Costa; December 30, 1969, Marin County, Flood; February 3, 1970, All areas, Flood.

Florida, Mississippi, and Louisiana received forgiveness on loans resulting from the Hurricane Betsy disaster in September 1965, under a special forgiveness act similar to the one I am proposing today.

During the Good Friday earthquake and the ensuing tidal waves, my State suffered damages totaling millions of dollars. Fatalities and tidal damage occurred as far south as Crescent City, Calif., and the Small Business Administration subsequently granted 1,636 loans for a total of $99,495,000 to assist in reconstruction. This earthquake was the most severe seismic disturbance ever registered in this country. This amendment will match the provisions of section 7 of the Disaster Relief Act of 1969, which was the act in force at the time the bill was originally introduced, and provide a forgiveness of SBA loans not to exceed $1,800 per loan. The total cost to the Government for forgiveness at $1,800 per loan would be approximately $2.9 million.

The Disaster Relief Act of 1969 extended back to disasters in 1967 the same provisions that were made available for Hurricane Betsy, the disaster of 1965. The 1969 act also extended to the Fairbanks flood area the provisions of the forgiveness section. However, the major disaster that we have had in Alaska—as a matter of fact—the major seismic disturbance that has occurred on the North American Continent—occurred on Good Friday in 1964.

This amendment would extend the same privilege to the SBA borrowers from 1,636 individual homeowners in the south-central Alaska area and elsewhere as was received by the victims of the Fairbanks flood in 1967, pursuant to the 1969 act. That forgiveness provision, which was available to people across the country was written into the 1969 act in the House of Representatives after the measure had passed this body. There was no opportunity to amend that bill here to extend the equality to people who suffered greatly as a result of the Good Friday earthquake in 1969. People that would be covered by my amendment are people residing in all the Pacific States, as far south as California. Many bene-

ficiaries would come from Oregon as well. Since this loan forgiveness provision is at the option of the borrower, and there are considerable number of people who have already repaid their loans, I suspect that the outside figure of $2.9 million would not, in fact, be utilized entirely.

I am merely seeking consistency between Alaskans who suffered damage in the 1964 earthquake and other borrowers who received benefits as a result of the 1969 act.

This provision is one that should have been included in the House when the 1969 act was considered. This body has often taken exceptions to its general attitude of retroactivity. I am sure every Senator in this Chamber has at one time or another voted for retroactivity on a measure. I believe this is an important enough one for my State and other western States that we should make an exception in this particular case. The purpose of my bill is only to cure defects in the 1969 act. If this provision is taken to conference then the House conferees can assist in a decision on the final measure. I believe at this point the objective of the amendment would be achieved.

In closing, I ask unanimous consent to have printed in the RECORD a letter I received over a year ago from Mr. and Mrs. George Stelioes of Anchorage, Alaska. It depicts the plight of their parents. I believe this case is typical of many Alaskans.

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

ANCHORAGE, ALASKA,
*April 1, 1971.*

Senator TED STEVENS (Alaska),
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR STEVENS: Recently I read you proposed some relief for Alaska earthquake victims and think this a thoughtful proposal.

Let me give you an example. My parents lived on 8th near "M" St. in Anchorage and completely lost their home in the quake and to add insult to injury that was the month my father retired from the Alaska Railroad. Their house was mortgage-free and these people (mortgage-free owners) are the ones in my opinion who really lost other than those who lost life. A year or so after the quake they borrowed from the SBA to buy another home and for the first time in many years they had house payments! My father's retirement pay is about $400 per month and with the $175 SBA payment there isn't much to live on. I feel deeply for all the retired people who had mortgage-free homes and then had to borrow to re-establish their homes. Perhaps this is why many of our old-timers have left to live outside.

We would appreciate any efforts made to help these mortgage-free retired people who lost their homes in the 1964 earthquake.

Thank you.

Sincerely yours,
Mr. & Mrs. GEORGE STELIOES.

Mr. STEVENS. Mr. President, if I may speak particularly to the distinguished Senator from New Hampshire, there are 614 homeowners, basically in the Anchorage area, and 523 small businesses in the same area that still owe money as a result of the 1964 earthquake. This amendment would give them the same consideration that was given in the old law to victims of other disasters.

The bill before us now forgives $5,000 for every one of the people who suffered from Hurricane Agnes. They pay 1 percent interest. The people concerned in the 1964 Alaska earthquake received no forgiveness and paid 2 percent interest. I do not see why the people who suffered from the largest earthquake disaster in the history of the country should not get the same benefit from the provisions of this act. I urge the Senator from New Hampshire and the Senator from Texas to consider this.

On the basis of information provided to us, the maximum exposure, in terms of forgiveness for all of those who can apply for loans would be, roughly, $3 million.

I think that what the Senator from New York (Mr. BUCKLEY) said about the people of his State paying two mortgages applies to the people of Alaska. The same thing that the senior Senator from New York (Mr. JAVITS) stated with respect to his amendment applies also to the people of Alaska. We are not asking for $5,000; we are asking for only what should have been given to us at the time of the earthquake.

I have examined this, and I cannot find one single reason why the Good Friday earthquake of 1964 in Alaska was exempted from the provisions of the 1969 act.

I urge the consideration of the amendment by the managers of the bill. It is a worthwhile amendment. It involves a small number of persons—1,137 in Alaska—who are paying these loans and are having the same problem but are not being given the same consideration. We are not asking for $5,000; we are asking for $1,800 which should have been extended at the time.

Mr. McINTYRE. Mr. President, I yield myself as much time as I may require.

By no means do I wish anything I am about to say to reflect on the victims of the earthquake disaster in Alaska. But I must say to the Senator from Alaska that that disaster occurred some 8 years ago. While we would be delighted to be able to go back and pick up all those disasters and try to treat them, as the Senator from Alaska has so ably stated, equally with the victims of Hurricane Agnes, the fact is that if we acceded to the proposal of the Senator from Alaska, I suspect that any victim of a disaster in 1964, 1965, or 1966 would have an equal right to come before us and ask for the same equitable treatment.

Much as I regret having to cross the line that we in the subcommittee and full committee started out with—June 1, 1972, and eventually worked ourselves back to January 1, 1971—I am not sure that we did not go too far at that point.

With all due respect to the Senator from Alaska, who is doing what he should—representing his constituents—I just cannot accept the Senator's amendment, I would appreciate it if he would withdraw it.

Mr. STEVENS. Mr. President, I yield myself whatever time I may require.

When I came here in 1969, there was no law permitting forgiveness. My colleague and I introduced a bill in 1969 to correct this condition. It was S. 4058 in the 91st Congress.

The then Senator from Texas, Mr. Yarborough, had some problems concerning another matter, and urged me not to call up and have a vote on the amendment.

When the 92d Congress convened, we introduced S. 45, one of the first bills in this Congress, and again called attention to this one single defect in the Small Business Act. That bill had been pending before the Senate Banking Committee and was before it when this bill we are presently debating was reported out.

I think this amendment involves a question of equity. If the amendment gets only two votes, I think we can tell our constituents in Alaska that we tried to get the same treatment for them that Congress has generally given to victims of similar natural disasters.

I have a list which describes the Maine disaster of 1969 and many others. The Camille Hurricane in Florida and the Alabama tornado were covered. We forgave loans arising as a result of the Blue Earth problems in Minnesota in 1967. The Hurricane Beulah, in Texas on September 20, 1967, was covered.

The law was made retroactive and went back to June 1, 1964, but did not go back to March 1964, to cover the March 27 earthquake.

I cannot understand why this was not done. I say to my good friend from New Hampshire respectfully that it is a matter of a very few people in relation to this bill that is before the Senate now, but it is a matter of great principle to us in Alaska. I have included in the record a typical letter I have received from people making payments for both the mortgage on the home that was destroyed and the SBA mortgage to rebuild the home afterward. They want to know why, when everyone else suffers from major disasters get forgiveness, they do not.

I urge my good friend from New Hampshire to reconsider. I wish he would.

The PRESIDING OFFICER. Who yields time.

Mr. TOWER. Mr. President, I am very much in sympathy with what my distinguished friend from Alaska is trying to do. I have had the privilege of visiting Alaska many times and I have always been treated with such splendid hospitality. These are people who always bear up so well under adversity, and who live in a rugged area, facing the Arctic winter and they do such a splendid job.

However, I do not think this is the proper vehicle for what the Senator seeks to do. I might be prepared to support this amendment were it offered as independent legislation. But I do not think it should be offered here. Also, there is a possibility of a point of order that might come up in the House and we would have great difficulty sustaining it in conference. If the Senator would consider offering it as independent legislation, I would be inclined to support it.

Mr. STEVENS. Mr. President, I thank my good friend from Texas. I appreciate his advice, but I point out that this was in one of the first bills I introduced 4 years ago when I came here. S. 45 was introduced in the first session of this Congress. It has not been considered by committee. The reason I do not know.

I appreciate what the Senator said about a point of order. Obviously if the House enters a point of order, we will lose the amendment. But I do not understand why we are not granted this relief. I cannot support a bill that would grant $5,000 in forgiveness and 1 percent on loans on a recent disaster, Hurricane Agnes, if our people in Alaska cannot have forgiveness of $1,800 when they experienced a far more serious disaster, one having more impact on our economy than any one in the other States involved in these other disasters. I do not understand this double standard and I cannot support the bill if we in Alaska do not get equal consideration.

The PRESIDING OFFICER. Who yields time?

Mr. McINTYRE. I am prepared to yield back my time.

Mr. STEVENS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment of the Senator from Alaska.

The amendment was rejected.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill is open to further amendment.

Mr. CASE. Mr. President, I have an amendment at the desk on behalf of myself and Senators WILLIAMS, JAVITS, and CRANSTON. I ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. CASE. Mr. President, I ask unanimous consent that further reading of the amendment be dispersed with, and that the amendment be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

On page 7, before line 17, insert the following new paragraphs (D) and (E), to read as follows:

"(D) shall, if the disaster was caused by hurricane or flood, require all borrowers located in areas eligible for the sale of flood insurance under the National Flood Insurance Act of 1968 (42 U.S.C. 4001–4127) to purchase and manitain flood insurance coverage for the duration of the loan on the buildings that are to be repaired, rehabilitated, or reconstructed, in an amount equal to the actual cash value of the buildings or the amount of subsidized coverage available, whichever is less, except that if the total amount of the loan is canceled pursuant to paragraph (C) of this subsection, such insurance shall be required only for the twelve-month period following the date of the first disbursement of any part of the loan; and

"(E) shall, if the disaster was caused by hurricane or flood, require all borrowers located in areas not yet eligible for the sale of flood insurance under the National Flood Insurance Act of 1968 to purchase and maintain flood insurance coverage for the duration of the loan on the buildings that are to be repaired, rehabilitated, or reconstructed, in an amount equal to the actual cash value of the buildings or the amount of subsidized coverage available, whichever is less, as soon as such coverage is made available in the area in which the buildings are located, provided the loan is still outstanding at such time."

Mr. CASE. Mr. President, I yield myself such time as I require.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. CASE. Mr. President, the amendment I propose today is one that I consider to be absolutely essential to the soundness of the bill we are considering. The two catastrophes that gave rise to the disaster relief legislation we are considering today both occurred during the month of June. Yet it is important to realize that another Hurricane Agnes could easily occur tomorrow, or the next day, or in September or October. And some other types of flood disaster could easily occur in the months thereafter.

Thus, while we talk of this bill as a bill for the victims of the Rapid City, S. Dak., and Agnes disasters, the fact is that we have no basis for believing that the 1972 flood season is yet even half over. For example, the most costly and tragic hurricanes in recent memory, such as Donna in 1960, Carla in 1961, Betsy in 1965, Camille in 1969, and Celia in 1970, all occurred in August or September, rather than in June or July. The Pacific Northwest flood of 1964 occurred in December, and the California floods and mudslides of 1969 occurred in January. Each of these catastrophies involved property damage well in excess of $300 million, and would cost much more today. Last year, of course, New Jersey was hit by Doria in late August.

Despite these realities, the act we are considering today does nothing to assure that the victims we are aiding will not become victims a second time before the year is over. Many of them also have been victims of previous hurricanes, such as Doria, and already have large disaster loans on their properties. Mr. President, how do we expect these people to repay these multiple disaster loans, even with the very generous $5,000 forgiveness and 1 percent interest rate the present bill contains?

The amendment I am proposing today would amend the bill reported by the committee to require loan recipients in communities eligible for the sale of subsidized flood insurance under the National Flood Insurance Act of 1968 to purchase such insurance as a condition of the SBA loan they are receiving, in order to protect them in the event of another flood disaster.

There are undoubtedly many of us in this body who have serious reservations about the action we are being asked to take today. The measure we are adopting is a costly one, and a precedent that may haunt us for years to come, yet it is inadequate to indemnify most flood victims for what they have lost as a result of Hurricane Agnes.

It is particularly distressing to me, as one who fought long and hard for the passage of the National Flood Insurance Act of 1968, to see that program ignored or downgraded, when it is a far more humane and effective manner of accomplishing what the present bill proposes. Its limits of subsidized coverage, $17,500 on single family structures and $30,000 on other types of structures, may be somewhat low and in need of revision, but a $17,500 debt-free insurance payment, in return for a small annual insurance premium, is far better than a much larger loan of which all but $5,000 has to be repaid.

I particularly want to call attention to the fact that the Federal Insurance Administration took action on its own initiative to substantially reduce its subsidized insurance rates on July 10, in recognition of the large numbers of people in the two disaster areas who could have purchased insurance but did not do so, either because they did not know the coverage existed or because they thought the premiums were too high. Under the new rates which became effective on July 10, the owner of a $25,000 house could obtain $17,500 in structure coverage and $5,000 in contents coverage for a total premium of only $72.50. Minimum agents' commissions have also been established to encourage publicizing the program.

Unfortunately, Mr. President, experience shows that most people simply do not purchase insurance coverage unless they are required to do so. That was true of fire insurance before lenders began requiring it, it is true of life insurance—as the existence of the social security system demonstrates—and it is certainly true of flood insurance, particularly in the Pennsylvania, Maryland, and Virginia communities where no one anticipated the kind of occurrence that Agnes caused. Only some 90,000 flood insurance policies had been sold, mostly in coastal areas, prior to Agnes, even though nearly 1,200 communities were eligible for the coverage.

What my amendment would do is to assure that these unfortunate victims of the Rapid City and Agnes disasters, and anyone else who benefits under the act we are considering today, will not fall victim to a second flood occurrence while their present SBA loans are outstanding, without the benefit of flood insurance protection. Briefly stated, the amendment has two parts, as follows:

First, it would require loan recipients who are benefited by this act to purchase flood insurance up to the value of their property or the limits of the subsidized coverage, whichever is less, at the very reasonable rates that have now been established, as a condition of their SBA loan. In cases where the total amount of the loan is less than the $5,000 forgiveness amount, they would be required to purchase flood insurance for only 1 year, but with the hope that they would have the incentive to keep their coverage in force from then on.

Second, in communities where flood insurance is not yet available, my amendment would require loan recipients who still have loan balances outstanding at

the time the community becomes eligible for flood insurance to purchase such insurance at that time.

It should be noted, Mr. President, that it is not the intention of this amendment that SBA must require flood insurance in connection with previous disaster loans not covered by this act. Flood insurance would be required in connection with past loans only to the extent that recipients elect to take advantage of the more generous provisions for which they are eligible under this present act. Thus, if a victim of Hurricane Doria already has a SBA loan outstanding and suffered further damage from Hurricane Agnes, he would be required to buy flood insurance only if he took out a new loan or had his old loan modified under this present act. If his old loan remained unchanged and he received no additional benefit from the present act, the flood insurance requirement would not apply.

In addition to the importance of flood insurance to Hurricane Agnes victims who may suffer still further damage from this current hurricane season, I think I should point out that my amendment also has budgetary advantages. I think all of us here realize that there is great danger, if the disaster benefits are increased, that the increased benefits will become simply a jumping off point for higher benefits the next time. By requiring the approximately 150,000 anticipated SBA Agnes loan recipients to purchase flood insurance, we will also achieve a significant expansion of the present flood insurance program, thereby both assuring its future viability and decreasing the likelihood of emergency recovery acts like the present one in the future.

Mr. President, I urge that this vital amendment be made part of the bill we are considering.

Mr. McINTYRE. Mr. President, this is an excellent amendment. It is going in the direction, I think we are going to have to go under a new natural disaster act. The committee is happy to accept the amendment.

Mr. TOWER. Mr. President, due to the force of the Senator's personality and lucidity of the argument, I, too, have recognized the integral merit of the amendment of the Senator from New Jersey, and I therefore am prepared to accept it.

Mr. McINTYRE. Mr. President, I yield back my time.

Mr. CASE. Mr. President, I yield back my time except first I request that any Senator who wishes to sponsor the amendment may do so or that any Senator who wants to put a statement in the RECORD before the vote may do so.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CASE. Mr. President, I yield back the remainder of my time.

Mr. McINTYRE. Mr. President, I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Jersey.

The amendment was agreed to.

The PRESIDING OFFICER. The question now is on agreeing to the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

The PRESIDING OFFICER. The question now is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time.

Mr. McINTYRE. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of the Senate amendments to H.R. 15692 and that the bill be printed as passed by the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Do Senators yield back their time on the bill?

Mr. TOWER. Mr. President, I yield back my time.

Mr. McINTYRE. Mr. President, I yield back my time.

Mr. President, I ask for the yeas and nays on passage.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time on the bill having been yielded back, the question is on passage.

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Georgia (Mr. GAMBRELL), the Senator from Oklahoma (Mr. HARRIS), the Senator from New Mexico (Mr. MONTOYA), the Senator from Maine (Mr. MUSKIE), and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG) is absent on official business.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL) would vote "yea."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senators from Tennessee (Mr. BAKER and Mr. BROCK), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Hampshire (Mr. COTTON), the Senators from Arizona (Mr. GOLDWATER and Mr. FANNIN), the Senator from Michigan (Mr. GRIFFIN), the Senator from Wyoming (Mr. HANSEN), the Senator from Iowa (Mr. MILLER), the Senator from Illinois (Mr. PERCY), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Colorado (Mr. ALLOTT), the Senator from Massachusetts (Mr. BROOKE), the Senator from Iowa (Mr. MILLER), and the Senator from Illinois (Mr. PERCY) would each vote "yea."

The result was announced—yeas 76, nays 2, as follows:

[No. 350 Leg.]

YEAS—76

| | | |
|---|---|---|
| Aiken | Bible | Case |
| Allen | Boggs | Chiles |
| Anderson | Buckley | Church |
| Bayh | Burdick | Cook |
| Beall | Byrd, Harry F., Jr. | Cooper |
| Bellmon | Byrd, Robert C. | Cranston |
| Bennett | Cannon | Curtis |
| Bentsen | Dominick | Dole |
| | Ervin | Magnuson |
| | Fong | Mansfield |
| | Fulbright | Mathias |
| | Gurney | McClellan |
| | Hart | McGee |
| | Hartke | McGovern |
| | Hatfield | McIntyre |
| | Hollings | Metcalf |
| | Hruska | Mondale |
| | Hughes | Moss |
| | Humphrey | Nelson |
| | Inouye | Packwood |
| | Jackson | Pastore |
| | Javits | Pearson |
| | Jordan, N.C. | Proxmire |
| | Jordan, Idaho | Randolph |
| | Kennedy | Ribicoff |
| | | Roth |
| | | Saxbe |
| | | Schweiker |
| | | Scott |
| | | Smith |
| | | Sparkman |
| | | Spong |
| | | Stafford |
| | | Stennis |
| | | Stevenson |
| | | Symington |
| | | Taft |
| | | Talmadge |
| | | Thurmond |
| | | Tower |
| | | Tunney |
| | | Weicker |
| | | Williams |

NAYS—2

| | |
|---|---|
| Gravel | Stevens |

NOT VOTING—21

| | | |
|---|---|---|
| Allott | Fannin | Miller |
| Baker | Gambrell | Montoya |
| Brock | Goldwater | Mundt |
| Brooke | Griffin | Muskie |
| Cotton | Hansen | Pell |
| Eagleton | Harris | Percy |
| Eastland | Long | Young |

So the bill (H.R. 15692) was passed.

The title was amended, so as to read: "An Act to authorize for a limited period additional loan assistance under the Small Business Act for disaster victims, to provide for a study and report to the Congress by the President setting forth recommendations for a comprehensive revision of disaster relief legislation, and for other purposes."

Mr. TOWER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## ORDER FOR ADJOURNMENT TO 10 A.M. MONDAY, AUGUST 7, 1972

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the convening of the Senate tomorrow at 10 a.m. be vacated and that when the Senate adjourns today it stand in adjournment until 10 a.m. on Monday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

## MILITARY CONSTRUCTION AUTHORIZATIONS, 1973

The PRESIDING OFFICER (Mr. TAFT). Under the previous order, the Chair lays before the Senate H.R. 15641, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (H.R. 15641) to authorize certain construction at military installations, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Armed Services with an amendment to strike out all after the enactment clause and insert:

TITLE I

SEC. 101. The Secretary of the Army may establish or develop military instalaltions and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment for the following acquisition and construction:

INSIDE THE UNITED STATES

UNITED STATES CONTINENTAL ARMY COMMAND

(*First Army*)

Fort Belvoir, Virginia, $11,027,000.
Carlisle Barracks, Pennsylvania, $1,078,000.
Fort Dix, New Jersey, $1,215,000.
Fort Eustis, Virginia, $7,535,000.
Fort Knox, Kentucky, $20,244,000.
Fort Lee, Virginia, $1,048,000.
Fort George G. Meade, Maryland, $1,818,000.

(*Third Army*)

Fort Benning, Georgia, $6,040,000.
Fort Bragg, North Carolina, $964,000.
Fort Campbell, Kentucky, $10,957,000.
Fort Gordon, Georgia, $5,225,000.
Fort Jackson, South Carolina, $18,650,000.
Fort McClellan, Alabama, $333,000.
Fort Rucker, Alabama, $1,571,000.

(*Fifth Army*)

Fort Bliss, Texas, $3,382,000.
Fort Benjamin Harrison, Indiana, $1,966,000.
Fort Hood, Texas, $36,193,000.
Fort Leavenworth, Kansas, $1,054,000.
Fort Polk, Louisiana, $4,997,000.
Fort Riley, Kansas, $787,000.
Fort Sheridan, Illinois, $787,000.
Fort Sill, Oklahoma, $13,878,000.
Fort Leonard Wood, Missouri, $18,578,000.

(*Sixth Army*)

Fort Carson, Colorado, $16,098,000.
Fort Ord, California, $8,451,000.
Presidio of San Francisco, California, $12,367,000.

MILITARY DISTRICT OF WASHINGTON

Fort McNair, District of Columbia, $120,000.
Fort Myer, Virginia, $1,815,000.

UNITED STATES ARMY MATERIEL COMMAND

Anniston Army Depot, Alabama, $1,460,000.
Army Materials and Mechanics Research Center, Massachusetts, $332,000.
Harry Diamond Laboratories, Maryland, $20,867,000.
Edgewood Arsenal, Maryland, $1,902,000.
Lexington-Blue Grass Army Depot, Kentucky, $1,610,000.
Fort Monmouth, New Jersey, $457,000.
Pueblo Army Depot, Colorado, $654,000.
Redstone Arsenal, Alabama, $547,000.
Rock Island Arsenal, Illinois, $444,000.
Sierra Army Depot, California, $2,633,000.
White Sands Missile Range, New Mexico, $530,000.
Yuma Proving Ground, Arizona, $926,000.

UNITED STATES ARMY SECURITY AGENCY

Vint Hill Farms, Virginia, $1,549,000.

UNITED STATES ARMY STRATEGIC COMMUNICATIONS COMMAND

Fort Huachuca, Arizona, $1,289,000.
Fort Ritchie, Maryland, $545,000.

UNITED STATES MILITARY ACADEMY

United States Military Academy, West Point, New York, $9,455,000.

ARMY MEDICAL DEPARTMENT

Fitzsimons General Hospital, Colorado, $685,000.
Walter Reed Army Medical Center, District of Columbia, $13,161,000.

MILITARY TRAFFIC MANAGEMENT AND TERMINAL SERVICE

Military Ocean Terminal, Bayonne, New Jersey, $3,245,000.

UNITED STATES ARMY, ALASKA

Alaska General, Alaska, $673,000.
Fort Richardson, Alaska, $1,273,000.

UNITED STATES ARMY, HAWAII

Fort Kamehameha, Hawaii, $1,245,000.
Schofield Barracks, Hawaii, $2,918,000.
Tripler Army Medical Center, Hawaii, $1,589,000.

BARRACKS MODERNIZATION

Various Locations, $103,225,000.

POLLUTION ABATEMENT

Various Locations, Air Pollution Abatement, $22,776,000.
Various Locations, Water Pollution Abatement, $36,502,000.

OUTSIDE THE UNITED STATES

UNITED STATES ARMY FORCES, SOUTHERN COMMAND

Canal Zone, Various Locations, $8,129,000.

UNITED STATES ARMY, PACIFIC

Korea, Various Locations, $2,018,000.

KWAJALEIN MISSILE RANGE

National Missile Range, $13,289,000.
Site Defense of Minuteman, $19,000,000.

UNITED STATES ARMY SECURITY AGENCY

Various Locations, $3,273,000.

UNITED STATES ARMY STRATEGIC COMMUNICATIONS COMMAND

Various Locations, $1,412,000.

UNITED STATES ARMY, EUROPE

Germany, Various Locations, $11,953,000.
Various Locations: For the United States share of the cost of multilateral programs for the acquisition or construction of military facilities and installations, including international military headquarters, for the collective defense of the North Atlantic Treaty Area, $58,000,000: *Provided*, That, within thirty days after the end of each quarter, the Secretary of the Army shall furnish to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives a description of obligations incurred as the United States share of such multilateral programs.

SEC. 102. The Secretary of the Army may establish or develop Army installations and facilities by proceeding with construction made necessary by changes in Army missions and responsibilities which have been occasioned by (a) unforeseen security considerations, (b) new weapons developments, (c) new and unforeseen research and development requirements, or (d) improved production schedules if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security, and in connection therewith to acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, in the total amount of $10,000,000: *Provided*: That the Secretary of the Army, or his designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization will expire as of September 30, 1973, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to that date.

SEC. 103. (a) Public Law 91–511, as amended, is amended under the heading "Inside the United States" in section 101 as follows:

(1) With respect to "Burlington Army Ammunition Plant, New Jersey", strike out "$384,000" and insert in place thereof "$650,000".

(2) With respect to "Sierra Army Depot, California", strike out "$369,000" and insert in place thereof "$761,000".

(3) With respect to "Tobyhanna Army Depot, Pennsylvania", strike out "$115,000" and insert in place thereof "$261,000".

(b) Public Law 91–511, as amended, is amended by striking out in clause (1) of section 602 "$180,502,000" and "$265,699,000" and inserting in place thereof "$181,306,000" and $266,503,000", respectively.

SEC. 105. (a) Public Law 92–145 is amended under the heading "Pollution Abatement" in section 101 as follows: With respect to "Various Locations, Water Pollution Abatement Facilities", strike out "$34,791,000" and "$2,000,000" and insert in place thereof "$35,291,000" and "$2,500,000", respectively.

(b) Public Law 92–145 is amended by striking out in clause (1) of section 702 "$363,126,000" and "$404,500,000" and inserting in place thereof "$363,626,000" and "$405,000,000", respectively.

TITLE II

SEC. 201. The Secretary of the Navy may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities and equipment for the following acquisition and construction:

INSIDE THE UNITED STATES

FIRST NAVAL DISTRICT

Naval Air Station, Brunswick, Maine, $2,499,000.
Naval Shipyard, Portsmouth, Kittery, Maine, $3,857,000.
Naval Hospital, Newport, Rhode Island, $423,000.
Navy Public Works Center, Newport, Rhode Island, $546,000.
Naval Station, Newport, Rhode Island, $2,050,000.
Naval Underwater Systems Center, Newport, Rhode Island, $2,257,000.
Naval War College, Newport Rhode Island, $8,469,000.
Naval Air Rework Facility, Quonset Point, Rhode Island, $1,460,000.
Naval Air Station, Quonset Point, Rhode Island, $3,636,000.

THIRD NAVAL DISTRICT

Naval Submarine Base, New London, Connecticut, $7,647,000.
Naval Submarine School, New London, Connecticut, $728,000.

FOURTH NAVAL DISTRICT

Naval Air Station, Lakehurst, New Jersey, $107,000.
Naval Air Test Facility, Lakehurst, New Jersey, $1,504,000.

NAVAL DISTRICT, WASHINGTON

Naval Academy, Annapolis, Maryland, $9,323,000.
Naval Air Test Center, Patuxent River, Maryland, $4,914,000.
Naval Electronic Systems Test and Evaluation Facility, St. Inigoes, Maryland, $140,000.
Naval Ordnance Laboratory, White Oak, Maryland, $438,000.
Naval Hospital, Quantico, Virginia, $185,000.

FIFTH NAVAL DISTRICT

Fleet Anti-Air Warfare Training Center, Dam Neck, Virginia, $294,000.
Naval Amphibious Base, Little Creek, Virginia, $3,001,000.
Navy Public Works Center, Norfolk, Virginia, $3,319,000.
Naval Shipyard, Norfolk, Virginia, $5,116,000.
Naval Station, Norfolk, Virginia, $3,186,000.
Naval Supply Center, Norfolk, Virginia, $5968,000.
Nuclear Weapons Training Group, Atlantic, Norfolk, Virginia, $2,266,000.
Naval Air Station, Oceana, Virginia, $2,347,000.
Naval Ophthalmic Support and Training Activity, Yorktown, Virginia, $421,000.
Naval Security Detachment, Sugar Grove, West Virginia, $475,000.

SIXTH NAVAL DISTRICT

Naval Air Station, Cecil Field, Florida, $479.
Naval Air Rework Facility, Jacksonville, Florida, $6,950,000.
Naval Air Station, Jacksonville, Florida, $3,676,000.

Naval Training Center, Orlando, Florida, $1,058,000.
Naval Coastal Systems Laboratory, Panama City, Florida, $716,000.
Naval Air Rework Facility, Pensacola, Florida, $6,275,000.
Naval Air Station, Pensacola, Florida, $1,296,000.
Naval Communications Training Center, Pensacola, Florida, $4,998,000.
Naval Hospital, Pensacola, Florida, $19,156,000.
Naval Air Station, Whiting Field, Florida, $756,000.
Naval Air Station, Glynco, Georgia, $1,213,000.
Naval Home, Gulfport, Mississippi, $3,300,000.
Naval Air Station, Meridian, Mississippi, $6,584,000.
Naval Shipyard, Charleston, South Carolina, $3,452,000.
Naval Air Station, Memphis, Tennessee, $10,512,000.

EIGHTH NAVAL DISTRICT

Naval Hospital, New Orleans, Louisiana, $11,680,000.
Naval Ordnance Missile Test Facility, White Sands, New Mexico, $160,000.
Naval Ammunition Depot, McAlester, Oklahoma, $390,000.
Naval Air Station, Corpus Christi, Texas, $642,000.
Naval Air Station, Kingsville, Texas, $250,000.

NINTH NAVAL DISTRICT

Navy Public Works Center, Great Lakes, Illinois, $108,000.
Naval Training Center, Great Lakes, Illinois, $5,147,000.

ELEVENTH NAVAL DISTRICT

Naval Amphibious Base, Coronado, California, $2,761,000.
Naval Air Station, Imperial Beach, California, $3,471,000.
Naval Shipyard, Long Beach, California, $5,586,000.
Naval Station, Long Beach, California, $1,844,000.
Naval Air Station, Miramar, California, $3,670,000.
Naval Air Rework Facility, North Island, California, $3,015,000.
Naval Air Station, North Island, California, $12,144,000.
Pacific Missile Range, Point Mugu, California, $665,000.
Naval Construction Battalion Center, Port Hueneme, California, $470,000.
Navy Public Works Center, San Diego, California, $1,758,000.
Naval Station, San Diego, California, $8,291,000.
Navy Submarine Support Facility, San Diego, California, $631,000.

TWELFTH NAVAL DISTRICT

Naval Air Station, Alameda, California, $8,134,000.
Naval Facility, Centerville Beach, Ferndale, California, $664,000.
Naval Air Station, Lemoore, California, $3,981,000.
Naval Schools Command, Mare Island, Vallejo, California, $5,153,000.
Naval Shipyard, Mare Island, Vallejo, California, $4,450,000.
Naval Air Station, Moffet Field, California, $2,097,000.
Fleet Numerical Weather Central, Monterey, California, $2,830,000.
Naval Station, Treasure Island, San Francisco, California, $2,690,000.
Naval Security Group Activity, Skaggs Island, California, $615,000.
Naval Air Station, Fallon, Nevada, $214,000.
Naval Ammunition Depot, Hawthorne, Nevada, $7,503,000.

THIRTEENTH NAVAL DISTRICT

Naval Communication Station, Adak, Alaska, $591,000.
Naval Arctic Research Laboratory, Barrow, Alaska, $3,759,000.
Naval Shipyard, Puget Sound, Bremerton, Washington, $5,992,000.
Naval Torpedo Station, Keyport, Washington, $96,000.
Naval Air Station, Whidbey Island, Washington, $8,744,000.

FOURTEENTH NAVAL DISTRICT

Naval Air Station, Barbers Point, Hawaii, $100,000.
Naval Ammunition Depot, Oahu, Hawaii, $10,098,000.
Naval Dispensary, Pearl Harbor, Hawaii, $3,593,000.
Naval Shipyard, Pearl Harbor, Hawaii, $424,000.
Naval Station, Pearl Harbor, Hawaii, $2,623,000.
Naval Submarine Base, Pearl Harbor, Hawaii, $2,755,000.

MARINE CORPS FACILITIES

Marine Barracks, Washington, District of Columbia, $5,233,000.
Marine Corps Development and Education Command, Quantico, Virginia, $6,492,000.
Marine Corps Base, Camp Lejeune, North Carolina, $9,672,000.
Marine Corps Air Station, Cherry Point, North Carolina, $2,143,000.
Marine Corps Air Station, New River, North Carolina, $3,748,000.
Fleet Marine Force, Atlantic, Norfolk, Virginia, $2,602,000.
Marine Corps Supply Center, Albany, Georgia, $236,000.
Marine Corps Air Station, Beaufort, South Carolina, $2,757,000.
Marine Corps Recruit Depot, Parris Island, South Carolina, $4,612,000.
Marine Corps Air Station, Yuma, Arizona, $2,030,000.
Marine Corps Auxiliary Landing Field, Camp Pendleton, California, $2,996,000.
Marine Corps Base, Camp Pendleton, California, $14,972,000.
Marine Corps Air Station, El Toro, California, $523,000.
Marine Corps Air Stations, Orange County, California, $40,379,000.
Marine Corps Base, Twentynine Palms, California, $2,017,000.
Marine Corps Air Station, Kaneohe Bay, Oahu, Hawaii, $794,000.

POLLUTION ABATEMENT

Various Locations, Air Pollution Abatement Facilities, $25,194,000.
Various Locations, Water Pollution Abatement Facilities, $55,016,000.

OUTSIDE THE UNITED STATES

TENTH NAVAL DISTRICT

Naval Communication Station, Ponce, Puerto Rico, $586,000.
Naval Facility, Ramey Air Force Base, Puerto Rico, $207,000.
Naval Station, Roosevelt Roads, Puerto Rico, $1,497,000.
Naval Security Group Activity, Sabana Seca, Puerto Rico, $660,000.
Naval Facility, Grand Turk, The West Indies, $271,000.

ATLANTIC OCEAN AREA

Naval Air Facility, Lajes, Azores, $120,000.
Naval Air Station, Bermuda, Bermuda Islands, $90,000.
Naval Air Station, Guantanamo Bay, Cuba, $144,000.
Naval Hospital, Guantanamo Bay, Cuba, $738,000.
Naval Station, Guantanamo Bay, Cuba, $3,310,000.
Naval Station, Keflavik, Iceland, $1,297,000.

EUROPEAN AREA

Naval Communication Unit, London, England, $88,000.
Naval Detachment, Souda Bay, Crete, Greece, $5,308,000.
Naval Air Facility, Sigonella, Sicily, Italy, $8,932,000.
Naval Station, Rota, Spain, $860,000.

INDIAN OCEAN AREA

Naval Communication Facility, San Diego Garcia, Chagos Archipelago, $6,100,000.

PACIFIC OCEAN AREA

Naval Communication Station, Harold E. Holt, Exmouth, Australia, $1,743,000.
Naval Air Station, Agana, Guam, Mariana Islands, $1,008,000.
Naval Hospital, Guam, Mariana Islands, $598,000.
Naval Magazine, Guam, Mariana Islands, $968,000.
Navy Public Works Center, Guam, Mariana Islands, $158,000.
Naval Station, Guam, Mariana Islands, $202,000.
Naval Air Station, Cubi Point, Republic of the Philippines, $4,470,000.
Naval Communications Station, San Miguel, Republic of the Philippines, $395,000.
Navy Public Works Center, Subic Bay, Republic of the Philippines, $267,000.

POLLUTION ABATEMENT

Various Locations, Water Pollution Abatement Facilities, $1,200,000.

SEC. 202. The Secretary of the Navy may establish or develop Navy installations and facilities by proceeding with construction made necessary by changes in Navy missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements, or (4) improved production schedules, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security, and in connection therewith to acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, in the total amount of $10,000,000: *Provided*, That the Secretary of the Navy, or his designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization will expire as of September 30, 1973, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to that date.

SEC. 203. (a) Public Law 90–110, as amended, is amended under the heading "INSIDE THE UNITED STATES", in section 201 as follows:

(1) With respect to Naval Submarine Medical Center, New London, Connecticut, strike out "$1,590,000" and insert in place thereof "$2,575,000".

(b) Public Law 90–110, as amended, is amended by striking out in clause (2) of section 802, "$422,599,000" and "$470,796,000" and inserting in place thereof "$423,584,000" and "$471,781,000", respectively.

SEC. 204. (a) Public Law 91–511, as amended, is amended under the heading "INSIDE THE UNITED STATES", in section 201 as follows:

(1) With respect to Naval Observatory, Flagstaff Station, Flagstaff, Arizona, strike

out "$286,000" and insert in place thereof "$804,000".

(2) With respect to Marine Corps Base, Camp Lejeune, North Carolina, strike out "$1,384,000" and insert in place thereof "$1,703,000".

(b) Public Law 91-511, as amended, is amended under the heading "OUTSIDE THE UNITED STATES", in section 201 as follows:

(1) With respect to Naval Magazine, Guam, Mariana Islands, strike out "$3,287,000" and insert in place thereof "$7,457,000".

(c) Public Law 91-511, as amended, is amended by striking out in clause (2) of section 602, "$246,118,000", "$21,994,000" and "$269,086,000 and inserting in place thereof "$246,955,000", "$26,164,000" and "$274,093,000", respectively.

TITLE III

SEC. 301. The Secretary of the Air Force may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for the following acquisition and construction:

INSIDE THE UNITED STATES

AEROSPACE DEFENSE COMMAND

Peterson Field, Colorado Springs, Colorado, $5,423,000.

Tyndall Air Force Base, Panama City, Florida, $200,000.

AIR FORCE LOGISTICS COMMAND

Gentile Air Force Station, Dayton, Ohio, $138,000.

Hill Air Force Base, Ogden, Utah, $4,242,000.

Kelly Air Force Base, San Antonio, Texas, $4,444,000.

McClellan Air Force Base, Sacramento, California, $11,312,000.

Robins Air Force Base, Macon, Georgia, $9,501,000.

Tinker Air Force Base, Oklahoma City, Oklahoma, $10,307,000.

Wright-Patterson Air Force Base, Dayton, Ohio, $14,074,000.

AIR FORCE SYSTEMS COMMAND

Arnold Engineering Development Center, Tullahoma, Tennessee, $300,000.

Brooks Air Force Base, San Antonio, Texas, $3,566,000.

Edwards Air Force Base, Muroc, California, $534,000.

Eglin Air Force Base, Valparaiso, Florida, $10,920,000.

Kirtland Air Force Base, Albuquerque, New Mexico, $893,000.

Satellite Tracking Facilities, $151,000.

AIR TRAINING COMMAND

Chanute Air Force Base, Rantoul, Illinois, $5,875,000.

Keesler Air Force Base, Biloxi, Mississippi, $4,454,000.

Lackland Air Force Base, San Antonio, Texas, $3,644,000.

Laredo Air Force Base, Laredo, Texas, $133,000.

Laughlin Air Force Base, Del Rio, Texas, $711,000.

Lowry Air Force Base, Denver, Colorado, $987,000.

Mather Air Force Base, Sacramento, California, $1,558,000.

Randolph Air Force Base, San Antonio, Texas, $2,137,000.

Reese Air Force Base, Lubbock, Texas, $2,235,000.

Sheppard Air Force Base, Wichita Falls, Texas, $5,074,000,

Williams Air Force Base, Chandler, Arizona, $329,000.

AIR UNIVERSITY

Maxwell Air Force Base, Montgomery, Alabama, $3,000,000.

ALASKAN AIR COMMAND

Eielson Air Force Base, Fairbanks, Alaska, $2,885,000.

Various Locations, $2,012,000.

HEADQUARTERS COMMAND

Andrews Air Force Base, Camp Springs, Maryland, $3,714,000.

Bolling Air Force Base, Washington, District of Columbia, $20,226,000.

MILITARY AIRLIFT COMMAND

Altus Air Force Base, Altus, Oklahoma, $543,000.

Dover Air Force Base, Dover, Delaware, $3,164,000.

McChord Air Force Base, Tacoma, Washington, $1,470,000.

McGuire Air Force Base, Wrightstown, New Jersey, $4,509,000.

Norton Air Force Base, San Bernardino, California, $1,009,000.

Scott Air Force Base, Belleville, Illinois, $359,000.

Travis Air Force Base, Fairfield, California, $274,000.

PACIFIC AIR FORCES

Hickam Air Force Base, Honolulu, Hawaii, $4,330,000.

STRATEGIC AIR COMMAND

Barksdale Air Force Base, Blytheville, Arkansas, $92,000.

Davis-Monthan Air Force Base, Tucson, Arizona, $2,665,000.

Ellsworth Air Force Base, Rapid City, Scuth Dakota, $103,000.

Grand Forks Air Force Base, Grand Forks, North Dakota, $1,812,000.

Grissom Air Force Base, Peru, Indiana, $138,000.

K. I. Sawyer Air Force Base, Marquette, Michigan, $338,000.

Loring Air Force Base, Limestone, Maine, $2,523,000.

Malmstrom Air Force Base, Great Falls, Montana, $1,145,000.

March Air Force Base, Riverside, California, $4,512,000.

Minot Air Force Base, Minot, North Dakota, $1,664,000.

Offutt Air Force Base, Omaha, Nebraska, $5,271,000.

Vandenberg Air Force Base, Lompoc, California, $3,185,000.

Westover Air Force Base, Chicopee Falls, Massachusetts, $455,000.

Wurtsmith Air Force Base, Oscoda, Michigan, $948,000.

TACTICAL AIR COMMAND

Bergstrom Air Force Base, Austin, Texas, $210,000.

Cannon Air Force Base, Clovis, New Mexico, $558,000.

England Air Force Base, Alexandria, Louisiana, $2,095,000.

George Air Force Base, Victorville, California, $501,000.

Holloman Air Force Base, Alamogordo, New Mexico, $772,000.

Homestead Air Force Base, Homestead, Florida, $3,184,000.

Langley Air Force Base, Hampton, Virginia, $2,514,000.

MacDill Air Force Base, Tampa, Florida, $4,798,000.

Mountain Home Air Force Base, Mountain Home, Idaho, $318,000.

Myrtle Beach Air Force Base, Myrtle Beach, South Carolina, $145,000.

Nellis Air Force Base, Las Vegas, Nevada, $2,722,000.

Pope Air Force Base, Fayetteville, North Carolina, $1,955,000.

Shaw Air Force Base, Sumter, South Carolina, $4,000,000.

UNITED STATES AIR FORCE ACADEMY

United States Air Force Academy, Colorado Springs, Colorado, $3,312,000.

UNITED STATES AIR FORCE SECURITY SERVICE

Goodfellow Air Force Base, San Angelo, Texas, $1,564,000.

POLLUTION ABATEMENT

Various Locations, Air Pollution Abatement Facilities, $7,300,000.

Various Locations, Water Pollution Abatement Facilities, $9,691,000.

AIR INSTALLATION COMPATIBLE USE ZONES

Various Locations, $12,000,000.

OUTSIDE THE UNITED STATES

AIR FORCE SYSTEMS COMMAND

Satellite Tracking Facilities, $310,000.

AEROSPACE DEFENSE COMMAND

Naval Station Keflavik, Iceland, $1,704,000.

PACIFIC AIR FORCES

Various Locations, $4,612,000.

STRATEGIC AIR COMMAND

Andersen Air Force Base, Guam, $800,000.

UNITED STATES AIR FORCES IN EUROPE

Germany, $8,161,000.

United Kingdom, $5,605,000.

Various Locations, $3,404,000.

POLLUTION ABATEMENT

Various Locations, Air Pollution Abatement Facilities, $171,000.

Various Locations, Water Pollution Abatement Facilities, $4,537,000.

SEC. 302. The Secretary of the Air Force may establish or develop classified military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $19,160,000.

SEC. 303. The Secretary of the Air Force may establish or develop Air Force installations and facilities by proceeding with construction made necessary by changes in Air Force missions and responsibilities which have been occasioned by: (a) unforeseen security considerations, (b) new weapons developments, (c) new and unforeseen research and development requirements, or (d) improved production schedules, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security, and in connection therewith to acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $10,000,000: *Provided*, That the Secretary of the Air Force or his designee, shall notify the Committee on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization will expire as of September 30, 1973, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to that date.

SEC. 304. (a) Public Law 91-142, as amended, is amended under the heading "INSIDE THE UNITED STATES," in section 301 as follows:

(1) With respect to Williams Air Force Base, Chandler, Arizona, strike out "$4,462,000" and insert in place thereof, "$5,008,000".

(b) Public Law 91-142, as amended, is amended by striking out in clause (c) of section 702 "$208,611,000" and "$268,994,000" and inserting in place thereof "$209,157,000" and "$269,540,000", respectively.

TITLE IV

SEC. 401. The Secretary of Defense may establish or develop military installations

and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities and equipment, for defense agencies for the following acquisition and construction:

INSIDE THE UNITED STATES

DEFENSE INTELLIGENCE AGENCY

Arlington Hall Station, Virginia, $1,600,000.

DEFENSE NUCLEAR AGENCY

Naval Ordnance Laboratory, White Oak, Maryland, $2,236,000.

Armed Forces Radiobiology Research Institute, Bethesda, Maryland, $360,000.

DEFENSE SUPPLY AGENCY

Defense Automatic Addressing Facility, Tracy, California, $137,000.

Defense Construction Supply Center, Columbus, Ohio, $1,199,000.

Defense Documentation Center, Alexandria, Virginia, $98,000.

Defense Depot, Mechanicsburg, Pennsylvania, $722,000.

Defense Depot, Memphis, Tennessee, $828,000.

Defense Depot, Ogden, Utah, $1,091,000.

Defense Depot, Tracy Annex, Stockton, California, $682,000.

Defense Electronics Supply Center, Dayton, Ohio, $159,000.

Defense General Supply Center, Richmond, Virginia, $1,171,000.

NATIONAL SECURITY AGENCY

Fort George G. Meade, Maryland, $5,221,000.

SEC. 402. The Secretary of Defense may establish or develop installations and facilities which he determines to be vital to the security of the United States, and in connection therewith to acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $15,000,000: *Provided*, That the Secretary of Defense, or his designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including real estate actions pertaining thereto.

TITLE V

MILITARY FAMILY HOUSING

SEC. 501. The Secretary of Defense, or his designee, is authorized to construct, at the locations hereinafter named, family housing units and mobile home facilities in the numbers hereinafter listed, but no family housing construction shall be commenced at any such locations in the United States until the Secretary shall have consulted with the Secretary of the Department of Housing and Urban Development, as to the availability of adequate private housing at such locations. If agreement cannot be reached with respect to the availability of adequate private housing at any location, the Secretary of Defense shall immediately notify the Committee on Armed Services of the House of Representatives and the Senate, in writing, of such difference of opinion, and no contract for construction at such location shall be entered into for a period of thirty days after such notification has been given. This authority shall include the authority to acquire land, and interests in land, by gift, purchase, exchange of Government-owned land, or otherwise.

(a) Family housing units—

(1) The Department of the Army, three thousand nine hundred and forty-nine units $100,122,000:

National Guard Battalion Headquarters, Bethel, Alaska, two units.

National Guard Battalion Headquarters, Nome, Alaska, two units.

Fort Huachuca, Arizona, one hundred units.

Sierra Army Depot, California, eighty units.

Fort Carson, Colorado, three hundred units.

Walter Reed Army Medical Center, District of Columbia, three hundred units.

Fort Benning, Georgia, four hundred and seventy-four units.

United States Army Installations, Oahu, Hawaii, six hundred and forty units.

Fort Riley, Kansas, one hundred units.

United States Army Installations, St. Louis, Missouri, two hundred units.

Cold Region Research Laboratory, New Hampshire, one unit.

Fort Monmouth, New Jersey, one hundred units.

Fort Bragg/Pope Air Force Base, North Carolina, five hundred units.

Fort Hood, Texas, one thousand units.

Fort Belvoir, Virginia, one hundred and fifty units.

(2) The Department of the Navy, four thousand six hundred units, $119,900,000.

Naval Complex, Long Beach, California, four hundred units.

Marine Corps Base, Camp Pendleton, California, four hundred units.

Marine Corps Base, Twentynine Palms, California, one hundred units.

Naval Complex, Washington, District of Columbia, six hundred units.

Naval Training Center, Orlando, Florida, three hundred units, and additional real estate.

Naval Complex, Oahu Hawaii, five hundred units.

Naval Complex, Great Lakes/Glenview, Illinois, three hundred and fifty units.

Naval Complex, New Orleans, Louisiana, one hundred units.

Naval Air Station, Meridian, Mississippi, two hundred units.

Naval Air Station, Lakehurst, New Jersey, two hundred units.

Naval Complex, Newport, Rhode Island, one hundred and fifty units.

Naval Complex, Charleston, South Carolina, two hundred units.

Naval Complex, Norfolk, Virginia, six hundred units, and additional real estate.

Naval Security Group Activity, Galeta Island, Canal Zone, twenty units.

Naval Complex, Guam, Marianas Islands, two hundred and thirty units.

Naval Air Station, Bermuda, two hundred and fifty units.

(3) The Department of the Air Force, three thousand one hundred and sixty-eight units, $76,024,000:

Maxwell/Gunter Air Force Bases, Alabama, two hundred units.

Davis-Monthan Air Force Base, Arizona, four hundred units.

Lowry Air Force Base, Colorado, three hundred units.

Bolling Air Force Base, District of Columbia, four hundred units.

Andrews Air Force Base, Maryland, three hundred units.

Nellis Air Force Base, Nevada, two hundred units.

Laredo Air Force Base, Texas, two hundred units

Hill Air Force Base/Defense Depot, Ogden, Utah, three hundred and eighteen units.

Langley Air Force Base, Virginia, five hundred units.

San Vito Air Station, Italy, one hundred and fifty units.

Incirlik Air Force, Turkey, two hundred units.

(b) Mobile home facilities:

(1) The Department of the Army, four hundred and twenty-one spaces, $1,662,000.

(2) The Department of the Navy, four hundred and thirty-two spaces, $1,725,000.

(3) The Department of the Air Force, five hundred and fifty spaces, $2,000,000.

SEC. 502. Authorization for the construction of family housing provided in this Act shall be subject, under such regulations as the Secretary of Defense may prescribe, to the following limitations on cost, which shall include shades, screens, ranges, refrigerators, and all other installed equipment and fixtures:

(a) The average unit cost for each military department for all units of family housing constructed in the United States (other than Hawaii and Alaska) shall not exceed $24,000 including the cost of the family unit and the proportionate costs of land acquisition, site preparation and installation of utilities.

(b) No family housing unit in the area specified in subsection (a) shall be constructed at a total cost exceeding $42,000 including the cost of the family unit and the proportionate costs of land acquisition, site preparation and installation of utilities.

(c) When family housing units are constructed in areas other than that specified in subsection (a) the average cost of all such units shall not exceed $33,500 and in no event shall the cost of any unit exceed $42,000. The cost limitations of this subsection shall include the cost of the family unit and the proportionate costs of land acquisition, site preparation and installation of utilities.

SEC. 503. The Secretary of Defense, or his designee, is authorized to accomplish alterations, additions, expansions, or extensions not otherwise authorized by law, to existing public quarters at a cost not to exceed—

(1) for the Department of the Army, $16,985,700.

(2) for the Department of the Navy, $9,121,000.

(3) for the Department of the Air Force, $11,955,000.

SEC. 504. Notwithstanding the limitations contained in section 502 of this Act, the Secretary of Defense, or his designee, is authorized to construct or otherwise acquire, four-family housing units in Brazil at a total cost not to exceed $215,000. This authority shall include the authority to acquire lands and interests in land.

SEC. 505. The Secretary of Defense, or his designee, is authorized to accomplish repairs and improvements to existing public quarters in amounts in excess of the $10,000 limitation prescribed in section 610(a) of Public Law 90–110, as amended (81 Stat. 279, 305), as follows:

The United States Naval Academy, Annapolis, Maryland, eleven units $275,000.

Royal Air Force Station, Mildenhall, New Market, United Kingdom, one unit, $18,500.

SEC. 506. Section 515 of Public Law 84–161 (69 Stat. 324, 352), as amended, is amended by (1) striking out "1972 and 1973" in the first sentence and inserting in lieu thereof "1973 and 1974", and (2) striking out the third sentence and inserting a new sentence as follows: "Expenditures for the rental of such housing facilities, including the cost of utilities and maintenance and operation, may not exceed: for the United States (other than Hawaii), Puerto Rico, and Guam an average of $210 per month for each military department, or the amount of $290 per month for any one unit; and, for Hawaii, an average of $255 per month for each military department, or the amount of $300 per month for any one unit."

SEC. 507. Section 507 of Public Law 88–174 (77 Stat. 307, 326), as amended, is amended by (1) striking out "1972 and 1973" and inserting in lieu thereof "1973 and 1974", and (2) striking out "$210" and inserting in lieu thereof "$225".

SEC. 508. Notwithstanding the provisions of any other law, members of the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service, with dependents, may occupy on a rental basis, without loss of basic allowance for quarters, inadequate quarters under the jurisdiction of a military department notwithstanding that such quarters may have been constructed or

converted for assignment as public quarters, subject to a charge against their basic allowance for quarters in the amount of the fair rental value of the housing facility: *Provided*, That notwithstanding the fair rental value of such family housing facility, no charge for occupancy thereof shall be made against the basic allowance for quarters of the occupant in excess of 75 per centum of such allowance, except that in no event shall the total charge to the occupants' basic allowance for quarters for such housing at any installation be less than the cost of maintenance and operation thereof. The net difference between the basic allowance for quarters and the occupancy charge shall be paid to the occupant from otherwise available appropriations.

The Secretaries of the Military Departments are each authorized, subject to regulations approved by the Secretary of Defense.

1. to designate as rental housing such housing as he may determine to be inadequate as public quarters; and,

2. to lease inadequate housing to personnel of any of the mentioned services for occupancy by them and their dependents.

On the effective date of this section, section 407 of Public Law 85–241 (71 Stat. 556), as amended (42 U.S.C. 1594j), is repealed.

SEC. 509. There is authorized to be appropriated for use by the Secretary of Defense, or his designee, for military family housing as authorized by law for the following purposes:

(1) for construction and acquisition of family housing, including improvements to adequate quarters, improvements in inadequate quarters, minor construction, relocation of family housing, rental guarantee payments, construction and acquisition of mobile home facilities, and planning, an amount not to exceed $318,379,700, and,

(2) for support of military family housing, including operating expenses, leasing, maintenance of real property, payments of principal and interest on mortgage debts incurred, payment to the Commodity Credit Corporation, and mortgage insurance premiums authorized under section 222 of the National Housing Act, as amended (12 U.S.C. 1715m), an amount not to exceed $730,949,000.

## TITLE VI

### HOMEOWNERS ASSISTANCE

SEC. 601. Effective November 30, 1970, section 1013 of Public Law 89–754 (80 Stat. 1255, 1290) as amended, is amended by (1) deleting the period at the end of subsection 1013(d) and adding the following: ", except in connection with compensation for property located on a base or installation pursuant to subsection (1).", and by (2) adding the following new subsection:

"(1) Notwithstanding the provisions of subsection (a)(2) and the second proviso of subsection (b), Federal employees or military personnel employed at or near a military base or installation outside the United States who are otherwise eligible under the criteria as set forth above shall be entitled to compensation for losses arising (1) out of the sale of property, or (2) out of the inability to sell property located on a base or installation, incident to the owner's transfer, reassignment, or involuntary termination of employment, which results in his relocation. Such employees or military personnel whose property is located off a base or installation shall be entitled to compensation under subsection (c) for losses sustained in private sales. Such employees or personnel whose property is located on a base or installation, who sell or are unable to find a purchaser for such property, may surrender their interest in such property to the United States, and shall be entitled to compensation, notwithstanding lack of ownership of the land on which such property is located, in an amount equal to (A) 90 per centum of the sum of the present owner's purchase price of the dwelling and improvements, and all costs of ownership including interest on notes, utilities and services, maintenance and insurance, less (B) the total of all housing allowances received from the Government during ownership and occupancy of the dwelling, all rents collected, and the sale price, if any, received for the property, as determined by the Secretary of Defense: *Provided, however*, That the maximum compensation shall in no event exceed 90 per centum of the unamortized portion of the cost of the property, including improvements, at the time ownership is terminated, as reflected in the amortization schedule, if any, relating to such property. For the purpose of this subsection, the term 'United States' means the several States and the District of Columbia."

## TITLE VII

### GENERAL PROVISIONS

SEC. 701. The Secretary of each military department may proceed to establish or develop installations and facilities under this Act without regard to section 3648 of the Revised Statutes, as amended (31 U.S.C. 529), and sections 4774(d) and 9774(d) of title 10, United States Code. The authority to place permanent or temporary improvements on land includes authority for surveys, administration, overhead, planning, and supervision incident to construction. That authority may be exercised before title to the land is approved under section 355 of the of the Revised Statutes, as amended (40 U.S.C. 255), and even though the land is held temporarily. The authority to acquire real estate or land includes authority to make surveys and to acquire land, and interests in land (including temporary use), by gift, purchase, exchange of Government-owned land, or otherwise.

SEC. 702. There are authorized to be appropriated such sums as may be necessary for the purposes of this Act, but appropriations for public work projects authorized by titles I, II, III, IV, and V, shall not exceed—

(1) for title I: Inside the United States, $440,688,000; outside the United States, $117,074,000; or a total of $557,762,000.

(2) for title II: Inside the United States, $473,509,000; outside the United States, $41,217,000; or a total of $514,726,000.

(3) for title III: Inside the United States, $235,835,000; outside the United States, $29,304,000; section 302, $19,160,000; or a total of $284,299,000.

(4) for title IV: A total of $30,504,000.

(5) for title V: Military family housing, $1,049,328,700.

SEC. 703. (a) Except as provided in subsection (b), any of the amounts specified in titles I, II, III, and IV of this Act, may, in the discretion of the Secretary concerned, be increased by 5 per centum when inside the United States (other than Hawaii and Alaska), and by 10 per centum when outside the United States or in Hawaii and Alaska, if he determines that such increase (1) is required for the sole purpose of meeting unusual variations in cost, and (2) could not have been reasonably anticipated at the time such estimate was submitted to the Congress. However, the total cost of all construction and acquisition in each such title may not exceed the total amount authorized to be appropriated in that title.

(b) When the amount named for any construction or acquisition in title I, II, III, or IV of this Act involves only one project at any military installation and the Secretary of Defense, or his designee, determines that the amount authorized must be increased by more than the applicable percentage prescribed in subsection (a), the Secretary concerned may proceed with such construction or acquisition if the amount of the increase does not exceed by more than 25 per centum the amount named for such project by the Congress.

(c) Subject to the limitations contained in subsection (a), no individual project authorized under title I, II, III, or IV of this Act for any specifically listed military installation may be placed under contract if—

(1) the estimated cost of such project is $250,000 or more, and

(2) the current working estimate of the Department of Defense, based upon bids received, for the construction of such project exceeds by more than 25 per centum the amount authorized for such project by the Congress, until after the expiration of thirty days from the date on which a written report of the facts relating to the increased cost of such project, including a statement of the reasons for such increase has been submitted to the Committees on Armed Services of the House of Representatives and the Senate.

(d) The Secretary of Defense shall submit an annual report to the Congress identifying each individual project which has been placed under contract in the preceding twelve-month period and with respect to which the then current working estimate of the Department of Defense based upon bids received for such project exceeded the amount authorized by the Congress for that project by more than 25 per centum. The Secretary shall also include in such report each individual project with respect to which the scope was reduced in order to permit contract award within the available authorization for such project. Such report shall include all pertinent cost information for each individual project, including the amount in dollars and percentage by which the current working estimate based on the contract price for the project exceeded the amount authorized for such project by the Congress.

SEC. 704. Contracts for construction made by the United States for performance within the United States and its possessions under this Act shall be executed under the jurisdiction and supervision of the Corps of Engineers, Department of the Army, or the Naval Facilities Engineering Command, Department of the Navy, or such other department or Government agency as the Secretaries of the military departments recommend and the Secretary of Defense approves to assure the most efficient, expeditious, and cost-effective accomplishment of the construction herein authorized. The Secretaries of the military departments shall report annually to the President of the Senate and the Speaker of the House of Representatives a breakdown of the dollar value of construction contracts completed by each of the several construction agencies selected, together with the design, construction supervision, and overhead fees charged by each of the several agents in the execution of the assigned construction. Further, such contracts (except architect and engineering contracts which, unless specifically authorized by the Congress, shall continue to be awarded in accordance with presently established procedures, customs, and practice) shall be awarded, insofar as practicable, on a competitive basis to the lowest responsible bidder, if the national security will not be impaired and the award is consistent with chapter 137 of title 10, United States Code. The Secretaries of the military departments shall report annually to the President of the Senate and the Speaker of the House of Representatives with respect to all contracts awarded on other than a competitive basis to the lowest responsible bidder.

SEC. 705. (a) As of October 1, 1973, all authorizations for military public works (other than family housing) to be accomplished by the Secretary of a military department in connection with the establishment or development of military installations and facilities, and all authorizations for appropriations therefor, that are contained in titles I, II, III, and IV of the Act of October 27, 1971, Public Law 92–145 (85 Stat. 394), and all such authorizations contained in Acts

approved before October 28, 1971, and not superseded or otherwise modified by a later authorization are repealed except—

(1) authorizations for public works and for appropriations therefor that are set forth in those Acts in the titles that contain the general provisions;

(2) authorizations for public works projects as to which appropriated funds have been obligated for construction contracts, land acquisitions, or payments to the North Atlantic Treaty Organization, in whole or in part before October 1, 1973, and authorizations for appropriations therefor; and

(3) notwithstanding the repeal provisions of section 705(a) of the Act of October 27, 1971, Public Law 92–145 (85 Stat. 394, 410), authorizations for the following items which shall remain in effect until October 1, 1974:

(a) utilities in the amount of $2,200,000 at Fort Belvoir, Virginia, that is contained in title I, section 101 of the Act of October 26, 1970 (84 Stat. 1204), as amended.

(b) utilities in the amount of $2,333,000 at Radford Army Ammunition Plant, Virginia, that is contained in title I, section 101 of the Act of October 26, 1970 (84 Stat. 1204), as amended.

(c) utilities in the amount of $876,000 at Fort Ritchie, Maryland, that is contained in title I, section 101 of the Act of October 26, 1970 (84 Stat. 1204), as amended.

(d) land acquisition contiguous to the Marine Corps Air Station, El Toro, California, as authorized in title II, section 204 of the Act of October 26, 1970 (84 Stat. 1204, 1212).

(e) land acquisition contiguous to the Marine Corps Air Station, Santa Ana, California, as authorized in title II, section 205 of the Act of October 26, 1970 (84 Stat. 1204, 1212).

(b) Effective fifteen months from the date of enactment of this Act, all authorizations for construction of family housing, including mobile home facilities, all authorizations to accomplish alterations, additions, expansions, or extensions to existing family housing, and all authorizations for related facilities projects, which are contained in this or any previous Act, are hereby repealed, except—

(1) authorizations for family housing projects as to which appropriated funds have been obligated for construction contracts or land acquisitions or manufactured structural component contracts in whole or in part before such date; and

(2) authorizations to accomplish alterations, additions, expansions or extensions to existing family housing, and authorizations for related facilities projects, as to which appropriated funds have been obligated for construction contracts before such date.

SEC. 706. None of the authority contained in titles I, II, III, and IV of this Act shall be deemed to authorize any building construction projects inside the United States in excess of a unit cost to be determined in proportion to the appropriate area construction cost index, based on the following unit cost limitations where the area construction cost index is 1.0:

(1) $27.00 per square foot for permanent barracks;

(2) $29.00 per square foot for bachelor officer quarters; unless the Secretary of Defense or his designee determines that because of special circumstances, application to such project of the limitations on unit costs contained in this section is impracticable; *Provided*, That notwithstanding the limitations contained in prior Military Construction Authorization Acts on unit costs, the limitations on such costs contained in this section shall apply to all prior authorizations for such construction not heretofore repealed and for which construction contracts have not been awarded by the date of enactment of this Act.

SEC. 707. Section 2683, title 10, United States Code (relating to relinquishment of legislative jurisdiction) is amended by revising subsection (a) thereof to read as follows:

"(a) Nothwithstanding any other provision of law, the Secretary of a military department may, whenever he considers it desirable, relinquish to a State, or to a Commonwealth, territory, or possession of the United States, all or part of the legislative jurisdiction of the United States over lands or interests under his control in that State, Commonwealth, territory, or possession. Relinquishment of legislative jurisdiction under this section may be accomplished (1) by filing with the Governor (or, if none exists, with the chief executive officer) of the State, Commonwealth, territory, or possession concerned a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State, Commonwealth, territory, or possession may otherwise provide.

SEC. 708. Section 709 of Public Law 92–145 (85 Stat. 394, 414) is amended to read as follows: "Notwithstanding any other provision of law, none of the lands constituting Camp Pendleton, California, may be sold, transferred, or otherwise disposed of by the Department of Defense unless hereafter authorized by law: *Provided, however*, That with respect, to said lands the Secretary of the Navy, or his designee, may grant leases, licenses, or easements pursuant to chapter 159 of title 10, United States Code."

SEC. 709. Titles I, II, III, IV, V, VI, and VII, of this Act may be cited as the "Military Construction Authorization Act, 1973".

TITLE VIII

RESERVE FORCES FACILITIES

SEC. 801. Subject to chapter 133 of title 10, United States Code, the Secretary of Defense may establish or develop additional facilities for the Reserve Forces, including the acquisition of land therefor, but the cost of such facilities shall not exceed—

(1) For the Department of the Army:

(a) Army National Guard of the United States, $33,570,000.

(b) Army Reserve, $33,500,000.

(2) For the Department of the Navy: Naval and Marine Corps Reserves, $14,715,000.

(3) For the Department of the Air Force:

(a) Air National Guard of the United States, $14,500,000.

(b) Air Force Reserve, $6,400,000.

SEC. 802. The Secretary of Defense may establish or develop installations and facilities under this title without regard to section 3648 of the Revised Statutes, as amended (31 U.S.C. 529), and sections 4774(d) and 9774(d) of title 10, United States Code. The authority to place permanent or temporary improvements on lands includes authority for surveys, administration, overhead, planning, and supervision incident to construction. That authority may be exercised before title to the land is approved under section 355 of the Revised Statutes, as amended (40 U.S.C. 255), and even though the land is held temporarily. The authority to acquire real estate or land includes authority to make surveys and to acquire land, and interests in land (including temporary use), by gift, purchase, exchange of Government-owned land, or otherwise.

SEC. 803. This title may be cited as the "Reserve Forces Facilities Authorization Act, 1973".

The PRESIDING OFFICER. Debate on the bill is subject to a 1-hour limitation, to be equally divided and controlled. Who yields time?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senate will be in order.

Mr. SYMINGTON. Mr. President, I yield myself such time as I may require.

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

Mr. SYMINGTON. I yield to the majority leader.

Mr. MANSFIELD. Mr. President, before the Senator starts on his introductory remarks I would like to raise a question based on the committee report.

On page 19 of the committee report on the military construction bill, under the heading "Safeguard System Command" I note that a total of $387 million originally requested by the Army for construction of Safeguard tactical facilities and for community impact assistance was withdrawn as a result of the SALT agreement.

I would point out that the five countries affected by the cancellation of the Montana ABM project had an unemployment rate of about 5.6 percent prior to the signing of the Nixon-Brezhnev agreement in Moscow last spring. The unemployment figure in those counties now averages 9.2 percent.

May I say further that the people of Montana who are most directly affected by this cancellation have taken the action of the President in good faith and in good spirits, and they are very much behind what the President has done in the signing of this agreement, which the Senate almost unanimously approved yesterday.

That is incidental, but it does raise some questions.

Am I correct in my belief that the withdrawal of this amount, with which I fully agree, will in no way affect those community impact requests which are now pending in the Department of Defense? I have in mind repair of the streets in Conrad, Mont., $237,000; the completion of a multipurpose facility at the elementary school in Conrad, $234,000; and the Safeguard share of economic development coordination at Conrad, $50,000. These three requests, along with others, were submitted as a direct result of Safeguard planning in Monana, and are tied with the cancellation of the contract as a result of the signing of the Nixon-Brezhnev agreement in Moscow last spring.

Mr. SYMINGTON. The distinguished majority leader is correct. It is my understanding that sufficient funds are available to the Safeguard System Command to fund approved projects remaining under the community impact program.

Mr. TOWER. Mr. President, I associate myself with the remarks of the Senator from Missouri. That is also my understanding.

Mr. MANSFIELD. I thank the manager of the bill and the ranking Republican member for their words of assurance and support, and I am delighted that this question has been erased in the Senate.

Mr. SYMINGTON. Mr. President, the bill before the Senate today provides construction and other related authority for the military departments and defense agencies within and outside the

United States, including authority for all costs of military family housing, and the construction of facilities for the Reserve components.

The total new authority granted by the bill is $2,539,304,700, and in addition thereto, approval is granted for an increase in prior years authority of $7,842 million, for a total authorization of $2,547,146,700.

The budget request this year for military construction was the largest to come before the committee in several years.

It approximated $3.48 billion. The amount approved by the committee is about $501 million less than that requested.

I must point out, however, as a result of the SALT agreement, some $394 million of the amount originally requested for the Safeguard ABM system was withdrawn by the Department of Defense, and the balance of $6 million for 218 units of family housing at the Grand Forks, N. Dak., site was considered in the recently passed military hardware procurement bill.

This left a remainder of about $2.6 billion in new authorization requests to be considered by the Armed Services Committee.

After careful consideration of some 806 line items at over 375 major bases, the committee approved an amount totaling $101,394,300 below the budget request, exclusive of Safeguard, and $28.6 million below the amount approved by the House of Representatives.

In that special emphasis was placed by the Department this year on personnel-oriented facilities in furtherance of the modern voluntary force concept, air and water pollution abatement, and facilities for the Reserve components, the bill was somewhat difficult to deal with.

For example, $387 million was set aside for the construction and renovation of bachelor housing. This will provide modern quarters for some 108,000 enlisted men and 1,700 bachelor officers. The committee approved this request in its entirety. Decent living facilities are of primary importance if a voluntary force is to be achieved.

Exclusive of those special items such as site protection of Minuteman and NATO Infrastructure, 58 percent of the Army request this year was for troop housing and community facilities. Another 16.6 percent was primarily for air and water pollution control projects. Only about 25 percent of the entire Army program was for operational requirements.

A total of $162.3 million is set aside for air and water pollution control projects for the three military services. These projects are more or less mandatory if the Department of Defense is to conform with the existing law.

With the completion of the pollution control projects provided for in the bill, the goal of meeting current standards will largely be met. The committee does recognize, however, that as more stringent requirements are promulgated, there will be a continuing need for some additional funds for these purposes in the future.

About $1.1 billion of the amount approved provides for all costs related to military family housing, such as debt payments, maintenance and operation, repair of the existing inventory, and 11,721 units of new housing. This is a substantial increase over new housing starts provided for in last year's bill.

Mr. President, I call these factors to attention of Senators simply to illustrate those factors the committee was confronted with in considering the bill.

Concerning all factors involved, it is believed the construction requirement for the three military departments and the defense agencies in fiscal year 1973 are amply provided for.

The reductions made by the committee were not based on a judgment that the projects deferred were not desirable or important, but because it was believed they could be safely deferred without jeopardizing the national defense or reducing the effectiveness of our military services.

Now I will mention a few items that may be of special interest.

As a result of the SALT agreement, and after the committee had completed its hearings, the Department of Defense requested that $40 million be added for the Air Force to expedite the Strategic Air Command's B–52 bomber dispersal program.

This program will eventually involve eight bases, and will cost around $15 million per base. Essentially, it will consist of constructing an additional light-duty runway at each base, and, in some instances, other related projects, such as crew alert facilities. The bill as submitted to Congress contained $10 million for one such base. The additional $40 million requested would provide for three additional bases and would supposedly expedite the completion of the program by 3 years.

The committee did not include these additional funds in the bill, nor have they been included in the House passed bill. This program is designed to protect our bomber force against a submarine launched missile that does not exist at the present time, but may come into being within the next couple of years.

There is nothing complicated about constructing the type of facilities proposed under this dispersal program, and the committee failed to see the necessity to provide these additional funds at this time.

The committee did not approve the Navy's request for $14.3 million to provide for the beginning of the first Trident base.

Such a base, if constructed, will eventually cost around $1 billion. The committee considered the request to be premature. No site has yet been selected for the base, although it is understood several locations are under consideration.

Finally, I wish to mention the provision for facilities for the Reserve components.

With the increased reliance being placed on our Reserve forces, substantial increases were requested over last year for all but the Air National Guard. Only $9 million was requested for this important Reserve component, of which $4.1 million was specified for three pollution abatement projects at the direction of the Secretary of Defense.

This, of course, would leave only $4.9 million available to the Air National Guard for major facilities at both flying and nonflying bases. The committee considered this to be entirely inadequate when considering the fact that more than 60 percent of the Air Guard units will have converted to later model aircraft by the end of this fiscal year. This, of course, has created an extensive construction requirement for more and more complex support facilities. Accordingly, the committee has increased the authority for the Air National Guard by $5.5 million to provide for the minimum essential requirements for the Air National Guard during fiscal year 1973.

This, Mr. President, is consistent with the action taken by the House of Representatives during their consideration of the bill.

Mr. President, I believe that I have fairly outlined the salient features of the bill before the Senate. The committee in reporting this bill is confident that the construction needs of the Department of Defense will be adequately provided for during fiscal year 1973.

Mr. President, I yield to the able senior Senator from Texas, the ranking Republican member of our subcommittee.

Mr. TOWER. I yield myself such time as I may require.

Mr. President, the military construction authorization bill before the Senate should be passed. It authorizes $2.5 billion for the services, defense agencies, and family housing. During extensive hearings and a review of testimony we reduced in conjunction with DOD, the administration request by over $500 million, leaving only the highest priority items. The increase in this year's request was due primarily to concern with increasing volunteerism in the Armed Forces, fighting pollution, boosting Reserve readiness, and giving a higher priority to operational and training requirements. I believe that with $386 million for bachelor housing and more than a billion dollars for 11,721 units of family housing, we are on the way toward providing the kind of home environment that will stimulate volunteerism. An offset agreement was concluded with the Federal Republic of Germany whereby they would provide $183 million for rehabilitation of troop barracks in Germany, which is a project long overdue. I share the concern of other Senators over housing in Germany. While this is a splendid first step toward a resolution of that problem, more must be done.

Mr. President, we have carefully reviewed the administration's request. We reduced it, in conjunction with the Defense Department, by approximately 15 percent by eliminating marginal items and deferring those that were not urgent.

So I heartily support this bill, and I commend the distinguished Senator from Missouri for his expeditious leadership in connection with this measure.

Mr. SYMINGTON. I thank the able Senator from Texas, who is as well informed on this subject as any other

Member of the Senate and who was of great assistance in the preparation of this bill.

Mr. FULBRIGHT. Mr. President, will the Senator yield for a question?

Mr. SYMINGTON. I am glad to yield.

Mr. FULBRIGHT. I am curious. I note that in the bill there is an item of $20 million for Bolling Field. I saw an item in the newspaper the other day about housing for Bolling Field. What is the $20 million for?

Mr. SYMINGTON. This is for a new office building at Bolling Field It has been approved twice by the Senate.

Mr. FULBRIGHT. An office building for whom?

Mr. SYMINGTON. For the Defense Department.

Mr. FULBRIGHT. Then, the story about turning it over for housing for the District of Columbia is incorrect?

Mr. SYMINGTON. I am not familiar with the story, but, to the best of my knowledge, it is incorrect.

Mr. FULBRIGHT. Can the Senator tell me what the mission is of the Iceland station? Just what function does that station perform? I note that $3 million will be spent. Is this for the next chess match, or is there some serious purpose for it?

I understood that there is a great question about the continuation of that base. There is very great doubt as to whether it has any function, in view of the recent trip of the President to Moscow, and so forth. Can the Senator tell us why $3 million additional is being spent in Iceland?

Mr. SYMINGTON. May I say to the Senator that there is less question about whether the base would proceed than whether the chess matches would proceed. The chess matches are going very well. Mr. Fischer won another game.

The purpose of this base is to maintain and operate facilities to provide services and material in support of special requirements of the operating forces of the Navy and the other military services as designated by the Chief of Naval Operations. The major activities are the antisubmarine warfare patrol, squadron units—the Senator knows better than I the strategic location of Iceland with respect to our fleet—U.S. Air Force, aircraft warning stations, and fighter-interceptor squadrons, naval communications station, naval facility at Keflavik, international ice patrol and aircraft operations. Major functions is the support of the antisubmarine warfare elements of the Navy operating force, and providing en route support for airlift operations.

Mr. FULBRIGHT. Then there is no prospect for this base being discontinued, in the Senator's opinion?

Mr. SYMINGTON. I would say none that the Department of Defense or the State Department have informed us of.

Mr. FULBRIGHT. The Senator did a great deal of investigation in a most effective way about the proliferation of bases around the world, the overcommitment of the United States. I thought this was one the Senator might be considering a surplus. Has the Senator given any thought to that or brought it up in committee at all?

Mr. SYMINGTON. We discussed it with the Navy and because of the nature of the bases and the fact that it is directly on the sealanes to Europe, they did need additional navigational aids on the crosswind runway in order to assure more safe and efficient operation of aircraft, and we decided, in this case, that it was worthwhile. This runway must be used about 17 percent of the time under marginal conditions.

Mr. FULBRIGHT. Is this considered an essential base to fly to Europe?

Mr. SYMINGTON. It all depends. As the Senator knows, in World War II, for example, during the fighting over Iwo Jima and when we captured that island, we saved many airplanes that otherwise would have gone in the brink. It is well to have this base, because of the extensive military and civilian traffic that goes over the airlane as well as the sealane.

Mr. FULBRIGHT. Could the Senator make any comment about Guantanamo? Is there less need for it now? We are spending $4 million there, I see.

Mr. SYMINGTON. As the Senator knows, Guantanamo is in a very major location for our fleet in the Caribbean. As to whether it should be continued, I would think, would be primarily a political matter as much as a military matter. As long as we do remain there we must provide reasonable necessities. In Guantanamo, we must provide, as appropriate, logistical support for the operating forces of the Navy and for dependent activities and other commands as designated by the Department of Defense.

Mr. FULBRIGHT. Does the committee feel that it has the responsibility to weigh the importance of maintaining the bases, or does it accept that as self-evident from the recommendations of the Department of Defense?

Mr. SYMINGTON. No, as I mentioned in my report to the Senate, we turn down a good many millions of dollars requested by the Air Force for bases, because we did not think it was opportune to do so at this time. Then, as the Senator well knows, we have many thousands of Americans using Guantanamo and, therefore, we must provide normal operating expenses for a base of that kind so close to the United States, comparable to the maintenance of operating expenses for a base in this country.

Mr. FULBRIGHT. Can the Senator tell the Senate whether any bases have been closed in the past year or the past 2 years—any bases the Senator knows of that have been closed?

Mr. TOWER. May I respond to that? Eglin Air Force Base?

Mr. FULBRIGHT. No. I mean abroad. What I am questioning is whether the maintenance of so many bases outside the United States is still consistent with the recent moves of the President—I approve his recent moves—but as I tried to make clear in debate recently, I do not see any consistency in moving toward a detente with the Russians and the Chinese—particularly the Russians—and at the same time maintaining the very same bases and our posture around the world based on the high degree of hostility going back to Stalin's day. I wonder whether the committee has given any thought to any restrictions or changes at all in connection with the bases. I realize the original reason for Iceland 25 years ago, which was pertinent to conditions prevailing at that time, but I question whether it is pertinent today. I am not talking about Texas. I know they have closed a number domestically.

Mr. TOWER. Not all of the cargo airlift, the airlift aircraft, are jet aircraft. Many are old prop jobs. Some are turboprops and they do require a place to refuel when they make trans-Atlantic journeys.

Mr. FULBRIGHT. What about the Azores? Does the Senator have any unlimited number of these? We have made over $400 million available in loans and grants for the Azores.

Mr. TOWER. Not via the Great Circle Route if you go by the Azores.

Mr. FULBRIGHT. Do we have to have these rights? The jets do not need to come down. They all fly direct to Europe now.

Mr. TOWER. They are not all jet planes.

Mr. SYMINGTON. Of course the Military Construction Subcommittee of the Armed Services Committee is not a committee that is basically designed to discuss policy from the standpoint of bases. However, I should like to supply for the RECORD, as well as for the information of my able colleague from Arkansas, the fact that we have denied considerable funds abroad. For instance, we denied $5½ million—$5,225,000 to be exact—for renovation of family housing in Germany.

Mr. FULBRIGHT. But did the Senator close any bases in Germany? The Senator can always polish them up, I am sure, and make refinements. Did the Senator close any base?

Mr. SYMINGTON. Constantly, on the floor here, we have gotten into the question of reducing troops in Germany——

Mr. FULBRIGHT. That is right.

Mr. SYMINGTON. I have supported the Senator and we have both supported the majority leader in efforts to reduce our troops. But inasmuch as we constantly are being defeated in that effort, I do not think that we should take it out on the American citizens now in Germany by closing the bases. They still must have a place to live. They still must have a place to send their children to school. They still have to be treated as American citizens.

Mr. FULBRIGHT. I do not deny that at all.

Mr. SYMINGTON. We need the bases, if we are to maintain our present troop level.

Mr. FULBRIGHT. That is not the question——

Mr. SYMINGTON. As long as the political and military decisions of this administration are such that we must continue to have these bases around the world, it would be, I think, rather cheapening to cut down the facilities available for them.

Mr. FULBRIGHT. That is not the question I raise at all.

Mr. SYMINGTON. If the Senator can effectively, with my support I might add,

reduce our troops abroad, I believe that we would automatically be able to reduce some of the bases.

Mr. FULBRIGHT. Is it clear that this committee of which the Senator is speaking today does not feel it has any function to examine the justification for the bases being there at all, to accept that and only justify their operations? Is that right?

Mr. SYMINGTON. May I say to my able friend that the question as to whether the base should be there, in any case, is a matter that, in effect, has already been decided by the full committee. What we try to do, inasmuch as the decision has been made as to what should be the position of the United States all over the world, is to give the Americans there adequate facilities in which to live and to educate their children.

Mr. FULBRIGHT. The full committee, has examined it in recent years—this year—the reason for maintaining a base, say, in Iceland or in Guantanamo; has the matter been raised and testimony taken on that kind of question?

Mr. SYMINGTON. I do not remember any testimony specific with respect to the Iceland base.

Mr. FULBRIGHT. I use that only as an example.

Mr. SYMINGTON. I think there has been testimony about the Guantanamo base. For example, as the Senator knows, this was discussed in the Committee on Foreign Relations——

Mr. FULBRIGHT. I am talking about the Armed Services Committee.

Mr. SYMINGTON (continuing). And the Armed Services Committee, about homeporting a carrier task force in Greece. When such a procedure was decided upon as Government policy, it is only logical and humane to see that reasonable facilities are provided for the people involved.

We went into this quite thoroughly, and I will refer the Senator to testimony beginning on page 61 of the hearings on this bill.

Mr. FULBRIGHT. I was asking, does the Armed Services Committee examine into the justification, the rationale, or whatever else one wishes to call it, for the maintenance of these foreign bases? Do they consider it is their responsibility, or is it some one else's responsibility?

Mr. SYMINGTON. I would say to my able friend that I think they are more prone, and it is a fair statement to say that they are more prone to accept the decision of the Secretary of Defense and the present administration than some other committees I serve on as for example, the Committee on Foreign Relations.

Mr. FULBRIGHT. The answer is they do not feel it is their responsibility to make this kind of decision?

Mr. SYMINGTON. I think it is fair to say that if they felt any base abroad was wrong, they would be very reticent about appropriating or authorizing money to run the base. Therefore, the fact that they are asking for money to this extent under these conditions means they are satisfied that the bases in question are needed in order to protect our military position all around the world.

Mr. FULBRIGHT. That is a satisfaction that is not based on testimony or basic reasons for being there. There are no bearings. In other words, the question has never been raised.

Mr. SYMINGTON. The Senator knows that I have as much pride in serving on the Armed Services Committee as I do on the Foreign Relations Committee.

Mr. FULBRIGHT. I submit that that is not responsive.

Mr. SYMINGTON. Let me answer the Senator's question. I like to finish my sentences. I think, inasmuch as I am defending this bill, I naturally start out with the premise that under the able setup we have, and considering the efforts of the members of the committee, the money that we are requesting today to be authorized is adequate and proper, based on the policies that have been laid down.

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

Mr. FULBRIGHT. I am glad to yield.

Mr. TOWER. In the course of considering the construction requests for bases abroad, I think we have to consider the question of whether or not the bases perform useful functions.

Certainly it is the responsibility of the committee to have oversight of the Department of Defense, and that would include bases abroad. I am certain that if the committee came to any conclusion that a lot of those bases were unnecessary, we would certainly move to act to encourage the Department of Defense to close them down.

On many of those bases we are mere tenants. They are not bases on American soil. So the bases which were built for the RAF in England or the German Air Force in Germany are bases where we are merely tenants and have facilities on the bases.

Mr. FULBRIGHT. I was raising a question as to whether the committee really examined and presented justifications. If I understood the Senator from Missouri and the Senator from Texas, they said, in effect, yes, we raised this question; we took testimony; and we came to this conclusion. They are assuming.

Mr. SYMINGTON. No; we took testimony. In the case of the Navy ranges on the island of Culebra, off the coast of Puero Rico, a great many people came before us, including the mayor of the town.

Mr. FULBRIGHT. I am talking about foreign bases.

Mr. SYMINGTON. Puerto Rico is not a State of the Union.

Mr. FULBRIGHT. It is a Commonwealth.

Mr. SYMINGTON. Many of the bases we are talking about are NATO bases, where, under our agreements, troops live on the bases as tenants, and we try to give them a decent standard of living.

Mr. FULBRIGHT. I will finish by taking, as an example, Greece—$5 million a year for Greece. Is that for new home port facilities. Did the Joint Chiefs so indicate?

The reason I ask—while the staff is looking that up—is that this installation was announced without its being in the form of a treaty. The Senator knows that it was announced as an executive agreement. Certainly the Committee on Foreign Relations has not had an opportunity to examine whether it is justified. I wondered whether in this case the Armed Services Committee went into the question of whether that new facility is justified.

Mr. SYMINGTON. Oh yes, indeed.

Mr. FULBRIGHT. Did the committee examine it?

Mr. SYMINGTON. We examined it.

Mr. FULBRIGHT. Is there a record of what the justification is? Is such a record available?

Mr. SYMINGTON. The Defense Department was very solid in its recommendation that we should, we might say, fortify further our Military Establishment in the eastern Mediterranean. It was with that premise that the arrangement was made with the Greek Government. We were assured there would be no heavy expenditures made. Actually, nearly all of this money—in fact, 100 percent of this money—is not for Greece per se. It is for Souda Bay, in Crete. It is for facilities to support aviation operations and activities in Crete, and for other activities as designated by the Department of Defense.

Mr. FULBRIGHT. It is not for construction?

Mr. SYMINGTON. Let me say to the Senator——

Mr. FULBRIGHT. What is the $5.3 million for?

Mr. SYMINGTON. That is what it is for.

Mr. FULBRIGHT. It is not for construction?

Mr. SYMINGTON. No; it is for construction.

Mr. FULBRIGHT. I thought this was a construction bill.

Mr. SYMINGTON. That is right. I am saying what the construction is for. We have obligations under NATO. There has been a lot of trouble on Crete, another of our NATO partners.

Mr. FULBRIGHT. On Crete or on Cyprus?

Mr. SYMINGTON. On Cyprus. Our operations on Crete have been in direct connection with the trouble on Cyprus.

Mr. FULBRIGHT. The $5 million, then, is for construction on the island of Crete?

Mr. SYMINGTON. That is right—not with respect to the addition of the fleet.

Mr. FULBRIGHT. How much is it going to cost for more port facilities for the fleet?

Mr. SYMINGTON. To the best of our knowledge, very, very little.

Mr. FULBRIGHT. Is there anything in the bill for it?

The PRESIDING OFFICER. All time of the Senator from Missouri has expired.

Mr. SYMINGTON. I did not know the Senator wanted answers in detail, such as he has asked for, but I know he will feel better when he finds that not a cent is spent that is not needed for this new development.

Mr. FULBRIGHT. In this bill?

Mr. SYMINGTON. Yes, in this bill.

Mr. FULBRIGHT. But it does not

mean that no funds will be spent for a home port?

Mr. SYMINGTON. I never said that, but funds for new facilities will be slight.

Mr. FULBRIGHT. That is relative.

Mr. SYMINGTON. I would not be surprised if they were to spend some money for the benefit of sailors who are sent to Greece. I do not think that would be a disaster.

Mr. FULBRIGHT. I think that because of the Senator's outstanding work in examining other commitments of the United States around the world, it would have been appropriate to look into the question of whether anyone examined into the justification of having bases around the world, many of which go back to World War II, when we were in a hot war, and created, for instance, a base in Iceland.

Everyone would agree that under those circumstances it was justified. I raise the question now and suggest that nobody examined the reasons for military bases which were created in World War II under circumstances very different from what they are today. I think someone ought to look into this to see whether there is any justification.

Mr. SYMINGTON. The Senator from Arkansas has been a Member of the Senate long enough to know that it is very difficult to attack a program and defend it at the same time.

As chairman of the subcommittee, I can say that we have done our best to look into the matter in great detail. The Senator did not notify me that he was particularly interested in any project in which he is now expressing an interest.

As to Souda Bay, Crete, I said:

You are asking $5,308,000 for additional facilities at Souda Bay in Crete, and also $8,932,000 for additional facilities at Sigonella, Italy. We are worried about continuing heavy investments abroad, and we would like a rather complete explanation as to why you deem these facilities needed at this point in time.

I said that on my own.

Would the Senator like me to read all of it or just place it in the RECORD?

Mr. FULBRIGHT. No; I will read it in the RECORD. I am sure I know what it is.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. TOWER. Mr. President, I yield 1 additional minute.

Mr. SYMINGTON. I thank my able friend from Texas. He is very sympathetic.

Mr. President, I ask unanimous consent that a detailed statement by Admiral Enger with respect to this matter may be placed in the RECORD at this point.

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

EXCERPT OF HEARING

SOUDA BAY, CRETE

Senator SYMINGTON. Very well.

Now, we go across the water, Souda Bay, Crete.

You are asking $5,308,000 for additional facilities at Souda Bay in Crete, and also $8,932,000 for additional facilities at Sigonella, Italy. We are worried about continuing heavy investments abroad, and we would like a rather complete explanation as to why you deem these facilities needed at this point in time.

Do you want to file that for the record?

Admiral ENGER. Yes, sir.

(The information follows:)

The marked shift by the Soviet Union over the past decade to a maritime strategy is manifested in the emergence of the Soviet Mediterranean Fleet, comprising missile ships, modern amphibious assault ships and submarines. This force is capable of operating for extended periods at sea and has access to several eastern Mediterranean ports for replenishment. United States policy commits the Navy to a strong role in the eastern Mediterranean to insure the strategic balance is not altered, that peacetime political and psychological advantage is not gained, and that our Middle East policy options are not limited. The Navy's successful performance of this mission is vital to the security of the United States.

An appraisal by CINCUSNAVEUR in early 1971 of shore based support facilities in the eastern Mediterranean evidenced an urgent need to upgrade the present austere installations at the Naval Air Facility (NAF) Sigonella, Sicily, and Naval Detachment (NAVDET) Souda Bay, Crete. These bases are strategically located close to primary SIXTH FLEET operating areas in the central and eastern Mediterranean and offer in being operational airfields for use in Fleet air logistics, air antisubmarine warfare, and military airlift operations, with the Souda Bay port facilities also capable of supporting SIXTH FLEET ships. The existing base structure at Sigonella and Souda Bay is very austere, with only minimal parking apron, cargo handling, maintenance and personnel support facilities available.

Present Souda Bay facilities were actually intended to support only intermittent operations in contingency situations; however, continuous operations have been required there since the Arab-Israeli War in May, 1967. These shortcomings seriously hamper the Navy's ability to effectively carry out the mission assigned in support of national policy. Experience during the Jordanian crisis of September, 1970, showed conclusively that these bases are not capable of effectively supporting increased base loadings resulting from contingency operations.

There has been no significant ungrading of facilities at Sigonella and Souda Bay over the past decade, while a gradual eastward shift in primary Fleet operating area has occurred. CINCUSNAVEUR had determined: (1) that NAF Sigonella must be upgraded to serve as the primary Military Airlift Command terminus in support of Navy operations in the Mediterranean, that Fleet Tactical Support Squadron VR-24 relocate from Rota to Sigonella, and required support facilities be provided for ASW patrol squadrons; and (2) NAVDET Souda Bay be upgraded to provide minimal support on a continuous basis for Fleet logistics support aircraft. ASW patrol aircraft, and ships transporting passengers and cargo in support of SIXTH FLEET operations. Facilities needed to achieve the foregoing capabilities were identified through an intensive, on site planning and engineering effort completed in March, 1971. Projects other than those most urgently needed to support immediate demands have been included in the Navy's FY 73 MILCON budget. Those projects deemed most urgently needed at NAF Sigonella, amounting to $7.2 mil, were undertaken immediately using emergency authorization in August 1971, with the approval of Congressional committees. Construction of these urgent facilities is in progress.

The current MAC terminal for all SIXTH FLEET personnel and most air cargo logistics is at Naval Station, Rota, Spain, outside the western end of the Mediterranean. SIXTH FLEET operations are now oriented predominantly to the central and eastern Mediterranean, a distance of about 1,200 to 2,500 miles eastward. Materials and personnel are distributed to the Fleet by Fleet Tactical Support Squadron VR-24, homeported in Rota with a detachment at NAF Naples. Further delivery to the Fleet is made by Carrier on Board Delivery aircraft having a range of 500 to 1,200 miles. Establishing a SIXTH FLEET MAC terminal at Sigonella and changing the homeport of VR-24 to Sigonella with a detachment at Souda Bay will extend the logistics support 1,200 miles further into the area of operations and put VR-24 aircraft within single flight range of the SIXTH FLEET carriers.

The ASW land-based patrol units will receive improved maintenance and personnel support facilities to correct severe crowding and other shortcomings now encountered during deployments to Sigonella. The proposed facilities at Souda Bay will enable a detachment of land-based ASW patrol aircraft to be stationed there. While these proposed facilities address only the normal intensity of operations anticipated, the improved base structure they provide will enable unforeseen contingency situations, during which loading surges of up to 50% can occur, to be handled with a reasonable amount of crowding and double loading.

RESUMPTION OF HEARING

Senator SYMINGTON. Haven't we been operating out of these two bases for a considerable period?

Admiral ENGER. Mr. Murphy.

SIGONELLA, ITALY

Mr. MURPHY. Yes, Mr. Chairman, we have been operating at Sigonella since the late fifties, and at Souda Bay on an intermittent basis 2 or 3 weeks per quarter on a training basis since approximately the same time. However, upon the intensification of events in the eastern Mediterranean, where Souda Bay particularly is located—it is 600 miles east of Sigonella in the eastern part of the Mediterranean—we have intensified our operations. These relate to both ASW patrols, using land-based aircraft, P-3 aircraft as well as logistics flights, in which the Navy transport aircraft move supplies and people around the Mediterranean, furnishing 6th Fleet ships with logistics support, both by carrier on board delivery of the people and supplies, as well as the dropping off at ports of call in the Mediterranean. So, while we have been operating there, we have intensified these operations in recent years, and feel we now must proceed with some better support facilities. Souda Bay became a full-time occupancy base by the U.S. Navy with the Jordanian crisis in 1970.

Senator SYMINGTON. You have been operating out of these two bases for some time. When will this increase in personnel become effective?

Mr. MURPHY. Mr. Chairman, we expect to have at Sigonella approximately 700 military people additional, and 16 additional aircraft. They would move aboard Sigonella upon completion of this 1973 program.

I might add that we are already underway with our improvements at Sigonella, using fiscal year 1971 emergency authorization and reprogramed funds. We are proceeding there now with an aircraft apron and air cargo handling facilities. That contract is under way. When we complete that, plus this program, we feel we can then move these people aboard.

I also would point out, of the 700 additional people, 500 of them are people that are already in the Med providing these functions. It is rather a repositioning of the people, and of the aircraft, as opposed to a buildup per se.

Senator SYMINGTON. What kind of base rights agreement do we have here in Sicily and also in Crete?

Mr. MURPHY. In Italy we operate under our NATO agreement. We have a bilateral infrastructure agreement with Italy. There are no prohibitions to future MILCON here in Sigonella, and all of our plans have been approved by the Italian Government. In Souda Bay there is a military facility agreement consummated by the U.S. Navy and the Greek Navy. This is done under the sponsorship of an overall country-to-country agreement with Greece dated 1953. The facilities use agreement, which the respective navies have agreed upon, will be amended to permit the expansion at Souda Bay.

To date, the negotiations have approved only our continual presence at Souda. Our prior arrangement was intermittent. We have reached agreement on continual presence there. And we are presently negotiating a further amendment to provide for building these facilities. We expect no difficulty in favorably completing those negotiations.

Mr. TOWER. Mr. President, I yield such time as I may require.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. Mr. President, I wish to comment on the home port in Greece. This apparently has been under attack by many people who do not like the political situation in Greece. The fact is that they are determined to be good allies of ours, whether we like them or not and their government is one of the most consistent allies we have.

The reason for the home port is to provide us with a better posture in the Eastern Mediterranean. Greece, where our carrier ships would be is ideal.

If there is any question those boys out there ask every Member of Congress and every Senator when they visit there it is, "When are we going to get a home port in the Mediterranean?" It is a tremendous morale factor. It is a friendly environment for us. Just because we do not like their authoritarian government does not mean we could not accept their friendship. They occupy a strategic position in the Mediterranean, and our position to respond to the needs of Israel depends on our allies in the Mediterranean.

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

Mr. TOWER. I yield.

Mr. STENNIS. Mr. President, I thank very much the Senator from Missouri for the many, many days of hard work he put in on this bill. It is quite a long chore. I also thank the Senator from Texas for his fine contribution. This bill represents over $2.5 billion, almost all of which goes in connection with our military installations and things related to them in the United States. There is no real big money beyond our shorelines in this bill, as I see it. It is an important matter. A fine job has been done in connection with the bill, and we are all indebted to them for the job that has been done.

Mr. SYMINGTON. I thank the able and distinguished chairman of the Committee on Armed Services and also Mr. Nease of the staff, and my colleague from Texas, because I think we have looked into this bill carefully and made some savings, only requesting what is essential to support our military here and abroad.

Mr. TOWER. I thank the Senator from Missouri. He has done a very fine job on this matter as he always does. I thank the distinguished Senator from Mississippi for his comments.

Mrs. SMITH. Mr. President, will the Senator yield?

Mr. TOWER. I yield.

Mrs. SMITH. Mr. President, as the ranking minority Member, I take this opportunity to thank the Subcommittee on Military Construction for the excellent job they have done in bringing this bill to the floor. I especially thank the ranking minority member of the subcommittee, the distinguished senior Senator from Texas (Mr. TOWER) and his colleagues, the Senator from South Carolina (Mr. THURMOND) and the Senator from Colorado (Mr. DOMINICK) for the diligence and thoroughness with which they have worked, and Mr. Nease, the staff member who has been such a great help.

Mr. SYMINGTON. Mr. President, I thank the able senior Senator from Maine for her kind remarks.

Mr. TOWER. Mr. President, I yield to the Senator from South Carolina.

Mr. THURMOND. Mr. President, as a member of the Military Construction Subcommittee of the Senate Armed Services Committee, I wish to speak in favor of the pending bill being handled by the distinguished Senator from Missouri (Mr. SYMINGTON).

In my judgment this is a sound bill. The $2.5 billion contained in H.R. 15641 does not give the military services all they wanted. However, within reasonable funding constraints it does meet the more important requirements involving our national security.

Sizable percentages of the bill go toward improving bachelor enlisted and officer quarters in keeping with the all-volunteer armed services concept. There are also significant expenditures for pollution abatement projects necessary to comply with recent laws enacted by the Congress.

Of significance is an increase of about 20 percent for reserve force facilities. This is necessary because as we draw down the size of our regular forces, we must strengthen reserve and guard units.

I wish to commend the distinguished Senator from Missouri (Mr. SYMINGTON) and the distinguished Senator from Texas (Mr. TOWER) for their splendid leadership in handling this bill. Also, I desire to express appreciation to Mr. Gordon Nease, the capable staff member who did such a fine job on this legislation.

Mr. President, I urge the Senate to give this legislation favorable action.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

Mr. SYMINGTON. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is on final passage.

Mr. MANSFIELD. Mr. President, the distinguished Senator from California was here and asking a question before third reading of the bill. I ask unanimous consent that third reading be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TUNNEY. Mr. President, I would like to offer an amendment to the bill to include a $2 million authorization for a new 15th Headquarters for March Air Force Base at Riverside, Calif. This has been authorized previously. The authorization has expired after failure to appropriate the money. It remains necessary in order to build the new 15th Air Force Headquarters. The 15th SAC Air Force at March Air Force Base is working out of buildings that were built as hospitals and barracks in World War II. There is a desperate need for this authorization. I would like to ask the distinguished Senator from Missouri and the distinguished Senator from Texas if they would be prepared to accept the amendment.

Mr. SYMINGTON. It is very difficult because it has not been recommended by the Department of Defense to the full committee, nor have there been hearings on it. This is the first I have heard of it.

Mr. TUNNEY. This was authorized by this committee approximately 5 years ago, for fiscal year 1968. The authorization has expired because the money was not appropriated.

Mr. TOWER. I cannot support it if it is not in the budget request, and I do not believe it is.

The PRESIDING OFFICER. It is the understanding of the Chair that there was a unanimous-consent request for recognition of the Senator from California. It did not include the request for the submission of an amendment. Is that correct?

Mr. MANSFIELD. No. but I would think, in order to be fair, that the Senator should have that right. If he does, I hope he would be brief. The issue is clear, and everyone understands it.

The PRESIDING OFFICER. Is there objection to the request that the Senator from California be allowed to offer an amendment?

Mr. ERVIN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ERVIN. Has not the committee amendment in the nature of a substitute been adopted and, therefore, is not the amendment at this time out of order?

The PRESIDING OFFICER. It has been adopted. There has been third reading. That is why the unanimous consent is required for the Senator to offer the amendment at this time.

Mr. MANSFIELD. Mr. President, if the Senator will yield, it was unfortunate but the Senator from California was here before those amendments were adopted and

making an inquiry, and because of a situation that developed he did not have an opportunity to offer his amendment.

Mr. ERVIN. I wonder if Senators should have the right to offer amendments to a substitute bill after it has been adopted.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the action adopting the substitute be rescinded.

The PRESIDING OFFICER. Would the Senator include third reading?

Mr. MANSFIELD. Yes.

The PRESIDING OFFICER. Is there objection? The Chair hears no objection, and it is so ordered.

Mr. TUNNEY. Mr. President, I ask unanimous consent that this amendment be considered by the conference committee.

Perhaps this amendment could be taken to conference for the purpose of consideration.

The PRESIDING OFFICER. Is the Senator offering an amendment?

Mr. TUNNEY. I am offering the amendment to allow that this provision be taken to conference. If the conference committee wants to adopt it, they could adopt it at that time.

The PRESIDING OFFICER. Would the Senator send his amendment to the desk and have it read? It still takes action of the Senate.

Is the amendment being sent to the desk?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TUNNEY. Mr. President, I would like to ask a question of the distinguished subcommittee chairman. If I agree to withdraw my amendment, would the subcommittee be prepared to give early consideration to the 15th Air Force authorization next year so that it could be a part of the fiscal 1974 legislation? We desperately need the new headquarters building for March Air Force Base.

Mr. SYMINGTON. I would like to answer my able colleague by saying there is $12.4 million in the bill for March, and next year we will give it full consideration, if the Senator will be good enough to withdraw the amendment.

Mr. TUNNEY. Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The question recurs on agreeing to the committee amendment in the nature of a substitute.

The committee amendment, in the nature of a substitute, was agreed to.

The PRESIDING OFFICER. The question now is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from North Dakota (Mr. BURDICK), the Senator from California (Mr. CRANSTON), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Georgia (Mr. GAMBRELL), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Wyoming (Mr. MCGEE), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG) is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Alaska (Mr. GRAVEL), and the Senator from Georgia (Mr. GAMBRELL) would each vote "yea."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Hampshire (Mr. COTTON), the Senators from Arizona (Mr. GOLDWATER and Mr. FANNIN), the Senator from Michigan (Mr. GRIFFIN), the Senator from Wyoming (Mr. HANSEN), the Senator from Iowa (Mr. MILLER), the Senator from Illinois (Mr. PERCY), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Vermont (Mr. AIKEN) is absent on official business.

Also, the Senator from Tennessee (Mr. BROCK), the Senator from New York (Mr. BUCKLEY), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

If present and voting, the Senator from Colorado (Mr. ALLOTT), the Senator from Massachusetts (Mr. BROOKE), the Senator from Iowa (Mr. MILLER), and the Senator from Illinois (Mr. PERCY) would each vote "yea."

The result was announced—yeas 67, nays 1, as follows:

[No. 351 Leg.]

YEAS—67

| | | |
|---|---|---|
| Allen | Cook | Javits |
| Anderson | Cooper | Jordan, N.C. |
| Bayh | Curtis | Jordan, Idaho |
| Beall | Dole | Kennedy |
| Bellmon | Dominick | Magnuson |
| Bennett | Ervin | Mansfield |
| Bentsen | Fong | Mathias |
| Bible | Gurney | McClellan |
| Boggs | Hart | McGovern |
| Byrd, Harry F., Jr. | Hartke | McIntyre |
| | Hatfield | Metcalf |
| Byrd, Robert C. | Hollings | Moss |
| Cannon | Hruska | Nelson |
| Case | Hughes | Packwood |
| Chiles | Inouye | Pearson |
| Church | Jackson | Proxmire |
| Randolph | Sparkman | Talmadge |
| Ribicoff | Spong | Thurmond |
| Roth | Stafford | Tower |
| Saxbe | Stennis | Tunney |
| Schweiker | Stevenson | Weicker |
| Scott | Symington | Williams |
| Smith | Taft | |

NAYS—1

Fulbright

NOT VOTING—31

| | | |
|---|---|---|
| Aiken | Fannin | Mondale |
| Allott | Gambrell | Montoya |
| Baker | Goldwater | Mundt |
| Brock | Gravel | Muskie |
| Brooke | Griffin | Pastore |
| Buckley | Hansen | Pell |
| Burdick | Harris | Percy |
| Cotton | Humphrey | Stevens |
| Cranston | Long | Young |
| Eagleton | McGee | |
| Eastland | Miller | |

So the bill (H.R. 15641) was passed.

Mr. SYMINGTON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SYMINGTON. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. BENTSEN) appointed Mr. STENNIS, Mr. SYMINGTON, Mr. JACKSON, Mr. ERVIN, Mr. CANNON, Mr. HARRY F. BYRD, JR., Mr. THURMOND, Mr. TOWER, and Mr. DOMINICK conferees on the part of the Senate.

## TRIBUTES TO SENATORS ON PASSAGE OF MAJOR BILLS TODAY

Mr. MANSFIELD. Mr. President, I wish to take this opportunity to express to the Senate and to the Nation my deep appreciation and the appreciation of the leadership both to Senator MCINTYRE and to Senator SYMINGTON for steering two major bills through to outstanding success in the Senate today.

First, with respect to the disaster relief measure, the distinguished Senator from New Hampshire (Mr. MCINTYRE) waged a tireless and effective battle to see that those who suffered because of recent major natural disasters will be adequately provided for because of the losses they sustained. Joined by Senator TOWER, the ranking minority member of the committee, Senator MCINTYRE supported this proposal with the outstanding effort and advocacy that have marked his many years of service in this body. Together their work on this bill assured its overwhelming success in the Senate.

We are grateful as well for the exemplary work of others with respect to this proposal. Notable was the effort of the distinguished Senator from Pennsylvania (Mr. SCHWEIKER) and his senior colleague (Mr. SCOTT) for doing their utmost to see that those devastated by the effects of recent flooding in their State were provided for.

The distinguished Senator from Ohio (Mr. TAFT) is to be thanked for offering his own strong and sincere views on this proposal as are the distinguished Senators from Minnesota (Mr. HUMPHREY and Mr. MONDALE). They, and all others who joined the debate, are responsible for making this discussion the most productive and on the highest order.

In turn, I would like to offer the thanks of the leadership to the distinguished Senator from Missouri (Mr. SYMINGTON). His leadership on the military construction authorization was, as always, truly outstanding. His great knowledge of the needs and requirements of our military forces in this area is unsurpassed in this body. To him we owe a deep debt of gratitude for his diligence and his deep devotion to this vital area of national concern.

Similarly, the Senate is grateful to the strong support on this measure provided by the distinguished Senator from Maine (Mrs. SMITH) and to the others who joined in support. Their assistance was indispensable to its overwhelming success.

To the Senate as a whole, I would like to add my special thanks for cooperating today on these two major legislative items. Their disposition brings us that much closer to our objective of clearing the legislative calendar prior to our break for the upcoming convention, and indeed brings us that much closer to an adjournment sine die.

## NATIONAL COMMISSION ON UNIFORM SECURITIES LAWS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the unfinished business remain in a temporarily laid aside status until the close of business today, and that the Senate proceed at this time to the consideration of Calendar No. 959, S. 3876.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 3876) to amend the Securities Exchange Act of 1934 to provide for the regulation of clearing agencies and transfer agents, to create a National Commission on Uniform Securities Laws, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the distinguished Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill.

Mr. WILLIAMS. Mr. President, on June 21, 1971 the Senate authorized the Committee on Banking, Housing, and Urban Affairs to examine, investigate, and to make a complete study of any and all matters pertaining to the securities industry. Pursuant to this authority the Subcommittee on Securities of which I am chairman has been and is engaged in the most comprehensive review of the country's securities markets undertaken by the Senate since the 1930's. The subcommittee's first report on its investigations was published on February 4, 1972, and we expect to publish a final report around the end of the year.

One of the first matters examined by the Securities Subcommittee when it commenced hearings last fall was the operational breakdown or "paperwork crisis" which plagued the securities industry and, more importantly, its customers in the late 1960's. I am sure my colleagues have not forgotten how during this period the industry's inability to handle its own paperwork caused tremendous inconvenience and financial loss to public customers, forced over 100 broker-dealers into liquidation and, for a time, jeopardized the continued operation of the securities markets themselves. To deal with this emergency in 1970 we passed the Securities Investor Protection Act. This act protects customers' funds and securities from the consequences of broker-dealer insolvency. Now that the SIPC bill has become law, our study has taken a remedial approach to the industry's operational problems.

We have made a comprehensive investigation of the industry's back office structure to determine whether improvements are needed and to assure the investing public that we do not experience future "paperwork crises." S. 3876 is the outgrowth of this investigation.

Based on our hearings of last September and October, we determined that two factors played a major role in the operational breakdown—the securities industry's failure to develop a nationwide system for the clearance and settlement of transactions and the lack of a central decisionmaking force in the area of processing securities transactions.

S. 3876 addresses both of these problems. It attempts to remove the barriers to development of an efficient nationwide system for handling securities transactions and it creates a unified regulatory structure for the first time in operational matters.

It is obvious that the Securities and Exchange Commission is the proper agency to fill the leadership vacuum in securities handling matters. S. 3876 therefore gives the SEC general regulatory power over clearing agencies and transfer agents for the purpose of facilitating the development of an efficient national securities transfer system. In addition, it sets a deadline for elimination of the stock certificate as a device for settlement of transactions among broker-dealers and prohibits the application of State stock transfer taxes in such a way as to impede the development of certificate depositories and clearing agencies.

During the hearings which were held on this legislation testimony was received from representatives of regulatory and self-regulatory bodies, the banking and securities industries, corporate issuers and transfer agents, private investors and independent consultants. These hearings made it clear that it was necessary to bring transfer agents and corporate issuers of securities within the purview of the same central regulatory pattern established for clearing agencies, and that securities handling problems cannot be solved at the Federal level alone. A comprehensive review of State corporation, securities, banking, and fiduciary laws must be undertaken to assist the States in modernizing their laws to facilitate more efficient handling of securities and to pave the way for ultimate elimination of the stock certificate.

Following the May hearings the Subcommittee prepared a substitute bill—S. 3876—which incorporated these provisions. In addition S. 3876 requires "clearing agencies"—which is defined to include securities depositories—to register with and report to the SEC and empower the Commission to review and amend the rules of clearing agencies. Inspection and enforcement responsibilities are assigned to the "appropriate regulatory agency"—the Commission, the Federal Reserve Board, the Comptroller of the Currency and the Federal Deposit Insurance Corporation—depending upon the type of clearing agency involved. The bill contains similar provisions respecting transfer agents except that as to transfer agents the registration powers as well as those of inspection and enforcement are lodged with the appropriate regulatory agency. Several provisions of the bill assure cooperation and coordination among the four regulatory agencies assigned responsibilities over clearing agencies and transfer agents.

S. 3876 also empowers the Commission to make rules and regulations concerning the format of securities issued by publicly held corporations and contains the provisions which I have already mentioned regarding State stock transfer taxes and elimination of the use of stock certificates by brokers and dealers. And the bill establishes a 14-man National Commission on Uniform Securities Laws to determine which provisions of State laws are impeding maximum efficiency in handling securities and whether amendments to such provisions are feasible. Another section directs the Commission to study "street name" registration of securities to determine whether it impedes communications with shareholders and whether steps can be taken to facilitate communications with shareholders while preserving the efficiencies of "street name" registration.

In summary, Mr. President, S. 3876 is the end product of over 10 months of intensive study, hearings and deliberations by our Committee, and its staff, the SEC, the securities industry and representatives of the investing public. In my opinion it will go a long way in seeing to it that paper handling problems will never again cause a lack of public confidence in our Nation's securities markets. This will and can be achieved within the self-regulatory pattern established by the Securities Exchange Act of 1934 by our providing for a comprehensive and unified regulation of the operational side of the securities business. This legislation will achieve that result and will remove the impediments to development by the private sector of a national system for the handling of securities transactions.

Mr. President, the Senator from Utah and I have worked for many months on the study dealing with the problems of the securities industry. I feel that our cooperation in this work has been complete.

Mr. BENNETT. Mr. President, I ap-

preciate the confidence of the Senator from New Jersey.

This legislation is designed to improve the operations of our securities markets and thus assist in the prevention of a possible recurrence of the financial difficulties experienced in various segments of these markets in the late sixties. During that period, the securities industry experienced serious and persistent operational problems which resulted in the liquidation of many broker-dealers, and a weakening of public confidence in our securities markets. At the time of the crisis, we enacted legislation providing insurance of customer accounts in order to protect customers and bolster confidence. That legislation also directed the Securities and Exchange Commission to study the practices of brokers and dealers and make recommendations for legislation needed to eliminate improper practices. The bill we are considering today is based on the recommendations made by the Commission, the recommendations of our Securities Subcommittee special study staff, and hearings held by the committee to obtain the views of all segments involved in the securities handling process.

The bill establishes the framework and the authority for a system of regulation of corporate issuers of securities, transfer agents, clearing agencies, and depositories for securities. The Securities and Exchange Commission is authorized to establish rules and regulations covering all clearing agencies and transfer agents while responsibility for the enforcement of these rules and regulations is assigned to the three Federal bank supervisory agencies when the clearing agencies or transfer agents are banks, bank holding companies, or subsidiaries of bank holding companies.

This regulatory and enforcement pattern was established in the bill after carefully weighing alternatives recommended by those who desired that all of the authority for both regulation and enforcement of clearing agencies be placed in either the Securities and Exchange Commission or in one or more of the banking agencies. The approach approved by the committee is a sound approach because it properly gives the Securities and Exchange Commission clear responsibility to develop regulations and provides for efficient enforcement of the regulations by the Federal agency primarily responsible for the overall supervision of the various institutions. In the case of institutions which are not banks or subsidiaries of banks, both regulation and enforcement will be by the Securities and Exchange Commission. For those institutions which are banks or subsidiaries of bank holding companies, the enforcement by Federal bank regulatory agencies will avoid duplicate examination and enforcement.

Because of this division of responsibility, the bill contains provisions to assure proper cooperation and coordination among the Federal agencies involved. They are required to furnish each other with copies of reports and examinations and must not notify each other of actions taken. Before issuing or adopting a rule or regulation, each agency must also consult with and ask for the views of the others.

The bill as approved by the committee maintains a delicate but specific balance between the responsibilities of the various Federal agencies. The Securities and Exchange Commission's general investigative powers over all securities matters granted in section 21 of the Securities and Exchange Act of 1934 extend to the provisions of this act. However, our committee report is very clear that the committee does not intend for this power to be used to become involved with the day-to-day supervision of clearing agencies or transfer agents which are organized as banks. Instead, the power is to be used only in cooperation and coordination with and to assist, if necessary, the bank regulatory agencies in carrying out their enforcement responsibilities under the act.

Because of the controversy that we have had over this jurisdictional matter, I would like to read from a letter which I received from Chairman Burns of the Federal Reserve Board supporting the approach contained in the committee bill:

> Under the arrangement in Committee Print No. 2 the Securities and Exchange Commission will write regulations covering clearing agencies and transfer agents while responsibility for the enforcement of these regulations will be assigned to the three Federal bank supervisory agencies when the clearing agencies or transfer agents are banks. All such institutions which are not banks will be supervised, as well as regulated, by the SEC.
>
> This is a sound administrative approach, for two reasons. First, it rightfully gives the Commission clear responsibility to develop regulations; second, it provides for efficient enforcement of the SEC's regulations by the Federal agencies primarily responsible for the supervision of the affected institutions. In the case of banks, the agencies would be the Comptroller of the Currency for national banks, the Board of Governors for State member banks, and the Federal Deposit Insurance Corporation for non-member State banks. Because of their very close and regular scrutiny of institutions under their jurisdiction, the Federal bank supervisory agencies will provide strict and uniform enforcement of the rules the SEC will prescribe. The regulatory-enforcement arrangement in Committee Print No. 2 will establish a sensible division of responsibilities among the appropriate Federal agencies with uniform regulation and even-handed enforcement as the result.

I also asked the other Federal bank regulatory agencies for their comments on this regulatory structure and received no comments in opposition to the approach contained in this bill.

Mr. President, the bill contains other provisions in addition to those dealing with registration and regulation of clearing agencies and transfer agents. These provisions relate to the elimination of stock certificates, a study of what can be done to facilitate communications between corporations and their shareholders retaining the benefits accruing from "street name" registration, State taxes on securities transactions, and the establishment of a Commission with the responsibility of assisting States in modernizing their laws consistent with the purposes of this legislation. I do not feel that it is necessary for me to discuss these provisions in detail.

I recommend Senate approval of the bill.

Mr. JAVITS. Mr. President, I have had this bill under consideration for a while, by virtue of the fact that a number of the affected banks in the city of New York asked me to look into it very carefully. They have been studying it in order to determine that the regulatory practice which is proposed would work well and not be unduly burdensome, since all these banks are trustees for depositors and trust beneficiaries; and since the particular type of regulation, especially as it goes to clearinghouses, which are defined to include depositories, and the effort to eliminate the stock certificate through a system of bookkeeping entries is very desirable. But they also raise the possibility of imposition and the danger and the liability for the billions of dollars in trust assets and in stock certificates and other property which is concerned.

I appreciate their concern; and while generally favoring the bill, from the reports made on it by my staff and my own study, I did look into it and also had an opportunity to consult with the banks in question.

Pursuant to that inquiry, Mr. President, I finally agreed with the distinguished Senator from New Jersey that the bill should be called up this evening. He, in turn, has very graciously agreed that he would answer two questions which are of great moment in this matter and epitomize the concerns which caused the study and deliberation to which I have referred.

The first question is as follows—and I ask the Senator if he would be kind enough to give me his close attention:

The bill spells out the conditions under which a clearing agency can deny access to it by a would-be participant. This is an important section—17A(c) (3) and (7) of the Securities Exchange Act, as amended by the bill—for it directly affects the ability of clearing agencies to exclude participants who, for example, because of their known ties to criminal elements might present a substantial risk to the agencies.

I might point out that this fear of criminal intrusion is not unfounded. The hearing record on this bill—my colleague presided over the hearing—shows that securities thefts in the first half of 1971 were double the entire 1970 level and represented a $1.2 billion leakage in the industry.

The establishment of clearing agencies and of certificateless transactions, in fact, responds partly to this very serious theft problem.

Mr. President, the bill does allow clearing agencies to make rules restricting or conditioning participation on certain criteria, such as, for example, geographic location, and it allows agencies to require a deposit from participants. Therefore, my question to the distinguished manager of the bill, the Senator from New Jersey, is this: Does the bill also require clearing agencies to grant access to potential participants who are

known to be consorting with criminal elements?

Mr. WILLIAMS. The answer, of course, at the outset, simply is "No." The Senator from New York and I have discussed this matter informally, and I believe that it is important to spell out the provisions of existing law which would reach the situation the Senator has described, provisions which deal with the possibility that criminal elements might infiltrate the securities business.

The bill requires access to such agencies only for qualified brokers and dealers and certain other classes of financial institutions. Therefore, the following provisions of the Securities Exchange Act of 1934 are available to keep firms that have engaged in improper activities from participating in clearing agencies or depositories:

Section 15 of the act requires the SEC to deny registration to, and permits it to revoke or suspend the registration of, brokers or dealers who have:

Willfully filed materially false information with the SEC;

Within the preceding 10 years been convicted of any felony or misdemeanor involving the purchase or sale of any security, arising out of doing business as a broker-dealer or investment adviser, involving embezzlement, fraudulent conversion or misappropriation;

Been enjoined from acting as investment adviser, underwriter, broker, dealer, affiliated person or employee of an investment company, bank or insurance company;

Willfully violated provisions of the other statutes administered by the SEC.

Section 15A requires national securities associations to deny membership to persons who are subject to an SEC order denying, suspending or revoking registration or barring or suspending them from being associated with brokers or dealers or who have associated with them any person known to be ineligible for membership.

Section 6 requires the rules of national securities exchanges to provide for the expulsion or suspension of members for conduct inconsistent with just and equitable principles of trade and for willful violations of the Exchange Act. It also requires national securities exchanges to enforce the Exchange Act.

Other provisions of the Act prohibit manipulative and deceptive devices in securities transactions and make it unlawful to arrange for, obtain, receive or enjoy credit in violation of the Federal Reserve Board's margin rules.

A violation of the Act is a felony.

Furthermore, section 21 of the Act empowers the Commission to investigate violations of the Act by any persons and to seek injunctions against them.

Mr. JAVITS. Mr. President, I gather, then, that the fundamental thrust of the Senator's measure, which is here presented, will be such as to give the clearing agencies the opportunity to see that they are not imposed upon by participants who are known to be consorting with criminal elements.

Mr. WILLIAMS. I think that all the authority of law is there to protect our securities industries from just such elements. Although we have heard testimony that there may be some of these persons within the securities markets, the law is there, and it can be applied to exclude them.

Mr. JAVITS. And it is the intent of the manager of the bill that in the administration of the act, assuming that it becomes law, it shall be so applied?

Mr. WILLIAMS. Certainly.

Mr. JAVITS. Mr. President, one last question. The bill deals—at pages 19, 25, and 26, and the following—with the problems of regulation. It mentions three areas where consultation among the various regulatory agencies involved must take place as this bill deals with the amendment to sections 17A and 17B of the Securities and Exchange Act. Now the reference there to rules and requirements which are made in respect of such regulations are that these various rules and requirements may "accord with sound banking practices and fulfill mutual regulatory needs to the extent practicable."

Now the question I would like to ask, and again it is a matter of assuring the way in which this bill will be administered: Is the consultation provided for by the bill and the cooperation called for by the bill to be considered mandatory?

Mr. WILLIAMS. Would the Senator refer back to the page and line of the bill?

Mr. JAVITS. The pages of the bill that I have reference to specifically are page 25 where we begin to deal with line 18——

Mr. WILLIAMS. Yes.

Mr. JAVITS (continuing). With the appropriate regulatory agencies for consultation and cooperation with each other and the specification of the agencies concerned which follow on pages 26 and 27. There is also a similar reference on page 28 with respect to consultation and cooperation, and on page 19, beginning at line 12.

The point I am making now, is this consultation and cooperation among the various regulatory agencies specified in the bill mandatory?

Mr. WILLIAMS. I would say first to the Senator that it is certainly our intention to make it mandatory. There was some ambiguity in the bill as first drafted—the bill considered in the hearings and the bill that went into the markup. We made amendments and changed that in the original bill so that this cooperation would be mandatory under the bill as it is before the Senate right now.

The bill contains several provisions designed to assure cooperation among and avoid duplicate regulation by the several agencies which regulate and enforce compliance by clearing agencies. The Commission and the bank regulatory agencies must furnish one another with copies of reports concerning clearing agencies where appropriate and must notify each other of actions taken with regard to clearing agencies. The agencies charged with regulation, inspection and compliance of clearing agencies must consult with and request the views of each other before issuing a proposed rule for public comment or adopting such a rule.

These provisions were fashioned after full consultation with all the agencies that will have the responsibility under the act. I am quite sure that it is understood that way. In conclusion, this consultation and cooperation among the regulatory agencies is most certainly mandatory under the bill.

Mr. JAVITS. I thank my colleague. Could my colleague give us the assurance in the legislative oversight, as the Senator is managing the bill and is on the Committee on Banking, Housing and Urban Affairs, and is chairman of the appropriate subcommittee, that this assurance which underlies the bill will be given every consideration?

Mr. WILLIAMS. It certainly will. I appreciate the Senator's having the RECORD reflect this concern and to have this opportunity to make it clear.

Mr. JAVITS. Legislative oversight, then, will give proper consideration to these assurances as to the mandatory nature of this consultation and cooperation?

Mr. WILLIAMS. The Senate has been wise, indeed, in making available to the committee the resources for just the kind of staff that can be with us day in and day out in providing this oversight.

Mr. JAVITS. So the Senator's answer to that is in the affirmative?

Mr. WILLIAMS. Yes.

Mr. JAVITS. I thank my colleague from New Jersey very much and, under those circumstances, Mr. President, I shall interpose no objection to enactment of the bill.

The PRESIDING OFFICER. (Mr. BENTSEN). The bill is open to amendment. If there are no amendments to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3876

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

SECTION 1. Section 2 of the Securities Exchange Act of 1934 (15 U.S.C. 78b) is amended by striking out "and to impose requirements necessary to make such regulation and control reasonably complete and effective," and inserting in lieu thereof "to impose requirements necessary to make such regulation and control reasonably complete and effective, and to provide for the development of an integrated national system for the prompt and accurate processing, clearance, and settlement of securities transactions,".

SEC. 2. Section 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(3)) is amended to read as follows:

"(3) No broker or dealer shall make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors—

"(A) to regulate the time and method of making settlements, payments, and deliveries and of closing accounts; and

"(B) to provide safeguards with respect to the financial responsibilities and related practices of brokers and dealers including, but not limited to, the acceptance of custody and use of customers securities, and the carry-

ing and use of customers' deposits or credit balances. Such rules shall require the maintenance of reserves with respect to customers' deposits or credit balances, as determined by such rules and regulations.

Nothing in this section shall be construed (1) to affect the authority of the Board of Governors of the Federal Reserve System, pursuant to section 7 of this title, to prescribe rules and regulations with respect to the extension, maintenance, or arranging of credit to purchase or carry any security, or (2) to authorize the Commission to prescribe such rules or regulations."

SEC. 3. Section 15A(k)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3(k)(2)) is amended by inserting after clause (D) the following:

"(E) the time and method of making settlements, payments, and deliveries and of closing accounts."

SEC. 4. Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end thereof the following new paragraphs:

"(22) The term 'clearing agency' means any person who acts as intermediary among participants in making payments or deliveries in connection with transactions in securities or who engages in providing facilities for participants for netting of purchases and sales of specific securities to reduce the number of settlements of individual transactions, or for allocation of cash and securities settlement responsibilities among itself and participants. Such term also means a person who is the custodian of securities in accordance with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery thereof. The term 'clearing agency' does not include (i) Federal Reserve banks, Federal home loan banks, or Federal land banks, or (ii) banks, brokers, life insurance companies or their registered separate accounts, registered open end investment companies or unit investment trusts, building and loan, savings and loan, and homestead associations, and cooperative banks by reason of the lending, fiduciary, correspondent, or safekeeping functions commonly performed by them.

"(23) The term 'participant', when used with respect to a clearing agency, means any person who maintains one or more accounts with a clearing agency for the purpose of settling or comparing transactions in securities or making or receiving payment for or delivery or hypothecation of securities.

"(24) The term 'transfer agent' means any person who engages, on behalf of an issuer (including itself) of securities, in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; or (D) exchanging or converting such securities. Such term does not include any person who performs such functions solely with respect to variable annuity contracts issued by insurance companies.

"(25) The term 'appropriate regulatory agency', when used with respect to a clearing agency or a transfer agent required to be registered under this title, means:

"(A) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia, or a subsidiary thereof other than a nonbank subsidiary of a bank holding company;

"(B) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company, or a nonbank subsidiary of a bank holding company;

"(C) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) or a subsidiary thereof other than a nonbank subsidiary of a bank holding company; and

"(D) the Commission, in the case of all other transfer agents and all other clearing agencies.

"As used in this paragraph, the terms 'bank holding company' and 'subsidiary' have the meaning given them in section 2 of the Bank Holding Company Act of 1956, as amended."

SEC. 5. The Securities Exchange Act of 1934 is amended by inserting after section 17 (15 U.S.C. 78q) the following new section:

"REGISTRATION OF CLEANING AGENCIES

"SEC. 17A. (a) Except as otherwise provided in this subsection, it shall be unlawful for any person, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the function of a clearing agency with respect to any security (other than an exempted security) unless such person is registered under this section. The Commission, by rules and regulations or by order, upon its own motion, or upon application, may conditionally or unconditionally exempt any person, security, transaction or clearing agency, or any class or classes of persons, securities, transactions, or clearing agencies from any provision or provisions of this section or of any rule or regulation prescribed under this section if the Commission specifically finds that the application of such provision or provisions to such person, security, transaction, clearing agency, or class or classes of persons, securities, transactions, or clearing agencies is not practical or not necessary or appropriate in the public interest or for the prompt and accurate processing and settlement of securities transactions.

"(b) Any clearing agency may be registered with the Commission under the terms and conditions hereinafter provided in this section by filing with the Commission a registration statement in such form as the Commission may prescribe setting forth the following informataion and accompanied by the following documents:

"(1) Such data as to its organization, participation, rules of procedure, financial condition and results of operation, methods of safekeeping, transferring, hypothecating and accounting for funds and securities as the Commission may by rules and regulations require.

"(2) Copies of its constitution, charter, or articles of incorporation or association, with all amendments thereto, and of its existing bylaws, operational rules, forms. and procedures and of any rules or instruments corresponding to the foregoing, whatever the name, hereafter in this section collectively referred to as the 'rules of the clearing agency.'

"(3) Such other information as the Commission may by rule require.

"(c) An applicant shall not be registered as a clearing agency unless it appears to the Commission that—

"(1) by reason of the number of its participants, the scope of their transactions, and the geographical distribution of its participants such clearing agency will be able to comply with the provisions of this title and the rules and regulations thereunder and to carry out the purposes of this section;

"(2) such clearing agency is so organized, is of such a character and its rules applicable to the handling of securities transactions by and for participants are so structured as to facilitate the prompt and orderly settlement of securities transactions, to safeguard funds and securities held for the accounts of participants, and to comply with the provisions of this title and the rules and regulations thereunder, and to carry out the purposes of this section;

"(3) the rules of the clearing agency provide that all brokers or dealers making use of a national securities exchange or of the mails or any means or instrumentality of interstate commerce to effect any transaction in any security, other clearing agencies, registered investment companies, banks (as defined in section 2(a)(5) of the Investment Company Act of 1940), and such other classes of persons as the Commission may from time to time designate by rule as necessary to facilitate the prompt and orderly settlement of securities transactions, are eligible to become participants in such clearing agency, subject only to such other rules of the clearing agency as are expressly permitted under this paragraph. The rules of the clearing agency may restrict or condition participation in such agency on the geographical location of participants, on the type of business done by participants, and upon deposit with the clearing agency of an amount which bears a reasonable relationship to the value of positions maintained and transactions processed by the participant, and may deny participation to persons who have been expelled or suspended by a registered clearing agency during the period of such expulsion or suspension;

"(4) the rules of the clearing agency assure a fair representation of its shareholders or members and participants in the adoption of rules of the clearing agency and amendments thereto, the selection of its officers and directors, and in all other phases of the administration of its affairs;

"(5) the rules of the clearing agency provide for the equitable allocation of dues, fees, and other charges among its participants;

"(6) the rules of the clearing agency do not impose any schedule of prices, or fix minimum rates or charges, for services rendered by its participants;

"(7) the rules of the clearing agency are designed to promote the prompt and orderly settlement of securities transactions, to provide safeguards for securities and funds which are in its custody, to foster cooperation and coordination with national securities exchanges, national securities associations, brokers, dealers, banks, registered investment companies, with other clearing agencies, and with other persons engaged in the settlement of securities transactions, and to protect investors and the public interest; and do not have the effect of unfairly discriminating in the admission of participants or among participants in the use of such clearing agency;

"(8) the rules of the clearing agency provide that its participants shall be appropriately disciplined by expulsion, suspension, fine, or censure, for any violation of its rules; and

"(9) the rules of the clearing agency provide a fair and orderly procedure with respect to the disciplining of participants and the denial of participation to any person seeking participation therein. In any proceeding to determine whether a participant should be disciplined, such rules shall require that specific charges be brought; that such participant shall be notified of and be given an opportunity to defend against such charges; that a record shall be kept; and that the determination shall include—

"(A) a statement setting forth any act or practice in which such participant may be found to have engaged, or which such participant may be found to have omitted;

"(B) a statement setting forth the specific rule or rules of the agency of which any such act or practice, or omission to act, is deemed to be in violation; and

"(C) a statement setting forth the penalty imposed.

In any proceeding to determine whether a person shall be denied participation, such rules shall provide that the prospective par-

ticipant shall be notified of, and be given an opportunity to be heard upon, the specific grounds for denial which are under consideration; that a record shall be kept and that the determination shall set forth the specific grounds on which the denial is based. Notwithstanding any other provision of this section, the rules of the clearing agency may provide for the temporary suspension of a participant and the closing of its accounts pending determination on the merits of any disciplinary proceeding if, in the opinion of the clearing agency, such suspension and closing of accounts are necessary for the protection of investors or of the clearing agency or to facilitate the orderly and continuous performance of its services. The rules of the clearing agency shall afford the participant an expedited hearing on the merits in the case of any temporary suspension.

"(d) Within thirty days following the filing of an application for registration pursuant to subsection (b), the Commission shall by order grant such registration if the requirements of this section are satisfied. If after appropriate notice and opportunity for hearing it appears to the Commission that any requirement of this section is not satisfied, the Commission shall by order deny such registration.

"(e) A registered clearing agency may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors, or for the facilitation of prompt and accurate processing and settlement of securities transactions withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any such registrant or such other person for whom an application of registration is pending is no longer in existence or has ceased to do business in the capacity specified in the registration statement, the Commission shall by order cancel the registration.

"(f) Each registered clearing agency shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, copies of any changes in, additions to, or deletions from the rules of the clearing agency, and such other information and documents as the Commission may require to keep current or to supplement the registration statement and documents filed pursuant to subsection (b). Upon the filing of any change in, addition to, or deletion from the rules of a registered clearing agency the Commission shall, after opportunity for public comment, by order declare such change, addition, or deletion effective if the rules of the clearing agency, as so changed, satisfy the requirements of this section relating to registration of clearing agencies. The Commission shall, after notice and opportunity for hearing, disapprove the change, addition, or deletion in whole or in part if it is contrary to the public interest or contrary to the purposes of this section. If the Commission does not declare the change, addition, or deletion to be effective or institute a proceeding for its disapproval within thirty days from the date it is filed, the change, addition, or deletion shall become effective on such thirtieth day with the same force and effect as though it had been declared effective by the Commission.

"(g) The Commission may, after notice and opportunity for hearing, and upon a determination that such action is necessary or appropriate in the public interest or to effectuate the purposes of this section, by order require the adoption, amendment, alteration of or supplement to, or rescission of any rule of a registered clearing agency.

(h) Each registered clearing agency shall make, keep, and preserve for such periods such accounts, correspondence, memorandums, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest, or to facilitate cooperation among clearing agencies and the prompt and orderly settlement of securities transactions, to safeguard funds and securities held for the accounts of participants, or for the protection of investors. Such accounts, correspondence, memorandums, papers, books, and other records shall be subject at any time to such reasonable periodic, special, or other examinations by examiners or other representatives of the appropriate regulatory agency as the appropriate regulatory agency may deem necessary or appropriate in the public interest or for the protection of investors. The appropriate regulatory agency shall make a full and detailed report of any examination made of a registered clearing agency and shall immediately furnish to the Commission a copy of any such report. The Commission shall immediately furnish to the appropriate regulatory agency any report which is received from a registered clearing agency and is required under this section.

"(i) Each clearing agency shall, at the time of filing a registration statement with the Commission pursuant to subsection (b), file a copy of such registration statement with the appropriate regulatory agency. Each registered clearing agency shall, at the time of filing a notice of withdrawal, amendment, or supplement to its registration statement, or copies of any changes in, additions to, or deletions from the rules of the clearing agency, file copies of such documents with the appropriate regulatory agency.

"(j) If any registered clearing agency takes any disciplinary action against any participant therein, or denies admission to any person seeking participation therein, such action shall be subject to review by the appropriate regulatory agency, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such action has been taken or within such longer period as the appropriate regulatory agency may determine. Application to the appropriate regulatory agency for review, or the institution of review by such agency on its own motion, shall not operate as a stay of such action unless such agency otherwise orders, after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of affidavits and oral arguments).

"(k)(1) If in a proceeding to review disciplinary action taken by a registered clearing agency against a participant the appropriate regulatory agency, after notice and opportunity for hearing and upon consideration of the record before the clearing agency and such other evidence as it may deem relevant—

"(A) finds that such participant has engaged in such acts or practices, or has omitted such act, as the clearing agency has found him to have engaged in or omitted, and

"(B) determines that such acts or practices, or omission to act, are in violation of such rules of the clearing agency as have been designated in the determination of the clearing agency,

it shall by order dismiss the proceedings, unless it appears to such agency that such action should be modified in accordance with paragraph (2) of this subsection. If it appears to such agency that the evidence does not warrant the finding required in clause (A), or if such agency determines that such acts or practices as are found to have been engaged in are not prohibited by the designated rule or rules of the clearing agency or that such act as is found to have been omitted is not required by such designated rule or rules, such agency shall by order set aside the action of the clearing agency.

"(2) If after appropriate notice and opportunity for hearing the appropriate regulatory agency finds that any penalty imposed upon a participant in excessive or oppressive, having due regard to the public interest, such agency shall by order cancel, reduce, or require the remission of such penalty.

"(3) If in any proceeding to review the denial of participation in a registered clearing agency the appropriate regulatory agency, after appropriate notice and opportunity for hearing and upon consideration of the record before the clearing agency and such other evidence as it may deem relevant, determines that the specific grounds on which such denial or bar is based exist in fact and are valid under this section, it shall by order dismiss the proceeding. Otherwise, the appropriate regulatory agency shall by order set aside the action of the clearing agency and require it to admit the applicant to participation therein.

"(l) The appropriate regulatory agency is authorized, if such action appears to be necessary or appropriate in the public interest or for the protection of investors or to carry out the purposes of this section—

"(1) after appropriate notice and opportunity for hearing, by order, to suspend for a period not exceeding twelve months or revoke the registration of a registered clearing agency, or place limitations upon the agency finds that such clearing agency has activities, operations or policies of such clearing agency if the appropriate regulatory agency finds that such clearing agency has violated any provision of this ttile, or any rule or regulation thereunder, or has failed to enforce compliance with its own rules, or has engaged in any other activity tending to defeat the purposes of this section;

"(2) after appropriate notice and opportunity for hearing, by order, to suspend for a period not exceeding twelve months or expel from a registered clearing agency any participant therein if the appropriate regulatory agency finds that such participant has violated any provision of this section or any rule or regulation thereunder or any rule of the clearing agency; and

"(3) after appropriate notice and opportunity for hearing, by order, to remove from office any officer or director of a registered clearing agency who, the appropriate regulatory agency finds, has willfully failed to enforce the rules of the clearing agency, or has willfully abused his authority.

"(m) If a proceeding under subsection (l)(1) of this section results in the suspension or revocation of the registration of a clearing agency, the appropriate regulatory agency may, upon notice to such clearing agency, apply to any court of competent jurisdiction specified in section 27 or 21(e) of this title for the appointment of a trustee or may avail itself of any other procedures available under relevant laws. In such event, the court may, to the extent it deems necessary or appropriate, take exclusive jurisdiction of the clearing agency involved, and the books, records, and assets thereof, wherever located; and the court shall appoint the appropriate regulatory agency or its designee as the trustee who, with the approval of the court, shall have the power to take possession and to continue to operate or to terminate the facilities of such clearing agency in an orderly manner, for the protection of participants and public investors, subject to such terms and conditions as the court may prescribe.

"(n) The agencies enumerated in section 3(a)(25) of this title shall consult and cooperate with each other and shall advise one another promptly of the pendency or determination of any proceedings, of the promulgation of any rules, and of the entry of any order relating to a clearing agency, participant, class of clearing agencies, or class of participants. At least fifteen days prior to the issuance for public comment or adoption of any proposed rule or regulation regarding clearing agencies pursuant to this section, the agency contemplating issuance or adop-

tion of any such rule or regulation shall first consult with and request the views of each of the other agencies enumerated in section 3(a)(25) so that rules and regulations applicable to bank clearing agencies may be in accord with sound banking practices and fulfill mutual regulatory needs to the extent practicable. Nothing in this section shall impair the authority of any State banking authority or other State or Federal regulatory authority having jurisdiction over a person registered as a national securities clearing agency from making or enforcing rules governing such person which are not inconsistent with this section or any rules promulgated hereunder.

"(o) The Commission shall, on or before December 31, 1976, take such steps as are within its power to bring about the elimination of the negotiable stock certificate as a means of settlement among brokers or dealers of transactions consummated on national securities exchanges or by means of the mails or other means or instrumentalities of interstate commerce. On or before December 31 of each year, commencing in 1972 and ending in 1976, the Commission shall report to the Congress (1) the steps it has taken and the progress it has made toward the elimination of the negotiable stock certificate as a means of settlement, and (2) its recommendations, if any, for further legislation to eliminate the negotiable stock certificate."

SEC. 6. The Securities Exchange Act of 1934 is further amended by inserting after section 17A (added by section 5 of this Act) the following new section:

"TRANSFER AGENTS AND THE FORM AND FORMAT OF SECURITIES

"SEC. 17B. (a) (1) Except as otherwise provided in this subsection, no person shall make use of the mails or of any means or instrumentality of interstate commerce, directly or indirectly, in order to perform the function of a transfer agent with respect to any security unless such person is registered in accordance with this section. The Commission, by rules and regulations or by order, upon its own motion or upon application, may conditionally or unconditionally exempt any transfer agent or class of transfer agents or security or class of securities from any provision or provisions of this section or any rule or regulation if the Commission specifically finds that the application of such provision or provisions to such transfer agent or class of transfer agents or such security or class of securities is not practical or not necessary or appropriate in the public interest or for the prompt and accurate processing and settlement of securities transactions.

"(2) The provisions of this section shall apply only to securities and to persons performing the function of transfer agent with respect to securities which are registered under section 12 of this title or which would be required to be so registered except for the exemption from registration provided in subsection (g)(2)(B) or (g)(2)(G) of that section. The provisions of this section shall not apply to variable annuity contracts issued by insurance companies.

"(b) Any transfer agent may be registered for the purposes of this section by filing with the appropriate regulatory agency a registration statement which shall state the address of its principal office or offices for transfer agent activities, the length of time it has been acting as a transfer agent, and the identity of the issuers and issues of securities for which it is acting as transfer agent, and shall contain such other information in such detail as the appropriate regulatory agency may require as necessary or appropriate with regard to performance capability, standards and procedures for safe handling and custody of securities and funds, and operational compatibility of the transfer agent with other persons involved in the securities handling process. A regulatory agency other than the Commission shall file with the Commission for any transfer agent required to register with such regulatory agency under this section, a notice which shall state the name of such transfer agent, the address of its principal office or offices for transfer agent activity, the identity of the issuers and issues of securities for which it is then acting as a transfer agent, and shall file with the Commission such information as the Commission shall require to keep reasonably current the information and documents required to be filed with the Commission under this subsection. Except as otherwise provided in subsection (d) of this section, a registration of a transfer agent filed under this subsection shall become effective thirty days after the receipt of the registration statement by the appropriate regulatory agency or within such shorter period of time as such agency may determine.

"(c) The appropriate regulatory agency shall, after appropriate notice and opportunity for hearing, by order, deny registration to any transfer agent seeking registration if it finds that such denial is in the public interest and that such transfer agent does not have procedures or the means to be able to comply with the provisions of this section and the rules and regulations prescribed under this section.

"(d) Pending final determination whether any registration of a transfer agent under this section shall be denied, the appropriate regulatory agency may by order postpone the effective date of such registration for a period not to exceed ninety days, but, if after appropriate notice and opportunity for hearing (which may consist solely of affidavits and oral arguments), it appears to such agency to be necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of such registration until final determination, such agency shall so order.

"(e) Any transfer agent registered under this section may, upon such terms and conditions as the appropriate regulatory agency may deem necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with such agency. If such agency finds that any such transfer agent for whom a registration statement is pending is no longer in existence or has ceased to do business as a transfer agent, it shall by order revoke, deny, or cancel the registration.

"(f) Every transfer agent required to be registered pursuant to this section shall file with the appropriate regulatory agency, in accordance with such rules or regulations as such agency may prescribe as necessary or appropriate to carry out the objectives of this section, such information and documents as such agency shall require to keep reasonably current the information and documents required to be included in or filed with the registration statement.

"(g) Every transfer agent required to register pursuant to this section shall make, keep, and preserve such accounts, correspondence, memorandums, papers, books, records, and other data shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the appropriate regulatory agency as such agency may deem necessary or appropriate to carry out the objectives of this section. Such accounts, correspondence, memorandums, papers, books, records, and other data shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the appropriate regulatory agency as such agency may deem necessary or appropriate to carry out the objectives of this section.

"(h) No transfer agent shall make use of the mails or of any means or instrumentality of interstate commerce, directly or indirectly, to engage in any activity as transfer agent in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate with regard to minimum standards for the performance of transfer functions, measures and personnel standards for safe handling and custody of securities and funds, and operational compatibility of the transfer agent with other persons involved in the securities handling process.

"(i) The appropriate regulatory agencies shall consult and cooperate with each other and, as may be appropriate, with State banking authorities having supervision over banks so that the accounts, correspondence, memorandums, papers, books, records, and other data required of banks acting as transfer agents, and the inspections thereof, may be in accord with sound banking practices and fulfill mutual regulatory needs to the extent practicable. Nothing in this section shall be construed to impair the authority of any State banking authority or of any other State or Federal regulatory authority which has jurisdiction of a person registered as a transfer agent to make or enforce rules governing such person if such rules are not inconsistent with this section or any rules prescribed under this section.

"(j) Compliance with the requirements imposed by this section shall be enforced under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the case of—

"(1) national banks or banks operating under the Code of Law for the District of Columbia, or subsidiaries thereof other than nonbank subsidiaries of bank holding companies, acting as transfer agents, by the Comptroller of the Currency;

"(2) State member banks of the Federal Reserve System, subsidiaries thereof, bank holding companies, or nonbank subsidiaries of bank holding companies, acting as transfer agents, by the Board of Governors of the Federal Reserve System; and

"(3) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) or subsidiaries thereof other than nonbank subsidiaries of bank holding companies, acting as transfer agents, by the Federal Deposit Insurance Corporation.

For the purpose of the exercise by any bank regulatory agency referred to in this subsection of its powers under section 8 of the Federal Deposit Insurance Act, a bank holding company and a nonbank subsidiary of a bank holding company, acting as a transfer agent, shall be considered a bank; and a violation of any requirement imposed under this section upon banks, bank holding companies, or nonbank subsidiaries of bank holding companies registered as transfer agents is a violation of the requirements imposed under the Federal Deposit Insurance Act. In addition to its power under section 8 of the Federal Deposit Insurance Act, each of such bank regulatory agencies may exercise, for the purpose of enforcing compliance with any requirement imposed under this section, any other authority conferred on it by law.

"(k) All of the functions and powers of the Commission under this title are available to the Commission to enforce compliance by any person with the requirements imposed under this section. Except to the extent that enforcement of the requirements imposed under this section is specifically committed to some bank regulatory agency under subsection (j), the Commission shall enforce such requirements.

"(l) The Commission may, after appropriate notice and opportunity for hearing, by order, censure, or bar or suspend or place limitations upon any transfer agent, other than a transfer agent referred to in subsection (j), or any officer, director, or employee of any such transfer agent, or revoke the registration

of any transfer agent, other than a transfer agent referred to in subsection (j), if the Commission finds that such censure, barring, suspension, placing of limitations, or revocation is in the public interest or for the protection of investors and that such transfer agent or any officer, director, or employee thereof has willfully violated or is unable to comply with any provision of this section or any rule or regulation promulgated thereunder pertaining to such transfer agent or any officer, director, or employee thereof.

"(m) At least fifteen days prior to the issuance for public comment or adoption of any proposed rule or regulation regarding transfer agents pursuant to this section, the agency contemplating issuance or adoption of any such rule or regulation shall first consult with and request the views of each of the other agencies enumerated in section 3 (a) (25) so that rules and regulations applicable to bank transfer agents may be in accord with sound banking practices and fulfill mutual regulatory needs to the extent practicable.

"(n) It shall be unlawful for an issuer, by use of any means or instrumentality of interstate commerce, or of the mails, to issue, either originally or upon transfer, any securities to which this section applies, whose form or format contravenes such rules and regulations as the Commission may prescribe as necessary or appropriate for the prompt and accurate processing of transactions in such securities."

SEC. 7. Section 19 of the Securities Exchange Act of 1934 (15 U.S.C. 78s) is amended by adding at the end thereof the following new subsection:

"(f) The Commission is authorized and directed to make a study and investigation of the practice of registration of securities other than in the name of the beneficial owner and to determine (1) whether such registration is consistent with the policies and purposes of this Act, with particular reference to section 14, and (2) if consistent, whether steps can be taken to facilitate communications between corporations and their shareholders while at the same time retaining the benefits of such registration. The Commission shall report to the Congress its preliminary findings within six months after the date of enactment of this section, and its final results and recommendations within one year of such date.

SEC. 8. Section 28 of the Securities Exchange Act of 1934 (15 U.S.C. 78bb) is amended by inserting after subsection (b) the following new subsection:

"(c) No State or political subdivision thereof shall impose any tax on any change in beneficial or record ownership of securities effected through the facilities of a registered clearing agency or any nominee thereof or custodian therefor or upon the delivery or transfer of securities to or through or receipt from such agency or any nominee thereof or custodian therefor, unless such transfer or delivery or reecipt would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency or any nominee thereof or custodian therefor were not physicaly located in the taxing State or political subdivision. No State or political subdivision thereof shall impose any tax on securities which are deposited in or retained by a registered clearing agency or any nominee thereof or custodian therefor, unless such securities would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision."

NATIONAL COMMISSION ON UNIFORM SECURITIES LAWS

SEC. 9. (a) There is established the National Commission on Uniform Securities Laws (hereinafter referred to as the "Commission").

(b) (1) The Commission shall consist of fourteen members to be appointed by the President as follows:

(A) two from among persons who represent the securities industry;

(B) two from among persons who represent organizations or associations which are engaged in the preparation of uniform State laws;

(C) two from among persons who represent the private investor;

(D) two from among persons who administer State laws relating to securities;

(E) two from among persons who represent the banking industry;

(F) two representatives of the Securities and Exchange Commission; and

(G) two from among persons who represent issuing corporations.

(2) The President of the United States shall designate a Chairman from among the members of the Commission. Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(c) (1) The Commission shall—

(A) determine the necessity for revising State laws to facilitate the establishment of an effective network of securities depositories;

(B) furnish advice and assistance in the planning, development, and execution of methods to evidence ownership of securities by means other than paper certificates;

(C) prepare, in cooperation with such other organizations or persons as may be appropriate, such amendments or revisions to those laws as may be necessary; and

(D) prepare and circulate such reports, drafts, or other papers as may be necessary to facilitate the enactment of any such amendments or revisions in any State.

(2) The Commission shall make such interim reports of its findings and recommendations as it deems advisable, and it shall make a final and complete report of its findings and recommendations to the Congress and the President not later than February 1, 1975. Sixty days after the submission of its final report, the Commission shall cease to exist.

(d) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title;

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals; and

(3) hold such hearings and sit and act at such times and places as the Commission may deem advisable.

(e) (1) A member of the Commission who is otherwise an officer or employee of the United States shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties of the Commission.

(2) A member of the Commission from private life shall receive $125 per diem when engaged in the actual performance of duties of the Commission, and shall receive reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(f) Each department, agency, and instrumentality of the United States and of any State, is urged to furnish to the Commission, upon request made by the Chairman, such information and services as the Commission deems necessary to carry out its functions under this section.

(g) There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section.

SEC. 10. This Act shall become effective on the date of its enactment, except that sections 17A(a) and 17B(a) of the Securities Exchange Act of 1934 (as added by this Act) shall become effective on July 1, 1973.

Mr. WILLIAMS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## ROUTINE MORNING BUSINESS

The routine morning business of the day is printed at this point in the RECORD by unanimous consent:

## COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. METCALF) laid before the Senate the following letters, which were referred as indicated:

REPORTS ON NUMBER OF OFFICERS ON DUTY WITH HEADQUARTERS, DEPARTMENT OF THE ARMY

A letter from the Secretary of the Army, transmitting, pursuant to law, reports on number of officers on duty with headquarters, Department of the Army and detailed to the army general staff, as of June 30, 1972 (with accompanying report); to the Committee on Armed Services.

PROPOSED AMENDMENT OF TITLE 10, UNITED STATES CODE

A letter from the Secretary of the Navy, transmitting a draft of proposed legislation to amend title 10, United States Code, to provide for the promotion of officers of the Navy and Marine Corps who are in a missing status, and for other purposes (with an accompanying paper); to the Committee on Armed Services.

REPORT OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Problems Associated With Reimbursements to Hospitals for Services Furnished Under Medicare," Social Security Administration, Department of Health, Education, and Welfare, dated August 3, 1972 (with an accompaning report); to the Committee on Government Operations.

REPORT ON RECLASSIFICATION OF CERTAIN LANDS

A letter from the Assistant Secretary of the Interior, reporting, pursuant to law, on the reclassification of certain lands in the Willwood Irrigation District, Shoeshone Project, Wyo. (with accompanying papers); to the Committee on Interior and Insular Affairs.

REPORT ON CERTAIN DEFECTOR ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, a report on certain defector aliens (with accompanying papers); to the Committee on the Judiciary.

TEMPORARY ADMISSION OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders entered relating to the temporary admission of certain aliens (with accompanying papers); to the Committee on the Judiciary.

## PETITION

Mr. HARTKE. Mr. President, despite the persistent efforts of this administration to hide our trade crisis under a bushel of rhetoric, Americans across the country are beginning to demand action to save their jobs and preserve the diversified industrial base that has made America great.

On May 9, 1972, in Troy, N.Y., the Rensselaer County Legislature formally endorsed my Foreign Trade and Investment Act of 1972. This is an early sign of a ground swell of concern that must lead to a reform of our disastrous foreign trade and investment policies.

Mr. President, because of the importance of this issue, I ask unanimous consent that the resolution of the Rensselaer County Legislature be printed in the RECORD at this point, and that the resolution be referred to the Finance Committee of the U.S. Senate.

There being no objection, the resolution was ordered to be printed in the RECORD, and referred to the Committee on Finance, as follows:

RESOLUTION IN SUPPORT OF BURKE-HARTKE BILL (H.R. 10914–S. 2592)

Whereas there is presently pending before the Congress of the United States certain legislation known as the Burke-Hartke Bill (HR10914–S2592), and

Whereas, it is the purpose of the said Burke-Hartke Bill to stem the loss of hundreds of thousands of American skilled jobs and the destruction of American industries resulting from the unfair competition of imports of cheap labor origin, and

Whereas, the Burke-Hartke measure would limit these imports by reshaping tax, trade and other Federal laws to challenge the international crisis that threatens American jobs and the United States economic future, now therefore

Be it resolved, that this County Legislature goes on record in support of the Burke-Hartke Bill and urges its adoption by the Congress of the United States and if adopted further urges its approval by the President of the United States, and

Be it further resolved that the clerk of this Legislature be and is hereby directed to forward a certified copy of this Resolution to Congressman Burke and Senator Hartke and to Congressman Carleton King and to Senators Jacob Javits and James Buckley and to the President of the United States.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

My Mr. CANNON, from the Committee on Commerce, with amendments:

S. 2280. A bill to amend sections 101 and 902 of the Federal Aviation Act of 1958, as amended, to implement the Convention for the Suppression of Unlawful Seizure of Aircraft, and for other purposes (Rept. No. 92–1012.)

By Mr. ALLEN from the Committee on Agriculture and Forestry, without amendment:

S. 2516. A bill to authorize the Secretary of Agriculture to reimburse owners of equines and accredited veterinarians for certain expenses of vaccinations incurred for protection against Venezuelan equine encephalomyelitis (Rept. No. 92–1013).

By Mr. ROBERT C. BYRD (for Mr. LONG) from the Committee on Commerce, with amendments:

H.R. 755. An act to amend the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, to convert criminal penalties to civil penalties in certain instances, and for other purposes (Rept. No. 92–1014).

## REPORT ENTITLED "PROBLEMS OF ELECTRICAL POWER PRODUCTION IN THE SOUTHWEST"—REPORT OF A COMMITTEE (S. REPT. NO. 92–1015)

Mr. JACKSON. Mr. President, I submit the report of the Committee on Interior and Insular Affairs on problems of electrical power production in the Southwest. This is an interim report of the committee's study of a national fuels and energy policy.

This report deals with the specific energy problems and public policy issues arising out of the development of a major thermal-electric powerplant complex in the desert region of the Southwest. The situation covered by the report is quite specific, but it is a situation which exemplifies many broad energy problems and public policy issues which are of growing vital concern to all parts of the Nation.

The construction and operation of these huge desert powerplants, alone with the mining operations and the transportation and transmission facilities which they require, has had, and will have, profound impacts upon the way of life of the residents of the desert region and upon the environment. Aside from the immediate consideration of air pollution control, in which Federal regulation is rapidly evolving, there are many areas of direct and indirect Federal involvement with these plants which might not exist if they were located elsewhere.

As the analysis in this report displays, the major part, at least, of the energy planned to be produced by these plants is urgently needed. Furthermore, development of these plants would bring employment and economic activity to the desert region which will provide new opportunities for the residents, particularly the Indian people. This has been a national social objective for some time.

At the same time, it appears equally certain that development of the energy resources of the Four Corners region, regardless of the very best measures which technology can provide, will have significant adverse environmental impacts. The desert area, until recently, has remained sparsely populated and undeveloped. Its unparalleled scenery and unique ecological systems have been largely undisturbed by the works of man. Development will surely result in significant changes.

As the implications of many of the broad policy issues in the Four Corners became apparent, and as the study plan for the national fuels and energy policy study directed by Senate Resolution 45 was developed, the committee's Four Corners investigation was incorporated into the broader policy study where it will serve as a useful case history. The history and the projected plans for the Four Corners energy development are, in many respects, representative of the complex and difficult energy issues—social, environmental, legal, institutional—facing our Nation everywhere.

Among the current and emerging major energy policy issues to which this case study is relevant are:

The long-term implications of continuing present growth rates of energy demand, especially for electrical power;

The increasing trend toward the use of environmental regulations for local zoning or control of local development;

The institutional structure of the electrical utility industry and the industry's responsiveness to public planning needs;

Increasing public concern over the use of the extensive stripable coal resources of the West, and the implications for the use of national coal resources in meeting future requirements;

The organizational structure of Federal energy agencies and its effect upon their capabilities to make and implement public decisions;

The state of technology of electrical power generation and transmission and the adequacy of research and development in the field; and

Evolving environmental protection law and regulations and their relationships to other social objectives and needs.

Some of the national energy policy issues and implications of the Four Corners situation will be considered in the final report on national fuels and energy policy. The findings which are set forth in this report are derived from the testimony and other information obtained during the hearings and investigation. The recommendations are believed by the committee to be both necessary and capable of achievement. Some of the recommendations included herein involve the legislative and oversight jurisdiction of committees other than the Interior Committee. They are presented in the spirit and in the hope that they can provide a useful contribution to a coordinated congressional response to the problems presented.

The PRESIDING OFFICER. The report will be received and printed.

## ENROLLED BILLS SIGNED

The ACTING PRESIDENT pro tempore (Mr. METCALF) today, August 4, 1972, signed the following enrolled bills, which had previously been signed by the Speaker of the House of Representatives:

S. 247. An act for the relief of Albert G. Feller and Flora Feller;

S. 3284. An act to increase the authorization for appropriation for completing work in the Missouri River Basin by the Secretary of the Interior;

H.R. 489. An act to approve an order of the Secretary of the Interior canceling irrigation charges against non-Indian-owned lands under the Modoc Point unit of the Klamath Indian irrigation project; Oregon;

H.R. 9936. An act to amend the Federal Food, Drug, and Cosmetic Act to provide for a current listing of each drug manufactured, prepared, propagated, compounded, or processed by a registrant under that act, and for other purposes;

H.R. 15093. An act making appropriations for the Department of Housing and Urban Development; for space, science, veterans, and certain other independent executive agencies, boards, commissions, corporations, and offices for the fiscal year ending June 30, 1973, and for other purposes: and

H.R. 15418. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending June 30, 1973, and for other purposes.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. SCHWEIKER:

S. 3880. A bill to amend the Public Health Service Act to provide for education with regard to and detection of diabetes mellitus. Referred to the Committee on Labor and Public Welfare.

By Mr. CHILES:

S. 3881. A bill to provide that meetings of government agencies and of congressional committees shall be open to the public, and for other purposes. Referred to the Committee on Government Operations.

By Mr. MONDALE (for himself, Mr. JAVITS, Mr. KENNEDY, Mr. PELL, Mr. WILLIAMS, Mr. HUMPHREY, Mr. CHURCH, Mr. PROXMIRE, Mr. JACKSON, Mr. HARTKE, and Mr. STEVENSON):

S. 3882. A bill to amend the Federal Property and Administrative Services Act of 1949 to provide for the use of excess property by certain grantees. Referred to the Committee on Government Operations.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SCHWEIKER:

S. 3880. A bill to amend the Public Health Service Act to provide for education with regard to and detection of diabetes mellitus. Referred to the Committee on Labor and Public Welfare.

### DIABETES—A HIGH PRIORITY

Mr. SCHWEIKER. Mr. President, there are now approximately 6 to 8 million people in the United States with diabetes according to the last survey done in 1968. For each person with the disease there are three or four who will eventually come down with it. The number of people affected by diabetes becomes a possible future total of 24 million Americans. Nearly one person in 20 is either an actual or potential diabetic. One-fifth of the population are carriers and have a 50-percent chance of passing the trait on to their children although they themselves do not develop the disease. It is estimated that by 1980, one in five people will have diabetes or its trait.

The problem of the incidence of diabetes is one to which we must devote our full attention. Studies show that there is a 9-percent increase each year in the diabetic population which is an accelerating increase because each year the diabetic population becomes 9 percent larger. Studies by scientists in Israel show that the incidence of diabetes is increasing dramatically as our population becomes older, fatter, more affluent, and more urbanized.

An important factor in the increase are our very own diabetic children. In 1921, diabetic children died. There was no chance for them. After the discovery of insulin by Dr. Banticz and Dr. Best in 1921, children and young adults have survived, have grown to maturity, and have been producing children with diabetes or with a strong inherited factor for diabetes. There are now about 8 million diabetics with a 50-percent chance of producing diabetic children.

Statistics on diabetes are vague because diabetes is not a reportable disease. Diabetes is the fifth leading cause of death in the United States. It is probably second or third if you consider the fact that diabetes is the major factor causing many chronic and disabling illnesses, primarily cardiovascular, renal, hypertensive, and neurological. The man who dies of a heart attack is listed in the death statistics as a victim of heart disease, but many times he has actually died from diabetes which caused the heart attack and the vascular disease. The same is probably true in cases of kidney disease, stroke, and so forth. Diabetes has become the major cause of blindness in our country. There are 154,700 people blind from diabetic retinopathy, and estimates are that by the year 2000 there will be 573,500 blind from diabetic retinopathy because of the accelerated increase in the number of people with diabetes and the fact that 50 percent of people with diabetes for 20 years will develop retinopathy and 95 percent of people who have had diabetes for 30 years will develop this disease.

Insulin has preserved the life of the diabetic; but because he has lived longer, he has been exposed to the complications of diabetes over a longer life span. This is a problem we did not have to cope with before. Hence, the rise in diabetic blindness, is a function of the very fact that the diabetic lives longer.

The discovery of insulin, if we are to face the facts squarely, we must realize was not a cure, as was believed originally, but only one step in the battle against diabetes. "The Invisible Disease." Is it because it is "invisible" that we, as a Nation, have not come to grips with the problem? It is ironic that diabetes now dominates the medical scene, yet so little is being done to solve the mysteries of this illness.

It is necessary, in order to understand fully the problems we are facing, to have proper statistics. Diabetes should be made a reportable disease so that it can be studied according to population and geographical area and the impact of incidence and heredity can be noted. My only fear is that we will be overwhelmed when and if correct statistics are made available.

Mr. President, it should be noted that Congress, in the Labor and HEW appropriations bill, has authorized the initiation of regional diabetes research centers throughout the Nation. Our knowledge of diabetes has been pitiful to date, and the millions of people who suffer from this metabolic disorder feel neglected. They are justified. Up to now we have not had a single research center devoted to diabetes. I am pleased that we are facing up to this problem, and I am hopeful that these new diabetes-related research efforts can begin as soon as possible. The elimination of diabetes will mean an end to its dread complications.

Mr. President, today I introduce the National Diabetic Education and Detection Act. It is the purpose of this legislation to establish a national program to:

Locate and treat undetected diabetes in men, women, and children;

Alert the citizens of the United States to the early detection of diabetes mellitus and to emphasize the importance of early detection and proper control;

Advance programs regarding patient education, professional education, public education, and detection of diabetes.

In this legislative proposal the Secretary of Health, Education, and Welfare is authorized to make grants to public and nonprofit entities for the establishment of screening and counseling programs to make information available to the public and to provide counseling to persons having diabetes and to their families regarding the adjustment they face to the medical regimen required of diabetics. In addition, a program of screening, counseling, and treatment would be established within the Public Health Service, and the Regional Medical program would be authorized to undertake programs related to diabetes.

Under the bill the Director of the National Institute of Arthritis, Metabolism and Digestive Diseases is directed to establish a program to provide information directly to physicians and allied health personnel regarding the latest developments in research and treatment of diabetes. Furthermore, the Director is to establish a Task Force to conduct a comprehensive study and survey to investigate the magnitude of diabetes mellitus, its economic and social consequences, and to evaluate available screening information and formulate a long-range plan to combat diabetes. This Task Force can easily be integrated into the program recently inaugurated through the John A. Fogarty International Center of the National Institutes of Health which is to review and evaluate the state of knowledge and research in the prevention and control of human disease. It is my understanding that this program is to include a focus on diabetes mellitus.

Mr. President, it is my hope that the Federal Government will give a much higher priority to the disease of diabetes mellitus.

Mr. President, I ask that the bill be printed in the RECORD.

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

S. 3880

A bill to amend the Public Health Service Act to provide for education with regard to and detection of diabetes mellitus

*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 "National Diabetes Education and Detection Act".

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. (a) The Congress hereby finds and declares—

(1) that diabetes mellitus is a major health problem in the United States;

(2) that diabetes mellitus contributes to many other health problems, and may significantly decrease life expectancy;

(3) that the citizens of the United States should have a full understanding of the nature and the impact of diabetes mellitus;

(4) that there is striking evidence that the known prevalence of diabetes mellitus has increased dramatically in the past decade;

(5) that the severity of diabetes mellitus in children and most adolescents is greater than in adults, which in most cases involves greater problems in the management of diabetes mellitus; and

(6) that the attainment of better methods of diagnosis, and treatment of diabetes mellitus deserves the highest priority.

(b) In order to preserve and protect the health and welfare of all citizens, it is the purpose of this Act to establish a national program to—

(1) locate and treat undetected diabetic men, women, and children;

(2) alert the citizens of the United States to the early indications of diabetes mellitus and to emphasize the importance of early detection and proper control; and

(3) advance programs regarding patient education, professional education, public education and detection of diabetes.

AMENDMENTS TO PUBLIC HEALTH SERVICE ACT

SEC. 3. (a) Section 1 of the Public Health Service Act is amended by striking out "titles I to X" and inserting in lieu thereof "titles I to XI".

(b) The Act of July 1, 1944 (58 Stat. 682), as amended, is amended by renumbering title XI (as in effect prior to the enactment of this Act) as title XII, and by renumbering sections 1101 through 1114 (as in effect prior to the enactment of this Act), and references thereto, as sections 1201 through 1214, respectively.

(c) The Public Health Service Act is further amended by adding after title X the following new title:

"TITLE XI—DIABETES PREVENTION PROGRAM

"GRANTS FOR DIABETES SCREENING AND COUNSELING PROGRAMS

"SEC. 1101. (a) The Secretary is authorized to make grants to, and to enter into contracts with, public and private nonprofit entities to—

"(1) assist in the establishment and operation of voluntary diabetes screening and counseling programs;

"(2) assist in developing and making available information and educational materials relating to diabetes to all persons requesting such information or materials, and to inform the general public about the nature of diabetes; and

"(3) assist in providing counseling to persons having diabetes and to their families with regard to adjustments to the medical regimen required of such persons, including necessary medical precautions.

A grant may be made under this subsection for programs implementing any or all of the above listed programs.

"(b) In making grants and contracts under this section the Secretary shall take into account the number of persons to be served, the extent to which such screening and counseling is needed on a local basis, the relative need of the applicant, and its capacity to make rapid and effective use of such assistance.

"(c) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1973; $20,000,000 for the fiscal year ending June 30, 1974; and $30,000,000 for the fiscal year ending June 30, 1975.

"APPLICATIONS

"SEC. 1102. A grant under this title may be made upon application to the Secretary at such time, in such manner, containing and accompanied by such information as the Secretary deems necessary. Each application shall—

"(1) provide that the programs and activities for which assistance under this title is sought will be administered by or under the supervision of the applicant;

"(2) describe with particularity the programs and activities for which assistance is sought;

"(3) provide for strict confidentiality of all test results, medical records and other information regarding screening, counseling, or treatment of any person treated except for (A) such information as the patient (or his guardian) consents to be released; or (B) statistical data compiled without reference to the identity of any such patient;

"(4) provide for appropriate consultation with community representatives in the development and operation of any program funded under this title;

"(5) set forth such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this title; and

"(6) provide for making such reports in such form and containing such information as the Secretary may reasonably require.

"PUBLIC HEALTH SERVICE FACILITIES

"SEC. 1104. The Secretary shall establish a program within the Public Health Service to provide for voluntary diabetes screening, counseling, and treatment. Such program shall be made available through facilities of the Public Health Service to any eligible person requesting screening, counseling, or treatment, and shall include notification of all eligible persons, including parents of children who have diabetes, of the availability and voluntary nature of such programs.

"REPORTS

"SEC. 1105. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress each year a comprehensive report on the administration of this title.

"(b) The report required by this section shall contain such recommendations for additional legislation as the Secretary deems necessary.

"DISSEMINATION OF CURRENT INFORMATION

"SEC. 1106. The Director of the National Institute of Arthritis, Metabolism, and Digestive Diseases shall establish a program (to assure the continuing improvements in the care and treatment of patients with diabetes) which shall provide information directly to physicians and allied health personnel regarding the latest developments with regard to research and treatment of diabetes."

AMENDMENT TO TITLE IX OF THE PUBLIC HEALTH SERVICE ACT

SEC. 3. Section 900 (a) of the Public Health Service Act is amended by inserting immediately after "stroke," the words "diabetes mellitus,".

TASK FORCE ON DIABETES

SEC. 4. (a) The Director of the National Institute of Arthritis, Metabolism and Digestive Diseases shall establish a task force which shall conduct a comprehensive study and survey investigating the magnitude of diabetes mellitus, its economic and social consequences, and to evaluate available scientific information and formulate a long range plan to combat diabetes.

(b) The task force shall be composed of persons who are eminently qualified to serve on such a task force.

TASK FORCE REPORTS

SEC. 5. The task force shall publish and transmit to the President and to the Congress an interim report within six months after the date of enactment of this Act and a final report within one year after the date of enactment of this Act. Such reports shall specify the problems relating to diabetes mellitus and recommend a program designed to provide solutions to those problems.

By Mr. CHILES:

S. 3881. A bill to provide that meetings of government agencies and of congressional committees shall be open to the public, and for other purposes. Referred to the Committee on Government Operations.

FEDERAL GOVERNMENT IN THE SUNSHINE ACT

Mr. CHILES. Mr. President, in 1913, Supreme Court Justice Louis D. Brandeis wrote:

Publicity is justly commended as a remedy for social and industrial disease. Sunlight is said to be the best disinfectant and electric light the most efficient policeman.

Justice Brandeis could just as well have applied these remedies to the governmental process, for democratic self-government and an informed citizenry just naturally go hand in hand, making essential the conduct of public business in the open, "in the sunshine." Only with such openness can the public judge and express, through its vote or voice, whether governmental decisions are just and fair.

Since I came to the Senate last year, I have become very disturbed by the great amount of public business I have found being conducted behind closed doors and by the attitude of secrecy I have seen in our Federal Government agencies. I am not surprised that people are suspicious of our motives and are losing confidence in their government when they are shut out of the decision-making process.

So, I am introducing the Federal "Government in the Sunshine Act", which seeks to assure the openness of our governmental processes and to restore public confidence in those processes. It seeks to do this through a simple requirement: all meetings of Federal authorities and congressional committees shall, subject to certain exemptions, be open to the public. Citizens will have the right to attend meetings in which they had a personal interest, and news media and other interested groups will have access which will insure a broader dissemination of information on public affairs.

The proposed law provides for open meetings of all Federal governmental authorities except the courts and the military. In particular, it applies to Federal regulatory agencies and commissions—such as the Interstate Commerce Commission, the Federal Trade Commission, and the Civil Aeronautics Board—which are responsible for serving the public interest. It would apply to the committees of Congress, which have for too long conducted too much of their business behind closed doors.

Mr. President, I ask unanimous consent to have the full text of the bill printed in the RECORD.

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

S. 3881

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That: (a) except as provided in subsection (b), all meetings (including meetings to conduct hearings) of any government agency at which any official action is considered or discussed shall be open to the public.

(b) Subsection (a) shall not apply to that portion of any meetings in which the action or proposed action to be taken, considered, or discussed by an agency

(1) relates to a matter affecting the national security,

(2) relates solely to the internal management of such agency,

(3) might tend to reflect adversely on the character or reputation of any individual who is subject to any proposed or potential sanction by such agency, or

(4) might divulge matters required to be kept confidential under (specified statutory provisions).

*Provided,* That this subsection does not authorize closed meetings or the withholding of information from the public except as specifically stated in this subsection, and is not authority to withhold information from Congress.

(c) Each agency subject to the requirements of this Section shall, within 180 days after the effective date of this Act, establish through publication in the Federal Register procedures for providing public notice of meetings required by this Section to be open to the public. Such notice shall be given as far in advance of such meetings as is practicable, in order to facilitate attendance of such meetings by persons desirous of doing so.

SEC. 2. (a) Section 133(b) of the Legislative Reorganization Act of 1946 as amended by Section 103(a) of the Legislative Reorganization Act of 1970 is amended as follows:

"(1) Each meeting (including meetings to conduct hearings) of each standing, select, special, or conference committee of the Senate shall be open to the public, except when the committee determines that the matters to be discussed, or the testimony to be taken, relates to a matter of national security, relates solely to the internal management of such committee, may tend to reflect adversely on the character or reputation of the witness or any other individual, or may divulge matters required to be kept confidential under other provisions of law."

(2) Clause 27(f)(2) of Rule XI of the Rules of the House of Representatives is amended to read as follows: Each meeting (including meetings to conduct hearings) of each standing, select, special or conference committee shall be open to the public, except when the committee determines that the matters to be discussed, or the testimony to be taken, relates to a matter of national security, relates solely to the internal management of such committee, may tend to reflect adversely on the character or reputation of the witness or any other individual, or may divulge matters required to be kept confidential under other provisions of law."

SEC. 3. A transcript shall promptly be made of each meeting which is open to the public pursuant to the provisions of this Act and copies of such transcript shall promptly be made available for public inspections and copying.

SEC. 4. The districts courts of the United States shall have original jurisdiction of actions to render declaratory judgments or to enforce, by injunction or otherwise, the first Section of this Act and Section 3 insofar as it relates to that Section. Such actions may be brought by any person in the district where such person resides, or has his principal place of business, or where the agency whose action is complained of, resides.

SEC. 5. *Definitions.* For the purpose of this Act—

(1) "government agency" means each authority of the Government of the United States (whether or not it is within or subject to review by another government agency) having more than one member, but does not include—

(a) the Congress

(b) the courts of the United States

(c) military authorities

(2) "person" included an individual partnership, corporation, association, a public or private organization other than an agency.

SEC. 6. his Act shall take effect on the 90th day after the date of its enactment.

Mr. CHILES. Mr. President, the bill can be easily summarized.

Section 1 requires all meetings of Government agencies at which official action is taken, considered, or discussed to be open to the public, with certain exceptions. Exceptions would be in matters relating to national defense and security or any matters required by statute to be kept confidential; meetings related to an agency's internal management; and disciplinary proceedings which could adversly affect the reputation of an individual. This section would also require agencies to adopt procedures for providing the public with advance notice of meetings.

Section 2 requires that meetings of congressional committees shall be open to the public, with exceptions similar to those cited for meetings of Government agencies.

Section 3 requires that a transcript, available to the public, be made of meetings of Government agencies and congressional committees.

Section 4 provides for court enforcement of the open meeting requirement for Government agencies upon suit brought "by any person."

Section 5 defines agencies referred to in the act as all multimember Federal authorities other than the courts, Congress, or military authorities. This section also broadly defines the "person" who may seek court enforcement of the act's provisions.

Section 6 provides that the act shall be effective 90 days after enactment.

I would like to express my indebtedness to Prof. Richard B. Stewart of the Harvard University Law School for his expert counsel in the drafting of this measure.

There is good practical precedent among the States for a Federal open meeting law. I cite the examples of two States where sunshine is particularly abundant and where sunshine laws have been conducive to good government. California was one of the first States to enact an open hearing law; Florida passed a comprehensive "Government-in-the-Sunshine" Act in 1967, and since I was a member of the Florida Legislature at that time, I am especially familiar with it.

As early as 1953, the California Assembly enacted the Brown Act, which makes provision for open public meetings for all local government agencies—but not State government. The California attorney general also ruled that the act applies to legislative bodies of chartered cities. The case that brought forth that ruling was an instructive one, for it held invalid a San Diego city council resolution restricting attendance at "council conferences" by requiring citizens to register for the meetings and to agree to silence. The basis for that ruling is an eloquent statement of the case for sunshine laws:

The right and ability of the people to have free and open access to all meetings of local legislative bodies is vital to the preservation of an informed electorate and constitutes an elemental safeguard to democratic government. The existence of devices, loopholes or subterfuges which tend to "cabin, crib or confine" the public from free access to the meetings and deliberations of their local governmental agencies is contrary to the public policy of this State.

The Brown Act states that all public entities in the State "exist to aid in the conduct of the people's business." It declares all meetings of a local legislative body or agency to be "open and public," with no conditions on attendance by the public. The time and place of regular meetings are to be made known. Special meetings must be formally announced, with adequate notice given to the public and communications media. The law is rightly flexible, granting the right of public bodies to executive sessions, specifically in the case of personnel actions, certain complaint charges and matters affecting the national security. For those interested in basic research on the California Brown Act and its broader relation to the whole freedom of information question, I recommend the article, "Secrecy and the Access to Administrative Records" by Prof. Albert G. Pickerell, and I ask unanimous consent to have Professor Pickerell's article printed at this point in the RECORD.

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

PART V. AGENCIES AND THE PUBLIC: SECRECY AND THE ACCESS TO ADMINISTRATIVE RECORDS

(By Albert G. Pickerell) *

I. THE FEDERAL SCENE

Since 1948 newspaper editors have been expressing anxiety over a "growing tendency" of government officials to suppress public information.[1] In 1950 the American Society of Newspaper Editors authorized its Freedom of Information Committee (which previously had been primarily concerned with reducing barriers to the *international* flow of information) to undertake a general attack on the "undemocratic practice" of news suppression.[2] The chairman of the committee reported a short time later that a "nation-wide and incessant guerrilla warfare was being waged against our right of access to public information."[3] There is "arrogant suppression of news all over the place," he told the 1951 ASNE convention.[4] As a result a concerted campaign has been carried on by several newspaper organizations, especially the ASNE. At least four national associations have set up standing "freedom of information" committees,[5] and similar groups have been formed in many states to fight news suppression on state and local levels.

Numerous protests of withhonding information of legitimate interest to the public have been lodged by these Freedom of Information committees as they sought, by a combination of publicity and legal action, to win broader access to public information. During the first half of 1953, for example, one group processed forty "major" cases, the "majority of which concerned secret government of one kind or another, or outright censorship by autocratic officials."[6]

In 1951 the ASNE commissioned Harold L. Cross, veteran New York newspaper attorney, to continue a preliminary study and to pre-

Footnotes at end of article.

pare a "comprehensive report on customs, laws and court decisions affecting our free access to information whether it is recorded on police blotters or in the fields of the national government." [7] The result was his *The People's Right to Know*, published in 1953, and hailed as a "manual of arms" for newspaper editors.[8]

The practice of news suppression has not been peculiar to any special type of information or limited to any particular branch of government. One California editor has commented: ". . . off-the-record statements by public officials are becoming a growing disease in this country. Because the President of the United States holds off-the-record conferences to supply background information, deputy sheriffs are doing likewise." [9]

Two executive orders (one by President Truman [10] and one by President Eisenhower [11] have been the cause of much criticism, as have the information policies of the Department of Defense and the tight rein on information imposed by Secretary Wilson's directive of March 29, 1955, which permitted release only of material that would "constitute a constructive contribution to the primary mission of the Department of Defense." [12] Numerous other governmental information policies have been strongly protested.[13]

The "freedom of information" campaign reached something of a climax late in 1955 when a special House subcommittee under the chairmanship of Representative John E. Moss of California opened hearings on government information practices. The subcommittee, said Representative Moss, "will not be conducting an investigation but, rather, will be studying a vital problem." [14] As preparation for its task the group in August, 1955, sent a questionnaire to all federal executive and independent agencies.[15] Among other things, the replies revealed some 30 new classifications [16] that had been devised to keep information unrelated to security from being disclosed and apparently to circumvent the Presidential order which had limited classification of information to three defined categories, "top secret," "secret" and "confidential." [17] Hearings were held November 7–10 and concentrated on the Executive branch. A second set of hearings was conducted in January, 1956, centered on the regulatory agencies. Witnesses for the Civil Service Commission particularly drew heavy fire. The commission had replied to the subcommittee questionnaire thusly: "The authority of the Commission to deny access to or to furnish information from its records and files is based on the inherent power of the executive branch of the Government derived from the Constitution. . . ." [18] Both Commisisoner Young and the agency's acting general counsel defended commission rulings that had kept secret such information as the names of eligible candidates for postmaster appointments. They maintained such authority was "inherent" in the Civil Service Act of 1949.[19]

Representative Moss expressed "amazement" that some agencies contended they had an "inherent power" to keep information from the public, describing it as a "fantastically new concept of law." [20] Officials of the agency asserted that they answered all "reasonable" requests for information. They insisted, however, that they alone had the right to judge what was "reasonable." [21] As a result of the hearings, there were indications the committee would take action to recommend changes in federal statutes. The Civil Service Commission has revised its public information regulations. [22]

Cross found the right of inspection on the federal level to be a "rare exception," in contradistinction from the law at state and municipal levels, where the right of inspection is the "general rule." He found there was no enforceable legal right to general inspection of federal non-judicial records, the availability thereof being a matter of official grace, indulgence or discretion.[23] Cross reported he had practiced newspaper law for 35 years without encountering a serious case of refusal of access to public records and proceedings. "Now," he commented in 1951, "scarcely a week goes by without a new refusal. The last five years brought more newspaper lawsuits to open records than in any previous twenty-five years." [24]

It is difficult to conceive of any branch of the law that does not require frequent examination of such public documents as police records, vital statistics, tax assessments, motor vehicle records and various other materials to which newspaper organizations have been seeking the right of access. As Justice Botein has pointed out: [25]

"The information stored in public records which the news reporter wants to inspect for possible publication may be the same information which the lawyer desires to inspect for possible use in a trial, in the preparation of legal documents, or in the myriad of functions he performs for clients."

The complexities and bigness of government alone make it increasingly difficult for the newsman to dig out information, especially information the public official is reluctant to disclose. As an indication of the problem facing the editor in his quest for "all the news that's fit to print," in San Francisco alone there are some 200 federal agency offices.[26]

The (London) *Economist* thus pictured a British senior civil servant if he had attended opening sessions of the Moss subcommittee hearings: ". . . he would have returned to Whitehall thankfully, like an explorer escaped from the Jibaro head-hunters." [27] The observations of the *Economist* illustrate sharply basic differences in the United States and England as to the relationship between public officials and the press, as well as differences in status of the contemporary press. Commented the *Economist;* [28]

"Nobody ventured to suggest that these self-elected guardians of the public interest were already getting more information from government departments than were the newspapermen of any other country in the world. Nobody seriously challenged the proposition that it was undemocratic and shameful to deny them more information. As for the idea, widely if not universally entertained in Whitehall, that government officials should be insulated from inquisitive newspapermen by press officers, who should dispense whatever information the department chiefs think fit to give them and no more—that idea was too arrogant and fantastic to be mentioned at all."

Even within the United States there are many varying concepts of "freedom of information." [29] From a practical standpoint, they range from the somewhat idealistic and sometimes over-zealous position of newsmen [30] to the "inherent" powers of suppression claimed by some government officials. According to the charges, the suppression of public information takes many forms and stems from various motives. There is not room here for discussion of all of these. One position is that the barriers are supported principally by public officials who have a basic contempt for the judgment and intellectual capacity of the American people.[31] Another is that censorship is used to cover up administrative mistakes and to prevent embarrassment.[32]

There is evidence that the complexities of governmental affairs and the continuing crises of the cold war have reduced the public's interest in public information and strengthened the idea that security is somehow served by secrecy. The efforts in recent years of newspaper editors to reduce the area of restricted information, says one observer, "may prove to be the necessary pioneer work of men with real vision of a grave national problem." [33] The American Civil Liberties Union published a study on the subject and expressed "rising concern" that government agencies were "narrowing 'the market-place of opinion.'" [34] But there has been little general concern, and newspaper editors themselves, in the opinion of some of their spokesmen, have in some instances not taken sufficient interest in the problem.[35] If the suppression of public information is as "arrogant" and "rampant" as some observers claim, the situation certainly presents a grave threat to the proper functioning of democratic processes.

### II. THE CALIFORNIA PICTURE

In the winter of 1951 the Riverside *Press-Enterprise* learned that two drunk driving arrests had been made by the Riverside police department, the reports of which had been withheld from police records. Thus was the newly organized Freedom of Information committee of the California Newspaper Publishers Association (hereinafter referred to as the CNPA) provided with its first case of alleged news suppression.[36] Since then the CNPA and its Freedom of Information committee have been active in this field, sponsoring legislation and lodging numerous complaints that information of a legitimate interest to the public was being concealed.[37] At the 1953 legislative session two bills dealing with access to public information were passed, both actively supported by the CNPA and the League of California Cities. The first was Assembly Bill 339 which was signed into law as Government Code sections 54950–958 and makes "open public meeting" provisions for all local governmental agencies.[38] The act does not apply to state agencies but, on the basis of a recent opinion of the Attorney General, now appears to apply to legislative bodies of chartered cities.[39] City attorneys of charter cities had previously held both ways on the subject.[40]

Governor Warren objected to the bill's failure to cover state agencies, commenting:[41]

"There isn't any reason at all why we should have a law for local government and then refuse to have the same thing for State government. I personally believe it would be a good thing to have such a law for all branches of government, including the legislature. Some of the worst things that have happened in government stemmed from secrecy. It should be avoided."

The second proposal was Assembly Bill 1160, introduced by Frank Luckel of San Diego as a result of refusal by county health authorities to allow the San Diego *Union* and *Evening Tribune* access to their records. The bill proposed to add a section to the Government Code, reflecting the "intent" of the legislature,[42] and supporters of the bill urged passage because "appellate courts are known to pay close attention to 'intent' whenever a law is challenged." [43] The bill received a pocket veto by Governor Warren, who referred to it as a "cutie" and as merely a statement of policy that did not change existing law. The governor said he vetoed the bill because it was a "pious evasion of responsibility on the part of the Legislature . . . . I believe there is a greater likelihood the Legislature will pass effective legislation if nothing is on the books than if there are a few pious phrases that are not implemented by positive law." [44]

On June 2, 1953, Senator George Miller introduced a resolution to create a special Senate investigating committee on Governmental Organizations.[45] He later announced the group would conduct a study of the availability to the public of official records. Newspaper reporters, editors, and publishers were asked to help the Senate committee by reporting specific instances of refusals or difficulties experienced in attempting to gain

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access to official records of state, county, or city governments.[46]

In January, 1954, the committee posed four questions to some 66 state agencies and boards: [47]

"1. What records in the keeping of your office are by law confidential? Please furnish citations for such decisions.

"2. What other records in your office do you consider as not being open to inspection?

"3. What records in your office are not now confidential which you believe should be made confidential? State reasons.

"4. Are any records now confidential by law which you believe should be open to the public?"

The responses, along with opinions of the attorney general and the legislative counsel on the subject, were published by the committee in May, 1955. The 148-page report contains the full replies received from each agency, together with such exhibits as were presented.[48] The committee held hearings in November, 1955, and Senator Miller has said other hearings would be conducted during 1956, with the expectation that legislation would be recommended to the 1957 session.[49]

Several sections of the codes of California relate to public records and their inspection. Two sections define public writings.[50] Others provide that citizens are entitled to inspection and, upon demand, to certified copies of public writings.[51] These definitions of "public writings" extend well beyond the general common law definitions.[52] The "stark brevity" of the California definitions has left wide scope for judicial interpretations,[53] but actually there have been few cases bearing on these statutes. For the most part those that have been decided have ruled merely whether a particular record falls within the provisions of the statutes and do not lay down any broad general rules that can be followed. Generally there is no single test that may be applied to determine what constitutes a public record.[54] The only language of general applicability in the various California cases is found in *Coldwell v. Board of Public Works* [55] to the effect that "the only means of deciding whether or not a document is a public writing is by determining whether or not it falls within the statutory definition." [55a]

On the surface California's statutes defining public records and the right of inspection appear to be "liberal." The general statutory provisions seem clearly to indicate the legislature intended that only those matters specifically made confidential by law should be excepted from public view.[56] In passing Assembly Bill 339 in 1953 the legislature declared the following as a matter of policy: [57]

"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in their delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

And in Assembly Bill 1160, the legislature declared as its "intent" that "all official records, reports, or other official documents" should be available to the public for inspection, "except as otherwise provided by law." [58]

The phrase "and other matters" in Political Code section 1227 [59] would seem to imply that the legislature intended to extend the right of inspection to more than just "public records." And the courts have been "liberal" in their interpretation of the phrase "other matters." In *Mushet v. Department of Public Service*,[60] it was held that the papers of a municipal utility were not "strictly speaking, public records," but access was granted on the ground they were "other matters" of a general public concern. In *Coldwell v. Board of Public Works* [61] the court held that a private person had the right to inspect the preliminary estimates and plans prepared in the office of the city engineer of the City and County of San Francisco, in connection with the Hetch-Hetchy project, even though the documents were memoranda prepared for use in the office and had not been formally adopted as the official acts of the engineer. Inspection was granted on the basis they were "other matters" in which the "whole public" had an interest. In both cases the petitioner gained access to documents sought, and both reflect a liberal point of view in respect to the public's right of inspection.[62]

In reaching its conclusion in *Mushet v. Department of Public Service* that the documents "strictly speaking" were not public writings, the court adopted a policy of consolidating the statutes, resulting in a restrictive definition of "public writings." According to section 1888 of the Code of Civil Procedure public writings are the "written acts or records of the acts" of public bodies or officials. Section 1894 then divides public writings into four classes: "law, judicial records, other official documents, and public records, kept in this state, of private writings." Consolidating the language of the two statutes, the court held in the *Mushet* case that papers in question must not only be "official documents" but must also be the "written acts or records of the acts" of public officials or bodies.[63] In other words, it is not enough that they be written acts or records of acts *or* official documents—they must be *both*.

This "doctrine of exclusion" has been consistently applied by the attorney general in opinions rendered for various state agencies.[64] And the Miller committee survey shows these opinions have been widely relied on by many agencies other than those for whom they were prepared. It is not difficult to see how this "doctrine" could have been conceived. Section 1894, certainly has little meaning standing by itself. However, one could question whether the office of the attorney general was *required* to construe the public records statutes in the restricted manner in which it has. But conceding the attorney general felt constrained by the dicta of the *Mushet* and *Coldwell* cases to follow the *Mushet* "doctrine of exclusion" there appears to have been no *requirement* for the attorney general to have interpreted "records of the acts" so narrowly.

This is illustated in an opinion prepared in response to an inquiry from the County Council of San Bernardino raising the question of whether lists of names and addresses of students attending a public high school were "public writings" within the meaning of the statutes. The question concerned lists of pupils maintained by school officials in preparation of reports required under the Education Code and also to serve as aids in school administration. The attorney general applying the "doctrine of exclusion" of the *Mushet* case, concluded the "records in question are not public records . . ." [65] It is significant to note that the attorney general refers to the lists as "records." The preparation of such lists—for whatever purpose—certainly is an *act*. The attorney general still could have applied the *Mushet* analysis and found such records to be "official documents" that were also "records of acts" and hence to be "public writings."

Also it is to be noted that subdivision 3 of section 1894 of the Code of Civil Procedure refers to "other official *documents*," which could be interpreted to imply that the legislature intended public writings to include more than "written acts or records of acts." Otherwise, why not "other official *records*," thus making it consistent with subdivision 2—"judicial records"?

The right of inspection is not an absolute or unqualified right, and even though a document is a public record it is not automatically open to inspection. Section 1892 of the Code of Civil Procedure provides every citizen has a right to inspect any public writing "except as otherwise expressly provided by statute," and section 1227 of the Government Code permits inspection of public records and other matters "except as otherwise provided." For reasons of public policy, the legislature in many instances has specifically declared certain records to be confidential or not open to inspection. Also there are particular relationships which the legislature has declared should be protected and preserved inviolate. Section 1881(5) of the Code of Civil Procedure provides: "A public officer cannot be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure."

On several occasions the courts have recognized section 1881(5) as an exception to the public records statutes.[66] Also it has been held that public policy demands certain types of communications and documents be treated as confidential even though they are in the custody of a public officer and are of a public nature.[67] In the exercise of their investigative powers, government agencies frequently find it necessary or convenient to solicit data that would be available only with the understanding it will be kept confidential and not indiscriminately disclosed. Undoubtedly there are situations in which it is in the public interest that a public official and the integrity of his information be protected. The statute would clearly seem to place the burden on the custodian of the records to demonstrate that "the public interest would suffer by the disclosure," to use the words of section 1881(5).

It appears there should be some sort of control over the public official in the exercise of this privilege, but this presents a difficult problem. As Hocking has commented, "We say recklessly that [readers or listeners] have a 'right to know'; yet it is a right which they are helpless to claim, for they do not know that they have a right to know what as yet they do not know." [68]

The Miller committee survey shows that public officials in many instances have assumed a good deal of authority to withhold information and that confusion and inconsistencies exist among the various agencies. Several of them comment on the uncertainty of the law and declare that legislation to clarify the situation would be helpful.[69] Some agencies regard the information submitted in application for a license and the grades made in an examination to be confidential.[70] Others do not.[71] The Structural Pest Control Board takes the interesting position that since sections of the Structural Pest Control Act list certain documents as public records, "it would, therefore, follow, that those not named would be confidential" [72] The Miller committee survey further noted: [73]

"While the newspapermen, because they are expected by the public to report on public affairs, encounter many difficulties in carrying out this mission, theirs is not nearly so difficult as is the lot of the individual taxpayer. . . . For newspapermen, wise in the ways of obtaining facts, usually manage to ferret out the information they seek despite the obstacles encountered."

But the public's right to information about public affairs should not be based on such a haphazard, illogical process. It should *not* be left to official grace, indulgence or discretion. Public policy calls for some speedy objective process by which denials of access may be tested by legal standards clearer and more uniform than now exist. The right should be subject only to those limitations that are clearly and urgently in the public interest.[74] The determination of just where this public interest lies is, in practice, a difficult problem. Newspaper editors themselves are not in agreement.[75]

The argument is made that the public interest is best served "if ideas can be fully and freely exchanged." [76] Obviously it is not in the

Footnotes at end of article.

public interest that every piece of correspondence of every public official be open to indiscriminate inspection. But in a democratic society that public should be entitled to know the considerations involved in public affairs decisions, as well as the results.[77]

Naturally, no reasonable person wants access to information that legitimately should be concealed in the interest of national security and defense, and would not claim right of inspection of records pertaining to state secrets, diplomatic communications, confidential military matters, and the like. Also, it is recognized there are cases in which public policy demands that certain proceedings and papers be kept from public view—ranging, for example, from some personnel records to deliberations of the Supreme Court. Should the public be told *all* (the position of the overzealous "right to know" advocates), or what some person in authority thinks is wise or sufficient for them to know (the position of officials who claim an *inherent* power to suppress)? The answer, of course, is some place in between. Such decisions should be by legislative determination and not left loosely to the custodian of the records.

Absolutes are neither desirable nor attainable, and, as Cross points out, no perfect law is to be expected.[78] The situation in California is considerably better than that found on the federal level and in many states. But still, on the basis of existing cases and opinions of the attorney general, one is unable to determine with any degree of certainty what are public records and what are not. In any "tight" cases that might now arise, California statutes as presently interpreted do not appear to give adequate recognition to the importance of the market-place of public opinion in a free society. As Macaulay said, ". . . nothing could be more irrational than to give power and not give the knowledge without which there is the greatest risk that power will be abused." [79]

The degree of confusion and inconsistency evidenced by agency responses to the Miller committee alone indicates clearly the need for legislative action. There is obvious need for a new and more positive law. One approach might be to declare *everything*, in effect, to be a public writing and open to inspection, uness expressly excepted by statute.[80] This would require a careful study to determine just what specific documents the legislature desired to declare by law to be confidential. In instances in which the legislature in the past has desired that government documents be withheld from public inspection because of the nature of the records, the legislature has known how to legislate to that end; in fact, it has done on at least twenty-four occasions.[81]

It is true such procedure may result in oversights and omissions, producing occasional "hard" cases for the courts. But that is the lesser evil than a continued tendency to narrow the information available to the citizen concerning the operation of his government.

FOOTNOTES

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[1] See, *e.g.*, proceedings of the annual convention of the American Society of Newspaper Editors in PROBLEMS OF JOURNALISM 1948 150–51, 168–69. "Our responsibility lies in the domestic field as well as in the international field. . . ." Basil Walters, Bulletin of the ASNE, Oct. 1, 1948, p. 1.

[2] The problem of course is not a new one. "Every newspaperman is used to a nominal tussle over news that reflects some discredit on elected or employed public officials. . . . This is a conflict as old as government and news of government." James S. Pope, in CROSS, THE PEOPLE'S RIGHT TO KNOW xv (1953).

[3] Editor & Publisher, Jan. 27, 1951, p. 59.

[4] ASNE, PROBLEMS OF JOURNALISM 1951, p. 171.

[5] For reports of the ASNE see annual volumes of PROBLEMS OF JOURNALISM and the monthly Bulletin of the ASNE. Also taking part in the campaign have been the American Newspaper Publishers Association, the Associated Press Managing Editors Association (see annual volumes of the APME Red Book), Sigma Delta Chi, national journalistic fraternity (see its monthly publication, The Quill), and the National Editorial Association (see its monthly publication, The National Publisher).

[6] Newton, *A Growing Threat to Democracy: Secrecy in Government*, The Quill, Sept. 1953, p. 7. Eighteen formal protests were lodged; they included secret meetings of the Alameda, California, city council and a secret conference on ethical standards at the University of California. *Ibid.* See also *Report of Advancement of Freedom of Information Committee*, The Quill, Dec. 1954, p. 7

[7] CROSS, THE PEOPLE'S RIGHT TO KNOW xv (1953).

[8] See also its 1953 CUM. SUPP. No. 1 (1954). For an illustration of the use of Cross' book to gain broader access to public information see Romm. *Opening Up the City Hall*, Nieman Reports, Jan. 1954, p. 8.

[9] The Publishers' Auxiliary, Feb. 16, 1952, p. 1.

[10] Exec. Order No. 10290, 16 FED. REG. 9795 (1951).

[11] Exec. Order No. 10501, 18 FED. REG. 7049 (1953). "We have found news somewhat harder to dig out under the present administration," W. L. Beale, Jr., chief of Washington bureau, Associated Press, quoted in RAYMOND, THE PEOPLE'S RIGHT TO KNOW 48 (1955).

[12] Reprinted in 101 CONG. REC. 11325 (daily ed. Aug. 3, 1955). See also New York Times, March 31, 1955, pp. 1, 16; April 7, 1955, p. 15; April 13, 1955, pp. 1, 11; Time Magazine, May 9, 1955, pp. 78–79; and Henkin, "Pentagon News Policies Irk U.S. Press," I.P.I. Report (International Press Institute, Zurich), Aug. 1955, p. 1.

[13] These include activities of the Office of Strategic Information in the Commerce Department; the Commerce Department's control of the export of technical data; an "excessive" number of secret meetings by congressional committees; and information policies of the Atomic Energy Commission. See, *e.g.*, reports of the ASNE subcommittee on Atomic Information in ASNE, PROBLEMS OF JOURNALISM 1952 and 1953 and an article by its chairman, Block, *The Fetish of Atomic Secrecy*, Harper's Magazine, Aug. 1953, p. 31. For general discussion by an edition of public information problems and restrictions see statement by Wiggins in *Hearings before the Subcommittee on Reorganization of the Senate Committee on Government Operations*, 84th Cong., 1st Sess., pp. 682–701 (1955). This statement also appears in ASNE, PROBLEMS OF JOURNALISM 1955, pp. 272–79. One of the most severely criticized administration policies has been the Eisenhower-to-Wilson letter of May 17, 1954, issued during the Army-McCarthy hearings, described by one newsman as "the greatest threat to freedom of the press in our time." Mollenhoff, *Is the Press Alert to a Dangerous President On Executive Secrecy?*, The Quill, Dec. 1955, p. 9. See also Mollenhoff, *A Precedent the Press Should Examine*, Nieman Reports, Jan. 1956, p. 28. "Never has so broad a power of executive right to withhold been asserted." Cross, Editor & Publisher, No. 26, 1955, p. 72.

[14] 101 CONG. REC. A6213 (daily ed. Aug. 25, 1955).

[15] The four-page questionnaire and the "unevaluated" replies from the agencies, along with the bulk of exhibits, has been issued as a 552-page committee print, *Replies from Federal Agencies to Questionnaire Submitted by the Special Subcommittee on Government Information of the House Committee on Government Operations*, 84th Cong., 1st Sess. (1955).

[16] For example, "for administrative use only," "for official distribution," "for staff use only," "administratively confidential," etc.

[17] Exec. Order No. 10501, 18 FED. REG. 7049 (1953).

[18] *Replies from Federal Agencies to Questionnaire Submitted by the Special Subcommittee on Government Information of the House Committee on Government Operations*, 84th Cong., 1st Sess. 83 (1955).

[19] New York Times, Nov. 9, 1955, p. 39.

[20] Editor & Publisher, Nov. 19, 1955, p. 13. "We are amazed to learn that Congressman John E. Moss is 'amazed' that some government agencies believe they have an 'inherent' power to control information. This perverted notion that elected or appointed officials can decide what items of non-security information should be released to the public has been the root cause of news suppression at all levels of government. It has provided the basic reason for the Moss Committee investigation." Editor & Publisher, Nov. 26, 1955, p. 6.

[21] New York Times, Nov. 9, 1955, p. 39.

[22] Editor & Publisher, Jan. 28, 1955, p. 46; New York Times, Jan. 21, 1956, p. 8. In its opening hearings the committee "took a giant step toward the goal of clearing the channels of communications between Federaldom and the public." Marder, *Freedom of Information—a Giant Step Forward*, Bulletin of the ASNE, Dec 1, 1955, p. 1. See also Editor & Publisher, Nov. 12, 1955, p. 10 and Nov. 19, 1955, p. 13; and Freedom of Information News Digest, Feb. 6, 1956 (an occasional, mimeographed publication distributed by the National Editorial Association, 222 N. Michigan Ave., Chicago).

[23] See CROSS, THE PEOPLE'S RIGHT TO KNOW 199–201 (1953) for listing of "several factors" (including five "legal doctrines") held responsible for the "state of the law." He deals in separate chapters with REV. STAT. § 161 (1875), 5 U.S.C. § 22 (1952), and the Administrative Procedure Act, 60 STAT. 243 (1946), 5 U.S.C. §§ 1001–11 (1952). He describes the former as having been "tortured into a barrier against the public interest" and a situation that "cried aloud for change." *Id.* at 222. He considers the latter as "abject failure" as far as making records available is concerned. New York Times, Dec. 18, 1955, p. 69.

[24] Quoted in Pope, *The Suppression of News*, Atlantic Monthly, July 1951, p. 51.

[25] Botein, Book Review, 67 HARV. L. REV. 920 (1954).

[26] San Francisco Chronicle, July 3, 1955, p. 6.

[27] The Economist (London), Nov. 19, 1955, p. 653.

[28] *Ibid.* But see Griffith, *The Crichel Down Affair*, 18 MODERN L. REV. 557, 568–69 (1955).

[29] For discussion of distinguishable theories of functions and purpose of mass media see, *e.g.*, contributions by Siebert and Peterson in MASS MEDIA AND EDUCATION 13–53 (Henry ed. 1954); see also SIEBERT, PETERSON AND SCHRAMM, THE FOUR THEORIES OF THE PRESS (unpublished manuscript in Stanford University library, Division of Communication and Journalism, 1955); and HOCKING, FREEDOM OF THE PRESS (1947).

[30] *E.g.*, "A free people cannot properly exercise their franchise unless they know the facts about the public business. And there can be no withholding of the facts about the public business on *any* score." Isaacs, The APME Red Book 1954, p. 187. *But cf.*, "I am beginning to wonder whether the initials ASNE do not really stand for 'American Society for No-restrictions Enywhere.' So vast is the flood of rhetoric and report about Freedom of Information, so frequent and so ferocious are the pronouncements of editors and publishers on the subject, that one is

sometimes impelled to seek out a Noah to show the way into an ark of dry silence away from the deluge of declaration." Markel, Bulletin of the ASNE, March 1, 1956, p. 7. "Moderation, in my opinion, will accomplish much more for freedom of information than an evangelical campaign making extreme demands." Mathews, Bulletin of the ASNE, Nov. 1, 1954, pp. 3, 6.

[31] See, *e.g.*, The APME Red Book 1954, p. 190, and Wiggins, *A Failing Faith in the People as a Cause of Official Secrecy*, Bulletin of the ASNE, Oct. 1, 1954, p. 9.

[32] "In sum, secrecy may be a device to conceal ignorance and error as well as knowledge and success." GELLHORN, SECURITY, LOYALTY AND SCIENCE 50 (1950).

[33] RAYMOND, THE PEOPLE'S RIGHT TO KNOW 45 (1955).

[34] *Id.* at 3. This ACLU report concludes that the "abuses of power in Federal agencies to suppress information of value and interest to the nation were never so rampant as now," *Id.* at 45. For another general report on the subject see Stone, *Secrecy in Government*, 24 EDITORIAL RESEARCH REPORTS 895–912 (1955).

[35] See *e.g.*, Report of Sigma Delta Chi committee, The Quill, Dec. 1954, pp. 7, 8.

[36] HAFNER, CALIFORNIA AND "THE RIGHT TO KNOW' (unpublished master's thesis in University of California Library, Berkeley, 1955). See also Berkeley Gazette, Nov. 27, 1951, p. 3.

[37] For examples of these protests see files of The California Publisher, monthly publication of the California Newspaper Publishers Association.

[38] Assembly Bill 339 was introduced by Ralph M. Brown, chairman of the Assembly Interim Committee on Judiciary. The bill resulted from a ten-part series on "Your Secret Government" by Michael Harris that appeared daily in the San Francisco Chronicle from May 25 to June 4, 1952. For a report of hearings on Assembly Bill 339 in September 1952, see Progress Report to the Legislature by Assembly Interim Committee on Judiciary, Part I, *The Suppression of Public Information by Government Agencies, Commissions, Boards, Councils and Officials*, Part I at 13–63 (1953). For an account of the origins of Assembly Bill 339 and its passage through the legislature see HAFNER, CALIFORNIA AND 'THE RIGHT TO KNOW' (unpublished master's thesis in University of California Library, Berkeley, 1955).

[39] 27 OPS. CAL. ATT'Y GEN. 123 (No. 56/40, Mimeographed, March 2, 1956), holding invalid a San Diego city council resolution restricting attendance at "council conferences" by requiring citizens to register and further to agree to remain silent unless requested so to speak. "The right and ability of the people to have free and open access to all meetings of local legislative bodies is vital to the preservation of an informed electorate and constitutes an elemental safeguard to democratic government. The existence of devices, loopholes or subterfuges which tend to 'cabin, crib or confine' the public from free access to the meetings and deliberations of their local governmental agencies is contrary to the public policy of this State." *Id.* at 131.

[40] See the correspondence in the office of League of California Cities, Berkeley.

[41] San Francisco Chronicle, July 26, 1953, p. 14. A bill that would have applied similar "open meeting" requirements to all state agencies was introduced in the 1955 legislature by Sheridan N. Hegland. The bill, Assembly Bill 18, was never reported out of the Committee on Governmental Efficiency and Economy.

[42] Assembly Bill 1160 would have added the following sections to the Government Code: "Except as otherwise provided by law, all official records, reports, or other official documents, or any state agency, or any county, city and county, city or of any district, or any public agency of any kind, or of any of the officers and employees thereof, shall be available to the public for inspection during business hours, and any persons shall be permitted to inspect such official records, reports, or other official documents."

[43] The California Publisher, Aug. 1953, p. 3.

[44] San Francisco Chronicle, July 26, 1953, p. 14.

[45] Sen. Res. No. 157 in 3 Journal of the Senate 3484 (1953 reg. sess.), authorizing and directing the committee "to ascertain, study and analyze all facts relating to any department or agency of state or local government in California, including (but not limited to) its organization, functions and personnel and administration; the evaluation of all phases of its program and the relations of such agencies or departments to newspapers, radio and television in carrying out such program . . . ."

[46] The California Publisher, Dec. 1953, p. 12.

[47] Calif. Senate Special Committee on Governmental Administration, *Public Records Survey* (Partial Report, May 1955). This report will hereinafter be cited as *Public Records Survey*.

[48] *Ibid.*

[49] Letter from Senator George Miller, to writer, September 30, 1955: "It is our hope . . . we will be able to develop some better law on the subject to remove the areas of doubt which now exist."

[50] "Public writings" are defined in CAL. CODE CIV. PROC. § 1888 as follows: "Public writings are: 1. The written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this State, of the United States, of a sister State, or of a foreign country; 2. Public records, kept in this State, of private writings."

CAL. CODE CIV. PROC. § 1894 provides: "Public writings are divided into four classes: 1. Laws; 2. Judicial records; 3. Other official documents; 4. Public records, kept in this State, of private writings."

[51] CAL. GOVT. CODE § 1227 provides: "The public records and other matters in the office of any officer, except as otherwise provided, are at all times during office hours open to inspection of any citizen of the State."

And CAL. CODE CIV. PROC. § 1892 provides: "Every citizen has a right to inspect and take a copy of any public writing of this State, except as otherwise expressly provided by statute."

CAL. CODE CIV. PROC. § 1893 states: "Every public officer having the custody of a public writing, which a citizen has a right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing."

[52] The following is a frequently cited common law definition: "A public record is a written memorial made by a public officer. . . . [It] is one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said or done." Amos v. Gunn, 84 Fla. 285, 343, 94 So. 615, 634 (1922).

[53] Cross, in Bulletin of the ASNE, June 1, 1954, p. 7.

[54] The mere fact that a writing is in the custody of a public agency does not make it a public record. Whelan v. Superior Court, 114 Cal. 548, 46 Pac. 468 (1896); Coldwell v. Board of Public Works, 187 Cal. 510, 202 Pac. 879 (1921). A test frequently used by the courts is that "in order that an entry or record of the official acts of a public officer shall be a public record it is not necessary that such record be expressly required by law to be kept, but it is sufficient if it be necessary or convenient to the discharge of his official duty." People v. Tomalty, 14 Cal. App. 224, 231, 111 Pac. 513, 515 (1910). See also People v. Pearson, 111 Cal. App. 2d 9, 244 P. 2d 35 (1952).

[55] 187 Cal. 510, 202 Pac. 879 (1921).

[55a] *Id.* at 518, 202 Pac. at 882.

[56] Consider, *e.g.*, instructions by the governor in a letter by his departmental secretary to all department heads: "[T]he Governor [has] instructed me to notify the Department of Public Health that any report it prepares should be made available to the press unless there is a specific prohibition in law against it. This may be taken as policy by all departments." Letter from M. F. Small, Departmental Secretary to All Department Heads, Jan. 7, 1952, in *Public Records Survey, supra* note 47 at 140. The Controller replied to the Miller committee inquiry: "Unless made confidential by law, we regard all records in the custody of this office as being open to public inspection" *Id.* at 77.

[57] CAL. GOVT. CODE § 1227.

[58] This was the bill which received a pocket veto by Governor Warren. See note 42 *supra*.

[59] Section 1227 provides: "The public records *and other matters* in the office of any officer, except as otherwise provided, are at all times during office hours open to inspection of any citizen of this state." (Emphasis added.)

[60] 35 Cal. App. 630, 170 Pac. 653 (1917).

[61] 187 Cal. 510, 202 Pac. 879 (1921).

[62] A student writer hailed the *Coldwell* case thus: "This case establishes the sound rule that a citizen or organization of citizens may inspect all data concerning any activity of the state or municipality irrespective of their character as public records . . . . The section of the Code of Civil Procedure [section 1892] which opens all public writings to inspection has been made mere surplusage by this decision. Everything covered by it and much additional material is accessible under the Political Code . . . ." Note, 10 CALIF. L. REV. 346, 347–48 (1922).

[63] 35 Cal. App. 630, 170 Pac. 653 (1917).

[64] The "doctrine of exclusion" as expressed in the *Mushet* case "has been consistently followed by the courts and this office in its determination of what are and what are not public or private writings." 18 OPS. CAL. ATT'Y GEN. 231, 235 (1950). See also OPS. CAL. ATT'Y. GEN. 41 (1948), 13 OPS. CAL. ATT'Y. GEN. ATT'Y GEN. 180 (1949), 16 OPS. CAL. ATT'Y GEN. 163 (1950).

[65] 16 OPS. CAL. ATT'Y. GEN. 163, 164 (1950). Cross has warned newspaper editors to avoid "routine, indiscriminate requests" for opinions of attorneys general. "These men by their official position are advocates of those very office holders whom you are seeking to force to permit that access." The Publisher's Auxiliary, Feb. 16, 1954, p. 1. See also Editor & Publisher, April 25, 1953, p. 106. "Opinions of the attorney general are not of controlling authority, but in the light of the relation of the office to the general government, they are regarded as having a quasijudicial character and are accorded substantial weight by the courts." 6 CAL. JUR.2d 97 (1952).

[66] San Francisco v. Superior Court, 38 Cal.2d 156, 238 P.2d 581 (1951); Coldwell v. Board of Public Works, 187 Cal. 510, 202 Pac. 879 (1921).

[67] Runyon v. Board of Prison Terms and Paroles, 26 Cal. App.2d 183, 79 P.2d 101 (1938).

[68] HOCKING, FREEDOM OF THE PRESS 170–71 (1947).

[69] *E.g.*, The Department of Public Works states: "Passage of legislation to remove this uncertainty [as to the confidentiality of matters involved in prospective or pending litigation] would be highly desirable." *Public Record Survey, supra* note 47 at 136.

[70] *E.g.*, Board of Optometry, *id.* at 127, and Board of Architectural Examiners, *id.* at 117.

[71] *E.g.*, Board of Medical Examiners, *id.* at 125.

[72] *Id.* at 128. The Board of Chiropractic Examiners takes a similar view, *id.* at 118.

[73] *Public Records Survey, supra* note 47 at 7. "Newspapers generally, though with numerous exceptions, enjoy more and better access to these sources of news by means of the

sugar of voluntary processes than they could hope to get by the vinegar of compulsion under the present state of the law." CROSS, THE PEOPLE'S RIGHT TO KNOW 5 (1953).

[74] "It is not enough merely to recognize the important political justification for freedom of information. Citizens of a self-governing society must possess the legal right to examine and investigate the conduct of its affairs, subject only to those limitations imposed by the cost urgent public necessity. This right must be elevated to a position of highest sanctity if it is to constitute an effective bulwark against unresponsive leadership." Note, *Access to Official Information: a Neglected Constitutional Right*, 27 IND. L.J. 209, 212 (1952).

[75] See differing points of view expressed by Mathews, Newton and Wiggins, "How Best to Fight Official Secrety," Bulletin of the ASNE, Nov. 1, 1954, p. 3.

[76] Peterson, *The Legislatures and the Press*, 27 State Government 223 (Nov. 1954). "Too often the members of the press assume that public servants, as a group, are not entitled to confidence with respect to their conscientious endeavor to discharge their duties honorably." *Id.* at 224.

[77] *But cf.*, "Only documents which present ultimate actions should be accessible to the public. Those which are merely part of the preliminary steps by which the conclusion was reached should become public only in the discretion of the particular agency." Yankwich, Book Review, 48 Nw. U.L. REV. 527, 530 (1953).

[78] Cross, in Bulletin of the ASNE, March 1, 1955, pp. 9, 10.

[79] 4 MACAULAY, HISTORY OF ENGLAND 429 (Harper ed. 1879).

[80] The present statutory definition of "public writings" *could* be interpreted to do this. Public writings are "written acts or records of the acts" of official bodies or public officers (CAL. CODE CIV. PROC. § 1888). Is not a letter a "written act or record of the act"—the *act* of communicating? See LA. REV. STAT. § 44:1 (1950) for a broad, general definition of public records.

[81] See Opinion of Legislative Counsel No. 110, July 21, 1953, in *Public Records Survey, supra* note 47 at 17, for list of twenty-four statutes declaring documents confidential. "In general the statutes declaring certain documents confidential are indexed only by the subject matter. Consequently, a complete list of such statutes cannot be prepared without a careful examination of all the laws of the State." *Ibid.* A survey of New Jersey statutes discloses sixty-seven known statutes that classify certain documents as "public records" and/or "records open to public inspection." YOUNG, PUBLIC RECORDS IN NEW JERSEY (Rutgers University Press Research Survey Study No. 9, 1955).

Mr. CHILES. Mr. President, the Florida Sunshine Act had a tortuous history. It was introduced in every regular session of the Florida Legislature from 1961 until its passage 6 years later. Five other States—Arkansas, Indiana, Nebraska, New Jersey, New Mexico—enacted open-meeting measures while the Florida law was being debated. State legislators and the Florida media shared a concern over increasing closed meetings and behind-the-scenes government combined to alert Floridians to the dangers of secret government. In writing of the Florida law, one commentator said about the origins of this new public concern:

The increased demands for open government in the United States since World War II seem to have had no specific origin, but an aversion to undue centralization and irresponsible government revealed itself in such political issues as reapportionment and home rule. The emergence of an affluent and better educated society whose attention focused on sophisticated issues strengthened the demands for political responsibility. The increased impact of mass media on society played an important role in directing public attention to inadequacies and abuses of government. Whatever its source, the public's urge to participate more fully in legislative decisions was evident.

The forces necessary for the passage of a sunshine law in Florida finally came together in 1967. The law is brief and simple, saying that all meetings of governmental bodies are open to the public at all times. No resolutions or actions of such bodies are binding unless they are made at such an open meeting. Minutes of such meetings are to be recorded and open to public inspection, and violators of the act are charged with a misdemeanor and specified penalties.

Experience under the sunshine law has shown that the open meeting principle does not hamper public business operations and increases public confidence in government. I functioned under Florida's law for 3 years in the Senate and became totally convinced that the lawmaking process was not inhibited or damaged. Closed doors are not necessary to sound resolution of conflicting views and interests.

A steady criticism of the sunshine law was that requiring open meetings would only generate secret preconference agreements which would be formally ratified at the public meeting. True, this was tried by some Florida officials, but the Florida courts have since made clear in a number of decisions that the sunshine law's open-door rule applied to all meetings dealing with the public's business. For instance, the Supreme Court if Florida, in Board of Public Instruction against Doran 1969, ruled that the "entire decision making process" of government is subject to the act, not just "formal meetings" or voting sessions. For further information, I offer an annotated report on the law by Robert E. Greenberg, research assistant to Prof. L. Harold Levinson of the University of Florida College of Law and ask unanimous consent that the report be printed in the RECORD.

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

AN ANNOTATED HISTORY OF FLORIDA'S "SUNSHINE LAW"

(By Robert E. Greenberg)

THE BEGINNING

On April 12, 1961, Senator Cliff Herrell of Miami introduced a bill to ban secret meetings by governmental agencies.[1] It heralded Florida's first attempt to replace "molehill government" with "government in the sunshine."

Herrell's bill carried no penalties for officials who conducted public business in private.[2] The proposed law provided that "no administrative body of the state, a county, district or city shall hold meetings which are closed to the public." [3] The prohibition applied to informal gatherings, as well as formal, if official business was the subject of the meeting. Meetings concerned with confidential investigations, merit examinations, unsubstantiated charges against personnel, land acquisitions where premature disclosure would increase prices and state secrets would be exempt.[4]

A similar proposal by Senator J. Emory Cross [5] of Gainesville included a penalty for violation of the open meeting requirement.[6] This same bill, when introduced in 1967, eventually became § 286.011, Florida Statutes, or the government-in-the-Sunshine Law.[7] After its introduction in 1961, the issue died in committee. The same fate awaited it for five more years. One newspaper characterized the vote as ". . . wise cracking, laughing . . ." at Floridians, denying the people public meetings.[8]

State Attorney General Richard W. Ervin favored and appeared on behalf of the proposed legislation. It was his hope to create some sort of "honor system" to provide a rule of conduct which the cabinet, county commissions, and state agencies could follow.[9] "I believe this bill would create more confidence in government."[10] Though private meetings are "more expeditious," Ervin felt that secrecy caused more errors in judgment than public meetings.[11] "Where you know what you say and do is going to be put down," public officials are inclined to be more cautious.[12]

The success of the embryonic Sunshine Law may well have been caused by the federal court decision requiring new elections in accord with one man, one vote reapportionment, to balance the urban-rural percentage that had for so many years been tipped against the more liberal cities. One could say that when the "porchoppers" lost control of the Legislature, Sunshine's passage was inevitable.

Fortuitously, the Senate chamber was then engaged in a debate over "executive sessions" and their abuses. The media had been aroused when one of their number refused to leave one of these sessions and was forcibly ejected.[13]

GOVERNMENT-IN-THE SUNSHINE: APPENDIX A

On April 13, 1967, S.B. 9, later to become § 286.011, Florida Statutes, was placed on the Senate calendar, the first time in history such a measure survived committee politics.[14] "The public's business should be conducted in public; . . . this won't completely stop secret huddles but it will require that discretion be used." [15]

Two days later the bill was passed by the Senate and sent to the House [16] where three amendments were offered. The Senate agreed to one amendment vesting the Circuit Courts of the state with injunctive powers to prevent future violations, and rejected two others exempting personnel and other secret matters from the purview of the law.[17]

Perhaps the best account of the drama on the floor appeared in a Tampa newspaper article:[18]

"The government in the sunshine bill whipped back and forth between the two houses of the legislature yesterday like a woman scorned."

The Tampa Tribune reported on June 28, 1967 that Nebraska had that day passed an "open meeting" bill similar to the Florida proposal. "It requires any governing body using public money or recommending such spending to hold meetings open to the public." The media would not forget.

When the government in the sunshine bill finally emerged from a joint House-Senate Committee, it was intact, with the addition of the injunctive remedies now available.[19]

THE FIRST DECISION: APPENDIX B

In 1969, the Dade County Circuit Court issued what amounts to the first reported opinion interpreting the government in the sunshine law, in *Berns v. City of Miami Beach*.[20]

The newspaper publisher, editor, and a reporter of the Miami Beach Sun,[21] filed suit charging the defendant city and its councilmen with holding secret meetings in violation of the government in the sunshine law.[22]

Footnotes at end of article.

The relief prayed for was an injunction prohibiting the council from holding any more meetings at which official acts were to be taken where the public was excluded.

The complaint alleged that defendants caused the reporter to be arrested and charged with disorderly conduct for refusal to leave the city manager's office; that the reporter's conduct was at all times peaceful and orderly; and that his refusal to leave the office was based solely on the belief that the defendants were contemplating holding a secret meeting; and that he was under instructions from his superiors at the newspaper to cover all of the defendants' meetings, secret or otherwise.[23]

The defendants countered by admitting that they had "gotten together" in private, usually in the city manager's office, and usually an hour or so before the regular city council meetings.[24] The defendants described these pre-meeting meetings as "briefing sessions," "conferences," or "backgrounders." [25] The public and press were neither aware of the times of these sessions nor permitted to be present.[26]

Judge King, in granting a permanent injunction, held that there is no such right to hold such meetings under the Sunshine Statute. "The legislature did not exclude, by subject, certain matters which could be discussed in private. It is the prerogative of the legislature to specify those matters which must be considered as public meetings and if they so elect, specify those matters which may be considered privately." [27]

Notwithstanding the court's finding that voting did in fact take place behind closed doors, the judge felt that, ". . . the purpose of this opening meeting statute would be frustrated if the entire deliberative process could be held behind closed doors only to emerge in public for a show of hands." [28]

With all the clamor that has preceded and followed the enactment of the Sunshine Law, concerning what is covered and what is not, Judge King had no trouble in reading the statute to effect Senator Cross' intent:

"The Florida Legislature has mandated that the public has the right to know without exception, when, how, and why its business is being conducted. Deliberations, sessions, conferences, briefings, expressions, discussions, proposals, recommendations, actions, reports, etc. must be open to the public, *for these are as much official acts as the final vote itself*. The legislative intent is clear. The collective acquisition and exchange of facts by the defendants is required to be made in public. The reasons for and against a choice of a course of action are 'official acts.' Obviously, the vote cannot be had without the prior receipt and exchange of ideas and information." [29] (emphasis added).

In the court's findings the trial judge mentioned, *inter alia*, that the plaintiffs had standing to sue.[30] At this point one must speculate whether the pending criminal charge entered into the judge's decision. Further, it is not made clear whether the Sunshine Law will be deemed a valid defense in the instant case; rather, the judge enjoined the defendants from continuing the prosecution of the plaintiff reporter.

Various other newspapers [31] reported Sunshine violations: In Alachua County the members of the school board met at the home of the acting chairman during the 1968 teacher crisis—the meeting held at night was termed a coffee get-together instead of a meeting. The city commissioners of Stuart, Florida were indicted and suspended by Governor Kirk for holding secret meetings for which they kept no minutes, while they parceled out bonuses to two city employees. In Alachua County in 1969 the State Attorney and the State Auditor refused to divulge any information concerning the fiscal affairs of the Court of Record, then under investigation.

Commenting on the secret investigation of the Court of Record, the Gainesville Sun editorialized: [32] "Our purpose for reading such facts into the record is a simple one. We think government-in-secrecy is a mistake which undermines public confidence. And we don't think such mistakes should be repeated."

TIMES PUBLISHING—FIRST APPELLATE REVIEW: APPENDIX C

*Times Publishing Company* v. *Williams*,[33] represents the first considered opinion of a Florida Appellate Court construing the government in the sunshine law.

The appellants, Times Publishing Company,[34] filed a complaint in the Pinellas County Court alleging that the county school board had held various secret meetings during 1967 and 1968, subsequent to the enactment of the Sunshine Law. At the conclusion of the testimony, the trial judge denied plaintiffs' prayer for an injunction to preclude such future activity.

On appeal, the appellants contended that "injunctive relief is available to the members of the public to enjoin and prohibit the Board of Public Instruction of Pinellas County, Florida, from holding meetings at which official acts are to be taken if the public is to be excluded." [35] Appellants also urged that whenever the board met "informally" or for any purposes relating to the operation of the schools and excluded the public, the board was violating the statute and should likewise be enjoined from holding such secret meetings.

The court found, as a matter of law, that since the act relates to ". . . all meetings . . . at which official acts are to be taken. . .", it is obvious the legislature intended to extend application of the "open meeting" concept so as to bind every board or commision of the state, or of any county or political subdivision over which it has dominion or control.[36]

The Court felt that the Government in the Sunshine Law was a "declaration of public policy, the frustration of which constituted" irreparable injury to the public interest.[37] To effectuate this policy, it was the entire *decisionmaking process* that the legislature intended to affect by the enactment of the statute. "Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern." [38] Every step in the process culminating in a decision, is an indispensable requisite to "formal action"; it therefore follows that each such step constitutes an "official act," an indispensable requisite to "formal action," within the meaning of the act.[39]

In interpreting the intent of the legislature, the Court came to the conclusion that "official acts" cannot be limited to "formal action." The formal act of voting on an issue, or the formal execution of an official document, easily ascertainable from the record, encompassed only a fraction of the real need for the act's creation. "It is how and why the officials *decided* to so act which interests the public." [40] ". . . the legislature could only have meant to include therein the *acts* of *deliberation, discussion,* and *deciding* occurring prior and leading up to the affirmative "formal action" which renders official the final decisions of the governing bodies." [41]

The Court then went on to deal with the question of exceptions to the open meeting mandate of the act; specifically, where personnel matters were involved.

As a matter of law the court held that, "any rights or privileges (here personnel matters) . . . third parties might have must be found elsewhere," and the agencies, etc. governed by the sunshine law could not rely on the rights and privileges of these third parties to disregard and circumvent the provisions of the act.[42]

In keeping with the notion that personnel matters were not legally protected, the Court left open the door for future "real" privileges. "The attorney-client relationship is a unique one under the law. Within this relationship both the attorney and the client enjoy rights and privileges independent of each other.[43] Clearly, the area of the attorney-client relationship which is excepted from the statute is that which would conflict with the ethical obligations of the profession. "It is our conclusion, therefore, that the legislature is fully aware of its constitutional limitations and did not intend . . . to place attorneys in a position of having no alternative but to violate the Canons of Ethics." [44] All other consultations between the public agency and its counsel are precluded, "since the public has waived any privilege of confidentiality it may have by virtue of such relationship." [45]

FORESEEABLE ACTION TEST: APPENDIX D

In *Board of Public Instruction of Broward County* v. *Doran* [46] the Florida Supreme Court held that the statute was sufficiently precise and afforded adequate standards to afford due process to those charged with violations of the law.

As per the previous cases the plaintiffs alleged violations of law, seeking an injunction to prevent such future activity.

In its answer, the defendant school board admitted that members of the board meet for an informal conference at which no official acts were to be taken or were taken, and at which time the public was excluded; thereafter the board would hold "open," public meetings. The affidavits of the several parties indicated that there were several occasions when the board retired to discuss matters in private, though no formal action was taken.[47]

In determining that the statutory language provided adequate guidelines the court adopted a "foreseeable action" test. "The obvious intent was to cover any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board." [48]

In short, the statutory language conveyed a definite warning as to proscribed conduct when measured by common understanding or practices.[49] "Statutes enacted for the public benefit should be interpreted most favorably to the public."

"One purpose of the Sunshine Law was to maintain the faith of the public in governmental agencies. Regardless of their good intentions, these specified boards and commissions, through devious ways, should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made." [50]

In referring to the law as clarified by the Court, one official described it as "that idiot decision." [51] "If it doesn't make liars out of us, it makes connivers out of us." [52]

In retrospect, compliance at first was slow and officials in some areas seemed convinced the law implicitly contained certain exemptions.

The 1969 decision in *Times Publishing Co. v. Williams*, supra,[53] was a significant step in developing an expansive interpretation. Subsequent rulings removed all clouds as to the full impact of the law.[54] A survey by the Associated Press revealed that dramatic changes in the management of government had begun.[55] Among the more striking examples.

(1) The Orange County Commission no longer bodily removes reporters when they are not wanted; [56]

(2) The Broward County School Board (the defendant in the *Doran* case) acquiesced; [57]

(3) The State Cabinet's longstanding practice of breakfast at the Duval Hotel and coffee in the governor's office prior to the regular meeting has collapsed; [58]

(4) The State Board of Regents' frequently-invoked rule of excluding reporters

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when selection of a University president has come up has been ended; [59]

(5) The Miami Beach City Council, famous for its meetings in the back room of Mendelson's Meat Market, is now conducting business in the open; [60]

(6) The Leon County School Board no longer holds secret sessions while discussing integration, and choice of a consultant; [61]

(7) The Lee County School Board no longer closes its doors in attempting to deal with recurring teacher disputes; [62] and

(8) The St. Petersburg City Council has abandoned its long famous "executive session," partly because of the Supreme Court, partly because the three new members elected had all campaigned against the practice.[63]

The radical changes brought by the Sunshine Law seemed to catch many officials in a state of shock and disbelief.

Two schemes designed to circumvent the effects of the newly vitalized law were quickly instituted: (1) two-party meetings and (2) proliferating memoranda.[64] The two-party meeting operated thus: The head of the board would meet with other members of the board, one at a time, on a touchy subject until some consensus had been arrived at, or at least until all the members of the board had been briefed sufficiently on its background, so that no debate need occur at a formal meeting.[65] Utilization of memos, one after the other between commissioners or board members would eventually "type out" an issue.

Perhaps the greatest challenge to the law came in the form of threatened libel suits for damaging and libeling discharged public employees.[66] One Commission Chairman voiced his intent to seek legislative changes in 1970 to exempt personnel, legal matters, and condemnation proceedings from the law's purview.[67]

THE QUASI-JUDICIAL EXCEPTION: APPENDIX E

On January 27, 1970, the First District Court of Appeal admitted an exception to the Government in the Sunshine Law.[68] In *Canney* v. *Bd. of Public Instruction of Alachua County*,[69] petitioner sought review of the board's action in suspending him from school, for failing to comply with a hair styling regulation.

While the main thrust of the opinion was concerned with the fulfillment of due process requirements in administrative proceedings, and the validity of a regulation pursuant to legislative authority in the absence of some judicial determination, the question of Government in the Sunshine arose in connection with the board's recess to reach a decision in the case.[70]

The Court held that the School Board was acting "in a quasi-judicial capacity," and the conference held by it was privileged and did not fall within the purview of the (Sunshine) statute.[71]

For purposes of controlling authority, one district is not bound by the decision of a sister district, and therein lies the basis of conflict *certiorari* to the Florida Supreme Court.[72] The District Court of Appeal for the First District observed that notwithstanding the Second District's dicta to the effect that quasi-judicial funcions were not excepted by the Legislature from the application of said statute,[73] "the Legislature is not empowered, by statute or otherwise, to prescribe the conduct of the internal government of the judicial branch." [74]

The rationale used to reach this result was ambiguous at best. The Court at the outset established that the Legislature may create and vest county school boards with quasi-judicial functions; however, once so endowed with judicial [75] characteristics, the Legislature's prerogatives ceased to exist.[76]

Analyzing the school board's recess to the "conference room of the Supreme Court of Florida" or the "petit jury room" when the deliberations are taking place,[77] the Court held that "neither the public nor the press has any more right to enter into the judicial deliberations of the members of a county school board of public instruction. . ." [78]

RENEWED NOTICE UNNECESSARY: APPENDIX F

In *Shaughnessy v. Metropolitan Dade County*,[79] the Third District Court of Appeal held that a continued matter may be disposed of at a later specified meeting without the necessity of repeating the notice or public hearing requirements of the Sunshine Law.[80]

The Zoning Appeals Board of Dade County, after notice and public hearing, deadlocked over whether to grant an application for a special use permit, and set the matter over to a later specified date, and acted thereon without further notice or public hearing.[81] When the county commission ratified the Board's action, the appellant commenced this action.

The appellant's allegations specified that the Zoning Appeals Board failed to abide by the provisions of the Sunshine Law, in that it failed to give the required public notice about the meeting wherein the second vote was to be taken.[82]

The *per curiam* opinion held that "all official action of the Board as it appears from this record was taken in open public meeting," and did not thus violate either the provisions of the law or those appellate decisions interpreting the same.[83]

BERNS REVISITED: APPENDIX G

The following year the *Berns* case was reviewed by the Florida Supreme Court, *sub nom, City of Miami Beach v. Berns*.[84] The Court held on rehearing that where public officials meet at a time and place to avoid being seen or heard by the public to transact or agree to transact public business at a future time in a certain manner, they violate the Sunshine Law, regardless of the formality or lack of formality the meeting takes.[85]

Section 165.22, Florida Statutes provides in part that:

All *meetings* of any city or town council or board of aldermen of any city or town . . . shall be held open to teh public . . . (emphasis added).

In *Turk* v. *Richard*,[86] a 1950 case, the Court held that the *open meeting* requirement only applied when a municipal council was assembled in a formal session attended by a quorum.

The crux of the Court's rationale in the *Berns* case, prohibiting any meeting whether or not a quorum is present, rested on the language the legislature chose *not to follow* when drafting section 286.011, Florida Statutes ". . . (I)f the intent of the Legislature had been to include only *formal assemblages* for the transaction of official business," [87] it would not have been necessary to "include a provision declaring certain meetings as *public* meetings."[88]

The Court opined that in enacting this piece of legislation a "general revision of the law applicable to open meetings of public agencies" was intended.[89] Therefore, in such a situation, whether or not this right to attend meetings existed at common-law, or whether or not the two statutes are harmonized, "we are persuaded to apply the rule that a statute enacted for the public benefit should be construed liberally in favor of the public . . ."[90]

The Court then reinforced the *Williams* [91] and *Doran* [92] principles that: (1) Legislature intended to expand the open meeting concept to bind every political subdivision or agency over which it has dominion; (2) the obvious intent was to cover gatherings where the individuals will deal with matters on which *foreseeable action* may be taken at a later time; and, (3) the proscriptive conduct [(1) & (2)] is not to be circumvented by matters that are privileged, pertaining to the duties and responsibilities of subject bodies.[93]

A secret meeting, the Court said, occurs when officials meet so as to avoid being seen or heard by the public.[94] Whether the meeting is formal or not, such secretive action violates the Sunshine Law. "It is the law's intent that any meeting, relating to any matter on which foreseeable action will be taken, occur openly and publicly." [95]

The opinion contains several warnings; it warns those who are in doubt whether they are convening in violation of the law to leave the meeting forthwith,[96] and it warns those who hope to push the statute beyond debatable limits that the majority of the Court will meet future problems on a case by case basis as they arise.[97] The Court stated:

"The Legislature did not intend to muzzle lawmakers and administrative boards to an unreasonable degree. It would be contrary to reason and violate the right of free speech to construe the law to prohibit any discussion whatever by public officials between meetings. *The practice of discussing politics and government is part of our American heritage* . . ." [98]

Thus if there is no intentional secrecy involved, legislators can meet and discuss their business without worry. "It is only the evil of closed door operation of government without permitting public scrutiny and participation" that the law seeks to prohibit.[99]

A joint session of the City Commission of Gainesville and the Alachua County Commission at a local inn was scuttled on February 3, 1971, in deference to the Sunshine Law.[100] The same day the Gainesville Sun ran an editorial entitled "Statehouse Orgy;" its focus was the Sunshine Law.[101] After lauding its accomplishments the editorial continued:

"But we are disturbed by recent developments. Not only has Secretary of State Stone removed the door from his office but . . . an Associated Press . . . reporter . . . (has) . . . interrupted a corporate income tax strategy session between Governor Askew and other legislators. . . (I)t appears (that) some of these fellows are trying to love the Sunshine Law to death. What we see is an informational orgy, put on foot by officialdom and naively joined by newsmen, to make the Sunshine Law unworkable." [102]

THE TELEPHONE RULING AND "STATEHOUSE ORGY"—A REACTION: APPENDIX H

I would not call it a conspiracy, but clearly a good many politicians in Tallahassee were hoping that the news media and the people would prove the law unworkable, to provide ripe justification for repealing the same. The editorial was timely warning of a growing movement.

Just five days later, Governor Askew called for moderation in the interpretation and application of the Sunshine Law. The Governor was quoted as saying that certain "difficult areas" exist in government which do not lend themselves to coverage by newsmen, citing legislative strategy meetings as an example.[103] "The question is can you not talk to anyone about the business of the state until and unless the representatives of the press hear your every word?"

Governor Askew was required to throw open an "invitation only" dinner meeting between himself, the Cabinet and Capital Center architects, on March 10, 1971, because of the Sunshine Law.[104]

On March 3, 1971 Attorney General Shevin rendered an opinion that held *inter alia* that the press and public had the right to listen in on telephone conversations between public officials.[105]

Responding to this, H. G. "Buddy" Davis, the Pulitzer Prize winning journalist who wrote the "Statehouse Orgy" editorial in the Gainesville Sun, was quoted as saying: "When a responsible guy goes around and says two officials have to invite reporters to

Footnotes at end of article.

listen to a phone conversation—that's ridiculous." [106]

"Loving" the law to death, Davis said, "would make the law so obnoxious and so impossible, and so unworkable, it'll have to be changed or repealed. It's just that simple." [107]

Attorney General Shevin in the telephone opinion had also ruled that the phrase "at all times" prevents a board from holding a secret ballot, though the vote would be replayed at a subsequent public meeting.[108] If members of the press and the public were *deliberately excluded* from the public offices furnished for the conduct of the public's business, there would then be a Sunshine Law violation in the opinion of the Attorney General.[109]

Then perhaps Mr. Davis overstated the impact of the "telephone" ruling. Relying on *Williams* and *Doran*, certain telephone conversations which are part of the deliberative process which would ultimately lead to recorded action at a formal public meeting could not be conducted covertly.[110]

In a March 6, 1971 interview with the Gainesville Sun's Capital Bureau correspondent, the author of the Sunshine Law, J. Emory Cross, mused that the public-meeting law has suffered "telling damage from recent Court and Attorney General opinions." [111] "What they do is make it absurd," categorizing Shevin's telephone ruling as "way out" absurd.[112] The other major snafu according to Cross is the Supreme Court ruling that the law applies, even if there is less than a quorum present. "Cross said he thought that was clearly put, indicating he did not intend to prevent a couple of public officials meeting for dinner or talking on the phone for fear of violating the law." [113]

Perhaps hardest hit by the Sunshine Law are the county officials, because they work on problems requiring decisions daily. What happens when several, say two, county commissioners meet with the public utilities director, or plan board member; or if they sit down and talk over a cup of coffee; are they taking "official action?" Must they give prior notice?

Most city or county commissioners polled by the Melbourne Times in 1971 felt that it was not a violation, and if it was, then the law was too extreme.[114] "If I had a choice of the Sunshine Law or nothing, I'd take the Sunshine Law." [115]

*Refining the law*

In an effort to clarify an earlier opinion the Attorney General of Florida opined on March 31, 1971 that if a school board voted for a new superintendent by code number rather than by name there would be no *per se* violation of the law, provided that all the facts available to the board would also be available to the public and press, and that all such votes or other actions of the board be open to the press and public.[116]

On the question of the validity or invalidity of action taken by a public body in violation of the law, it was Shevin's opinion that it is not void *ab initio*, but rather voidable, and may be corrected by subsequent re-enactment *nunc pro tunc*.[117]

In the 1971 Legislative session several bills were unsuccessfully introduced to modify the Sunshine Law.[118] One bill listed six exceptions to be written into the law that would have virtually repealed open-meeting requirements. The amendment provided that quasi-judicial bodies, matters of national security, land transactions, personnel problems, conferences with attorneys, and other "sensitive matters" would be allowed behind closed doors.[119]

Another defeated amendment would have provided for closed door sessions to deal with "matters which, if discussed in public, would be likely to benefit a party whose interests are adverse to those of the general community." [120]

In testimony before the House Governmental Organization and Efficiency Committee, Attorney General Shevin urged defeat of the above bills charging public officials: "Give politicians an excuse to violate the government-in-the-sunshine law, and that's what they will do." [121]

"If you give these exemptions 1-2-3-4, they will do more than 1-2-3-4 when they get behind closed doors. I think it would be a step backwards to amend this law." [122] The law, according to the Attorney General, was not hard to interpret as long as the basic point, that elected officials are to be prohibited from deliberatly trying to exclude press and public, is kept in mind at all times.

Members of the Florida Society of Newspaper Editors felt that politicians were exaggerating when they said newsmen wanted to listen in on telephone conversations. "Our concern is with closed meetings or hideaway meetings by a quorum or committee with the authority to act." [123]

On May 5, 1971, four years after the bill passed into law, the first convictions under the Sunshine Law were recorded.[124] The Mayor and Vice-Mayor of North Lauderdale were convicted of holding "many secret" meetings, including one discussing the future dismissal of the town's police chief. This particular secret meeting was held in the back of a town police cruiser.

The Florida Sunshine Law does not apply to federal agencies operating in Florida.[125] According to an Attorney general's opinion, the Sunshine Law only applies to state agencies. The question may again be brought up, because the agency in this particular case had open meeting rules promulgated by the Director of the program, under the 1964 Economic Opportunity Act. For most purposes, section 1.01 Florida Statutes, defining "political subdivision," is applicable to determine the Sunshine Law's status and effect.

In his effort to bring the most sunshine possible to bear on public meetings, the Attorney General, in late October of 1971, announced that notice of an official meeting should be given when official matters are to be considered and discussed, even though the public body's membership is less than a quorum.[126]

On November 11, 1971, the father of the bill announced that it was never the intention of the statute to prohibit governmental bodies from appointing committees to deal with sensitive personnel matters, "as long as final action was taken publicly." [127] There is no reason why "committees of less than quorums ought not to be able to handle the gory details without throwing it all in the open." [128]

Cross welcomed the Attorney General's Opinion requiring prior notice. Cross had hoped to introduce an amendment to the law to achieve that desired goal, "it was never my intention just to let in the press and call it a public meeting." [129] The former state senator also was heard to say that the *Canney* decision's "quasi-judicial" rule would "be a tremendous blow to the Sunshine Law because every time a board wants to close a meeting it can invoke the quasijudicial ruling." [130]

In what may be the first interpretation loosening the Sunshine Law's stringent requirements, the Attorney General ruled on November 11, 1971 that members of a public body may jointly inspect the physical characteristics of a matter upon which they are to take subsequent official action.[131] Shevin ruled that even though the *public is not invited* to attend or participate, *it is not a secret meeting* which is outlawed by the Sunshine Law. The *press and staff* were *present*, which *minimizes* the possibility of *secret* action.

Is the public's receiving adequate advance notice no longer a prerequisite? Does the presence of media representatives vitiate the secret meeting aspects of this particular excursion, or has it comes to mean that the media may stand in place of the public to preserve the open meeting status of a public body's function?

One month later Shevin ruled that a purely advisory body is not within the purview of the law, but a body having statutory powers and duties that are governmental in nature should hold its meetings in the sunshine even though it functions only in an advisory capacity.[132]

An opinion reaching even further was published in January, 1972, holding that two or more legislators may not hold a secret meeting with the intention of excluding the press and public, so as to decide upon a course of action pertaining to legislative matters.[133] According to the opinion there would appear to be no violation if it were in full view, without prior arrangement, where the press or public could have access.

One month later, Senate President Jerry Thomas announced that the law does not apply to the Senate, but only to boards or agencies, and therefore legislators could ignore the previously noted Attorney General's Opinion.[134]

A NEW EXCEPTION IS CREATED: APPENDIX I

The latest chapter in the Sunshine Law's turbulent history concerns collective bargaining of public employees and the effect of the Sunshine Law. In *Bassett v. Braddock* [135] decided on May 17, 1972, the Florida Supreme Court held that labor negotiators employed by a school board in preliminary or tentative teacher contract negotiations could negotiate outside of public meetings without violating the Sunshine Law, and that these negotiators would be instructed or consulted by the school board privately.

The Court felt constrained to "merely affirm the lower court's action," so as not to "deny the public employees' rights to bargain collectively as guaranteed" by the Florida Constitution.[136] It could be well argued that the Court was with reservation "judicially implementing" the Constitutional collective bargaining provision in the absence of statutory guidance, without regard to the means employed.

The appellee school board's argument was simply that the statute's "intensity of the sunrays . . . could cause a damaging case of sunburn to these employees or to the public which elected the board." [137]

The Court sustained the lower court's finding of fact that "meaningful collective bargaining would be destroyed if full publicity were accorded at each step of negotiations." [138]

The public's negotiators, the Court went on, must not face the "Goliath" (employee negotiators) with all its cards exposed. There must be "an equal position" afforded the school board in relation to those with whom it must deal. "The public should not suffer a handicap at the expense of a purist view of open public meetings, so long as the ultimate debate and decisions are public and the 'official acts' and 'formal action' specified by the statute are taken in open public meetings." [139]

In this particular instance the negotiator could not bind the Board, and in fact his recommendations were later modified by the Board in open public meetings. Whether Attorney General Shevin pointed to his earlier opinion on the subject in the State's *amicus curiae* brief is unknown at this time.[140]

The Court clarifies its earlier position by shifting the emphasis from "matters on which foreseeable actions will be taken by the Board" to "official actions" taken at "meetings." Classifying the labor negotiations as preliminary deliberations which "may never result in any action taken," the Court neatly comes full circle to conclude that the Sunshine Law does not apply "where there is no

Footnotes at end of article.

relationship at all to any meeting at which any foreseeable action is contemplated."[141]

In concluding its opinion the Court felt that common sense and fair play required the Board to be allowed to privately confer with its negotiator, because the public employees could do so at any time. The Court apparently forgot that public employees do not have the right to strike under the 1968 constitution.

In a stinging dissent, Justice Adkins declared: "Thus far the government in the sunshine law has withstood various attacks where a few misguided local boards and agencies have attempted to seek a means by which they could circumvent the law so as to resume secret meetings.[142]

"The right of the public to be present, to be heard, and to participate should not be circumvented by having secret meetings of various committees appointed by the Board and vested with authority to make recommendations or suggestions to the Board concerning a matter on which foreseeable action may be taken."[143]

CONCLUSION—THE FUTURE—THE AUTHOR

Perhaps more than anything else this history of the Sunshine Law has indicated several of the problems, potential solutions, opinions and reactions to the Government in the Sunshine Law. I have deliberately waited to this point to relate my own interview with the law's author, Emory Cross.[144]

Mr. Cross's major concern is two fold: (1) The debilitating effect of the "quasi-judicial" exception; and, (2) "Shevin's absurd ruling" that the law applies when two or more public officials congregate. "The quasi-judicial ruling in *Canney* is like Lincoln's old saying: calling a dog's tail a leg does not make it so—calling an agency quasi-judicial does not make it so." As to the Attorney General's two-or-more ruling, Cross cannot understand it, "Shevin supported the bill as a legislator in 1967, how could he do this! I meant a quorum, because final action is impossible without a quorum. If they had interpreted it like I wrote it, they would have been able to exempt personnel problems."

When I queried the former Senator as to some of the oddities the law fostered he became emotional, claiming he never thought the media would crash a cabinet meeting unless there was a quorum present. Also, he felt that Jerry Thomas was wrong—"The Senate is included in the law—the new constitution cuts down the right to go into executive session—right down to the bone."

Cross feels that had the courts not fumbled the "final action" notion, the main argument (personnel problems) against the law would have withered away. Cross likes to tell an anecdote to those who favor secret personnel sessions. He tells the story of the Racing Commission attorney who argued in favor of secrecy because "we get all kinds of addicts and felons etc. applying for jobs, and well—occasionally one slips by us." My goodness, bellowed Cross, that's exactly why we need the law!

The former Senator is sure that there are "people working underground to screw it up. Legislators dislike it but they are afraid to change it because the press and the public like it." Because of this he doubts if any amendments will pass for quite some time: "The media has a right and a responsibility to be there and inform the people—they have acquired the responsibility to see it is not repealed."

When I questioned the former state senator on his views on amendments he offered three:

(1) spell out the need for a quorum to reverse Shevin's ruling;

(2) include quasi-judicial functions of administrative agencies (reverse *Canney*);

(3) require the prior publication of agendas at all regularly scheduled meetings, and also at special meetings if there is sufficient time to do so.

On the possibility of a federal "Sunshine Law" he thought it was feasible provided that some court or body not subject to the law could determine before hand whether certain items were "national secret" exceptions.

FOOTNOTES

[1] Fla. S. Jour. 103 (April 1961).
[2] Tampa Tribune, April 12, 1961.
[3] *Id.*
[4] *Id.*
[5] Fla. S. Jour. 125 (April 1961).
[6] Tampa Tribune, April 13, 1961.
[7] *Id.* In § 1 the only addition being: "...at which official acts are to be taken...." In § 2 the original appeared as the first sentence only. § 3 containing the penal provisions was amended by Ch. 71–136, Laws of Florida (1971).
[8] Tampa Tribune, May 4, 1961. One Senator was quoted: "My people don't want it. They like secret meetings." Another was heard to say that the death vote was representative of good government.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] St. Petersburg Times, April 6, 1967, see *also* Tampa Tribune, April 11, 1967.
[14] Fla. S. Jour. 23 (April 1967).
[15] Florida Times-Union, April 14, 1967. The bill received unanimous approval in the Judiciary Committee.
[16] Fla. S. Jour. 93 (April 1967).
[17] Fla. S. Jour. 679 (June 1967).
[18] Tampa Tribune, June 9, 1967.
[19] *Id.* on June 28, 1967.
[20] 32 Fla. Supp. 7 (#68–17875 Circuit Court, Dade County. March 25, 1969) *aff'd*, 231 So. 2d 847 (3d D.C.A. Fla. 1970) *aff'd* 245 So. 2d 845 (Fla. 1971).
[21] Now called The Miami Beach Sun-Reporter Robert Swift, the editor at the time, is no longer associated with the paper. There are no current employees who were with the paper when the suit was filed. The paper was owned by Louis Wolfson at the time. We expect to receive the briefs used in argument before the Supreme Court of Florida shortly.
[22] § 286.011 Fla. Stats. (1971).
[23] 32 Fla. Supp. 7 at 8. The Court had earlier denied defendant's motion to dismiss on the grounds that § 286.011 did not apply to municipalities. *See*, Op. Atty. Gen. 071–171 (1971) and § 1.01 Fla. Stats. (1971).
[24] *Id.* at 9. Attorney General Shevin will later condemn this very practice as one the law was designed to thwart. Op. Atty. Gen. 071–32 (1971).
[25] *Id.*
[26] *Id.* The defendants contended that primarily: a) land acquisitions or condemnations; b) personnel matters; and c) pending litigation were discussed at these sessions. Note the similarity to the Herrell bill, *see*, note 4, *supra*.
[27] *Id.*
[28] *Id.* Note the similar train of thought in 071–32, *supra*, note 24.
[29] *Id.*
[30] *Id.* at 10.
[31] *Eg.*, Gainesville Sun, editorial, January 26, 1969.
[32] *Id.*
[33] 222 So. 2d. 470 (2d D.C.A. Fla. 1969).
[34] Publishers of the St. Petersburg Times were Betty Orsini and Charles Patrick.
[35] *Id.* at 472. Compare these contentions with the allegations in the complaint in *Berns, supra. See also*, appellant's brief at 10.
[36] 222 So. 2d at 473. The Court then referred to *Walling v. Carlton*, 109 Fla. 97, 147 So. 236 (1933) where "official act" was defined as: "any act done by the officer in his official capacity under color and by virtue of his office."
[37] 222 So. 2d at 473.
[38] *Id. See also*, appellant's brief at 25–6.
[39] *Id.*
[40] *Id.* at 474. *But see, Bassett v. Braddock, infra.*
[41] *Id.*
[42] *Id.* The Court stated that the public interest may not be served by closed door personnel hearings. "The public has chosen to deny any privilege or discretion in appellee and similar governmental bodies to conduct closed meetings."
[43] 222 So. 2d at 475. *See, Florida Bar v. Massfeller*, 170 So. 2d 834 (Fla. 1965).
[44] 222 So. 2d at 476.
[45] *Id.* The Court later receded from this position in *Bassett v. Braddock*, 262 So. 2d 425 (Fla. 1972).
[46] 224 So. 2d 693 (Fla. 1969), *reh. denied*, July 29, 1969. In the rehearing petition, school board attorney Shanleweiler contended that the court's decision "seems to be broader than the express language of the act itself", and that "it is difficult to conceive why the narrower sunshine law is given the broadest interpretation by the court." *See*, Tampa Tribune, July 30, 1969.
[47] 224 So. 2d at 696. "Items were passed by letter and number and it was impossible for the public to understand the items being considered."
[48] *Id.* at 698.
[49] The Court did imply that the statute does require a charge and proof of scienter even though it is not specified as a specific element of the offense.
[50] *Id.* at 699. The injunction was accordingly affirmed.
[51] Tampa Tribune, August 3, 1969, referring to the *Williams* decision.
[52] *Id.* Paul Pickett, then Orange County Commission Chairman.
[53] *See* note 33.
[54] *But see Bassett* v. *Braddock*, 262 So. 2d 425 (Fla. 1972) abruptly reversing the snowballing trend established in these cases.
[55] Tampa Tribune, August 3, 1969.
[56] *Id.* Chairman Pickett was not happy about the Supreme Court Opinion, when informed by the County Attorney.
[57] *Id.* Whenever we have a quorum present we shall be open to the press and public: Supt. Ralph Staten.
[58] *Id.* "I believe that it should be the policy of the governor and all Cabinet members to take care that at such times as they are together, the press and public should have complete access to the meetings . . ." Letter to Governor Kirk, by Attorney General Earl Faircloth.
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.* One of the campaigning councilwomen said that, "It was my reason for running, and I feel the Sunshine Law has given us a little bit of backbone."
[64] *Id.* The two-party meeting was popularized by Orange County Commission Chairman Pickett. *See* note 60 and accompanying text.
[65] Pickett conceded that he may well be violating the intent if not the letter of the Court's order but he refused to put himself in a position of discussing charges against a county employee in public if they were unsubstantiated. *See* Op. Atty. Gen. 071–032 (1971).
[66] Two Broward County School Board employees resigned and threatened suit because of a critical remark made by a member of the Board.
[67] Tampa Tribune, August 3, 1969.
[68] *Canney* v. *Board of Public Instruction of Alachua County*, 231 So. 2d 34 (1 D.C.A. Fla. 1970) *reh. denied*, January 27, 1970.
[69] *Id.*
[70] *Id.* at 39.
[71] *Id.*
[72] Fla. Const. art. V, § 4 (2) (1968).
[73] *Times Publishing Company v. Williams*, 222 So. 2d 470, 474 (2d D.C.A. Fla. 1969), footnote 2.
[74] *Canney v. Board of Public Instruction*

*of Alachua County*, 231 So. 2d 34 (1 D.C.A. Fla. 1970).

[75] The abrupt shift in terminology from quasi-judicial functions to judicial characteristics, is unexplained as well as unwarranted. It is this slip in terminological consistency that leads to the eventual result.

[76] *Canney v. Board of Public Instruction of Alachua County, supra.*

[77] *Id.*

[78] *Id.* It is this wording that lends credence to the belief that the decision is limited to school board dealing with students. *Bassett, infra*, broadened the interpretation in this reporter's opinion. I feel that the courts are carving out portions of a school board's activities because of the delicate nature of their work and the potential harm facing Florida's young, impressionable school children.

[79] 238 So. 2d 466 (3d D.C.A. Fla. 1970), *rehearing denied*, Sept. 30, 1970.

[80] The first vote resulted in a 2–2 deadlock, and the second vote, in open hearing approved the application 2–0, the balance of the quorum abstaining in accordance with the Board's rules. In accord with its own rules and general principles of administrative law, the Board continued the matter without further notice or public hearing. *See*, 2 Am. Jur. 2d, Admin. Law § 362.

[81] 238 So. 2d at 467.

[82] *Id.*

[83] *Id.* The Court cited all the cases discussed to this point.

[84] 245 So. 2d 38 (Fla. 1970), *on rehearing, original opinion withdrawn. See*, Tampa Tribune, October 8, 1970. The District Court of Appeal certified the case to the Florida Supreme Court as a question of great public interest.

[85] *Id.*

[86] 47 So. 2d 543 (Fla. 1950).

[87] 245 So. 2d at 40.

[88] *Id. See also Board of Public Instruction* v. *Doran*, 224 So. 2d 693, 698 (Fla. 1969), *supra.*

[89] 245 So. 2d at 40.

[90] *Id.*

[91] *Times Publishing Co.* v. *Williams*, 222 So. 2d 470 (2d D.C.A. Fla. 1969).

[92] *Board of Public Instruction of Broward County* v. *Doran*, 224 So. 2d 693 (Fla. 1969).

[93] 245 So. 2d at 41.

[94] *Id.*

[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] *Id.*

[99] *Id.*

[100] Gainesville Sun, February 3, 1971. pg. 4.

[101] *Id.* at pg. 8.

[102] *Id.*

[103] Gainesville Sun, February 8, 1971. pg. 15.

[104] *Id.*

[105] Tampa Tribune, February 8, 1971. It should be noted that Senator Askew voted for the Cross bill.

[106] Melbourne Times, March 19, 1971. pg. 3.

[107] *Id.*

[108] *Id.* at 4. The opinion actually uses the words "purposely secret." There is no invitation requirement. *See*, Op. Atty, Gen. 071–32 (March 1971).

[109] *Id.*

[110] *Id.*

[111] Gainesville Sun, March 6, 1971. pg. 6.

[112] *Id.*

[113] *Id.*

[114] Melbourne Times, March 19, 1971.

[115] *Id.* Commissioner Steele of Brevard County.

[116] Op. Atty. Gen. 071–58. (March 1971).

[117] *Id.* The opinion contains a warning against using the *nunc pro tunc* reenactment to avoid the effect of the law.

[118] Gainesville Sun, May 4, 1971. pg. 8.

[119] *Id.*

[120] *Id.*

[121] Gainesville Sun, May 7, 1971. pg. 7.

[122] *Id.*

[123] *Id.*

[124] Gainesville Sun, May 19, 1971. pg. 1.

[125] Op. Atty. Gen. 071–191 (July 1971).

[126] Op. Atty. Gen. 071–159 (June 1971).

[127] Gainesville Sun, November 9, 1971. pg. 3.

[128] *Id.*

[129] *Id.*

[130] *Id.*

[131] Op. Atty. Gen. 071–361 (November 1971).

[132] Op. Atty. Gen. 071–380 (December 1971).

[133] Op. Atty. Gen. 072–16 (January 1972).

[134] Gainesville Sun, February 9, 1972. Jerry Thomas co-sponsored the bill in 1967. He felt that if he was correct then the law should be amended to include legislators, "but only if it strictly spelled out what specific functions were excluded."

[135] 262 So. 2d 425 (Fla. 1972).

[136] *Id.* at 476.

[137] *Id.*

[138] *Id.*

[139] *Id.* at 427.

[140] Ap. Atty. Gen. 071–32A (July 1971).

[141] *Bassett v. Braddock*, 262 So. 2d 425, at 427.

[142] *Id.* at 429.

[143] *Id.* at 430.

[144] One hour interview with Senator Cross at his Gainesville office, July 7, 1972.

Mr. CHILES. Mr. President, Florida government and citizens of the Sunshine State have greatly benefited from the law. Certainly, our government there is not perfect, but it is open and more effective, I think. I ask unanimous consent that a recent excellent review of the Florida law by Ruth Mayes Barnes be printed in the RECORD.

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

GOVERNMENT IN THE SUNSHINE: PROMISE OR PLACEBO?

In 1967 the Florida Legislature enacted the "Government in the Sunshine Law," [1] which attempts to open the deliberations of state and local governments to the public. Since its passage, the Sunshine Law has been the subject of continued debate. This note attempts to place this debate in perspective by examining the scope and effect of the Act, analyzing cases and statutes of Florida and other states having similar laws, and evaluating the statute's present and potential impact.

THE DEMAND FOR OPEN GOVERNMENT

The supporters of senate bill 9 (later the Sunshine Law) felt that certain state and local practices, manifested in closed meetings and behind-the-scenes manipulation, indicated an urgent need for abolition of secretive government practices.[2] However, without media influence and pressure, "Government in the Sunshine" might never have survived committee action. In 1967 reapportionment of the legislature had increased the proportional representation of the urban centers in central and south Florida. Generally, the urban representatives were more sensitive to the influence of the media than the rural legislators who dominated the legislature before reapportionment. The media's active endorsement of the measure helped convince the legislators of the popularity of an open meeting regulation and provided significant impetus for passage of the Sunshine Law.[3]

Legislative recognition of the desire for open government was not unique to Florida. Five other states enacted open-meeting laws while Florida's bill was being debated.[4] The increased demands for open government in the United States since World War II seem to have had no specific origin, but an aversion to undue centralization and irresponsible government revealed itself in such political issues as reapportionment and home rule. The emergence of an affluent and better educated society whose attention focused on sophisticated issues strengthened the demands for political responsibility. The increased impact of mass media on society played an important role in directing public attention to inadequacies and abuses of government. Whatever its source, the public's urge to participate more fully in legislative decisions was evident.

In Florida, while not all governmental units were felt to be deceptive or corrupt, closed sessions provided a shield for occasional instances of irresponsibility and corruption that public disclosure might have prevented. Furthermore, testimony before the house committees revealed that the existing need for more responsible government was not confined to the local level. One of the state commissions advised that the law not be enacted because many of the commission's applicants for employment were convicted felons, known drug addicts, or otherwise unqualified for state employment. The commission disclosed that it sometimes employed these people either unknowingly or inadvertently and urged that such practices should not be exposed.[5] In reaction, proponents of the Sunshine Law demanded the inclusion of personnel matters in the Act and emphasized that this testimony indicated an immediate need for the bill.[6]

*Legislative history of Government in the Sunshine*

After its passage in the Senate,[7] the "Government in the Sunshine Law" was submitted to the house, where several amendments were proposed.[8] Although some of these amendments might have resolved subsequent problems concerning the law's applicability, the senate refused to concur in any restriction of its original proposal.[9] As a result, only one amendment was adopted at the Act's passage, and that amendment gave the law additional impact. It provided standing to any citizen of the state, jurisdiction in the circuit courts, and injunctive relief to enable citizens to protect their new right.[10] The Sunshine Law, as finally enacted, states: [11]

"(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting.

"(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

"(3) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation or any political subdivision who violates the provisions of this section by attending a meeting not held in accordance with the provisions thereof is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment."

*Precedent for the Sunshine Law*

Florida's statute is not without precedent. Other states, especially western ones, have supported open meetings in constitutions,[12] statutes,[13] and case law.[14] In 1953 New Mexico [15] and California [16] were the first states to pass comprehensive open meeting laws, which are similar to the Florida act. New Mexico's

Footnotes at end of article.

law requires that all final decisions of all governing bodies of state or local subdivisions supported by public funds be made at public meetings.[17] California's comprehensive Brown Act is limited in its application to local government levels, but it applies even to library boards and recreation commissions.[18] Moreover, Florida Statutes, section 165.22, is precedent for the Sunshine Law. Enacted in 1905, that section requires that all city and town meetings be open to the public. On its face, the Sunshine Law sems to reiterate the provisions of this earlier statute, which declares: [19]

"All meetings of any city or town council or board of aldermen of any city or town in the state, shall be held open to the public of any such city or town, and all records and books of any such city or town shall be at all times open to the inspection of any of the citizens thereof."

In addition to a fine or imprisonment enforcement provision, the earlier law demands vacation of office by any violator of the act.[20]

However, in *Turk v. Richard* [21] the Supreme Court of Florida considerably limited the effect of section 165.22 by enunciating the so-called "formal meeting" doctrine. The early law was held applicable only to "formal assemblages of the council sitting as a joint deliberative body as . . . required or authorized by law . . . [and] held for the transaction of official municipal business . . . . " [22] Thus the statute, which opened meetings of city or town councils or boards of aldermen to the public, was coupled with a judicial interpretation requiring potential voting as a necessary prerequisite for the enforcement of open meetings. As a result, city and town government meetings were required to be open only when votes "could be taken, though [they were] not necessarily certain to be taken." [23] The narrow literal scope of the statute and its further limitation by the judiciary left much governmental activity immune from public scrutiny. For this reason, the 1905 law was largely ineffective.

PRESENT CONSTRUCTION OF GOVERNMENT IN THE SUNSHINE

Superficially, the Government in the Sunshine Law seems similar to its town council predecessor. However, relying on legislative intent, the Florida courts have given the Sunshine Law wider application than the former act.[24] Because the Sunshine Law appears overly broad and ambiguous in certain areas, it was challenged on the ground that it was "void for vagueness." [25] Opponents of the statute asserted it violated the constitutional doctrine that a "statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." [26] Rejecting this contention, the Florida supreme court held that the law properly expressed its legislative intent and provided a substantially clear mandate.[27]

Although the Sunshine Law is constitutionally valid. the breadth of its language has raised problems of construction. The terms of the law are not tempered by any practical exceptions, nor do they provide precise guidelines for operational compliance. Judicial interpretation has corrected some of the drafting flaws, but three basic, interrelated legal issues remain. The Sunshine Law does not state which bodies are *not* affected by the law; it does not exclude any types of deliberation from its scope; and it fails to recognize any stage in the deliberative process that might not be subject to the requirements of the Act. While courts have not explicitly delineated the issues in this manner, the Second District Court of Appeal indicated in *Times Publishing Co. v. Williams,*[28] that comprehension of the full meaning of the law requires such analytical divisions.

No Florida court has faced the question of which agencies might fall outside the application of the law. The only litigation to date deals with those agencies to which inherent applicability is assumed, such as city councils and boards of education.[29] The language of the Act applies to all facets of government; [30] however, the question of applicability is unresolved with regard to groups such as ad hoc committees, which act in a purely advisory capacity.

It is conceivable that unlimited application of the law could produce undesirable results. The goals of certain investigatory groups, such as those fighting organized crime, might be jeopardized by premature exposure of important procedures and information. Where an ad hoc committee is purely advisory and exercises no real powers, where it reaches no final determination, and where its findings will result in later action by an authority subject to the Sunshine Laws or the courts, the application of the law could create ineffectiveness or inefficiency to the disadvantage of the state. One solution to the dilemma would be to require only that such a committee state publicly the purpose of the group and announce its membership. In such instances, especially in investigatory actions, the committee should be entitled to conduct private sessions. This would accomplish minimum compliance with the basic purpose and policy of the Sunshine Law while providing for confidential meetings when necessary.

If this exception were made, a problem would arise concerning which ad hoc or advisory bodies should be excluded from application of the law. A broad exclusion would permit many to hide behind this shield and undermine the effectiveness of the law. Unless a showing of good cause is made to warrant exclusion, all such groups will remain within the scope of the Sunshine Law.[31] A group in need of confidential hearings could insure its privacy by requesting a court order upon proof of the advisability of closed sessions. Such a procedure would place the burden upon the committee or group involved to show that the open meeting policy of the state was not being unnecessarily evaded.[32]

The type and stage of deliberation to which the law is applicable has in several cases been delineated by the courts. Rejecting the "formal meeting" doctrine of *Turk v. Richard,*[33] the court in *Times Publishing Co.* held that the law applies to the "entire decision making process." [34] The Florida supreme court upheld this interpretation in *Miami Beach v. Berns,*[35] and further emphasized the applicability of the Sunshine Law, even to informal assemblies, by stating that section 286.011 in effect repeals section 165.22.[36] The fact that no voting will take place at a particular meeting is no longer a bar to the necessity of open sessions.[37] Any stage in a proceeding—from proposals and reports to discussions and recommendations—is a proper subject of public scrutiny.

The ruling in *Berns* was portended by *Board of Public Instruction v. Doran* [38] in which a school board, relying upon the *Turk* formal meeting doctrine, continued to hold executive sessions from which reporters were barred. The school board had asserted that only formal action was subject to the mandate of the Sunshine Law and argued that the legislature, cognizant of existing case law, had only intended the new law to extend the scope of Florida Statutes, section 165.22, beyond the city and town and council level. The court provided a clue to the missing definition of "meetings" by declaring that the law "was to cover *any* gathering of the members where the members *deal with* some matter on which foreseeable action will be taken by the board." [39]

The most explicit clarification in this regard, however, is found in *Berns v. Miami Beach,* in which the trial judge states: [40]

"The Florida legislature has mandated that. . . . Deliberations, sessions, conferences, briefings, expressions, discussions, proposals, recommendations, actions, reports, etc. must be open and public, for these are as much 'official acts' as the final vote itself."

Thus, it seems that if a group's functions are deemed subject to the law, no stage of its proceedings will be exempt.

Dicta in *Times Publishing Co.*[41] revealed that the Second District Court of Appeal expressly viewed quasi-judicial deliberations [42] as subject to the provisions of the Sunshine Law. In *Canney v. Board of Public Instruction,* however, the First District Court of Appeal disagreed, holding that quasi-judicial actions do not "fall within the purview of the . . . statute." [43] *Canney* involved a decision by a school board relating to the discipline of a student. Relying upon article V, section 3, of the Florida Constitution,[44] the court emphasized that it alone had the exclusive power to order the conduct and procedure of the "internal government" of the judicial branch.[45] The opinion then stated that the legislature can vest quasi-judicial functions in a county school board, but: [46]

"[once it has transformed any of the board's responsibilities and duties] into that of a judicial character, its prerogatives in the matter have ceased. Neither the public nor the press has any more right to enter into the judicial deliberations of the members of a county board . . . than they have to enter into the conference room of the Supreme Court of Florida when the members of that Court are deliberating upon a judicial question or into a petit jury room when those citizens are deliberating upon their verdict."

Thus, the first exception on behalf of the government units has been carved out. The controversy stemming from this decision concerns the propriety of equating quasi-judicial functions with actions of the state judicial system. If such reasoning is proper, disciplinary matters, such as those in *Canney,* and other quasi-judicial activities will no longer be subject to the Sunshine Law; any session in which a decision affecting a private party is deliberated might be excluded from the Act's coverage. If, however, the dicta of *Times Publishing Co.* is adopted by the Florida supreme court, this exception would be eliminated. The split of opinion between the Second District Court of Appeal in *Times Publishing Co.* and the First District in *Canney* has forced the supreme court to hear the question.[47]

It is illogical to assume that no other exception to the Sunshine Law will ever exist. However, even in cases where the law's application may result in great harm, the nonexclusory nature of the law will probably cause exceptions to be developed narrowly, depending on the circumstances of each case. Nevertheless, the broadness of the statute, coupled with the recentness of its enactment, makes judicial determination vital for the resolution of problems involving the applicability of this law.

The Second District Court of Appeal in *Times Publishing Co.* dismissed contentions that the Act has generally recognized exceptions and expressly declared that personnel matters were subject to the law.[48] The court asserted there are "no exceptions . . . unless there is a constitutional impediment to such a mandate. . . ." [49] However, the 1968 Florida Constitution provides little immunity. The only provisions that have yet been recognized as impediments are article V (the judicial department), section 3 and 23,[50] dealing respectively with procedure in the judicial system and discipline of attorneys.

Recently, the Supreme Court of Florida endorsed the *Times Publishing Co.* interpretation "as being an accurate analysis of the subject statute." [51] Significantly, the court in *Times* had acknowledged only one exception to the Sunshine Law and stated that while the statute "has waived attorney-client priv-

Footnotes at end of article.

ileges with regard to the enumerated public bodies," [52] there are other facets of the privilege to be considered: [53]

"[T]here . . . are obligations which bind the attorney . . . His professional conduct in [pending or impending litigation] . . . is governed by the Canons of Ethics . . . promulgated by the Supreme Court . . . Section 23 of Art. 5 . . . gives "exclusive" jurisdiction to the Supreme Court in the disciplining of attorneys; and this disciplinary power necessarily includes the exclusive province to proscribe rules of professional conduct the breaching of which renders an attorney amenable to such discipline. . . .

"The legislature . . . is without any authority to directly or indirectly interfere with or impair an attorney in the exercise of his ethical duties. . . ."

The court emphasized that the exception was restricted to "that area of the attorney-client relationship in which the *ethical obligations of the attorney clearly conflict* with the dictates of this statute. . . . [T]he act does not permit private consultation between the agency and its attorney in any other circumstances. . . ." [54] Hence, a governmental unit may not exercise the privilege, but an attorney may utilize it to safeguard his professional standing.[55] While partial nonrecognition of the attorney-client privilege of confidentiality may be criticized, the Florida position is not so extreme as others. Under a similar statute, [56] the Arkansas courts have ruled that the traditional lawyer's privilege is never valid.[57]

*Enforcement of the Sunshine Law*

Standing to enforce the Sunshine Law has been granted by the provisions of the statute to "any citizens of this state." [58] Problems of standing are thus virtually eliminated for Floridians. Enforcement may be accomplished by injunctive relief, orders declaring past actions of meetings void, and criminal penalties.[59] *The Times Publishing Co.* decision noted: "Injective relief is an extraordinary remedy which issues only when justice requires and there is not adequate remedy at law, and when there is real and imminent danger or irreparable injury." [60] However, the opinion concluded that the statutory provision for injunctive relief mandates that violation of the law "constitutes an irreparable public injury." [61] Injunctions under the Sunshine Law are more easily obtainable because "one of the requisites . . . need not be proved, *i.e.*, an irreparable injury; and a mere showing that the statute has been or is clearly about to be violated fully satisfies such requirements." [62]

The Sunshine Law states: [N]o resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting." [63] Thus, any action taken at or resulting from a meeting later declared in violation of the law is void *ab initio* and may be ignored by persons subject to such action. Invalidation of illegally enacted decisions is characteristic of similar laws that were passed in other states almost simultaneously with the Sunshine Law.[64] States whose laws are older have not so quickly voided such action automatically.[65]

* * * * *

The "Right to Know Law" of New Jersey is applicable to any "group of 2 or more persons organized . . . to perform a public governmental function by official action." [66] Official action is defined by statute as a determination by vote.[67] Utilizing this definition, the New Jersey courts have applied the law to zoning commissions.[68]

New Mexico's statute affects "all . . . governmental boards and commissions of the state or its subdivisions, *supported by public funds*. . . ." [69] The New Mexico judiciary has even applied this statute to a city-owned electrical company on the basis that it was supported by public funds.[70]

Footnotes at end of article.

The Arkansas Act delineates its intended scope by stating that the law encompasses "all . . . of the governing bodies of all municipalities, counties, townships, and school districts, and all boards, bureaus, commissions, or organizations of the State of Arkansas, except Grand Juries, supported wholly or in part by public funds, or expending public funds. . . ." [91] While Arkansas courts have not been confronted with an "applicable body" question, the statute provides guidelines for use in determining each case. Presumably, the courts of Arkansas will apply their statute much as the courts of New Mexico have applied theirs.

Definitional words in the cited statutes have thus been utilized as guides for judicial interpretation and courts have applied the laws to groups such as urban renewal agencies,[92] zoning commissions,[93] and city-owned electrical companies.[94] The courts of other states may also be aided by the specific references and examples generally contained in the statutes. California, for example, specifically included library boards and recreation commissions.[95] The Florida Sunshine Law lacks this precision; yet, by its breadth, it would certainly seem to affect any of the above-mentioned agencies. Determining the groups, if any, to which the law does *not* apply, however, is another matter. It is noteworthy that Arkansas, the only other state whose courts have not adjudicated the question of applicability, also passed its law in 1967. The New Mexico and California laws were enacted in 1953, and the New Jersey statute was passed in 1963. If the experiences of other states are indicative, it seems likely that the question will arise in the Florida courts. A clarification of the bodies affected by the law would probably make the law more practicable; it could eliminate ad hoc compliance and reduce unreasonable or unintended applications.

A second flaw in the statute is its lack of a uniform minimum notice provision. Agencies and commissions may still have individual notice regulations with which citizens may be unfamiliar. An unannounced or unattended public meeting is of little use to those interested in the deliberations of a public agency. Once again, provisions in other statutes exemplify how Government in the Sunshine could be utilized more effectively by the ordinary citizen. Exceptions to any uniform notice provision would undoubtedly be necessary, however, individualized notice provisions should be the exception rather than the rule.

One statute making certain city governments subject to open meetings provides that regular meetings shall be held in a place "designated by ordinance" and special meetings may be called at any time "by written notice delivered at least three hours prior to the time specified for the proposed meeting." [96] The Arkansas statute insists that the "time and place of each regular meeting shall be furnished to anyone who requests the information. . . . In the event of emergency or special meetings the person calling such a meeting shall notify the representatives of the [media], if any, located in the county in which the meeting is to be held and which have requested to be notified . . . of the time, place and date at least two (2) hours before such a meeting takes place. . . ." [97] This statute is probably the best practical model for any amendment to Florida's statute.

A third and final omission in the Sunshine Law is its lack of reference to reporting privileges. The press and other communication media greatly stimulated the passage of the Sunshine Law [98] and maintain an active interest in its enforcement. The law is mute in relation to broadcasting privileges, however.

The Hughes Anti-Secrecy Act of Indiana,[99] which is similar to the Government in the Sunshine Law, explicitly allows recorded or live broadcasting subject to reasonable rules and regulations. The media may be required, however, to pool recording or broadcasting facilities.[100] In their notice provisions Arkansas and California recognize the interest of the media in public meetings.[101]

Problems have arisen in other states concerning the broadcasting privilege. A New York municipality, which had open meetings, was permitted, for example, to disallow the taping of an open session by a private party, because official minutes were taken at the meeting.[102] The California standards are more practicable. California's attorney general has ruled it is within the discretion of a county board of supervisors to refuse to permit a radio station to broadcast its regular meetings.[103] The California courts, however, have ruled that "where a recorder is silent and unobtrusive and . . . does not interfere in any way with the meetings" taping should be allowed.[104] The California view seems reasonable, while the New York decision, by comparison, seems unduly restrictive. So long as the rights of others are respected by the media, there appears no reason to bar taping of public meetings.

THE SUNSHINE LAW IN PERSPECTIVE

Government in the Sunshine assures the right of the public to be present at all important meetings of governmental units that affect them. That right to be present is unqualified except in certain unusual instances. The law of Indiana explicitly states the essential thrust of open meeting laws: "[P]ublic proceedings shall be open to any citizen of this state, and every citizen shall, insofar as physical facilities permit, be permitted to observe such proceedings." [105] As illustrated by the parties to the cases on the subject, the news media are apparently the most interested in exercising this right to attend. Three of the first four cases in Florida involve attempts by newspapermen to be present at "executive sessions" or closed meetings of public bodies.[106] Press utilization of open meeting provisions may also be observed in other states, such as California [107] and Indiana.[108] Television, like the newspapers, takes an active interest in Government in the Sunshine and keeps the subject before its audiences.[109]

This is not to imply, however, that the Sunshine Law and similar statutes were enacted only for the convenience of the communications media. Cases arising from public meeting laws include private suits challenging zoning desicions,[110] racial apportionment of schools,[111] disciplinary actions by school boards,[112] decisions of city electrical companies,[113] and dismissal of public personnel.[114] Open meeting laws afford interested citizens a chance to attend informal sessions to see what is decided and how the decision is reached.

CONCLUSION

Despite its unnecessary vague portions, the Government in the Sunshine Law is a step toward more open and responsible government. Definitional phrases are needed to assure a better practical application and for added clarity. The past refusal to exempt personnel matters, especially in disciplinary investigations, reports, and hearings, is unjust to those unfairly accused and should be reexamined. Additionally, the laws, application to certain ad hoc and advisory groups should be reevaluated. Finally, the lack of a uniform notice provision undermines the effect of the law by making compliance with Government in the Sunshine depend in some instances upon non-existent means of informing the public of prospective meetings.

In spite of its unpolished draftsmanship, the problems presented by the Sunshine Law are easily outweighed by its potential utility. The valuable opportunity to observe and participate in government decisions is undeniably secured by the Sunshine Law. Greater precision, however, would encourage a more meaningful participation by the general public.

RUTH MAYES BARNES.

FOOTNOTES

[1] FLA. STAT. § 286.011 (1969).

[2] Interview with J. Emory Cross, State Senator from Gainesville, Florida, in Gainesville, Florida, April 14, 1970; interview with John S. Rawls, Judge, First District Court of Appeal, in Tallahassee, Florida, March 26, 1970 [hereinafter cited as interviews].

[3] Interviews, note 2 *supra*.

[4] ARK. STAT. ANN. § 12–12805 (1968); CAL. GOV'R CODE §§ 54950–60 (West 1966); IND. ANN STAT. §§ 57–601 *et seq.* (1967); N.J. REV. STAT. §§ 10:4–1 *et seq.* (Supp. 1963); N.M. STAT. ANN. § 5–6–17 (1953). It should be noted that the Florida bill was debated for ten years. It was introduced in every regular session of the legislature from 1957 until its passage in 1967.

[5] Interview with J. Emory Cross, note 2 *supra*.

[6] *Id.*

[7] FLA. S. JOUR. 958–59 (June 1967).

[8] FLA. H.R. JOUR. 958–59 (June 1967).

[9] The House considered repeal of the existing public meeting law applicable to city and town councils, exemption of purely administrative acts of affected agencies, and specific inclusion of the Florida Education Association within the scope of the Act. The representatives rejected these proposals, but submitted the following for senate approval: an amendment giving circuit courts jurisdiction to issue injunctions to enforce the statute, an amendment granting an exemption from application of the law to hearings involving individuals charged with violation of law or regulations respecting employment, and an amendment prohibiting application of the enforcement provisions of the Act to personnel matters. FLA. S. JOUR. 679 (June 1967); FLA. H.R. JOUR. 958–59 (June 1967).

[10] FLA. S. JOUR. 679 (June 1967).

[11] FLA. STAT. § 286.001 (1969).

[12] The Texas Constitution states that all trials must be open to the public. In 1935 the Texas Court of Civil Appeals held that the relevant section applied to the county commissioner's court: "They [the commissioners] meet as a court and transact the county business in open session. Such requirement . . . is substantial, both that the members may have the benefit of the knowledge and opinions of the other members, as well as that the public may know when and where its affairs are being transacted." Tarrant County v. Smith, 81 S.W. 2d 537, 538 (Tex. Civ. App. 1935).

[13] CAL. GOV'T CODE §§ 54950–60 (West 1966); N.M. STAT. ANN § 5–6–17 (1953); UTAH REV. STAT. § 202 (1898).

[14] Tarrant County v. Smith, 81 S.W. 2d 537 (Tex. Civ. App. 1935); Acord v. Booth, 33 Utah 279, 93 P. 734 (1908).

[15] N.M. STAT. ANN. § 5–6–17 (1953).

[16] CAL. GOV'T CODE §§ 54950–60 (West 1966).

[17] N.M. STAT. ANN. § 5–6–17 (1953).

[18] CAL. GOV'T CODE §§ 54952.5, 5493 (West 1966).

[19] FLA. STAT. §§ 165.22 (1969).

[20] *Id.*

[21] 47 So. 2d 543 (Fla. 1950).

[22] *Id* at 544.

[23] Times Publishing Co. v. Williams, 222 So. 2d 470, 473 (2d D.C.A. Fla. 1969).

[24] *See* Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971), *aff'g* 231 So. 2d 847 (3d D.C.A. Fla. 1970), *aff'g* 32 Fla. Sup. 7 (11th Cir. 1969); Board of Pub. Instr. v. Doran, 224 So. 2d 693 (Fla. 1969); Canney v. Board of Pub. Instr., 231 So. 2d 34 (1st D.C.A. Fla. 1970); Times Publishing Co. v. Williams, 222 So. 2d 470 (2d D.C.A. Fla. 1969).

[25] Board of Pub. Instr. v. Doran, 224 So. 2d 693 (Fla. 1969).

[26] Connally v. General Constr. Co., 269 U.S. 385, 391 (1926).

[27] Board of Pub. Instr. v. Doran, 224 So. 2d 693 (Fla. 1969).

[28] 222 So. 2d 470 (2d D.C.A. Fla. 1969).

[29] Board of Pub. Instr. v. Doran, 224 So. 2d 693 (Fla. 1969); Canney v. Board of Pub. Instr., 231 So. 2d 34 (1st D.C.A. Fla. 1970); Times Publishing Co. v. Williams, 222 So. 2d 470 (2d D.C.A. Fla. 1969); Berns v. Miami Beach, 32 Fla. Supp. 7 (11th Cir. 1969).

[30] *See* text accompanying note 11 *supra*.

[31] *See* Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971).

[32] *See id.*

[33] 47 So. 2d 543 (Fla. 1950).

[34] 222 So. 2d 470, 474 (2d D.C.A. Fla. 1969).

[35] 245 So. 2d 38 (Fla. 1971). Citing *Times Publishing Co.* and *Berns* the Attorney General of Florida has stated the opinion that the use of a secret ballot to elect a school board chairman violated the Sunshine Law. OP. ATT'Y GEN. FLA. (Jan. 27, 1971).

[36] *Id.* at 40.

[37] The court clearly rejected any requirement of a quorum by stating: "[W]e have held that the open door policy announced by the statute applies to informal as well as formal meetings of a board at which there is a collective decision or collective commitment of a majority of the members to take action in a particular manner on a matter affecting the public. Any action so taken is an official act within the contemplation of the statute and rule which we have announced. When a minority of the members meet to investigate or discuss a public matter then it becomes a factual issue to determine in each case whether the majority has fragmentized itself into minority groups merely to collaborate on a decision in private for the purpose of thus secretly concluding the matter." *Id.* at ——. The Attorney General of Florida has stated, however, that an informal telephone conversation or an informal discussion between two or more school board members is not a prosecutable offense" if there is no attempt to exclude any member of the public or press seeking admission to the place of discussion." Where a quorum is present at informal meeting, however, "the obligation rests on the board members to discontinue meeting or discussion of public business until reasonable notice . . . [is] given since such discussion without such notice constitutes violation." OP. ATT'Y GEN. FLA. (Jan. 27, 1971).

EDITOR'S NOTE: Since the writing of this note the Supreme Court of Florida has affirmed the holding of the First District Court of Appeal in *Canney*. Thus, exception of quasi-judicial matters from the effect of the Sunshine Law is now firmly established Canney v. Board of Pub. Instr., Nos. 39,473 and 39,474 (Fla., Feb. 24, 1971).

[38] 224 So. 2d 693 (Fla. 1969).

[39] *Id.* at 698 (emphasis added).

[40] 32 Fla. Supp. 7, 9 (11th Cir. 1969).

[41] 222 So. 2d 470, 474 (2d D.C.A. Fla. 1969).

[42] Quasi-judicial is defined as "a term applied to the action, discretion, etc., of public administrative officers who are required to investigate facts, or ascertain the existence of facts, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature." A quasi-judicial act is defined as "a judicial act performed by one not a judge." BLACK'S LAW DICTIONARY 1411 (4th rev. ed. 1968).

[43] 231 So. 2d 34, 39 (1st D.C.A. Fla. 1970).

[44] FLA. CONST. art. V, §3: "Practice and procedure—The practice and procedure in all courts shall be governed by rules adopted by the supreme court."

[45] Canney v. Board of Pub. Instr., 231 So. 2d 34, 39 (1st D.C.A. Fla. 1970).

[46] *Id.*

[47] The Florida Constitution grants "conflict jurisdiction" to the supreme court when district courts of appeal are in conflict with each other. Fla. Const. art. V. §4(2). *Canney* v. *Board of Pub. Instr.* is now pending before the court.

[48] Times Publishing Co. v. Williams, 222 So. 2d 470 (2d D.C.A. Fla. 1969).

[49] *Id.* at 473.

[50] FLA. CONST. art. V, § 23 provides: "Admission and discpline of attorneys—The Supreme Court shall have exclusive jurisdiction over the admission to the practice of law and the disciplining of persons admitted. It may provide for an agency to handle admissions subject to its supervision. It may also provide for the handling of discretionary matters in the circuit courts and the district courts of appeal, or by commissions consisting of members of the bar to be designated by it, the supreme court, subject to its supervision and review." Art. V, § 3 provides: "Practice and procedure—The practice and procedure in all courts shall be governed by rules adopted by the supreme court."

[51] Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971).

[52] 222 So. 2d 470, 475 (2d D.C.A. Fla. 1969).

[53] *Id.*

[54] *Id.* at 476 (emphasis added).

[55] *Id.*

[56] ARK. STAT. ANN. § 12–2805 (1968).

[57] Laman v. McCord. 245 Ark. 401, 432 S.W.2d 753 (1968).

[58] FLA. STAT. § 286.011 (1969). This clause may present constitutional problems of privileges and immunities. For example, the Sunshine Law would not necessarily secure the right of a Georgia citizen who owns property in Florida to be present at zoning commissions' meetings, et cetera.

[59] *Id.*

[60] 222 So. 2d 470, 476 (2d D.C.A. Fla. 1969).

[61] *Id.*

[62] *Id. See also* OP. ATT'Y GEN. FLA. (Jan. 27, 1971).

[63] FLA. STAT. § 286.011 (1969).

[64] *See* ARK. STAT. ANN. § 12–2805 (1968); IND. ANN. STAT. §§ 57–601 to –609 (1967).

[65] *See* CAL. GOV'T CODE §§ 54950–60 (West 1966); N.J. REV. STAT. §§ 10:4–1 *et seq.* (Supp. 1963).

* * * * *

[86] N.J. REV. STAT. § 10.4–2 (Supp. 1963).

[87] *Id.*

[88] Kramer v. Board of Adjustment, 80 N.J. Super. 454, 194 A.2d 26 (1963).

[89] N.M. STAT. ANN. § 5–6–17 (1953) (emphasis added).

[90] Raton Publishing Serv. Co. v. Hobbes, 76 N.M. 535, 417 P.2d 32 (1966).

[91] ARK. STAT. ANN. § 12–2805 (1968).

[92] Old Town Dev. Corp. v. Urban Renewal Agency, 249 Cal. App. 2d 313, 57 Cal. Rptr. 426 (1967).

[93] Kramer *v.* Board of Adjustment, 80 N.J. Super. 454, 194 A.2d 26 (1963).

[94] Raton Publishing Serv. Co. v. Hobbes, 76 N.M. 535, 417 P.2d 32 (1966).

[95] CAL. GOV'T CODE § 54952.5 (West 1966).

[96] KY. REV. STAT. § 88.040 (Supp. 1963).

[97] ARK. STAT. ANN. §12–2805 (1968).

[98] *See* text accompanying note 3 *supra*.

[99] IND. ANN. STAT. §§57–601 to 609 (1967).

[100] *Id.* §§57–608 to 609.

[101] ARK. STAT. ANN. §12–2805 (1968); CAL. GOV'T CODE §54956 (West 1966).

[102] Davidson v. Common Council, 40 Misc. 2d 1053, 244 N.Y.S. 2d 385 (1963).

[103] [1960–1962] CAL. ATT'Y GEN. BIENNIAL REP. 52.

[104] Nevens v. City of Chino, 233 Cal. App. 2d 775, 778, 44 Cal. Rptr. 50, 52 (1965).

[105] IND. ANN. STAT. §57–604 (1967).

[106] Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971). Board of Pub. Instr. v. Doran, 224 So. 2d 693 (Fla. 1969); Times Publishing Co. v. Williams, 222 So. 2d 470 (2d D.C.A. Fla. 1969).

[107] *See* Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors, 263 Cal. App. 2d 41, 60 Cal. Rptr. 480 (1968).

[108] Indiana is the only state that gives broadcasting special attention in its statute. *See* IND. ANN. STAT. §§ 57–601 to –609 (1967).

[109] *See, e.g.,* Editorial WJXT–TV, Jacksonville, Florida, April 21, 1970.

[110] Wolf v. Zoning Bd. of Adjustment, 79 N.J. Super. 546, 192 A.2d 305 (1963).

[111] Schults v. Board of Educ., 86 N.J. Super. 29, 205 A.2d 762 (1964).

[112] Canney v. Board of Pub. Instr., 231 So. 2d 34 (1st D.C.A. Fla. 1970).

[113] Raton Publishing Serv. Co. v. Hobbes, 76 N.M. 535, 417 P.2d (1966).

[114] Cozzolino v. City of Fontana, 136 Cal. App. 2d 608, 289 P.2d 248 (1955).

Mr. CHILES. Mr. President, I believe that a Federal Government-in-the-Sunshine Act is a logical consequence of positive State experience and the acceptance of the disclosure provisions in the Freedom of Information Act.

All of us know of the feelings of alienation and frustration so many people feel toward government these days. As government has grown, it seems to have gotten further away, out of the reach of people. It is not responsive enough; there is too little communication and too little understanding and too little trust between them. I saw the results of a recent survey conducted by the University of Connecticut in which professions were ranked according to the amount of trust the people put in them. Well, out of 20 "professions" included in the survey, politicians ranked No. 19, just ahead of used car salesmen and several notches below newspaper columnists. It reminds me of the old joke about whether you would buy a used car from a politician or not.

I believe a good deal of this problem is due to the aura of secrecy that surrounds too much of our Government—in most cases, totally unnecessary secrecy. Secrecy in government has rightly become a hot issue; for example, the Pentagon papers and the Anderson papers. These revelations have caused greater suspicion and cynicism about government, furthering the impression of bureaucracy and Congress in backroom decisions and dealing. It may be overreaction to some degree, but we cannot deny the public view of government as to closed and consequently unresponsive to peoples' needs.

Secrecy in government was an important theme in the recently completed Democratic National Convention. In its platform, my party pledged to transact the "public business publicly," except when the national security might be jeopardized. Let me cite a key proposal from the platform plank on "The People and the Government" which calls on Democratic Members of Congress to:

> Enact "open meetings" legislation, barring the practice of conducting the public business behind closed doors. This should include so-called markup sessions by legislative committees, but should allow for exemptions involving national security and invasions of privacy. To the extent possible the same principle should apply to the Executive Branch...

It is this principle that I second with my bill, not for partisan reasons, but because it answers the people's needs.

The Members of this body are well aware of the criticism of Congress for its practice of closed committee proceedings. Such criticism, within and outside of the body, moved the Congress to reform some of its meeting practices in the Legislative Reform Act of 1970. The overall hope of that reform was to bring congressional deliberations under closer public scrutiny. Yet, exceptions were made for markup sessions and the committees themselves could close their deliberations by majority vote.

The first session of the 92d Congress in 1971 was the first test year for legislative reforms. I was here in my first Senate year and in my opinion the reforms proved a failure. A Congressional Quarterly report of February 1972 shows how meager the impact has been in the area of openness of meetings. Thirty-six percent of all congressional committee meetings were closed, a slight decrease from the "prereform" year of 1970, but exactly the same percentage as in 1969. More importantly, the number of closed meetings last year was in no way significantly different from an average of 37 percent of closed sessions over the last 20 years. Another revealing statistic in the Congressional Quarterly survey was that 97 percent of those Senate committee meetings specifically designated as "business sessions"—organizing, marking up, voting, briefing sessions—were closed to the public.

If the final decision and amendment process is conducted in such an atmosphere, is there any wonder that questioning of our legislators' motives results? Even if hanky-panky is not present in such proceedings, the cloak of secrecy heavily implies its possibility. We all recognize that sound reasons exist for closed or executive sessions, and my earlier remarks identify some, but how is the public to know whether a closed meeting is held at the personal convenience of the legislator or for his personal gain?

I ask unanimous consent to have the full text of the February 8, 1972, Congressional Quarterly report on "Committee Secrecy" printed at this point in the RECORD.

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

COMMITTEE SECRECY: MINOR IMPACT OF REFORM ACT

Congressional committees conducted more than a third of their 1971 meetings in secret during the year in which the Legislative Reorganization Act of 1970—aimed, in part, at opening proceedings to the public—went into effect.

Thirty-six percent of all congressional committee hearings and meetings were held behind closed doors in 1971. This marked a decrease from the 41 percent recorded in 1970, but matched the secrecy score for 1969. The pattern of the past few Congresses has been to hold more open meetings in the first session than in the second. (1970 Almanac p. 1117)

The House, as in the past, had the higher percentage of closed meetings. It barred the public from 41 percent of its committee sessions in 1971. This was down from the 48 percent of 1970 but comparable to the 42 percent closed meetings in 1969.

Senate committees had an over-all secrecy score of 30 percent—less than the 33 percent of 1970, yet greater than the 28 percent recorded in 1969. Joint committees continued to report a low number of executive meetings: 20 out of a total of 126.

Since 1953, when Congressional Quarterly began its annual study of open and closed committee meetings, 23,720—or 37 percent—of the 64,231 meetings reported have been closed to the public. Statistics on committee meetings are given below. (Standards used in compiling the study, box this page.)

| Year | Total meetings | Number closed | Percent closed |
|---|---|---|---|
| 1953 | [2] 2,640 | 892 | [1] 35 |
| 1954 | [1] 3,002 | 1,243 | [1] 41 |
| 1955 | [1] 2,940 | 1,055 | [1] 36 |
| 1956 | [1] 3,120 | 1,130 | [1] 36 |
| 1957 | [1] 2,517 | 854 | [1] 34 |
| 1958 | [1] 3,472 | 1,167 | [1] 34 |
| 1959 | [1] 3,152 | 940 | 30 |
| 1960 | [1] 2,424 | 840 | [1] 35 |
| 1961 | [1] 3,159 | 1,109 | [1] 35 |
| 1962 | [1] 2,929 | 991 | [1] 34 |
| 1963 | [1] 3,868 | 1,463 | [1] 38 |
| 1964 | [1] 2,393 | 763 | [1] 32 |
| 1965 | 3,903 | 1,537 | 39 |
| 1966 | 3,869 | 1,626 | 42 |
| 1967 | 4,412 | 1,716 | 39 |
| 1968 | 3,080 | 1,328 | 43 |
| 1969 | 4,029 | 1,470 | 36 |
| 1970 | 4,506 | 1,865 | 41 |
| 1971 | 4,816 | 1,731 | 36 |
| Total [1] | 64,231 | 23,720 | 37 |

[1] Meetings of the House Appropriations Committee, all reported closed until 1971, were not included in the study until 1965.

House Appropriations: One of the noteworthy developments in 1971 was the opening of selected House Appropriations Committee hearings. Although only 8 percent of its sessions—36 of a total of 455—were open to the public, this was a contrast to the zero percent recorded in the past. (Committee staff members reported several open meetings in 1970; however, since these were carried as executive sessions in the daily digest, they were listed as closed in Congressional Quarterly's tabulations.)

The Legislative Reorganization Act of 1970 stipulated that House appropriations budget hearings are to be held in open session, except when the committee determines that the testimony may affect national security. (*1970 Almanac p. 447*)

Other House Committees: Ways and Means was the only other House committee, besides Appropriations, to meet more than 100 times and close its doors more often than not. It closed 69 of its 111 sessions for a secrecy score of 62 percent.

The House Judiciary Committee closed 47 percent of its 150 meetings. The number of closed sessions held by the House Armed Services Committee continued to decline in 1971. The committee secluded itself 41 percent of the time, as compared to 57 percent in 1970 and 64 percent in 1969.

The Education and Labor Committee remained at the top of the list of committees which met more than 100 times and most often in open session. The committee closed only six of its 199 meetings for a secrecy score of 3 percent.

Other committees which met more than 100 times with comparatively few closed sessions were Interior and Insular Affairs, 20 percent closed sessions; Government Operations, 22 percent; Interstate and Foreign Commerce, 24 percent; Foreign Affairs, 28 percent; Public Works and Merchant Marine and Fisheries, both with 31 percent.

Senate Committees: Only one of the Senate committees which met more than 100 times held the majority of its meetings in executive session. The Armed Services Committee closed 118 of its 150 meetings, or 79 percent. Public Works barred outsiders from 50 percent of its sessions. Foreign Relations closed its doors 43 percent of the time.

Senate Judiciary was the leader of committees which met more than 100 times and often in open session. It closed only 15 percent of its 167 meetings. Both Interior and Insular Affairs and Labor and Public Welfare closed 20 percent of their meetings; Commerce, 21 percent; Appropriations, 30 percent.

Joint Committees: Few executive sessions were held by joint congressional committees.

Of the 126 meetings reported in the daily digest, only 20, or 16 percent, were closed. The Joint Economic Committee, which met the most frequently, barred the public from only two of its 76 meetings.

Legislative Reform: In 1970, Congress passed its first reform act in 24 years. The Legislative Reorganization Act contained a number of provisions affecting the conduct of congressional committee meetings. A main thrust was to bring committee proceedings under public scrutiny. The reform legislation provided for making public the outcome of committee roll-call votes.

It stipulated that Senate committee business meetings are to be open except for mark-up (when a committee revises, amends and decides on the final language of a bill) and voting sessions. Senate committees also could close their business meetings by majority vote.

Ninety-seven percent of those Senate committee meetings specifically designated in the daily digest as business sessions—organizing, marking-up, voting, briefing sessions—were closed to the public.

The reorganization act also stated that House committee business meetings were to be open, except when the committee closed it by majority vote. Excluding the House Appropriations Committee, 79 percent of the sessions listed as business were held behind closed doors. (House Appropriations meetings were not included in these tabulations because subcommittee mark-up sessions were not reported to the Record.)

Public mark-up sessions are rare. Most committees prefer to write legislation in private for a variety of reasons. Some members believe that open meetings tend to encourage greater posturing and longer speeches for public consumption. Others think committee action is hindered by the necessity of observing formal procedures. One committee, which held open mark-up sessions in the past but not in 1971, found that the open meetings usually attracted more lobbyists than public.

Open Mark-Up Sessions: The House Education and Labor Committee, which had the lowest over-all secrecy score of House committees holding more than 100 meetings, also led in the open business meeting category. Of those specified as business sessions, the committee closed its doors six out of 60 times.

The House Education and Labor Committee's practice of opening mark-up sessions to the public began during heated debate over anti-poverty legislation in 1967, the year Rep. Carl D. Perkins (D Ky.) became chairman. Perkins opened the sessions when Republican committee members prevented action by boycotting meetings, while keeping someone in attendance to protest that a quorum was not present.

At that time Perkins stated: "If they (the Republicans) want to kill this bill then they're going to have to do it on the floor, out in the open and for the record. We're not going to let them do it behind closed doors." (1967 Weekly Report p. 2121)

Donald M. Baker, chief clerk of the House Education and Labor Committee, told Congressional Quarterly that he did not think open meetings had hampered committee proceedings and called it "a very good rule."

House Interior and Insular Affairs opened 30 of its 55 mark-up sessions. The Subcommittee on Territorial and Insular Affairs began marking up in open session in 1971 under the direction of its new chairman, Rep. Phillip Burton (D Calif.). Burton also serves on the Education and Labor Committee.

Another committee to mark up in open session in 1971 was House Post Office and Civil Service. The committee voted to open these sessions as a result of the Legislative Reorganization Act of 1970.

Committee Hearings: The 1970 Legislative Reorganization Act contained provisions concerning hearings. It required that House and Senate committees, with the exceptions of the Senate Appropriations and House Rules Committees, announce the date, place and subject of hearings at least one week in advance, unless the committee finds good cause for beginning them earlier. Provision for radio and television coverage of open committee meetings was contained in the legislation. Prior to the passage of the act, such coverage was permitted in the Senate but not in the House.

The reorganization law provided for the opening of more hearings. It stipulated that Senate hearings would be open except when the committee determines that testimony may relate to national security, may tend to reflect adversely on the character or reputation of an individual or may divulge matters deemed confidential under other provisions of law or government regulation.

GROUND RULES

Statistics in Congressional Quarterly's open-closed committee study were derived primarily from information published in the daily digest section of the *Congressional Record*, the official journal of Senate and House proceedings. Section 221 of the Legislative Reorganization Act of 1946 (now Section 905, Title 44, United States Code) required: "The Joint Committee on Printing shall provide for printing in the daily Record the legislative program for the day together with a list of congressional committee meetings and hearings, and the place of meetings and subject matter. It shall cause a brief résumé of congressional activities for the previous day to be incorporated in the Record. . . ."

In practice, however, not all committee meetings were listed in the Record. Committees used different criteria as to what constituted a meeting. Some did not report their meetings regularly to the Record; some said they reported their meetings but they were not carried in the Record.

Open meetings followed by closed meetings are counted twice—once in each category. Joint meetings of separate committees or subcommittees are counted as one meeting for each. A meeting of a subcommittee is counted as a meeting of the full committee.

The tabulations exclude meetings when Congress was not in regular session; meetings outside of Washington, D.C.; meetings of conference committees to reconcile conflicting Senate and House versions of bills; informal meetings of the House Rules Committee to consider sending legislation to the floor (but Rules Committee meetings for other purposes are included).

Meetings held by the House Appropriations Committee were not always reported to the Record. The CQ tally for the Appropriations Committee was made from a Record list of meetings scheduled. The Senate Select Committee on Standards and Conduct did not report its meetings, all closed, to the Record nor state the number of times it met.

OPEN AND CLOSED CONGRESSIONAL COMMITTEE MEETINGS, 1969–71

| | 1969 | | | | 1970 | | | | 1971 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Open | Closed | Total | Percent closed | Open | Closed | Total | Percent closed | Open | Closed | Total | Percent closed |
| Senate committees: | | | | | | | | | | | | |
| Aeronautical and Space Sciences | 7 | 7 | 14 | 50 | 12 | 3 | 15 | 20 | 7 | 3 | 10 | 30 |
| Agriculture and Forestry | 25 | 10 | 35 | 29 | 20 | 27 | 47 | 57 | 39 | 19 | 58 | 33 |
| Appropriations | 176 | 59 | 235 | 25 | 182 | 76 | 258 | 29 | 220 | 94 | 314 | 30 |
| Armed Services | 30 | 38 | 68 | 56 | 26 | 94 | 120 | 78 | 32 | 118 | 150 | 79 |
| Banking, Housing and Urban Affairs [1] | 86 | 27 | 113 | 24 | 60 | 29 | 89 | 33 | 72 | 22 | 94 | 23 |
| Commerce | 91 | 20 | 111 | 18 | 130 | 32 | 162 | 20 | 159 | 43 | 202 | 21 |
| District of Columbia | 54 | 6 | 60 | 10 | 29 | 6 | 35 | 17 | 27 | 5 | 32 | 16 |
| Finance | 41 | 28 | 69 | 41 | 50 | 36 | 86 | 42 | 35 | 31 | 66 | 47 |
| Foreign Relations | 63 | 63 | 126 | 50 | 62 | 65 | 127 | 51 | 72 | 55 | 127 | 43 |
| Government Operations | 95 | 14 | 109 | 13 | 45 | 12 | 57 | 21 | 84 | 9 | 93 | 10 |
| Interior and Insular Affairs | 60 | 30 | 90 | 33 | 88 | 37 | 125 | 30 | 90 | 23 | 113 | 20 |
| Judiciary | 78 | 14 | 92 | 15 | 138 | 29 | 167 | 17 | 142 | 25 | 167 | 15 |
| Labor and Public Welfare | 127 | 48 | 175 | 27 | 129 | 49 | 178 | 28 | 171 | 43 | 214 | 20 |
| Post Office and Civil Service | 33 | 12 | 45 | 27 | 6 | 15 | 21 | 71 | 16 | 10 | 26 | 38 |
| Public Works | 46 | 31 | 77 | 40 | 91 | 43 | 134 | 32 | 52 | 52 | 104 | 50 |
| Rules and Administration | 4 | 15 | 19 | 79 | 5 | 14 | 19 | 74 | 8 | 17 | 25 | 68 |
| Select Equal Educational Opportunity [2] | (3) | (3) | (3) | (3) | 45 | 4 | 49 | 8 | 30 | 4 | 34 | 12 |
| Select Nutrition and Human Needs | 12 | 1 | 13 | 8 | 18 | 4 | 22 | 18 | 18 | 2 | 20 | 10 |
| Select Small Business | 34 | 1 | 35 | 3 | 24 | 1 | 25 | 4 | 21 | 1 | 22 | 5 |
| Select Standards and Conduct | (4) | (4) | (4) | (4) | (4) | (4) | (4) | (4) | (4) | (4) | (4) | (4) |
| Special Aging | 23 | 3 | 26 | 12 | 16 | 0 | 16 | 0 | 17 | 0 | 17 | 0 |
| Veterans' Affairs [5] | (3) | (3) | (3) | (3) | (3) | (3) | (3) | (3) | 13 | 4 | 17 | 24 |
| Total | 1,085 | 427 | 1,512 | 28 | 1,176 | 576 | 1,752 | 33 | 1,325 | 580 | 1,905 | 30 |

| | 1969 | | | | 1970 | | | | 1971 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Open | Closed | Total | Percent closed | Open | Closed | Tota | Percent closed | Open | Closed | Total | Percent closed |
| House committee: | | | | | | | | | | | | |
| Agriculture | 83 | 45 | 128 | 35 | 32 | 99 | 131 | 76 | 110 | 64 | 174 | 37 |
| Appropriations [5] | 0 | 330 | 330 | 100 | 0 | 379 | 379 | 100 | 36 | 419 | 455 | 92 |
| Armed Services | 59 | 105 | 164 | 64 | 92 | 123 | 215 | 57 | 110 | 78 | 188 | 41 |
| Banking and Currency | 70 | 22 | 92 | 24 | 73 | 27 | 100 | 27 | 52 | 26 | 78 | 33 |
| District of Columbia | 50 | 23 | 73 | 32 | 49 | 35 | 84 | 42 | 53 | 37 | 90 | 41 |
| Education and Labor | 180 | 20 | 200 | 10 | 205 | 15 | 220 | 7 | 193 | 6 | 199 | 3 |
| Foreigh Affairs | 79 | 73 | 152 | 48 | 133 | 43 | 176 | 24 | 136 | 52 | 188 | 28 |
| Government Operations | 90 | 29 | 119 | 24 | 69 | 19 | 88 | 22 | 131 | 36 | 167 | 22 |
| House Administration | 5 | 36 | 41 | 88 | 7 | 58 | 65 | 89 | 9 | 47 | 56 | 84 |
| Interior and Insular Affairs | 85 | 25 | 110 | 23 | 111 | 36 | 147 | 24 | 101 | 26 | 127 | 20 |
| Internal Security | 24 | 4 | 28 | 14 | 41 | 8 | 49 | 16 | 43 | 22 | 65 | 34 |
| Interstate and Foreign Commerce | 122 | 45 | 167 | 27 | 144 | 113 | 257 | 44 | 173 | 56 | 229 | 24 |
| Judiciary | 94 | 66 | 160 | 41 | 97 | 77 | 174 | 44 | 80 | 70 | 150 | 47 |
| Merchant Marine and Fisheries | 86 | 21 | 107 | 20 | 69 | 36 | 105 | 34 | 84 | 37 | 121 | 31 |
| Post Office and Civil Service | 90 | 35 | 125 | 28 | 45 | 30 | 75 | 40 | 88 | 3 | 91 | 3 |
| Public Works | 52 | 27 | 79 | 34 | 57 | 41 | 98 | 42 | 74 | 33 | 107 | 31 |
| Rules | 27 | 15 | 42 | 36 | 24 | 6 | 30 | 20 | 22 | 4 | 26 | 15 |
| Science and Astronautics | 64 | 21 | 85 | 25 | 38 | 14 | 52 | 27 | 47 | 15 | 62 | 24 |
| Select Crime Investigation [7] | 14 | 5 | 19 | 26 | 4 | 6 | 10 | 60 | 15 | 5 | 20 | 25 |
| Select Small Business | 31 | 0 | 31 | 0 | 26 | 0 | 26 | 0 | 29 | 1 | 30 | 3 |
| Standards of Official Conduct | 0 | 14 | 14 | 100 | 8 | 12 | 20 | 60 | 1 | 13 | 14 | 93 |
| Veterans' Affairs | 20 | 13 | 33 | 39 | 20 | 11 | 31 | 35 | 25 | 12 | 37 | 32 |
| Ways and Means | 65 | 50 | 115 | 43 | 36 | 84 | 120 | 70 | 42 | 69 | 111 | 62 |
| Total | 1,390 | 1,024 | 2,414 | 42 | 1,380 | 1,272 | 2,652 | 48 | 1,654 | 1,131 | 2,785 | 41 |
| Joint Committees: | | | | | | | | | | | | |
| Atomic Energy | 28 | 12 | 40 | 30 | 21 | 15 | 36 | 42 | 22 | 12 | 34 | 35 |
| Congressional Operations [8] | (3) | (3) | (3) | (3) | (3) | (3) | (3) | (3) | 6 | 3 | 9 | 33 |
| Defense Production | 0 | 1 | 1 | 100 | 0 | 0 | 0 | 0 | 3 | 1 | 4 | 25 |
| Economic | 56 | 5 | 61 | 8 | 64 | 0 | 64 | 0 | 74 | 2 | 76 | 3 |
| Others [8] | 0 | 1 | 1 | 100 | 0 | 2 | 2 | 100 | 1 | 2 | 3 | 67 |
| Total | 84 | 19 | 103 | 18 | 85 | 17 | 102 | 17 | 106 | 20 | 126 | 16 |
| Grand total | 2,559 | 1,470 | 4,029 | 36 | 2,641 | 1,865 | 4,506 | 41 | 3,085 | 1,731 | 4,816 | 36 |

[1] Formerly Banking and Currency Committee; renamed by the Legislative Reorganization Act of 1970.
[2] Created Feb. 19, 1970, by S. Res. 359.
[3] Not in existence.
[4] Not available.
[5] Created by the Legislative Reorganization Act of 1970.
[6] Committee staff members reported one open meeting on the District of Columbia appropriations and 8 open meetings on public works in 1970. However, since these were reported as closed in the Daily Digest, they were carried as executive sessions in tabulations.
[7] Created May 1, 1969, by H. Res. 17.
[8] In 1969 includes Joint Committees on Internal Revenue Taxation, Library, Printing. Reduction of Nonessential Federal Expenditures; in 1970 includes Printing; in 1971 includes Library, Printing.

Mr. CHILES. Mr. President, the closed-door practice in Congress is contrary to the spirit of our Constitution and the intent of its framers. Article I, section 5 of the Constitution provides that—

Each House shall keep a journal of its proceedings, and from time to time publish the same, except such parts as may in their judgment require secrecy . . .

The aim of this provision was to insure that the public's business be conducted in public; this in direct reaction to and desire to avoid the English parliamentary practice of closed sessions.

Living today as we do in a complex time when people are fearing loss of identity to a growing government that threatens to completely dominate them and is ever more difficult to understand, the need is now to expose our governmental processes to the fullest extent possible. We must open the doors—and windows—and let the disinfecting sunlight in. We can but gain—better lawmaking, greater public confidence, strengthening of the democratic process itself. I urge serious consideration of the legislation and its merits.

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By Mr. MONDALE (for himself, Mr. JAVITS, Mr. KENNEDY, Mr. PELL, Mr. WILLIAMS, Mr. HUMPHREY, Mr. CHURCH, Mr. PROXMIRE, Mr. JACKSON, Mr. HARTKE, and Mr. STEVENSON):

S. 3882. A bill to amend the Federal Property and Administrative Services Act of 1949 to provide for the use of excess property by certain grantees. Referred to the Committee on Government Operations.

EXCESS PROPERTY

Mr. MONDALE. Mr. President, I would like at this time to inform my colleagues that I am introducing today S. 3882, a bill which would require the continuation of programs under which recipients of Federal grants may acquire Federal excess property at a reduced rate.

On this occasion, I want to outline the sequence of events which has led up to my introduction of the bill; and to provide for the record certain information concerning the operation of the program and the reasons I believed that it should be preserved.

I ask unanimous consent to have printed in the RECORD at this point a memorandum prepared for me by the Library of Congress. This document provides a clear, unprejudiced definition of the term "excess property"—which is often mistakenly confused with "surplus property"—and of the authority for the existing program.

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

THE GSA PROGRAM ON EXCESS PROPERTY

1. The legislative basis for the GSA excess property program is the Federal Property and Administrative Services Act of 1949, as amended. Implementing instructions are delineated in the Federal Property Management Regulations. The salient features of the Federal Property and Administrative Services Act of 1949, are the following:

a. The Act makes a distinction between "*excess property*" and "*surplus property*". The former is any property under the control of a Federal agency which is no longer needed by *that* agency. Surplus property is any excess property not needed by *any* Federal agency, as determined by the Administrator of General Services.

b. The *Administrator* (GSA), to minimize expenditures for property, is given responsibility to prescribe policies and methods to promote the maximum utilization of excess property by Federal agencies. He makes provision for the *transfer of excess property* among Federal agencies. With the approval of the Director, Office of Management and Budget, he prescribes the extent of reimbursement for such transfers.

c. *Federal executive agencies* are responsible for surveying the property under their control to determine which is excess, reporting such property to the Administrator, GSA, and disposing of such property to the Administrator, GSA, and disposing of such property as promptly as possible, in accordance with GSA regulations.

d. Generally speaking, when excess property becomes *surplus property*, the Administrator, GSA, exercises supervision and direction over its disposition. Any agency authorized by the Administrator to dispose of surplus property may do so by sale, exchange, lease, permit, or transfer—for cash, credit or other property. Usually, disposals made or authorized by the Administrator are made after publicly *advertising* for bids. However, disposals may be *negotiated* under regulations prescribed by the Administrator, GSA. Among the conditions which permit negotiation are the following: because such action may be necessary for the public interest in an emergency, promotion of the public health, safety or national security, because bid prices after advertising are not reasonable.

e. The Administrator is authorized to *donate surplus property without cost* (except for care and handling), for use in any State for educational, public health or research purposes. For surplus property under the control of the Department of Defense, the Secretary, DOD, determines whether it is usable for educational purposes which are of special interest to the armed forces (e.g., military preparatory schools). If found usable, he allocates it for transfer by the Administrator, GSA, to State agencies for distribution. If not usable for military education, the surplus property may be examined by Department of Health, Education and Welfare of Civil Defense for possible utilization by these activities.

f. Determination as to whether surplus property is usable for education, health or research is made by the Secretary of HEW, who

allocates such property on the basis of needs for transfer by GSA to the States for distribution. The Civil Defense Administrator takes similar action for surplus property determined to be useful for Civil Defense purposes.

g. The Administrator, GSA, is authorized to assign to the Secretary, HEW, for disposal, such surplus *real* property that HEW recommends as needed for *education, health or research purposes.*

h. The administrator, GSA, is authorized to assign to the Secretary of the Interior, for disposal, such surplus *real* property needed for use as public parks or recreation area.

Mr. MONDALE. Mr. President, on May 16, 1972, Frank Carlucci, Associate Director of the Office of Management and Budget, wrote a letter to Rod Kreger, Acting Administrator of the General Services Administration, calling on GSA to "discontinue all authorizations and practices which now permit the use of Federal sources of supply or services by Federal grantees including depots, stores, warehouses, contracts, excess personal property or other such sources."

At this point, I ask unanimous consent to have printed in the RECORD the letter from Mr. Carlucci to Mr. Kreger.

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

OFFICE OF MANAGEMENT AND BUDGET,
*Washington, D.C., May 16, 1972.*

Hon. ROD KREGER,
*Acting Administrator,*
*General Services Administration,*
*Washington, D.C.*

DEAR MR. KREGER: As you know, there has been increasing concern in the business community, the Congress and the executive branch regarding an authorization of the General Services Administration which permits Federal grantees to buy supplies and services directly from GSA and from other Federal sources of supply.

The provision at issue as set forth in the Federal Property Management Regulations 41 CFR Sec. 101–33, authorizes other Government agencies to, in turn, authorize grantees of such agencies, to buy from GSA inventories and stores, and to order directly from manufacturers via Government contracts. Additionally, the authorization has been extended to the practice of allowing grantees to place orders with GSA regions or buying centers for direct purchase, and also allows grantees access to Federal sources of excess personal property.

The above authorizations are not consistent with the purpose of the Administration's policy of reliance on the private enterprise system and is particularly objectionable in this sense because the burden of GSA competition falls more heavily on small businesses throughout the country. To the extent that grantees are components of State or local governments, the authorizations are also not consistent with the intent of Congress as expressed in the Intergovernmental Cooperation Act and implementing regulations (Circular A–97) of OMB.

It is our conclusion, in view of the above, that GSA should discontinue all authorizations and practices which now permit the use of Federal sources of supply or services by Federal grantees.

I am requesting, therefore, that immediate steps be taken to propose an amendment to GSA regulations that would rescind all authorizations of GSA under which Federal grantees are permitted to use Federal sources of supply. The proposed regulation should, of course, be made available under OMB Circular No. A–85 for comment by State and local governments prior to issuance.

Upon issuance of the amendment, action should be taken to notify the agencies of the determination and request that they immediately advise their grantees that access to Federal sources, i.e., depots, stores, warehouses, contracts, excess personal property, or other such sources is no longer authorized. Appropriate action consistent with the above should also be taken with respect to existing arrangements and unfilled requisitions.

As you know, studies of the Commission on Government Procurement have extended to all phases of supply support and the Commission's final report may include recommendations concerning grantee use of Federal supply sources. We will, of course, review the above conclusion in the light of any such recommendation which the Commission may propose.

Your cooperation and assistance in accomplishing the foregoing will be appreciated. Should you have any questions regarding this matter, we would be happy to discuss it further.

Sincerely,

FRANK CARLUCCI,
*Associate Director.*

Mr. MONDALE. Mr. President, in the Federal Register dated June 1, 1972, the following announcement appeared:

(General Services Administration—[41 CFR Parts 101–26, 101–33, 101–43])

USE OF GOVERNMENT SUPPLY SOURCES BY GRANTEES

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the General Services Administration (GSA) is considering the adoption of revised rules prohibiting the use of GSA and other Government sources of supply by recipients of Federal grants.

The Office of Management and Budget has directed GSA to propose discontinuance of the authorization permitting Federal grantees to use Federal supply sources. Therefore, appropriate amendments to the Federal Property Management Regulations to accomplish this have been developed. However, cost-reimbursement type contractors will continue to be permitted to use GSA supply sources under the provisions of Subparts 1–5.5 and 1–5.9 of the Federal Procurement Regulations.

This notice is published pursuant to section 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Interested persons are invited to submit written data, views, or arguments regarding the proposed revision to the Commissioner, Federal Supply Service, General Services Administration, Washington, D.C. 20406, within 30 days after the date of publication of this notice in the FEDERAL REGISTER.

Dated: May 31, 1972.

M. S. MEEKER,
*Commissioner.*

I became aware of the appearance of this announcement more than a week later, when Minnesota grantees notified me that they stood to lose valuable and much-needed excess property if the rule change went into effect. Among the institutions and agencies in Minnesota alone which have since taken the trouble to inform me that they oppose the termination of the program are the following:

LIST OF INSTITUTIONS AND AGENCIES

Bemidji State College.

Bi-County Community Action Council, Bemidji, Minn.

Community Action Program, White Earth, Minn.

Dakota County Area—Vocational-Technical School.

Detroit Lakes Area Vocational-Technical School.

Gustavus Adolphus College, University of Minnesota.

Inter-County Community Council, Inc., Erskine, Minn.

Inter-County Community Council, Inc., Oklee, Minn.

Law offices of Legal Services Project, Cass Lake, Minn.

Legal Aid Society of Minneapolis.

Mankato Area Vocational-Technical Institute.

Meeker-Wright Community Action, Inc., Waverly, Minn.

Minnesota Private College Council.

Minnesota State Advisory Council for Vocational Education.

Northwest Community Action Council, Badger, Minn.

Red Wing Public Schools.

Rural Minnesota CEP and CO PO.

St. Cloud State College.

St. Mary's Junior College.

South Central Community Action Council, Jackson, Minn.

Southeastern Minnesota Citizens Action Council.

Southeastern Vocational Center.

Suburban Hennepin County Area Vocational-Technical School.

Technical Education Center, Willmar State Junior College.

After learning of the intention of GSA to terminate the excess property program, I wrote the following letter to GSA requesting information about the impact of the proposed change.

The letter follows:

JUNE 15, 1972.

Mr. ROD KREGER,
*Acting Administrator, General Services Administration, Washington, D.C.*

DEAR MR. KREGER: It has recently come to my attention that GSA is considering the adoption of revised rules prohibiting the use of GSA and other government sources of supply by recipients of Federal grants.

I am most distressed to hear that such a policy change is under consideration. It is apparent that a wide variety of institutions in Minnesota, including vocational and technical schools and the University, would be adversely affected by the proposed change.

To my knowledge these institutions have received no explanation from GSA of the reasons for the proposed change. My staff has secured a copy of the letter from Frank Carlucci, Associate Director of the Office of Management and Budget, notifying you of the proposed change in regulations. This letter states that existing policy is not consistent with the purpose of the Administration policy of reliance on the private enterprise system and is particularly objectionable in this sense because the burden of GSA competition falls more heavily on small businesses throughout the country. This letter offers no documentation of the so-called "administration policy" referred to or any explanation as to what extent the present policy places a burden on small businesses throughout the country.

In addition, my staff has been unable to secure from your agency an explanation of the potential impact of the policy change either nationally or in Minnesota.

I am very concerned about the possible effects of a change in the regulation on the quality of educational and other human service programs in Minnesota. But it is impossible for me to address the substance of this issue without adequate information. For this reason, I request that complete answers to the following questions be forwarded to my office by the close of business on Thursday, June 20th:

1. Please list all Minnesota institutions which received excess property in FY 1971 and 1972, the value of the property acquired and which of these institutions would become ineligible under the proposed change.

2. Please indicate the dollar value of excess and surplus property received by each of the following types of institutions in each of the last five years:

(a) Minnesota institutions,
(b) Minnesota colleges and universities,
(c) Minnesota vocational and technical education institutions,
(d) all vocational education institutions nationally,
(e) all colleges and universities nationally.

3. Please list the dollar value of excess property disposed of throughout the United States in FY 1971 and 1972.

4. Please explain the difference between excess property and surplus property.

5. What agencies or other recipients will acquire or be eligible for acquisition of the excess property that would be unavailable to grantees under the proposed rule change? Please provide a general answer on the national situation and the specific list of eligible recipients in Minnesota.

6. Please explain in full "the Administration policy of reliance on the private enterprise system" with documentation of its origin and existence.

7. Please explain Mr. Carlucci's assertion that "the burden of GSA competition falls more heavily on small businesses throughout the country."

I am looking forward to your speedy reply.

Sincerely,

WALTER F. MONDALE.

Despite the repeated attempts of my staff to receive answers to these questions from GSA, none had been received by my office on June 29. The deadline for comments to GSA was imminent and I feared that the program would be terminated before Congress even had the chance to express its interest and concern. For these reasons, on June 29, I introduced an amendment to the legislation authorizing continuation of the excess property and supply sources programs for grantees.

The Senate approved the amendment. At this point, I ask unanimous consent to have printed in the RECORD a copy of the letter received in my office from GSA—after the amendment had already been approved by the Senate. I hope you will take note of the failure of GSA to answer directly virtually all of the questions I had submitted.

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

GENERAL SERVICES ADMINISTRATION,
*Washington, D.C., June 29, 1972.*

HON. WALTER F. MONDALE,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR MONDALE: Thank you for your letter concerning the proposal that the Federal Property Management Regulations (FPMR) be amended to discontinue the General Services Administration (GSA) grantee program.

Your interest is appreciated and we are answering your questions in the same order as in your letter.

1 & 2: The information required to answer these two questions is not available within GSA. Transfers of excess property are made to Federal agencies, some of which, in turn, make it available for use by their grantees and cost-reimbursement type contractors. After such property is transferred, the extent to which it is used within the acquiring agencies, either directly or by their grantees, is not known by GSA.

By way of information, with the expansion of Federal grant programs, several years ago certain agencies started acquiring excess property not only for direct use but also for use in Federal grant programs and on cost-reimbursement type contracts. The principal recipient agencies have been the Office of Economic Opportunity; National Science Foundation; Office of Education, Department of Health, Education, and Welfare; Manpower Administration, Department of Labor; Department of Commerce; Defense Civil Preparedness Agency (former Office of Civil Defense); and, more recently, the Department of the Interior; Environmental Protection Agency; and the Law Enforcement Assistance Administration, Department of Justice. These agencies keep accountability records and information on the amount of property in the hands of their grantees and such information would be available only from them.

In the event the proposed regulation is issued, Federal grantees in the State of Minnesota will no longer be able to acquire excess property. While we do not have available the names of these grantees, they are generally involved in programs concerned with education, manpower training and development, community action, antipoverty, local police training, and civil defense.

With respect to surplus property, it is allocated among the States by the Department of Health, Education, and Welfare, and approved by the General Services Administration for transfer to the States for donation for education, public health, and civil defense purposes. By law, distribution to eligible donees within the States is made by an agency established by each State for that purpose. In Minnesota, that agency is under the direction of Mr. Harold W. Shattuck, Supervisor, Surplus Property Section, Department of Administration, 5420 Highway 8, Arden Hills, New Brighton, Minnesota 55112. Therefore, data on the amounts donated to specific donees within Minnesota would be available only from the State agency.

3. In terms of original acquisition cost, during FY 1971 $751.2 million of excess property was transferred to other Federal agencies; for FY 1972 through May the amount was approximately $858.0 million.

4. The term "excess property" means any property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof. While in excess status, this property is only available for use by the Federal Government.

The term "surplus property" means any excess property not required for the needs and discharge of the responsibilities of all Federal agencies, as determined by the Administrator of General Services. After being determined surplus, such property is made available first for donation to use within the States, after which any remainder is sold.

5. All agencies within the Federal Government which currently acquire excess property would continue to be eligible. However, the property would have to be acquired only for direct use or for use by their cost-reimbursement type contractors.

Since grantees would no longer be eligible, much of the excess property which Federal agencies acquire for such use would probably become surplus and donated for education, public health, and civil defense purposes. Consequently, grantees engaged in activities for other than those purposes would not be eligible for the donation of surplus property.

6 & 7: Since the quoted terms are extracted from the Office of Management and Budget letter of May 16, 1972, to GSA, we feel that OMB is better qualified to define their usage. Any such explanation should be obtained from the Office of Management and Budget.

Please let us know if we can be of further assistance.

Sincerely,

ROD KREGER,
*Acting Administrator.*

Mr. MONDALE. Mr. President, the amendment approved by the Senate was considered by the conference committee on the OEO bill. It was not included in the conference report, because the parliamentarian of the House of Representatives ruled that the amendment was not germane to the bill.

Apparently because of the high public interest and the volume of mail being received in response to the request for comments, GSA extended the comment period until July 31. In the meantime, Secretary of Health, Education, and Welfare Elliot Richardson unilaterally terminated the HEW excess property program on July 14. I ask unanimous consent to have printed in the RECORD here a copy of the document stating that the HEW program has been terminated.

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

MANUAL CIRCULAR—MATERIEL MANAGEMENT: USE OF EXCESS PROPERTY ON GRANTS

1. *Purpose.*—This circular provides Department policy regarding the use of excess personal property by grantees.

2. *Background.*—It has been determined that the use of excess personal property by grantees will be discontinued inasmuch as the majority of HEW grantees are eligible for donation of personal property under the Department's surplus property donation program.

3. *Policy.*—It is the policy of HEW that the use of excess personal property by grantees not be authorized. Section 103—43.320 of the HEW Materiel Management Manual is in the process of being revised to reflect this policy.

4. *Accountability.*—Federally-owned personal property presently in the possession of grantees will continue to be accounted for in accordance with current regulations.

5. *Effective Date.*—This circular is effective immediately.

On July 28, I and 22 other Senators signed and sent a letter to M. S. Meeker, Commissioner of the Federal Supply Service, expressing our concern about GSA's intention to terminate the excess property and supply source programs without providing adequate documentation of the reason for the decision and without providing a hearing to those who would be affected by the change. A copy of the letter follows:

JULY 28, 1972.

HON. M. S. MEEKER,
*Commissioner, Federal Supply Services, General Services Administration, Washington, D.C.*

DEAR MR. MEEKER: Please consider this letter a formal response to GSA's solicitation of comments on the proposed "adoption of revised rules prohibiting the use of GSA and other Government sources of supply by recipients of Federal grants", which appeared in the Federal Register on June 1, 1972.

We are deeply concerned to learn that GSA is considering terminating the excess property and GSA supply source programs for grantees. We believe that these programs are of considerable importance in keeping down the cost of government-supported projects to the tax-payers; and in maintaining the quality of service offered by many of these programs.

We have further been concerned to observe that GSA has not provided the Congress with a comprehensive analysis of the pros and cons of these programs as they exist; and of the specific reasons for the proposal to terminate them.

Any decision on the future of the grantee programs should be made only after complete information on its implications has been developed and provided to Congress and to

affected parties. Further, we believe that GSA should make a decision only after calling a public hearing and receiving testimony from those affected parties who wish to testify.

In addition, we believe that GSA should notify HEW—which has unilaterally terminated its own program even before the period for comments has expired—and other executive agencies that they should continue to operate their programs until a general policy decision has been made.

We thank you for your serious consideration of these points and urge that you immediately announce a date for a hearing and provide the Congress with the documentation required to fully understand the implications of the proposed rule change.

Sincerely,

Walter F. Mondale, George McGovern, Vance Hartke, Fred Harris, Philip A. Hart, Claiborne Pell, Thomas Eagleton, Clifford P. Case, Edward W. Brooke, Robert Stafford, William Proxmire, Mike Gravel, Harold E. Hughes, Daniel Inouye, Harrison Williams, Hubert H. Humphrey, Frank Church, Gaylord Nelson, John Tunney, Robert Taft, Jr., Edmund Muskie, Edward M. Kennedy, and Jacob Javits.

And now today, I am introducing a bill which would require the continuation of the excess property program. I have more than one reason for believing that this legislation is necessary.

The first, and most obvious, reason is that I believe that the excess property program is the legitimate source of property that is strongly needed by and significantly improves the programs of many educational and other public service agencies. Representatives of the vocational schools, colleges and universities and community action agencies have testified over and over again to me in letters that they simply could not afford to acquire the same property at the market price. If they cannot get it under the excess property program, they often cannot afford to buy it at all.

Second, I believe that the excess property program saves the taxpayers money. Institutions and agencies do not have to pay market prices for certain property that they otherwise acquire under the program; and the costs associated with acquisition run less for excess property than they do for property secured under the surplus donation program.

My third reason for introducing this legislation is that I am appalled at the disregard of the administration and the executive agencies for the prerogative of Congress in this whole area of property transfer. No less an authority than the Constitution of the United States states—in the second paragraph of article IV:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

The fact is that Congress was never consulted when the excess property program for grantees was initiated. And now that the program is threatened, now that the Government is trying to take away a privilege which it has previously granted, the attempt was again made to determine policy without the consultation of Congress. I am aware that Secretary Richardson wrote to Representative JACK BROOKS, chairman of the House Subcommittee on Government Activities, in June informing him that he expected to terminate the HEW program. But I am not aware that any member of the Labor and Public Welfare Committee, which oversees HEW programs, was notified that any such action was pending.

My fourth reason for introducing this bill today is this: while neglecting to work with and inform the Congress about the pending change in policy, the agencies involved have also completely failed to make their deliberations known either to the grantees who would be affected or to the general public. Notification of the proposed change proceeded in a most perfunctory manner giving rise to confusion and misinformation throughout the communities affected.

I strongly believe that we must put an end to secrecy in Government. I do not understand why a Senator who requests basic information concerning the impact of a proposed policy change which affects thousands of his constituents and cannot get an answer. I do not understand how an executive agency can make a policy change without being required to make public the reasons behind the proposed change.

It is apparent that not all of the executive agencies involved fully support the proposed termination of the excess property program. Phillip V. Sanchez, Director of the Office of Economic Opportunity, wrote to OMB Director Caspar Weinberger on June 23:

The annual utilization of excess federal property by OEO grantees is approximately $15 million. This excess property includes heavy equipment, many types of vehicles, shop equipment, furniture and other supplies and equipment that become excess to the many federal agencies. Loss of access to excess federal property will require commercial purchases whereas, the only cost for excess property is transportation.

And, Howard Matthews, Director of the Division of Manpower and Training of the Office of Education, wrote in a memo to the Director of the surplus property program at HEW:

We do have a strong program objection (to eliminating the excess property program for grantees), as hard core program savings reported by your regional excess property program coordinator exceeded $45 million in the last five years. These program savings reflect the utilization of Excess Federal Personal Property both in the consumable and major equipment categories in lieu of new procurement and represent savings of appropriated funds earmarked for the purchase of equipment and supplies for which excess Federal property was acquired and substituted. The monies saved have been used for program expansion and enrichment.

I see no justification for the high-handed, elusive treatment the public, interested parties and Members of the Congress have received in their attempts to learn about and have a part in decisions regarding the excess property policy.

At this time, I would like to make it clear for the record that the bill I am introducing and discussing here today concerns only the excess property program for grantees. It would not affect the access of grantees to Federal supply sources one way or the other. It is my belief that because these two programs were tied together in the announcement of a proposed rule change in the Federal Register, the public has been led to believe that the issues and the questions raised are inseparable. I think that the issues are different, and I am also introducing a completely separate bill that deals with the question of purchasing from GSA stores.

I am introducing the excess property legislation today in the hope that members of the Senate and House Committees on Government Operations will agree with me that the issues raised by the excess property policy are significant enough in themselves to warrant hearings and consideration by the Congress.

I am also pleased to note that Representatives MICHAEL HARRINGTON, of Massachusetts, and DON FRASER, of Minnesota, and others are introducing in the House of Representatives a bill on excess property which is identical to mine.

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

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

S. 3882

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 202 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483), is amended by adding at the end thereof the following new subsection:

"(i) Each executive agency shall furnish excess property to any grantee under a program established by law and for which funds are appropriated by the Congress if the head of that executive agency determines that the use of excess property by that grantee will (1) expand the ability of that grantee to carry out the purpose for which the grant was made, (2) result in a reduction in the cost to the Government of the grant, or (3) result in an enhancement in the product or benefit from that grant. Any determination under the preceding sentence shall be reduced to writing and furnished to the grantee involved. The Administrator shall prescribe regulations governing the use, maintenance, consumption, and redelivery to Government custody of excess property furnished to grantees under this subsection."

## ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 325

Mr. BEALL. Mr. President, on January 27, 1971, I introduced S. 325, which would provide for a permanent survivor benefit plan for dependents of retired military personnel.

I am pleased to add the names of Senators SCHWEIKER and COTTON as cosponsors of S. 325. This makes a total of 41 Senators who are sponsoring this legislation.

S. 2516

At the request of Mr. TOWER, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 2516, a bill to authorize the Secretary of Agriculture to reimburse owners of equines and accredited veterinarians for certain expenses

of vaccinations incurred for protection against Venezuelan equine encephalomyelitis.

S. 3330

At the request of Mr. JACKSON, the Senator from Minnesota (Mr. HUMPHREY) was added as a cosponsor of S. 3330, a bill to establish a national policy for the management, conservation, use, and development of the Nation's natural resources, to provide for the establishment of a Board on Natural Resources Planning and Policy, and for other purposes.

S. 3449

At the request of Mr. JACKSON, the Senator from Kansas (Mr. PEARSON) and the Senator from Washington (Mr. MAGNUSON) were added as cosponsors of S. 3449, a bill to authorize and direct the Water Resources Council to coordinate a national program to insure the safety of dams and other water storage and control structures, to provide technical support to State programs for the licensing and inspection of such structures, to encourage adequate State safety laws and methods of implementation thereof.

S. 3841

At the request of Mr. HANSEN, the Senator from Minnesota (Mr. HUMPHREY) was added as a cosponsor of S. 3841, to amend the Internal Revenue Code of 1954 to provide for an estate tax charitable deduction in the case of certain charitable remainder trusts.

S. 3872

At the request of Mr. JAVITS, the Senator from New Jersey (Mr. WILLIAMS), the Senator from Maryland (Mr. MATHIAS), and the Senator from Minnesota (Mr. HUMPHREY) were added as cosponsors of S. 3872, a bill to provide for the use of certain funds to promote scholarly, cultural, and artistic activities between Japan and the United States, and for other purposes.

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## SENATE RESOLUTION 342—SUBMISSION OF A RESOLUTION IN SUPPORT OF POLICY OF THE PRESIDENT NOT TO STRIKE DIKES IN NORTH VIETNAM

(Referred to the Committee on Armed Services.)

Mr. TUNNEY. Mr. President, on behalf of Senators CHURCH, EAGLETON, HARRIS, KENNEDY, MAGNUSON, MCGOVERN, PROXMIRE, RIBICOFF, BAYH, and myself, I am submitting today a sense-of-the-Senate resolution which supports the policy set forth by the President on June 29, 1972, that the United States shall not bomb the dikes in North Vietnam. I send the resolution to the desk for appropriate referral.

The ACTING PRESIDENT pro tempore. The resolution will be received and referred.

The resolution reads as follows:

S. RES. 342

Whereas the President has stated on June 29, 1972, that: "The United States has used great restraint in its bombing policies; and I think properly so. We have . . . had orders out not to hit dikes because the result in terms of civilian casualties would be extraordinary. As far as any future activities are concerned those orders are still in force . . . .", and

Whereas it appears that millions of civilian lives are protected by the complicated and ancient system of dams and dikes in North Vietnam, now, therefore be it

*Resolved*, That it is the sense of the Senate that, in accordance with the above-stated policy of the President, the United States shall not bomb or otherwise attack by air or sea any dams, dikes, or other hydraulic systems in North Vietnam.

Mr. TUNNEY. Mr. President, it is important to recognize that, since the President announced that policy, the administration has vacillated, equivocated, and altered that position. Yet, it should remain the administration's position, as it is proper and imperative.

Mr. President, no issue facing our Nation is more urgent than the possibility that our bombing may help cause mass floods in North Vietnam in the next month or two.

North Vietnam's dike system protects a rural population of over 10,000,000 people. These dikes run throughout the Red River Valley. Often reaching a height of over 40 feet. If the dikes are breached, if monsoon waters which peak in August break through and floods ensue, millions of civilian could drown or face starvation.

Mr. President, let me emphasize this point as strongly as I can: the lives of millions of human beings are at stake. The bombing of North Vietnam's dikes is not just another part of the Vietnam debate, another political antiwar issue. If these dikes fail, one of the greatest human disasters of the 20th century could result.

We may disagree on whether or not the United States should withdraw totally from Indochina. But there can be no disagreement that every moral and legal tenet we hold dear proscribes any support whatsoever for the bombing of North Vietnam's dikes.

In fairness, Mr. President, another point must also be emphasized. I do not claim that our bombing of dikes has yet caused severe civilian casualties. I do not claim that we have as yet jeopardized the civilian lives which are protected by the dikes.

But I do know, Mr. President, that an unchecked bombing policy threatens to do just that. I do know that the reports by our own Government of our bombing activities in North Vietnam have been conflicting and have not always been accurate.

It is important to adhere to the policy set forth by the President on June 29. But it appears that we are not doing that. The highest officials of the Nixon administration now admit that we are, in fact, bombing North Vietnam's dikes. More important, they have also made it clear that these strikes against the dikes are not mere "accidents," but are, in fact, the inevitable consequences of our overall bombing campaign against the North.

The issue of our bombing the dikes was first raised by North Vietnamese spokesmen during the months of April, May, and June, in which they charged that there had been 18, 46, and 46 raids respectively against the dikes. Many of us, including myself, tended to discount these reports as possible "enemy propaganda" and did not treat them with a great degree of seriousness.

I personally cannot believe that any attempt would be made to bomb the dikes. I am confident that the policy which had been a part of American foreign policy for the past 10 years will remain a part of that policy and that we would leave the dikes alone knowing that the only thing that could be caused in the way of results from bombing attacks on the dikes would be massive civilian deaths through drowning or starvation at some later point.

Similarly, I and others overlooked a provocative article in the June 7–8 issue of Le Monde by Yves Lacoste, a professor of geography at the University of Paris. In this article Mr. Lacoste argued that our bombing could cause flooding by bombing in and around the bases of the dikes without striking them directly.

Then, on June 24, 1972, the first eyewitness report by a western observer of a bombed-out dike emerged. Jean Thoraval, the Agence France Presse representative in Hanoi. reported visiting a Red River dike 14 miles from the city of Nam Dinh. He reported that:

One of the embankments were completely cut. Several were gutted, with gaps in the dike itself and hollows, evidently caused by bombs, alongside. Deep cracks were visible everywhere. (New York Times, June 25, 1972.)

This report was dwarfed in importance, however, by an event of the first magnitude which occurred 4 days later. On June 28, 1972, the Swedish Ambassador to Hanoi, Jean-Christophe Oberg, took a step virtually unprecedented for Western diplomats, who traditionally speak out only on issues of direct concern to their countries. Mr. Oberg not only reported witnessing bombed-out dikes directly, he called upon world opinion to mobilize to prevent any further bombing of dikes. Speaking out in the strongest possible language, Ambassador Oberg said:

The greater danger just now is the bombing of dams and locks . . . everyone, even diplomats must react as human beings, particularly those of us who have the advantage of being on the spot. Diplomat or not, I have no intention of witnessing passively what is happening . . . I am not the only one to have seen it. If a catastrophe occurs in a few months, at the time of the monsoon, we shall know who is responsible. But this must not be allowed to happen. The lives of millions of people are in jeopardy, and an unprecedented famine could occur in the north.

Mr. Oberg's appeal to world opinion was followed by another eyewitness report—this one by a journalist for the Swedish television network named Erik Eriksson. Mr. Eriksson's film of a bombed-out dike, presumably the same one seen by Mr. Thoraval, was shown on nationwide television in this country on June 30. The dike had been hit in two places, about 800 yards apart. Significantly, there were clusters of bomb craters at the base of the dike, precisely the kind of bombing which could cause the dikes to crack without direct hits, as predicted by Mr. Lacoste.

On July 1, Mr. Thoraval reported witnessing bomb damage at a different dike,

this one at Phy Ly, about 40 miles south of Hanoi. He reported that—

The system of sluice gates no longer worked, for the six doors could not move up or down. The reinforced-concrete pillars had been destroyed or cracked. As for the dike itself, apart from craters in it, it was full of cracks, some of them about a foot wide. (New York Times, July 1, 1972.)

On July 11, there occurred the most remarkable eyewitness account of dike bombing yet. On that day, Mr. Thoraval reported an attack on the dike at Nam Sach, 40 miles from Hanoi, while he and a group of foreign journalists were standing on it. He reported that—

It was about 6:00 a.m., an hour after dawn. We had just arrived at the edge of a crater made by an earlier attack when we heard the sound of approaching jet aircraft . . . a few seconds later about a dozen fighter-bombers could be seen flying fairly high above the hamlets. Then the jets went into a dive and released several bombs and rockets against the dike on which we were standing. In several other attacks and evidently without bothering to aim precisely, the jets dropped more explosives to both sides of us.

Significantly, Mr. Thoraval reported that there were no other "military" targets in the area. He wrote:

The journalists, including this correspondent, all agreed that the American pilots were specifically aiming for the dikes—as far as the eye could see there was nothing but rice paddies. Since there was no nearby shelter—not even a tree—the journalists had all the time they needed to study the action in which the Americans were the complete masters. The small nearby town of Nam Sach (note: one and a half miles from the dike) has no significant anti-aircraft defenses, and only two or three SAM missiles were fired at the attackers.

These witness reports by foreigners have been followed by accounts of bombed-out dikes from several visiting Americans, including columnist Joseph Kraft, John Sullivan, and/or George Perera of the American Friends Service Committee. Mr. Kraft has written:

Then there is the matter of the dikes which are central to flood control at the end of the rainy season next month and to the prevention of drought in the dry season thereafter. There is no doubt that the dikes have been hit by American bombs. I have seen with my own eyes two undoubted examples of such hits. (Washington Post, July 20, 1972.)

Not surprisingly, as these eyewitness reports of bombing of the dikes have continued to mount, there has been a corresponding increase in world concern.

On July 21, 1972, the general secretary of the World Council of Churches, Eugene Carson Blake, issued an open letter to President Nixon, putting the issue in its starkest terms.

After referring to in-depth inquiries with Western Europeans who had personally witnessed the situation since late June, Mr. Blake wrote:

I am therefore forced to conclude that intentional bombing of dikes must be taking place, and make an urgent appeal to you to use your authority as commander-in-chief of the military forces of the U.S.A. immediately to cease this bombing. I further request that you stop the bombing in the region of the dikes in order that the people of North Vietnam can make the urgent, necessary repairs to avoid a catastrophe of unthinkable proportions.

Then, on July 24, 1972, the Secretary General of the United Nations, Dr. Kurt Waldheim, lent the prestige of his office to a similar appeal. Mr. Waldheim went out of his way to state that he was not sure whether or not these bombings were deliberate or accidental. But, he said:

If the dikes are bombed then the plain will be flooded and this will lead to disaster and death. I hope this will be avoided.

In response by officials of the Nixon administration to these charges, we find obfuscation of the issues rather than a clarification.

From April through July 5, as reports by Thoraval, Eriksson, and Ambassador Oberg began filtering out, most administration spokesmen were denying that any dikes at all had been hit. On May 9, a Pentagon spokesman in Saigon went so far as to suggest that—

It was possible that North Vietnamese missiles fired at American planes had missed and fallen back on the dikes.

In response to Mr. Thoraval's July 1 description of the bomb damage at the Phy Ly dike, White House spokesman Ziegler denied that any dikes had been hit. Indeed, asked whether his remarks would leave open the possibility of accidental bombing he replied, "I do not mean to leave anything open." Others were leaving the door open by stating that accidents may have occurred.

On July 6, however, the official position drastically changed. Defense Secretary Laird admitted for the first time that we were not only striking dikes, but that we were doing so intentionally if these dikes had roads or antiaircraft sites on them. He stated:

So there have been times when I assumed these pilots have gone off after primary targets which were, of course, the anti-aircraft or logistics supplies. With the road network they have, many times, and with all the rice paddies and all the dams, there may have been some damage.

The significance of this admission cannot be overemphasized. For the first time it became clear that our bombings of the dikes was not accidental, but an inevitable result of the kind of bombing campaign we are waging against the North, a campaign that includes the dropping of 25,000 tons of bombs every day.

Mr. Laird did not speak of "accidents," mishaps, mistakes. He not only made it clear that a dike could be deliberately targeted if it was deemed that a military target was associated with it. He also implied that this was the case with a large portion of North Vietnam's dike system.

Despite Mr. Laird's very clear formulation, however, various other administration spokesmen have continued to claim that the only times dikes have been hit have been "accidents."

Secretary of State Rogers, for example, attempted to refute Secretary General Waldheim's appeal by stating that we were not "deliberately" bombing dikes, something Waldheim never claimed. Mr. Rogers and other administration spokesmen have further clouded the debate by the quite unnecessary charge that Waldheim and others are being used as "part of a carefully planned campaign by the North Vietnamese and their supporters."

Given the widespread documentation by Western sources, it is clear that this charge is an extreme form of pettifoggery.

On July 29, the State Department issued a report—largely prepared by the CIA—which was meant to refute Secretary Waldheim's charges. Instead of doing so, however, it simply compounded the confusion.

It begins with the central assertion that "photographic evidence shows conclusively that there has been no intentional targeting of dikes." No photographic evidence, however, was produced to support this assertion. It is difficult to see, moreover, what photographic evidence could exist which would show "conclusively" that we are not "intentionally" targeting dikes.

A large credibility gap is opened, moreover, by the surprising statement that "accidential bomb damage during the 1965–68 period made some locks inoperative," for the Pentagon papers reveal that we quite deliberately targeted dikes during this period. A report prepared by the CIA and DIA in early January 1966, found on page 56 of the Beacon Press edition of the Pentagon Papers, states that—

Of 91 known locks and dams in North Vietnam, only 8 targeted as significant to inland waterways, flood control, or irrigation. Only one hit, heavily damaged . . .

More important than the largely irrelevant claim that we are not intentionally hitting dikes, however, was the admission that we had hit 12 dikes already.

An attempt is made to soften this admission by the claim that these 12 dikes were all "minor," such strikes could not contribute to flooding, and that any flooding that did occur this year would be due to the failure of the North Vietnamese to repair their dikes from last year's flooding.

Once again, however, such claims are neither supported in the report itself nor backed up by outside evidence.

The 12 locations that are admitted to have been hit are not named. How then is one to know whether they are "minor" or not? Swedish TV Journalist Eriksson, for example, reports that the dike near Nam Dinh which he filmed protects an area containing 12,000 acres of rice paddies, inhabited by a population of 70,000. Agence France Presse reporter Thorval says that the Phy Ly dike protects the population of 10 districts in Namha Province, and similar reports have been filed about the importance of the dike near Nam Sach. How then are we to say what is a "minor" dike and what is not? Is the Nam Dinh dike "minor" to the 70,000 people protected by it? Are we to simply dismiss Ambassador Oberg's urgent call on the unsupported assertion that only 12 "minor" dikes have been hit?

Even after the publication of this CIA report, moreover, administration spokes-

men are still taking different positions. Secretary Laird's admission that we are striking dikes deliberately when military targets are located on them and CIA confirmation that we have hit the dikes on at least 12 occasions, are still apparently lost on Dr. Kissinger, for example. He is reported in the Evening Star as telling a group of dinner guests the day after the publication of the CIA report that:

It is possible a very few dikes have been hit by accident, but it is not a deliberate policy.

Out of this welter of claims and counter-claims, unseen photographic evidence and eyewitness reports by Swedes, Frenchmen, and Americans, however, not all is murky. I believe the following three points appear incontrovertible:

First. There is a strong possibility that massive floods could occur in the next month, floods which could bring misery to millions. On July 6 the New York Times reported that—

State Department officials said today that there was a strong likelihood North Vietnam would be flooded later this summer.

Distinguished and concerned observers concur, ranging from the Swedish Ambassador to Hanoi to the Secretary General of the United Nations to the General Secretary of the World Council of Churches. All sources agree that if this happens millions could drown or face starvation.

Second. The nature of our aerial campaign against North Vietnam insures that dikes will inevitably be weakened by our aircraft. On July 17, 1972, Secretary Laird made the startling statement that—

Now there are occasions, of course, when a dam or dike could possibly be hit when an anti-aircraft installation is placed on a dam or dike or when there is a roadway or a bridgework that is also tied in with a dam or dike formation. All you have to do is look at any of the aerial photography of North Vietnam and you will see that dams and dikes run through all of the agricultural area.

The July 29 CIA report, though cushioning its conclusion, makes a similar point:

Because a large number of North Vietnamese dikes serve as bases for roadways, the maze they create throughout the delta makes it almost inevitable that air attacks directed against transportation targets cause scattered damage to dikes.

It has become more than clear that if we continue to carry out over 300 sorties a day, closer to population centers than ever, with our military being given a freer hand than at any time in the past, it is inevitable that heavy bombing will occur in and around the dikes. They may weaken them by direct hits. They may weaken them by heavy cratering at the bases of the dikes which cause fires and cracks in the dike which are even more difficult to repair than direct hits. But our air strikes will in any event increase the likelihood that the dikes will crumble when the floodwaters reach a peak.

Third. The responsibility for ending our bombing of the dikes lies with the U.S. Congress. It has become clear that the executive branch will not of its own accord halt the bombing of the dikes. Indeed, the 12 admitted strikes against the dikes took place at a time when our President was assuring us that reports of bombing of dikes were "inaccurate," that—

We have tried to hit only military targets and we have been hitting military targets. (New York Times, June 30, 1972.)

Under the circumstances, the only reasonable hope that this bombing of the dikes will be halted is the U.S. Congress.

I know that there will be some of my colleagues who will argue that to halt the bombing of the dikes is not enough—that we must not detract from the central objective of ending the war. I agree. I agree that we must work unceasingly to end the war. We must end it completely. I was pleased that the night before last, Wednesday, August 2, we finally enacted a strong end-the-war amendment and passed the bill in which it was contained. I hope that that language will become law. But even if it does become law it will not be operative for 4 months. During that time, severe floods could occur if our policy does not conform to the President's words of June 29, if we allow ourselves to bomb the dikes in North Vietnam. Accordingly Mr. President, while I do not wish to detract for one moment from the central objective of ending this war, I do believe that we must adhere to the policy which protects those dikes from needless destruction.

I know that others will feel that we cannot now stop bombing the dikes. They will say that we must bomb to keep alive the hope of securing the release of our POW's, that we must keep bombing to protect American boys in South Vietnam, that we must keep bombing to keep the Thieu regime in power in Saigon. Here I do not agree. I think it is obvious by now that bombing North Vietnam will not secure the return of our POW's.

I believe most strongly that it is difficult to argue that we must bomb to protect our boys in South Vietnam, when American casualties in that country are not only down to a few per week, but when at this point our casualties from the air war far outnumber those from the ground war; and surely it must be clear by now that if 10 years and 6.5 million tons of bombs—three times the tonnage dropped in World War II—has not yet sufficed to keep the Thieu regime in power, it never will; that the Thieu regime or any similar government must stand and fight on its own merits and not on our ability to obliterate all signs of life in North Vietnam.

But, however, we all feel about the general issue of bombing in Indochina, on one thing we surely must all be able to agree:

There can be no more bombing of the dikes, not one more hit, because if there are floods our POW's will drown or starve as quickly as anyone else in North Vietnam.

There can be no more bombing of the dikes, not one more hit, because when all is said and done this particular act could produce a whole new level of horror; because there is a difference between strikes on cities and towns which kill hundreds or thousands, and strikes on a vital life system which threatens millions.

But mostly, there can be no more bombing of the dikes, not one more hit, because there must come a point in this war, finally, when we here in the Senate will finally admit to ourselves that it has gone too far: Because there are certain limits which civilized human beings cannot exceed without themselves descending into savagery: Because after 25 years of shooting, strafing, bombing, poisoning, burning, dismembering, assassinating, abducting, deporting the people of Indochina, after more than a million killed and 2 million wounded, and 700,000 widowed, and 200,000 orphaned, and 10 million made homeless, there must come a point when even the most indifferent, weak or distracted among us must have courage to say "stop."

Mr. President, I wish also to advise my colleagues of the contents of a letter which I shall send this morning to the Secretary of State. It is, I believe, self-explanatory.

The letter reads as follows:

U.S. SENATE,
COMMITTEE ON PUBLIC WORKS,
*Washington, D.C., August 4, 1972.*

The Honorable WILLIAM P. ROGERS,
*Secretary of State,*
*Washington, D.C.*

DEAR SECRETARY ROGERS: I have read with great interest the report released by the State Department on July 28, 1972, detailing the state of North Vietnam's system of dikes. I note with particular concern that American aircraft have damaged 12 different dike sections in North Vietnam.

As you know, I am greatly concerned with this problem. Since I believe that every single day is of tremendous importance given the imminence of flooding in the next month, I would like to request *immediately* the names and locations of each of the 12 dike sections our bombs have struck.

As a separate request, I would also like to know, in a few days if the information is not available right now, when these 12 dike sections were struck, by how many aircraft and bombs, what military targets were in the vicinity, and the extent of the damage caused by the strikes. If possible, I would appreciate copies of the photographs alluded to in the report, and particularly those of the 12 dike sections hit.

I note with particular interest as well the report that the North Vietnamese have not repaired their dike sections which have not been repaired.

Once again, I would like to request *immediately* the names and locations of those dike sections which have not been repaired.

In addition, in a few days if necessary, I would like to know what evidence—photographic or otherwise—there is for this report that the Vietnamese have not repaired their dikes from last year's floods.

I believe that the possibility of the large-scale civilian death and destruction which might emanate from an imprudent bombing policy might stand forever as a symbol of shame before the American people. In order to avert such a disaster, we should scrutinize our policy carefully in an effort to protect against grave mistakes.

Accordingly, I would appreciate a prompt answer to the questions I have raised herein.

Sincerely,

JOHN V. TUNNEY,
*U.S. Senator.*

Further, Mr. President, I ask unanimous consent that the contents of an open letter from Judge Philip Jessup to the President be printed at this point

in the RECORD. Judge Jessup is the only surviving retired American judge on the International Court of Justice. I believe that the contents of his letter should be considered carefully by us all.

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

AN OPEN LETTER TO THE PRESIDENT OF THE UNITED STATES CONCERNING THE BOMBING OF DIKES IN NORTH VIETNAM

DEAR MR. PRESIDENT: It is disturbing to note the recent Government intelligence report finding that American bombing had damaged North Vietnam's dike system at 12 locations whereas at a news conference several weeks ago you rejected reports of Western reporters and diplomats that American bombing of such dikes had occurred as "inaccurate."

There are moments in history when all humanity must unite to avert an impending disaster; moments when all people everywhere must put aside parochial interests, and even important ideological and political concerns, to deal with an overriding human crisis.

Such a moment is upon us now.

There is no longer any serious doubt that American aircraft are bombing dikes and dams in North Vietnam. Equally certain is the fact that destruction of the dike system could mean death, famine and misery for millions within a few months. You yourself have said that bombing the dikes could cause "extraordinary" civilian casualties.

It must be recognized that American bombing of the dikes is not just another political issue, not merely another Vietnam issue. The destruction of North Vietnam's dike system would cause one of the greatest human catastrophes of the twentieth century, an event on a par with the atomic bombing of Japan, the German massacre of Jews during World War II.

The issue of destruction of the dikes transcends the political debate surrounding the Indochina War. Even those still supporting the Administration's position on Indochina are legally and morally bound to oppose the bombing of the dikes—for humanitarian reasons and the good name of the United States.

Secretary-General Kurt Waldheim of the United Nations and Dr. Eugene Carson Blake, General Secretary of the World Council of Churches are to be commended for their humanitarian appeals to you, Mr. President, to see that no further injury is caused to the dikes and dams in North Vietnam—to avoid a catastrophe that would be unpardonable.

In their response to Secretary-General Waldheim's appeal not to bomb the dikes, American officials have distorted and evaded the main issue. Secretary of State Rogers has addressed himself solely to the question of intent, denying that the bombing of dikes was "deliberate"; yet he does not seem to have denied the fact that bombs have struck on or near the dikes and that they have been damaged.

Other American officials have said only that the dikes are not being "deliberately" targeted; while some officials have conceded that some dikes might have been hit "inadvertently" during the continued heavy American bombing of North Vietnam, as a number of Western reporters and diplomats posted in Hanoi have reported.

Secretary-General Waldheim had in fact taken pains to make clear that he was not accusing the United States of deliberately bombing North Vietnam's vital and highly vulnerable flood control network. His main concern was that the United States was bombing dikes—a fact it now has admitted.

The humanitarian appeal of the Secretary-General—the official spokesman of the international community—deserves a more forthright response from the United States Government: the President of the United States should issue a categoric order prohibiting bombing in the regions of the dikes and dams in North Vietnam and see that such order is scrupulously observed.

The monsoon waters will be at a peak within the month of August. Mr. President, you must act now, before it is too late. The President of the United States has a special responsibility under "The Principles of International Law Recognized in the Charter of the Nuremburg Tribunal," which was adopted unanimously by the first General Assembly of the United Nations at the initiation of the United States.

There is ample documentation available indicating the present threat to North Vietnam's dike system. The following points are critical.

(1) North Vietnam's dike system is vital to the survival of over ten million people. The 2,500 miles of dikes running through the Red River Valley protect a population of more than ten million from raging monsoon waters which reach a peak this year during the month of August. If the dike system is hit, and particularly if key sluice-gates are destroyed, hundreds of thousands of civilians could drown in a few days. Millions more would face starvation due to destruction of their rice crop and livestock and the American blockade of food and medicine presently in force. Flooding could be caused by any combination of the following acts: direct attacks on the dikes or sluice-gates; indirect attacks meant to weaken dike foundations; successful increases in rainfall due to weather modification by the U.S.

(2) American aircraft are currently striking the dike system. A wide variety of eyewitness reports by Western observers confirm the strikes against dikes. Particularly noteworthy is the July 11 dispatch by an Agence France Presse journalist, Jean Thoraval, describing an attack against a dike upon which he was standing. Film of more than a kilometer of a bombed-out dike taken by a Swedish TV journalist, Erik Erikson, has been shown on nationwide television both within the U.S. and in other countries. Joseph Kraft, Washington Post columnist reporting from North Vietnam, has written that the evidence is clear that dikes have been hit. And in an unprecedented action for a diplomat, the Swedish Ambassador to Hanoi, Jean-Christophe Oberg, has called upon world opinion in the strongest possible terms to prevent further bombing of the dikes which he has himself witnessed.

Equally important, Secretary of Defense Laird and Pentagon and State Department spokesmen have acknowledged that U.S. aircraft are striking dikes. Although some Americans may accept their justification that dikes are not being "targeted" as such, but rather targeted as roads or anti-aircraft sites, this is clearly a secondary issue. The fact that these American officials admit striking the dikes—for whatever reasons—is of paramount importance.

The notion implicit in the American position that the United States has a legal or moral right to wage war against a small, peasant country 10,000 miles away which has never attacked the United States—and indeed to bomb defensive installations claimed to be present on such dikes, especially where the consequences, even if unintended, may be catastrophic floods—indicates how far the United States has departed from the principles and purposes of the United Nations Charter whose dominant purpose was "to save succeeding generations from the scourge of war."

(3) *American bombing attacks may help cause mass floods in the coming months.* American officials predict that there will be flooding in North Vietnam within the coming period, thus corroborating the unprecedented appeals to world opinion made by North Vietnam about possible flooding. Claims by American officials that such flooding will be caused by the failure of the Vietnamese to repair damage to dikes from last year's floods cannot be taken seriously. All visitors to Hanoi report that the Vietnamese have not only repaired the dikes from last year, but have reinforced many key sections.

As Ambassador Oberg has stated:

"The greatest danger just now is the bombing of dams and locks. If there are further attacks, there may be an enormous catastrophe . . . everyone, even diplomats, must react as human beings . . . the Americans are now beginning to speak of the inability of the North Vietnamese to maintain their system of dikes. For someone who has seen the work carried out by the North Vietnamese continually to improve and reinforce their dikes, this looks like an attempt to provide an alibi. If a catastrophe occurs in a few months, at the time of the monsoon, we shall know who is responsible. But this must not be allowed to happen. The lives of millions of people are in jeopardy . . ."

We can only echo Ambassador Oberg's urgent call: "This must not be allowed to happen."

For humanitarian reasons and the good name of the United States, we ask, Mr. President, that you issue forthwith a categoric order prohibiting all bombing in the areas of the dikes in North Vietnam and see that such order is scrupulously observed.

Mr. TUNNEY. Mr. President, there can be no more bombing of the dikes, not one more hit, because that time has finally come. Now, it is for that reason that I introduce this resolution.

Mr. HARRIS. Mr. President, I am pleased to join the distinguished Senator from California and others to discuss this very serious matter.

Mr. President, Harry McPherson, White House Counselor under President Johnson, has described in his recent account of the Johnson Presidency the final luncheon of Secretary of Defense Robert McNamara. According to McPherson, McNamara on this farewell occasion sharply denounced U.S. bombing policy of which he was a prime architect in Vietnam. McNamara was particularly critical and embarrassed that the United States had dropped on one small Asian country more bombs than it had dropped on Japan and Germany throughout World War II. Luncheon guests listened in awkward silence. Future Secretary of Defense Clark Clifford followed McNamara's remarks intently. The others shifted uneasily in their chairs.

Mr. President, I think that many in the Senate today must feel like the participants at that luncheon. Certainly, it is not pleasant for any Senator to discuss the question of possible U.S. bombing of the dikes in North Vietnam. For even posing this question simply raises another question, far more important. What limits is the United States willing to set to the amount of destruction which it is causing in Vietnam? How far is it willing to go in the defense of a military dictatorship in whose name we have already sacrificed 50,000 of our own and hundreds of thousands of men, women, and children living in Vietnam.

I do not believe anyone in the Senate is in a position to know whether the United States is causing any serious damage to the dikes, either intentionally or accidentally. But we all see a pattern re-

peating itself which can only alarm and dismay us.

First, we read claims from the North Vietnamese that the United States is carrying out some military action. Second, we hear the heated denials from the Pentagon. Third, we learn from foreign diplomats that the United States is in fact carrying out the action charged. This sort of occurrence seems to go on and on in Vietnam. Fourth, the State Department then acknowledges that there is partial truth to the charges but that the U.S. policy nonetheless remains unchanged. What has happened is an accident. Fifth, some U.S. newspaperman documents that the United States is doing precisely what was originally charged. Finally, the White House admits that the reports are true and denounces those who have uncovered this fact as unpatriotic.

Mr. President, the Senate this week attempted to set broad guidelines to our policy in Vietnam. By adopting the Brooke amendment, which I supported along with the majority of those who voted on this question in the Senate, the Senate stated that it insisted on an end to U.S. involvement in the war within 4 months provided U.S. prisoners of war are returned. Some may ask, therefore, why the Senate must now attempt to speak on an issue that ordinarily might be considered a tactical decision on the part of the President.

The answer is quite clear. The Senate must speak out on the issue of the dikes because the damage which would result from their destruction poses moral questions of an entirely novel order.

Destroying the dikes in North Vietnam could be the equivalent of dropping nuclear weapons on North Vietnam. In 1944/45 sections of the Red River dikes in North Vietnam were broken by the U.S. Air Force, and some 225,000 hectares of rice land, or about ¼ of the total under cultivation, were ruined. That natural calamity became an atrocity when the Japanese occupation authority requisitioned much of the available paddy for its own purposes, leaving an estimated 2 million Vietnamese to starve to death.

Lest anyone conclude that this episode from World War II has no relevance for the debate today, I would like to quote from a memorandum which appears in the Pentagon papers. The author was Assistant Secretary of Defense John McNaughton. He wrote:

> Destruction of locks and dams, however—if handled right (perhaps after the next pause) offer promise. It should be studied. Such destruction does not kill or drown people. By shallow flooding the rice, it leads after time to widespread starvation (more than a million?) unless food is provided—which we could offer to do at the conference table . . .

Mr. President, this week the administration finally admitted that some dikes had been hit—12, I believe it was said—albeit the administration claimed accidentally. Yet despite a denial that any damage was intentional, speculation continues that the United States may at some point in the future bomb the dikes deliberately.

Indeed, Mr. President, if we stopped the horrible bombing altogether, as we should, then there would be no chance, even accidentally, that these dikes would be bombed.

But in any event there is only one way to end the speculation which has occurred in this country and throughout the world, speculation that cannot be laid only to propaganda of the North Vietnamese. That is to state flatly without any ambiguity that the United States will not attack the dikes at any point in the future regardless of whatever turn the war may take.

Such action would have the added advantage of forcing us to take every step to prevent the accidental bombing of the dikes.

I commend the President's statements pointing out that we have not destroyed the dikes because this would lead to enormous civilian casualities. But I strongly believe we have reached the point now with regard to possible bombing of the dikes that we reached some time ago with regard to the possible use of nuclear weapons. Because U.S. statements were unclear and our actions questioned, we categorically ruled out the use of nuclear weapons in Vietnam. It is now time that we make the same kind of pledge with regard to the possible bombing of the dikes.

Mr. President, the resolution we are introducing today would declare this to be the sense of the Senate regarding U.S. policy.

As I said when I began, I am very pleased to join with the distinguished Senator from California (Mr. TUNNEY) and with other Senators in urging the speedy adoption of the resolution, and I appreciate this opportunity to speak concerning it.

Mr. KENNEDY. Mr. President, I am pleased to join with Senator TUNNEY and the other sponsors of the Senate resolution being introduced today to express the sense of the Senate in opposition to the bombing of the dikes in North Vietnam.

The resolution emphasizes that the Senate is in full agreement with the stated policy of the President against the bombing of the dikes. The resolution specifically calls attention to the facts that North Vietnam's system of dikes protects the lives of millions of innocent civilians, and that the bombing of the dikes would cause an extraordinary number of civilian casualties. Clearly, a concerted effort to attack the dikes would cause death and devastation on a scale perhaps unparalleled in the history of mankind, and it is entirely proper in this resolution that the Senate should express its desire to prevent such an unconscionable tragedy.

To me, the present growing outcry over the dikes is but the latest sorry chapter in the continuing tragic story of America's involvement in the Vietnam war, and our inability to avoid or even recognize the inevitable consequences of our actions. The dikes have now become a focus of opposition to our bombing policy, a symbol of the horror of a policy that threatens a backward Asian country with total destruction if it refuses to bow before our will.

Today and every day, American planes are bombing North Vietnam with an intensity and inhumanity never known before in the entire history of our involvement in this war. The tonnage of bombs unleashed over North Vietnam in recent weeks defies our imagination and understanding. The figures themselves are numbing—112,460 tons of bombs dropped over Indochina in June, double the amount that was dropped last January, and the end is not in sight. Respected American columnists on visits to North Vietnam describe pieces of human beings seen in the rubble of Hanoi and Haiphong. Observers speak in terms of tens of millions of bomb craters in Indochina, and they liken parts of North Vietnam to the lunar landscape in describing the devastation we have caused.

Other journalists have described in vivid detail the patterns of carpet-bombing used by American B–52's to carry out their raids—a geometric pattern of bombs released by several planes to saturate a target area when the precision of individual bombs and planes is insufficient to insure the kill.

To be sure, in recent weeks, we have heard much of our so-called smart bombs and television-guided bombs, as though somehow the raids over North Vietnam were being carried out with a precision capable of avoiding any unwanted civilian casualty or installation.

But we see today only a pale shadow of the truth. We in Congress simply do not know the full extent of the destruction we are watching. Probably, the Defense Department does not even know for sure. But we do know the expanding nature of the targets authorized to be hit, as the President seeks to carry out his calculated policy of using whatever amount of American bombs are necessary to cripple the economy of North Vietnam.

Inevitably, as the President tells us, innocent civilians are being killed. Those cement plants and steel mills and powerplants and railroad yards are peopled by human beings. The President attempts to justify these casualties by invoking the civilian casualties suffered in the South at the hands of North Vietnam, but that is hardly a justification the American people can accept.

Inevitably, as the President also tells us, some dikes are hit as well. And just as inevitably, the report was greeted with substantial skepticism by an American public so recently bruised by the Lavelle affair and so long familiar with the sorry record of candor of our Government on the war.

Last week, the State Department sought to mute the growing controversy by releasing a report that attempted to minimize the damage. The report, based on aerial reconnaissance, asserted that only 12 areas had been hit on North Vietnam's dikes, and that each of the areas was adjacent to what the administration regards as a legitimate military target.

The State Department report is all the more ominous because it so clearly raises a disturbing question of the real meaning of the President's stated policy against the bombing of the dikes. Clearly, if the dikes are in close proximity to a potential bombing target, the policy of the administration is to bomb the target anyway, regardless of the consequences

for the dikes. It doesn't take a Philadelphia lawyer to label this policy for what it is—a policy of deliberately bombing dikes. If the direct result of bombing a target beside a dike is that bombs will inevitably hit the dike, then the dike is being bombed as deliberately as if the dike itself were the target.

And so I urge the administration to recognize the drastic implication of its policy, and to take immediate action to prevent any destruction of the dikes of North Vietnam. Surely, in the name of decency, the military priorities of the administration and its policy of massive bombing must yield to the simple human fact that countless innocent lives are being jeopardized when the dikes are bombed. Surely, in its unseemly zeal to bomb the North into a settlement of the war before election day, the administration can at least pull back from the awful brink of destruction and spare the dikes. Surely, America can forgo the destruction of a military target if it means the safety of a dike.

One more point should be made. The issue of the bombing of the dikes has become a cause of legitimate and substantial concern throughout the world. The allegations about the dikes are clearly raising new and increasingly serious doubts in the international community about America's role in Vietnam. Perhaps the most ominous aspect of the controversy, apart from the enormous question of the validity of the allegations being made, is the extremely hostile, defensive and increasingly isolated posture the President has adopted in seeking to rebut the charges.

The latest incident was the President's news conference last week, in which he labeled the Secretary General of the United Nations as naive and a dupe of Hanoi for daring to raise the question of the dikes. Mr. Waldheim is a distinguished and respected diplomat who has the confidence of all the member nations of the United Nations. I deeply regret the desperate ad hominem attack he has now suffered at the hands of the administration for speaking out of conscience on what has already become one of the great moral issues of the war. The proper stance of the administration on the issue is to deal on the merits with the questions about the dikes, not to attack those who raise the issue.

Incidents like this demonstrate why the Senate resolution introduced today comes at such an important time. The Senate has its own responsibility to help resolve the issue of the dikes. It is my hope that the serious questions now outstanding about our policy will be answered at once, so that the conscience of America can be cleared, at least on this new and ominous aspect of the war. What is at stake here is not simply the outcome of the war, but the judgment of history on the actions of the United States against a tiny Asian nation.

Mr. PROXMIRE. Mr. President, I am delighted to be a cosponsor of the resolution putting the Senate firmly on record in opposition to the bombing of the dikes in North Vietnam.

It is almost impossible to determine with any accuracy what damage our planes are causing the dikes. On the one hand we have the sort of denial I received from the Defense Department on July 19 indicating that, and I quote:

> The remote possibility exists that in our bombing of . . . military targets minor damage may have occurred to dikes or small irrigation dams.

On the other hand we have accusations by the North Vietnamese that we are deliberately bombing a great number of dikes.

The truth undoubtedly lies somewhere in between.

I am quite sure that we are not engaged in a systematic attempt to destroy the dikes in the North. As this resolution makes clear, the President stated on June 29 that this was against American policy.

However, at a time when a ranking officer in South Vietnam, General Lavelle, can conduct unauthorized bombing raids and receive no more than a gentle slap on the wrist, it is entirely possible, even probable, that individuals charged with flying sorties might find it in accordance with their concept of national policy to take a few runs at the dikes.

This is why I believe today's resolution is so important. It not only makes it clear to our friends around the world who are understandably upset by the recent charges that the Senate does not condone attacks on North Vietnam's dike system. It also serves to discourage American airmen from taking steps that they may mistakenly feel are in our national interest, despite our official posture.

I am hopeful that the Senate can act quickly to implement this resolution.

I ask unanimous consent that my letter to Secretary of Defense Laird on this issue as well as the Defense Department's response be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

JUNE 27, 1972.

The Honorable MELVIN LAIRD,
*Secretary of Defense, The Pentagon, Washington, D.C.*

DEAR MR. SECRETARY: The New York Times for June 26, 1972 carries a piece by Anthony Lewis raising the question of whether or not the United States is now bombing the dikes in North Vietnam.

Mr. Lewis cites the President's statement in April saying that it was something we wanted to avoid and that it was not needed.

He also cites a number of specific public statements, two of them by non-Vietnam sources asserting that the dikes have been bombed. One charged that "one of the dikes was completely cut" and another asserted that "Without doubt there is now systematic bombing of the dikes."

Mr. Lewis states that no one should doubt what bombing the dikes might mean. "It would bring into play, justifiably for once, that much abused word genocide."

I am writing to you to ask for a specific straightforward, unhedged, and unqualified statement by you as to the facts.

Has the U.S. bombed any of the dikes?

Is the U.S. systematically bombing the dikes?

If we are not bombing the dikes, would you cite the specific detailed orders which were given not to bomb them.

If we are bombing the dikes would you cite the specific authority under which you or the President specifically authorized the bombing.

We need an explicit statement of the facts and our policy *now*.

I would appreciate an immediate reply. If we are bombing, Congress and the U.S. public need to know it. If we are not, that should be made public in order to forestall charges which have no basis in fact.

I am enclosing Mr. Lewis' article.

With best wishes.

Sincerely,

WILLIAM PROXMIRE,
*U.S. Senator.*

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ASSISTANT SECETARY OF DEFENSE,
*Washington, D.C., July 19, 1972.*

HON. WILLIAM PROXMIRE,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR PROXMIRE: Secretary Laird has asked me to reply to your letter of June 27, 1972, concerning the alleged bombing of the dikes in North Vietnam by the United States.

The United States has exercised great restraint in our current bombing of North Vietnam. The US is *not* targeting dikes or dams in North Vietnam. Since some military targets, such as bridges and anti-aircraft artillery and missile sites are sometimes near dikes or dams, the remote possibility exists that in our bombing of these military targets minor damage may have occurred to dikes or small irrigation dams. Some enemy anti-aircraft sites have been placed on or near dikes and our pilots have the authority, and the inherent right of self-protection, to attack such sites in self-defense. Furthermore, there is an obvious possibility of damage to dikes or irrigation dams from North Vietnamese SAMs, downed MIGs or anti-aircraft shells falling back to earth.

It is quite clear that the North Vietnamese are conducting a worldwide propaganda campaign falsely alleging that the United States is systematically bombing their dike system. No doubt the United States will be blamed by North Vietnam for any and all damages to the dike system over the next few months.

In fact, floods occurred last year in North Vietnam *in the absence* of bombing partially because of the generally poor state of maintenance of the water conservancy system. Furthermore, the following warning on the neglected state of the system appeared in the official North Vietnamese newspaper, *Hanoi Moi*, on July 20, 1972:

"In some places the repair of the dike portions that were damaged by torrential rains in 1971 has not yet met technical requirements. A number of thin and weakened dikes which are probably full of termite colonies and holes have not yet been detected for repair. Therefore, cadres and people in the capital must absolutely not be subjective: Let each individual, locality and unit actively participate in the present dike-strengthening movement; especially in firming and solidfying the important portion of dikes. There is not much time before the torrential rain season."

These facts should set the record straight on our actual bombing policies and North Vietnamese allegations.

Sincerely,

DENNIS J. DOOLIN.

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## SENATE RESOLUTION 343—SUBMISSION OF A RESOLUTION RELATING TO BRIEFING OF MEMBERS OF THE SENATE ON STRATEGIC ARMS

(Referred to the Committee on Foreign Relations.)

Mr. ROTH (for himself, Mr. COOPER, and Mr. BOGGS) submitted the following resolution:

S. RES. 343

Whereas the agreements between the United States and the Soviet Union relating to strategic arms imposes constraints on the forces required for the national security of the United States; and

Whereas such constraints are in the best interest of the United States only if both parties adhere to both the letter and the spirit of the agreements; and

Whereas the Congress of the United States in consenting to such agreements has an obligation to the people of the United States to assure that the security of the United States is not compromised by any action taken by the United States or the Soviet Union; and

Whereas the Congress also has an obligation to assure that the agreements provide the basis for possible reductions in the respective strategic forces; and

Whereas it is essential to the future security of the United States that all Members of the Senate be fully informed regarding the status of negotiation and the strategic balance: Now therefore be it

*Resolved*, That it is the sense of the Senate that the majority and minority leaders, together with the chairmen and ranking members of the Committee on Foreign Relations and the Committee on Armed Services of the Senate should use their good offices to arrange for the comprehensive briefing of Senators who are not members of the two committees at least once each year, in groups of 20 or less, by the Secretary of State, the Secretary of Defense, the Director of the Central Intelligence Agency, or the Director of the Arms Control and Disarmament Agency concerning the strategic posture, development of new strategic systems, and research bearing on the strategic balance of the Soviet Union and the United States, and the state of negotiations with the Soviet Union limiting strategic offense arms.

## HANDGUN CONTROL ACT OF 1972—AMENDMENT

AMENDMENT NO. 1398

(Ordered to be printed and to lie on the table.)

GUN REGISTRATION AND LICENSING AMENDMENT

Mr. KENNEDY. Mr. President, I take this opportunity to introduce an amendment to S. 2507, the Handgun Control Act of 1972. I am pleased to announce that Senator WILLIAMS, Senator JAVITS, and Senator CASE have joined in support of my amendment.

The first title of my proposal requires the registration of all civilian owned firearms—including all rifles, shotguns, and handguns.

The second title of the amendment directs the Secretary of the Treasury to establish a nationwide system to license all gunowners.

With this amendment we shall produce substantial progress toward the realization of a standardized nationwide Federal firearms control system. The provisions in this amendment authorize the Secretary of the Treasury to establish controls on firearms that I originally included in a bill introduced on February 17, 1971—S. 831, the Personal Safety Firearms Act of 1971.

In introducing this measure today, the supporters of the amendment share my conviction that gun registration and licensing regulations, working in concert with the provisions of S. 2507 to ban cheap handguns, will greatly reduce the number of names on the annual list of 20,000 gun deaths—a list that grows longer each year.

It was less than 6 weeks ago when I testified before the chairman of the House Judiciary Committee that neither the Senate nor the House need more hearings on gun control. The time for hearings has passed. It is now time for the Congress to act. During my 10 years in the Senate, the Judiciary Committee in this body has held 43 days of public hearings; committee members have convened in 12 days of executive sessions, and committee records bulge with thousands of pages of testimony from 186 witnesses. During hearings in 1968 distinguished witnesses clearly made the case for registering guns and licensing gunowners. At least five commissions appointed by the President have recommended the enactment of Federal firearms, licensing and registration systems. Thus, the amendment I am offering today does not present any newly constructed proposals.

It does not confront the Senate with ideas or plans that have yet to be studied or investigated. Indeed, this same amendment has been pending in the Judiciary Committee for 17 months. Today I am presenting the Senate with a renewed opportunity to establish its commitment to end the unbridled assault of gun violence in America. I am offering to the Senate an amendment that requires no extensive explanation to understand its purpose. For, if ever there was a legislative proposal offered to Senators that was readily understood—gun registration and licensing is such a proposal.

Under my amendment, registration information on all firearms—handguns, shotguns, and rifles—will be referred by local registration offices to the National Crime Information Center maintained by the Federal Bureau of Investigation. In this way, enforcement officers throughout the country can trace the ownership of any firearm.

A person who carries a firearm must have with him a certificate of registration, which he must exhibit upon the demand of any law-enforcement officer.

A violation of the registration provisions is punishable by imprisonment for up to 5 years, a fine of up to $5,000, or both. Any purposeful falsification or forgery of registration information is punishable by imprisonment for up to 5 years, or a fine of up to $10,000 or both.

President Johnson said if it makes sense to register automobiles, boats, bicycles, and dogs, why then do we not register the guns in our Nation's homes?

Firearms registration will tell us how many guns there are, where they are and in whose hands they are held. I am convinced that it makes no sense for guns to remain as free floating in our society as flashlights or ballpoint ink pens. Any restriction imposed by firearms registration that prevents even one gun killing fully justifies the development and maintenance of a firearms registration system.

My proposal for legislation to enact restraints against the misuse of guns authorizes the Secretary of the Treasury to establish periods of amnesty for all gunowners to voluntarily turn in any weapons they wish to give up, and to receive reasonable compensation for the surrender of such weapons. Authorities know that gunowners want to safely remove firearms from homes or places where they may be stolen or where accidents may occur.

After the city of San Francisco enacted a gun licensing statute in 1968, at least 1,500 guns of every description were voluntarily turned in to the San Francisco Police Department. City officials confirmed the public commitment to the elimination of gun violence by forging the metal from these guns into a 9-foot statue of St. Francis of Assissi.

Finally, my amendment requires every gunowner to obtain a license before he may be entrusted with a gun.

Under the provisions of my amendment, if a State does not adopt a firearms permit system that meets minimum specified standards, Federal licensing will become effective until the State adopts an adequate permit system.

No person, whether a licensed dealer or a private individual, may sell firearms or ammunition to an individual who does not have either an adequate State permit or a Federal gun license. In addition, no one may possess a firearm or ammunition unless he has either an adequate State permit or a Federal gun license. To qualify as having an adequate permit system, a State must restrict the issuance of permits applied for by convicted felons, fugitives from justice, mental defectives, alcoholics, juveniles, and drug addicts, and must adequately investigate applicants prior to the issuance of permits.

In States that do not enact an adequate permit system, Federal gun licenses, valid for up to 3 years, will be issued by federally licensed dealers upon receipt—from both the chief law enforcement officer of an applicant's locality and a licensed physician—of information bearing upon his eligibility for a Federal gun license.

The litany of statistics that gun violence produces is astounding—3,000 Americans die each year from gun accidents; 7,000 people use guns to kill themselves; 10,000 people are murdered with guns; 20,000 suffer gunshot wounds; 71,000 aggravated assaults occur with guns and 113,000 robberies take place at gunpoint.

These appalling numbers are more than sufficient justification for the Senate to accept my amendment to the bill that Senator BAYH has skillfully guided through the Committee on the Judiciary.

Earlier this week the Senate made a courageous step toward cutting off the flow of resources that feed the destructive machinery of war in Vietnam.

Mr. President, it is time again for the Senate to display a vigorous show of courage by approving this comprehensive package of gun controls to aid in stemming the bloody flow of destruction by gunfire here at home.

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

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

On page 2, line 5, strike out the word "Handgun" and insert in lieu thereof the word "Firearm".

On page 2, between lines 6 and 7, insert the following new title:

TITLE I—HANDGUN CONTROL

On page 2, line 7, strike out "Sec. 2" and insert in lieu thereof "Sec. 101".

On page 2, line 17, strike out "Sec. 3" and insert in lieu thereof "Sec. 102".

On page 4, line 6, strike out "Sec. 4" and insert in lieu thereof "Sec. 103".

On page 10, line 20, strike out "Sec. 5" and insert in lieu thereof "Sec. 104".

On page 11, line 3, strike out "Sec. 6" and insert in lieu thereof "Sec. 105".

On page 12, line 1, strike out "Sec. 7" and insert in lieu thereof "Sec. 106".

On page 12, line 4, strike out "Sec. 8" and insert in lieu thereof "Sec. 107".

On page 12, after line 6, insert the following new title:

TITLE II—FIREARM REGISTRATION

SEC. 201. Title 18, United States Code, is amended by inserting after chapter 44 the following new chapter:

Chapter 44A.—FIREARM REGISTRATION

"Sec.
"931. Definitions.
"932. Registration.
"933. Sales of firearms and ammunition.
"934. Penalties.
"935. Disposition of firearms to Secretary.
"936. Rules and regulations: periods of amnesty.
"937. Disclosure of information.
"938. Assistance to the Secretary.

"§ 931. Definitions

"As used in this chapter—

"(1) The term 'firearm' means a weapon (including a hand-held firearm and a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, but shall not include a firearm as that term is defined in chapter 53 of the Internal Revenue Code of 1954 or an antique firearm as defined in section 921 of this title.

"(2) The term 'hand held firearm' means any weapon designed or redesigned to be fired while held in one hand; having a barrel less than ten inches in length and designed or redesigned or made or remade to use the energy of an explosive to expel a projectile or projectiles through smooth or rifled bore.

"(3) The term 'Secretary' means the Secretary of the Treasury.

"(4) The term 'licensed dealer' means any importer, manufacturer, or dealer licensed under the provisions of chapter 44 of this title.

"(5) The term 'ammunition' means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

"(6) The term 'sell' means give, bequeath or otherwise transfer ownership.

"(7) The term 'possess' means asserting ownership or having custody and control and subject to termination by another or after a fixed period of time.

"§ 932. Registration

"(a) It is unlawful for a person knowingly to possess a firearm not registered in accordance with the provisions of this section. This subsection shall not apply with respect to—

"(1) a firearm, previously not registered, if such a firearm is held by a certified dealer for purposes of sale: *Provided*, That records of such firearms are kept as may be required by the Secretary;

"(2) a firearm possessed by a person on the effective date of this Act and continuously by such person thereafter for a period not to exceed one hundred and eighty days;

"(3) a firearm, previously not registered, possessed by (A) the United States or any department or agency thereof, or (B) any State or political subdivision thereof.

"(b) (1) A certified dealer who sells a firearm to a person in whose possession the firearm must be registered shall require from the purchaser a completed application for registering the firearm and shall file the application with the Secretary at the time of sale.

"(2) When a person other than a certified dealer sells a firearm, the purchaser shall file an application for its registration with the Secretary prior to receipt of the firearm.

"(3) A person who possesses a firearm on the effective date of this Act shall, unless he sooner sells the firearm, file an application for registration of the firearm with the Secretary within one hundred and eighty days.

"(c) An application for registration of a firearm shall be in a form to be prescribed by the Secretary, which shall include at least the following:

"(1) the name, address, date and place of birth, photograph and social security or taxpayer identification number of the applicant;

"(2) the name of the manufacturer, the caliber or gage, the model and the type, and the serial number of the firearm; and

"(3) the date, the place, and the name and address of the person from whom the firearm was obtained, the number of such person's certificate of registration of such firearms, if any, and, if such person is a licensed dealer, his license number.

"(d) An application for registration of a firearm shall be in duplicate. The original application shall be signed by the applicant and filed with the Secretary, either in person or by certified mail, return receipt requested, in such place as the Secretary by regulation may provide. The duplicate shall be retained by the applicant as temporary evidence of registration. The Secretary after receipt of a duly filed completed application for registration, shall send to the applicant a numbered registration certificate identifying such person as the registered owner of such firearm.

"(e) The certified record of a firearm shall expire upon any change of the name of the registered owner or residence unless the Secretary is notified within thirty days of such change.

"(f) It is unlawful for a person to carry a firearm required to be registered by this chapter without having a registration certificate or if such certificate has not been received, temporary evidence of registration or to refuse to exhibit such certificate or temporary evidence upon demand of a law enforcement officer.

"§ 933. Sales of firearms and ammunition

"(a) A registrant of a firearm who sells the firearm shall, within five days of the sale, return to the Secretary his registration certificate noting on it the name and residence address of the transferee, and the date of delivery.

"(b) Whoever acquires a firearm required to be registered by this chapter shall require the seller to exhibit a registration certificate and shall note the number of the certificate on his application for registration.

"(c) A licensed dealer shall not take or receive a firearm by way of pledge or pawn without also taking and retaining during the term of such pledge or pawn the registration certificate.

"If such pledge or pawn is not redeemed the dealer shall return the registration certificate to the Secretary and record the firearm in his own name.

"(d) The executor or administrator of an estate containing a registered firearm shall promptly notify the Secretary of the death of the registered owner and shall, at the time of any transfer of the firearm, return the certificate of registration to the Secretary as provided in subsection (a) of this section. The executor or administrator of an estate containing an unrecorded firearm shall promptly record the firearm, without penalty for any prior failure to record it.

"(e) Whoever posseses a firearm shall within ten days notify the Secretary of a loss, theft or destruction of the firearm, and, after such notice, of any recovery.

"(f) A licensed dealer shall not sell ammunition to a person for use in a firearm required to be registered without requiring the purchaser to exhibit a certificate of registration or temporary evidence of registration of a firearm which uses such ammunition, and noting the certificate number or date of the temporary evidence of registration on the records required to be maintained by the dealer pursuant to section 923 (g) of this article.

"§ 934. Penalties

"(a) Whoever violates a provision of section 932 or section 933 shall be punished by imprisonment not to exceed five years, or by a fine not to exceed $5,000, or both.

"(b) Whoever knowingly falsifies any information required to be filed with the Secretary pursuant to this chapter, or forges or alters any certificate of registration or temporary evidence of registration, shall be punished by imprisonment not to exceed five years or a fine not to exceed $10,000 or both.

"(c) Except as provided in subsection (b), no information or evidence obtained from an application or certificate of registration required to be submitted or retained by a natural person in order to comply with any provision of this chapter or regulations issued by the Secretary, shall be used as evidence against that person in a criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing of the application for registration containing the information or evidence.

"§ 935. Disposition of firearms to Secretary

"(a) The Secretary is authorized to pay reasonable value for firearms voluntarily relinquished to him.

"(b) A person who lawfully possessed a firearm prior to the operative effect of any provision of this title, and who becomes ineligible to possess such firearm by virtue of such provision, shall receive reasonable compensation for the firearm upon its surrender to the Secretary.

"§ 936. Rules and regulations; periods of amnesty

"The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter, including reasonable requirements for the marking of firearms that do not have serial numbers, and may declare periods of amnesty for the registration of firearms.

"§ 937. Disclosure of information

"Information contained on any certificate of registration or application therefore shall not be disclosed except to the National Crime Information Center established by the Federal Bureau of Investigation, and to law enforcement officers requiring such information in pursuit of their official duties.

"§ 938. Assistance to the Secretary

"When requested by the Secretary, Federal departments and agencies shall assist the Secretary in the administration of this title."

TITLE III—FIREARM LICENSING

SEC. 301. Chapter 44 of title 18, United States Code is amended by inserting after section 923, the following new section:

"§ 923A. State permit systems; Federal firearms licensing

"(a) The Secretary shall determine which States or political subdivisions of States have enacted or adopted adequate permit systems for the possession of firearms and shall publish in the Federal Register the names of such States and political subdivisions.

"(b) An adequate permit system shall include provisions for:

"(1) identification of the permit holder appearing on the permit including name, address, age, signature and photograph;

"(2) restrictions on issuance of a permit to a person who is under indictment or who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, or who is a fugitive from justice;

"(3) restrictions on issuance of a permit to a person who, by reason of age, mental condition, alcoholism, drug addiction or previous violations of firearms laws cannot be relied upon to possess or use firearms safely and responsibly;

"(4) means of investigation of applicants for permits to determine their eligibility under subparagraphs (2) and (3), including filing with the issuing agency a complete set of fingerprints and a recent photograph of the applicant; and

"(5) prohibition of possessions of firearms or ammunition by any person who has not been issued such a permit.

"(c) It shall be unlawful for any person to sell or otherwise transfer any firearm or ammunition to any person (other than a licensed importer, licensed manufacturer or licensed dealer) unless:

"(1) the sale or transfer is not prohibited by any other provision of this chapter; and

"(2) the purchaser or transferee exhibits a valid permit issued to him by a State or political subdivision having an adequate permit system, or the purchaser or transferee exhibits a valid Federal gun license issued in accordance with subsections (d) and (e).

"(d) A licensed dealer shall issue a Federal gun license to a person upon presentation of:

"(1) a valid official document issued by the person's State or political subdivision, showing his name, current address, age, signature and photograph;

"(2) a statement, in a form to be prescribed by the Secretary and dated within six months and signed by the chief law enforcement officer (or his delegate) of the locality of residence of the person, that to the best of that officer's knowledge that person is not under indictment, has not been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, is not a fugitive from justice, and is not otherwise prohibited by any provision of Federal, States, or local law from possessing firearms and ammunition;

"(3) a statement in a form to be prescribed by the Secretary, dated within six months and signed by a licensed physician, that in his professional opinion such person is mentally and physically capable of possessing and using a firearm safely and responsibly;

"(4) a statement signed by the person in a form to be prescribed by the Secretary, that he may lawfully possess firearms and ammunition under the laws of the United States and of the State and political subdivision of his residence;

"(5) a complete set of such person's fingerprints certified to by a Federal, State or local law enforcement officer, and a photograph reasonably identifying the person.

"(e) Federal gun licenses shall be issued in such form as the Secretary may prescribe, and shall be valid for a period not to exceed three years. A dealer shall maintain a record of all licenses issued by him as part of the records required to be maintained by section 923(g) of this chapter, and shall forward to the Secretary the documents described in subparagraphs (d)(2)–(d)(5).

"(f) Any person denied a Federal gun license under subsection (d) may apply directly to the Secretary, for the issuance of a Federal gun license.

"(g) Unless otherwise prohibited by this chapter, a licensed dealer may ship a firearm or ammunition to a person only if the dealer confirms that the purchaser has been issued a valid permit pursuant to an adequate state permit system, a Federal gun license, or a Federal dealer's license, and notes the number of such permit or license in the records required to be kept by section 923 of this chapter.

"(h) No person may possess a firearm or ammunition without a valid state or local permit, if he is resident of a State or locality having an adequate permit system, or a Federal gun license.

"(i) Determinations of adequate permit systems and denials by the Secretary of Federal gun licenses shall not be subject to the provisions of chapter 5, title 5, United States Code, but actions of the Secretary shall be reviewable de novo pursuant to chapter 7, title 5, United States Code, in an action instituted by any person, State or political subdivision adversely affected."

SEC. 302. The analysis of chapter 44 of title 18, United States Code is amended by inserting immediately after the item "923" the following:

" '923. Licensing.'

" '923A. State permit systems; Federal firearms licenses.' "

AMENDMENT NO. 1401

(Ordered to be printed and to lie on the table.)

Mr. DOMINICK. Mr. President, congressional attention will focus shortly on gun control legislation. The choice we will be given seems to be restricting the domestic manufacture of "Saturday night specials," or, further, requiring registration of handguns or a ban on their ownership. It is my opinion that such changes will alter ownership patterns among law-abiding citizens, but I question the effect of such legislation on criminals.

I suggest that a change of much more immediate effect with respect to the use of handguns in crimes can be realized through the amendment I offer now to S. 2507, the Handgun Control Act of 1972. Congress attempted in the 1968 Gun Control Act to insure that criminals utilizing a weapon in the commission of a felony could be convicted of two separate offenses with the sentences imposed running consecutively.

Mr. President, a recent 10th Circuit Court of Appeals decision casts some doubt on Congress' intent. A Federal district court concluded that Congress did not intend a separate offense for use of a handgun in a felony, and that sentencing for purposes of a first offense could run concurrently. A circuit court of appeals held that use of a gun was a separate offense but sustained the district court's decision on sentencing. My amendment clarifies this and insures that the use of a handgun in the commission of a felony will be a separate offense calling for consecutive sentencing. The deterrent is obvious. A second felony for purposes of the habitual criminal statutes is added, and the possible period of incarceration is extended.

Mr. President, my amendment would also remove the present requirement that the firearm be carried unlawfully—that is, in violation of State, local, Federal law—during the commission of a felony. It would be a separate felony to carry a handgun while committing a crime even if possession of the firearm were itself not illegal.

Mr. President, the possible penalties under my amendment are 1 to 10 years for using a gun for a first offense or 2 to 25 years for subsequent convictions. The terms of imprisonment may not be suspended, probation may not be granted, and the terms must be served consecutively.

Mr. President, it is my earnest belief that this will have a far greater impact on criminals and the instance of crimes involving handguns than prohibiting the domestic manufacture of "Saturday night specials."

## NATIONAL NO-FAULT MOTOR VEHICLE INSURANCE ACT—AMENDMENT

AMENDMENT NO. 1399

(Ordered to be printed and to lie on the table.)

Mr. COTTON submitted an amendment to the bill (S. 945) to regulate interstate commerce and to provide for the general welfare by requiring certain insurance as a condition precedent to using the public streets, roads, and highways in order to have an efficient system of motor vehicle insurance which will be uniform among the States, which will guarantee the continued availability of such insurance, and the presentation of meaningful price information, and which will provide sufficient, fair, and prompt payment for rehabilitation and losses due to injury and death arising out of the operation and use of motor vehicles within the channels of interstate commerce and otherwise affecting such commerce.

## FEDERAL REVENUE SHARING—AMENDMENT

AMENDMENT NO. 1400

(Ordered to be printed and referred to the Committee on Finance.)

Mr. ROTH. Mr. President, at this time I rise to introduce an amendment to H.R. 14370, the State and Local Fiscal Assistance Act of 1972. This amendment would permit taxpayers, after 5 years of revenue sharing, the choice of crediting 40 percent of their State and local personal income taxes against their Federal tax bill in lieu of the present deduction for such taxes. The purpose of this measure is to make it easier for State and local legislators to make more extensive use of personal income taxes when seeking new sources of revenue.

I am a Senate cosponsor of H.R. 14370, as I was of the President's proposal and earlier bills of this nature. While revenue sharing can be said to be necessary in a time of financial crisis, I do not think that it offers an adequate long-term solution to the fiscal difficulties of State and local governments. It further has the disadvantage of placing the spending and taxing functions at different levels within our Federal system. Wider use of the more productive and equitable personal income taxes would lessen the need for revenue sharing and for our complex system of categorical grants.

A 40-percent Federal tax credit for State and local income taxes would allow our States and their subdivisions to raise more adequate revenues and spend them as they wish in meeting their responsibilities within the Federal system. To my mind, this is a creative device for restoring the traditional balance to our decentralized Federal system.

Mr. President, I ask unanimous consent that the brief explanation of Roth tax credit amendment to H.R. 14370 and a copy of my amendment be printed in the RECORD at the conclusion of my remarks.

There being no objection, the explanation and amendment were ordered to be printed in the RECORD, as follows:

BRIEF EXPLANATION OF ROTH TAX CREDIT AMENDMENT TO H.R. 14370

1. *In General:* Amends H.R. 14370 by amending Internal Revenue Code of 1954 to permit a credit of 40% of state and local individual income taxes against a taxpayer's final Federal tax bill. This credit would first be permitted beginning in the taxable year beginning January 1, 1977, H.R. 14370's revenue sharing, being scheduled to terminate on December 31, 1976.

2. *Purpose of the Amendment:* To provide a long-term solution to fiscal imbalance in the Federal system by strengthening the revenue-raising capacities of states and their communities. If non-Federal legislators could tell their constituents that 40% of their state-local income taxes could be credited against their Federal tax bill, it would be easier for them to make wider use of this tax. Such wider use of a tax, which grows with the economy and is relatively more equitable, would permit states and localities to more fully meet their responsibilities within the Federal system. This development might well lessen our dependence on a complex, encumbered, and often irrational system of categorical grants. Federal tax credits would also be useful in lessening interstate and intrastate tax competition.

3. *Taxes Creditable:* The amendment would permit the credit of only state and local personal income taxes; a taxpayer's distributive share of a tax imposed upon the income of a partnership of which he is a member, and a taxpayer's pro rata share of a tax imposed upon the income of an electing small business corporation by a state or locality (as defined in section 1371b of Internal Revenue Code). The personal income taxes to be credited must permit deductions for personal exemptions and dependents, or credits equivalent to those allowed against the Federal personal income tax.

4. *Relation to Current Deductions:* A taxpayer could choose between the current deductions for state and local income taxes and the 40% credit for personal income taxes. The current deductions apply to five major categories of state-local levies. The credit would be available to a wider group of taxpayers than the deduction, since one would not have to itemize his return to utilize the credit, as is the case with a deduction.

5. *Possible Impact of the Measure:* In 1969 the Advisory Commission on Intergovernmental Relations estimated that such a 40% credit would, during the first year after becoming effective, generate $2.1 billion in additional state-local income tax revenues at a cost of $2.5 billion foregone in Federal tax dollars. By the third year of operation, the ACIR estimated a gain of $7.2 billion with $5.1 billion foregone. At 1973 income levels, the Treasury Department estimates a $2 billion revenue loss to the Federal government.

6. *Report by Secretary of Treasury:* The Secretary is to report to Congress no later than March 1, 1980, on the success of the tax credit plan in generating state and local revenue and on the amount of Federal revenue foregone.

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AMENDMENT NO. 1400

On page 65, after line 4, add the following new title:

TITLE III—PARTIAL FEDERAL INCOME TAX CREDIT FOR STATE AND LOCAL INCOME TAX PAYMENTS

STATE AND LOCAL TAX CREDIT

SEC. 301. (a) Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended (1) by renumbering section 42 as 43; and (2) by inserting after section 41 the following new section:

"SEC. 42. STATE AND LOCAL INCOME TAXES.

"(a) Allowance of Credit.—If an individual chooses to have benefits of this section, there shall be allowed to such individual as credit against the tax imposed by this chapter for any taxable year beginning after December 31, 1976, an amount equal to 40 percent of the State and local income taxes paid or accrued for such taxable year.

"(b) Definitions and Special Rules.—For purposes of this section—

"(1) STATE AND LOCAL INCOME TAXES.—The term 'State and local income tax' means only—

"(A) a tax imposed upon the income of the taxpayer, after the deduction of an amount for personal exemptions and dependents allowances or the subtraction of a tax credit or credits equivalent in amount to the amount allowed for this purpose under part V of subchapter B of chapter 1 (relating to deductions for personal exemptions);

"(B) the taxpayer's distributive share of a tax imposed upon the income of a partnership of which the taxpayer is a member; and

"(C) the taxpayer's pro rata share of a tax imposed upon the income of an electing small business corporation (as defined in section 1371 (b)) of which the taxpayer is a shareholder, by a State or any political subdivision thereof. In the case of a separate return by a married individual, the amount of State and local income taxes imposed upon the income of such individual shall be determined under regulations prescribed by the Secretary or his delegate.

"(2) CHANGE OF ELECTION.—The choice as to whether an individual shall elect to have the benefits of this section may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for the taxable year with respect to which such State or local income tax was paid or accrued.

"(3) ADJUSTMENTS ON PAYMENT OF ACCRUED TAXES.—If accrued taxes when paid differ from the amounts used by an individual as the basis for claiming a credit under this section, or if any tax paid is refunded, in whole or in part, such individual shall notify the Secretary or his delegate, who shall redetermine the amount of the credit for the year or years affected. The amount of tax due on such redetermination, if any, shall be paid by such individual on notice and demand by the Secretary or his delegate, and the amount of tax overpaid, if any, shall be credited or refunded to the individual in accordance with subchapter B of chapter 66 (section 6511 and following). In the case of a State or local income tax accrued but not paid, but used as the basis for claiming a credit under this section, the Secretary or his delegate, as a condition precedent to the allowance of such credit may require such individual to give a bond, with sureties satisfactory to and to be approved by the Secretary or his delegate, in such sum as the Secretary or his delegate may require, conditioned on the payment by the individual of any amount of tax found due on any such redetermination; and the bond herein prescribed shall contain such further conditions as the Secretary or his delegate may require. In such redetermination by the Secretary or his delegate of the amount of tax due from such individual for the year or years affected by a refund, the amount of the taxes refunded with respect to which credit has been allowed under this section shall be reduced by the amount of any State or local income tax imposed with respect to such refund; but no credit under this section, and no deduction under section 164 (relating to deduction for taxes), shall be allowed for any taxable year with respect to such State or local income tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary or his delegate, resulting from a refund to the individual, for any period before the receipt of such refund, except to the extent interest was paid on such refund by the State or local government for such period.

"(4) TAX IMPOSED BY THIS CHAPTER.—The tax imposed by this chapter for any taxable year does not include the tax imposed by section 56 (relating to minimum tax for tax preferences).

"(c) CROSS REFERENCES.—

"(1) for deductions of State and local income taxes, see sections 161 and 275.

"(2) for right of each partner to make election under this section, see section 703(b)."

(b) DISALLOWANCE OF DEDUCTION.—Section 275 (a) of such Code (relating to certain taxes not deductible) is amended by adding at the end thereof the following new paragraph:

"(6) State and local income taxes, if the individual chooses to take to any extent the benefits of section 42 (relating to State and local income taxes)."

TECHNICAL AMENDMENTS

SEC. 302. (a) The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 is amended by striking out the item relating to section 42 and inserting in lieu thereof the following:

"SEC. 42. State and local income taxes.

"SEC. 43. Overpayments of tax."

(b) Section 37(a) of such Code (relating to retirement income) is amended by striking out "and section 35 (relating to partially tax-exempt interest)" and inserting in lieu thereof "section 35 (relating to partially tax-exempt interest), and section 42 (relating to State and local income taxes)".

(c) Section 46(a)(3) of such Code (relating to amount of credit) is amended—

(1) by striking out "and" in subparagraph (B);

(2) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding after subparagraph (c) the following new subparagraph:

"(D) section 42 (relating to State and local income taxes)."

(d) Section 703 of such Code (relating to partnership computations) is amended—

(1) by relettering subparagraphs (D), (E), and (F) of subsection (a)(2) as subparagraphs (E), (F), and (G);

(2) by inserting after subparagraph (C) of paragraph (2) the following new subparagraph:

"(D) the deduction for taxes provided in section 164(a) with respect to State and local income taxes;" and (3) by amending subsection (b) to read as follows:

"(b) Elections of the Partnership.—Any election affecting the computation of taxable income derived from a partnership shall be made by the partnership, except that the election under sections 42 (relating to State

and local income taxes) and 901 (relating to taxes of foreign countries and of possessions of the United States), and any election under section 615 (relating to pre-1970 exploration expenditures) or under section 617 (relating to deduction and recapture of certain mining exploration expenditures), under section 57 (c) (relating to definition of net lease), or under section 163(d) (relating to limitation on interest on investment indebtedness), shall be made by each partner separately."

REPORT BY THE SECRETARY

SEC. 303. The Secretary shall report to the Congress not later than March 1, 1980, on the operation of the provisions of this title for the preceding 3 calendar years. This report shall include estimates of the amount of Federal revenue forgone and of the amounts of additional State and local revenue derived from the provisions of this title. This report may also contain any recommendations on the part of the Secretary for additional legislation.

## NOTICE OF HEARINGS BY THE DISTRICT OF COLUMBIA COMMITTEE

Mr. TUNNEY. Mr. President, I wish to announce hearings by the Subcommittee on Public Health, Education, Welfare and Safety of the Senate District of Columbia Committee on the following bills:

S. 2230, to designate a certain traffic circle in the District of Columbia as the "Benito Juarez Circle";

S. 3530—H.R. 2895—to provide for the conveyance of certain real property in the District of Columbia to the National Firefighting Museum and Center for Fire Prevention, Inc.;

S. 2646—H.R. 11032—relating to the transportation and other public accommodations and services involving blind persons accompanied by a dog guide in the District of Columbia;

H.R. 11773, to amend section 389 of the Revised Statutes of the United States relating to the District of Columbia to exclude the personnel records, home addresses, and telephone numbers of the officers and members of the Metropolitan Police Department of the District of Columbia from the records open to public inspection;

H.R. 9769, concerning medical records, information and data to promote and facilitate medical studies, research, education, and the performance of the obligations of medical utilization committees in the District of Columbia; and

H.R. 456, to exempt from taxation certain property in the District of Columbia owned by the Reserve Officers Association of the United States.

The hearings on August 9, 1972, will begin at 9:30 a.m. in room 6226, New Senate Office Building.

Persons interested in testifying on this bill should contact Mr. Gene E. Godley, general counsel, in room 6222, New Senate Office Building.

## ADDITIONAL STATEMENTS

## PUBLIC EXECUTION OF SOUTH VIETNAMESE OFFICIALS BY COMMUNIST POLITICAL OFFICERS

Mr. DOMINICK. Mr. President, over the last few weeks we have seen and heard a great number of allegations of American inhumanity against North Vietnam, all of which has been disposed of to my satisfaction as Communist propaganda. Actress Jane Fonda has returned from her so-called factfinding tour to pronounce the North Vietnamese completely harmless and the United States totally wrong for bombing targets in the north.

U.N. Secretary General Kurt Waldheim fell victim to Hanoi's trumped-up charges of deliberate U.S. bombing of the dikes and added his voice to those less-informed but equally naive critics. All of this criticism has been adequately refuted by the administration.

I am grateful that the New York Times this morning provides us with an example of the kind of fate the South Vietnamese could expect if we were to abandon that country completely as many continue to suggest. On its front page, the Times carries a story quoting allied officials who have confirmed that North Vietnamese Communists publicly executed hundreds of Saigon government officials and imprisoned thousands during their occupation of Binhdinh Province on the central coast of South Vietnam. The story details dates and locations, and in some cases names of those unfortunate government officials whose fate was left in the hands of the North Vietnamese during the invasion this spring.

Mr. President, how much more of this sort of thing must we witness before the critics of President Nixon's positive, methodical search for peace and stability in Southeast Asia will permit him to proceed unhampered by unfounded criticism and unwise legislative actions which only serve to postpone the time when hostilities will be ended in that part of the world? I urge Senators to give their attention to the report of Joseph Treaster in the New York Times of Friday, August 4. I ask unanimous consent that the article be printed in the RECORD.

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

ENEMY IS SAID TO EXECUTE HUNDREDS IN SOUTH VIETNAM

(By Joseph B. Treaster)

SAIGON, SOUTH VIETNAM, Aug. 3.—Allied intelligence officials say that Communist political officers have publicly executed hundreds of Saigon Government officials and imprisoned thousands during their occupation of Binhdinh Province, on the central coast of South Vietnam.

The allied officials say that they have confirmed the deaths of about 250 persons through eyewitness reports and have additional information that leads them strongly to believe that the total number of dead is about 500.

People who have escaped have pinpointed three large prison camps in the rugged Anlao valley of central South Vietnam, which are said to hold about 6,000 persons, the officials say.

The main victims of the enemy were said to be hamlet and village chiefs and their deputies, pacification workers, policemen and militamen. But teachers, doctors, nurses and minor administrative staff workers, as well as some soldiers, were among those reported imprisoned.

Lengthy interviews with people who lived in northern Binhdinh during the nearly three months of unchallenged Communist occupation generally corroborated the findings of the intelligence officials.

The reported executions in Binhdinh appear to be the most sizable deliberate assault on individuals connected with the Saigon Government since the massacres in Hue during the 1968 Lunar New Year offensive when, according to allied officials and independent journalists, more than 2,600 people were killed.

Some American officials see the reported executions in Binhdinh as a sample of the kind of "bloodbath" that President Nixon has predicted if the Communists succeeded in taking over South Vietnam by force.

Such violence, these officials say, especially would be expected if a Communist victory were "sudden and decisive."

Other American officials, however, say that history would suggest that a sudden and decisive victory "just isn't in the cards for either side."

These officials feel that if the North Vietnamese Communists were eventually to gain control of South Vietnam through a gradual political settlement, they might well adopt a conciliatory attitude toward their former opponents in hopes of uniting the country.

But those who must firmly subscribe to the "bloodbath theory" are convinced that any kind of enemy take-over would result in the execution of many officials in the Government in Saigon.

Some Americans with considerable experience in studying North Vietnamese and Vietcong affairs say that they have been surprised by the particularly harsh tactics of the Communists in Binhdinh province which has a long history of party activity.

REVENGE SUGGESTED

They suggest that some of the reported killings may have been inspired by a sense of revenge toward former party members who, for one reason or another, have worked with the Saigon Government in recent years. Another possibility, they say, is that the reported killings represent some sort of inter-party conflict, perhaps between northern and southern factions.

While a few executions have been reported in the other areas captured by the North Vietnamese in their current offensive, there has been nothing of the magnitude of the events reported in Binhdinh.

This is so, authoritative officials say, because the districts in Binhdinh fell rather suddenly—in a few days as compared with a few weeks in Quangtri—and many Saigon Government officials were "caught in place."

After the fall of northern Binhdinh Province in April, nearly three months passed before Government troops tried to retake the territory. Thus, left alone, the Communists were able to carry out their programs in some detail among the more than 200,000 people of the region.

In most of the other captured areas, the fighting never fully subsided. It was fairly quiet, however, in Locninh district, north of Anloc, and that is where some of the other executions were reported.

HUNDREDS SHOT TO DEATH

The enemy gunned down several hundred South Vietnamese civilians who tried to flee from their control in Quangtri Province, the northern most province in South Vietnam, and they used the same tactic at Anloc, but apparently killed fewer civilians there.

American intelligence officials believe that these slayings were more likely to have been the outcome of local battlefield decisions than the results of high-level policy, as the reported executions apparently were.

Government troops began to disrupt Communist programs in northern Binhdinh with a counteroffensive late in July. Within two weeks, Saigon's troops had re-entered the

principal town in each of three northern districts—Hoainhon, Tamquan and Hoaian—and had encountered little resistance. In the last several days, though, the enemy has been striking back, and large sections of the area remain contested.

The territory in northern Binhdinh was captured by North Vietnamese regulars. But after they had secured the area they withdrew and left administration of the "liberated communities to local Communists, some of whom had been living in the mountains for years.

INSTALLATION OF OFFICIALS

The Communists are believed to have installed chiefs and administrative staffs in each of the villages and 138 hamlets in the three districts.

According to allied intelligence officials and residents of northern Binhdinh province, this is how the Communists proceeded.

Communist security officers had compiled dossiers on everyone in the region. They quickly classified the population into several categories according to physical capabilities, financial position, occupation, age and relationships to the Communists and the Government in Saigon.

Those who had worked directly for the Saigon Government were brought before "peoples' courts," denounced as "tyrants," and condemned to death or sentenced to prison.

Relatives of the Communists were often offered jobs in the administration of the hamlet, while relatives of Government employes were watched closely, restricted in movement and forced to attend special indoctrination classes.

In organizing the "people's courts," the Communists would assemble 30 to 40 persons to the entire hamlet of several hundred. The courts were held during the day and the night, usually outside administrative offices or schools but sometimes on a road or in a rice field.

"FROZEN WITH FEAR"

Sometimes the residents were urged to join in hurling charges against the accused. But in other cases a death sentence was read while the people stood—in the words of a farmer—"frozen with fear."

In many cases, there were fewer than half a dozen victims in the reported executions in Binhdinh. This is in contrast to the killings in Hue during Tet, when scores of people were herded together and shot as the Communists apparently tried to eliminate the entire community of Saigon Government workers and anti-Communist leaders.

American intelligence officials say that the Communists appear to have been generally more "selective" in their killings in Binhdinh than in Hue in 1968, intending them as "object lessons" to discourage future cooperation with Saigon and to reinforce loyalty to the Communist side.

For this reason, the intelligence officials say, only the worst "tyrants" were killed. Others were given stiff prison terms ranging up to 30 years, and still others were required only to attend intense political-indoctrination courses for a month or so, where they were expected to learn that the salvation of the Vietnamese lay in Communism.

Despite the general pattern of small-scale executions reported, the intelligence officials said that they had sketchy details on a few mass killings. For example, they say, on May 18 in the evening, 100 Government officials were reported to have been killed and buried in Andong hamlet.

In another instance, 42 policemen and Government workers, including an officer, Tran Van Luc of Binhdinh, were said to have been shot to death on the outskirts of Vinhphuong hamlet at about 9 P.M. May 27. They were reported buried in a sandbar nearby.

Rifle fire was the most common method of killing, but intelligence officials say that a hamlet chief and 46 other village and hamlet officials and soldiers were buried alive south of Tanthanh hamlet sometime in May.

They also said that a policeman, a pacification worker and an assistant village chief had been stabbed "many times" with a bayonet affixed to a rifle after they had been shot before 1,000 people at the Anphong village sports stadium May 29.

On May 21, the intelligence officials say, an unidentified South Vietnamese military policeman was beheaded in Bongson and his body was hanged in front of the military-police station there.

According to allied intelligence officials and northern Binhdinh residents, the charges that brought the death penalty were usually vague but reflected the Communists' puritanical nature and their intolerance for "crime" against their own people.

Those who died were reportedly accused of taking bribes, violating unmarried women, making love to wives of "revolutionary cadre," capturing and killing "legal agents of the revolution," and providing information to the "enemy." Some were reported also cited as simply "corrupt" and "domineering" over the people.

## NEED TO EASE AIR TRAVEL RESTRICTIONS FOR HANDICAPPED

Mr. HARTKE. Mr. President, I am appalled that 6 million of this Nation's citizens can routinely be denied air transportation. Operating under a tariff rule, this Nation's airlines can—and do—arbitrarily deny passage to the physically handicapped. The governing tariff rule allows a carrier to refuse to accept a person whose condition is such as to render him incapable of caring for himself, unless accompanied by an attendant. Coupled with a 1962 agreement among carriers which sets forth criteria for interline acceptance of handicapped persons, the airlines' policy boils down to an attitude of "if you can't walk, you can't fly."

Yet airlines continue to decide who is capable of caring for himself and who is not. Many airlines consider any person who cannot board a plane without assistance as unable to care for himself. Many of these physically handicapped persons, once aboard the airplane, can provide for their own needs, and find the aide only a financial drain. While airlines happily make accommodations for the young to fly at partial fare, they force upon the handicapped the burden of an extra, and unnecessary fare.

During the last quarter of 1971, the Civil Aeronautics Board announced it was considering rulemaking action to amend regulations concerning air transportation for the physically disabled, and asked for participation from the public concerning the change. Comments received pointed out the gross injustices suffered by the disabled and asked for quick action to alleviate the confusion facing the handicapped traveler. To date, the Board has made no further move toward helping the physically handicapped. While the CAB does nothing, the disabled are forced to endure further hardships. This is not a problem which can be postponed indefinitely, it must be tackled now and action taken immediately. I call on the CAB to stop stalling and take immediate steps to rectify this situation.

## VIETNAM

Mr. SPONG. Mr. President, during my term in the Senate, especially during the past year when I have served on the Foreign Relations Committee, I have been particularly concerned over the congressional role in foreign policy. I believe the war powers and the foreign policy powers are shared powers, that the Constitution grants responsibilities in these fields to both Congress and the President. I believe Congress has, in the past, permitted its powers in these areas to atrophy, and that it must reassume the powers which it does have in the foreign policy process.

Furthermore, I believe each Senator has a responsibility to his constituency to share his own views and judgment. For me, in the case of Vietnam, this is based upon nearly 6 agonizing years of observing our involvement in Indochina and participation in a number of recent Senate votes.

Throughout these nearly 6 years I have shared a natural inclination to support the President of the United States in his actions abroad, regardless of who that President might be, and despite my own growing disquiet over the situation in Indochina. In 1970 I noted in a Senate floor speech that my inclination to support the President in Southeast Asia was based upon a recognition and understanding of several complex and difficult factors: the tremendous task of reducing a U.S. commitment in Southeast Asia without exposing our servicemen to additional dangers, without abandoning the South Vietnamese who had fled the North and who had fought against the North Vietnamese and Vietcong, without encouraging aggression elsewhere in Asia and without raising undue questions among our European allies about our commitments in Europe and our willingness to stand by them.

In 1970 I supported the Cooper-Church amendment, which was designed to restrict military activities in Cambodia and thereby contribute to our disengagement from Indochina. At that time, the Gulf of Tonkin Resolution, providing congressional sanction for U.S. military operations in Southeast Asia, was still in effect and I viewed the Cooper-Church amendment as a geographical limitation on that resolution.

The 1970 debate on the Cooper-Church amendment—both in Congress and among the public—reflected a growing confusion among our people over U.S. goals and objectives in Southeast Asia. The American people have found it difficult to understand our policy with regard to this war, particularly since the 1968 Tet offensive when it became apparent that the United States sought not to gain a military victory but only to prevent a defeat.

During the debate on Cambodia, it also became clear that the open-ended and vaguely worded Gulf of Tonkin Resolution no longer accurately reflected congressional sentiment on the situation in Southeast Asia, and later, in January 1971, the resolution was repealed.

That left a vacuum, a lack of a congressional statement of policy on our in-

volvement in Indochina. It did not, however, change the reality of our involvement in hostilities in South Vietnam.

A few months following repeal of the Gulf of Tonkin resolution—and I supported repeal—I became a cosponsor of an amendment which urged and requested the President to negotiate a cease-fire and a withdrawal of U.S. forces from Southeast Asia by a date certain, contingent upon the release of our prisoners of war. I viewed this amendment as a reasonable statement of congressional sentiment and as an opportunity for the President to share with Congress the great responsibility for our disengagement from Southeast Asia. A modified version of the Mansfield amendment finally passed Congress in November 1971, but the President indicated at that time that he would disregard it.

Late last year, as a member of the Senate Foreign Relations Committee, I also supported, as a complement to the above amendment, an amendment to H.R. 9910, which would have limited the use of appropriations for Southeast Asia to activities associated with the withdrawal of U.S. forces from that area and the protection of U.S. troops as they withdrew. I felt this was basically the policy which the President was following in his continuing withdrawal of ground troops, and that congressional expression of its views on the matter was appropriate. That amendment was, however, deleted on the Senate floor.

Thus, through the end of last year, it was my position to support a gradual but continuous withdrawal of our troops from Southeast Asia and to support legislation which sought to keep our Nation on that policy path. When it seemed that we were straying from that continuous, gradual withdrawal policy—as it did in the case of Cambodia—I supported legislation designed to return us to that path.

In the aftermath of the 1972 Easter weekend North Vietnamese offensive, in which, by aggression in the south, Hanoi dispelled the myths of its past policy and bid boldly for a military victory, President Nixon concluded that decisive U.S. military action was necessary. On April 26 he announced new bombing raids in the north and on May 8 the mining of the ports of North Vietnam and the interdiction of supplies into that country. His policy was, in large measure, a gamble. It risked confrontations, which fortunately did not take place. It embodied the possibility that additional servicemen, in carrying out new raids, would become prisoners of war. It contained the seeds of possible failure in that there were questions, even within the administration, over the ultimate military value of the new measure.

It was, however, evident that the President's May 8 military moves were tempered by his acceptance of the general outlines of the Mansfield amendment, which passed the Senate, with my support, on three occasions in 1971. The President, for the first time, publicly agreed to the establishment of a date certain for withdrawal of all U.S. troops, providing our prisoners of war were returned and providing an internationally supervised cease-fire could be arranged for Indochina. I was pleased that the President made these new peace proposals. I wish he had done so prior to the development of the offensive. It might have avoided the tragedy of recent months in Vietnam and the necessity for the U.S. actions.

When the Vietnam situation was considered in the Democratic caucus on May 9, I voted against a resolution disapproving the President's actions in mining the ports of North Vietnam and interdicting supply ships. While I questioned the effectiveness of the military actions ordered, I believe we accomplish little by exhortations or measures of censure, particularly in times of crisis. Instead, Congress should act legislatively, in a substantive manner. Consequently, I voted for a pending amendment in that caucus as an indication of my concern over new military activities, which I feared could prolong rather than reduce our involvement, and as an indication of my desire to see an end to U.S. involvement in the war in Vietnam. That amendment provided for cutting off funds for military operations in Indochina 4 months after North Vietnam released U.S. prisoners of war. It thus contemplated termination of U.S. involvement in Southeast Asia but also recognized the necessity of obtaining the return of our prisoners.

On the Senate floor, the debate over antiwar measures continued for over a week, during which I spent time evaluating the situation in Indochina, talking with constituents and studying relevant information. I continued to view the President's decision as a gamble. I did, however, support an amendment which added a cease-fire to the POW release condition already specified in the Case-Church amendment as a prerequisite to U.S. withdrawal from Vietnam. This was consistent with my position on the Mansfield amendment in 1971. Our Nation has been involved in hostilities in Vietnam for over a decade. Our presence there has contributed to those hostilities. Despite the difficulties associated with achieving a cease-fire, I have hoped we could bring an end to those hostilities in which so many are dying and in which so much destruction is taking place. Furthermore, the vote on the Byrd amendment came just prior to the President's departure for Moscow. Since there was the possibility that the hostilities in Vietnam might be affected by the Moscow trip, it seemed preferable to permit the President to depart for the Soviet Union in a position to bargain, a position which the Byrd amendment provided.

The President's diplomatic initiatives, the aggressive military moves by the North Vietnamese this spring, coupled with the fact that our force strength had been reduced to 39,000 troops that are not being used in ground combat, suggest that we have reached a watershed in Vietnam. We are at a turning point as far as our policy in Indochina goes. The decisions which are made in the next few months regarding that area of the world will affect all of us in this Nation not only in the immediate times ahead, but for years to come. For this reason, I believe it is incumbent upon Congress, especially in view of the lack of an existing congressional policy statement on Southeast Asia, to express myself.

In preparing to participate in formulating such an expression, I have been reevaluating our situation and trying to place it in perspective. I applaud the President's initiatives, both in Peking and in Moscow. It is evident that he has enlisted the assistance of both mainland China and Russia in trying to bring an end to the war. These are commendable moves.

We have, however, for years, now, been pursuing a withdrawal course. This is the announced an obvious policy of this administration. I cannot, at this point, see any likelihood that that policy will be reversed. Furthermore, the irreversibility of that policy is sustained by a number of difficulties which have beset us in South Vietnam—the widespread addiction to heroin and other drugs by U.S. servicemen, incidents such as Mylai, the cost in dollars of involvement at a time of pressing domestic needs and instability of the dollar, divisiveness which has wracked our Nation at home, and less than desirable aspects of the Thieu regime.

At the same time, I am aware of the sacrifices many of the Vietnamese have made. I am impressed by a number of recent reports, such as those on the efforts to retake Quang Tri. Although I have been less than sanguine about the ultimate capabilities of the Army of the Republic of South Vietnam, I am pleased with the ability they have recently demonstrated pursuant to our training and provision of arms. I am also, however, aware of the significant role that U.S. air and naval power has played in recent military actions in South Vietnam. And, I am aware that this has meant an increased cost to the United States—there is a supplemental budget request for Vietnam of $2.2 billion. I am aware that it has created more POW's and MIA's and has resulted in additional destruction in Vietnam. Furthermore, it runs counter to the policy upon which I believe we must, ultimately, depend: the people of Asia must seek Asian solutions to Asian problems.

After a number of proposals offered as amendments to the foreign aid authorization bill failed, Senator COOPER called up an amendment providing for the withdrawal of all U.S. forces within 4 months of enactment and specified that appropriated funds could be used only for activities associated with withdrawal. In effect, this amendment would have provided for unconditional withdrawal, which I do not support. A move was, however, made to add the condition of a release of all prisoners of war. With this bargaining point added, I supported the amendment.

I continue to believe that a cease-fire is desirable. I hope that one might be worked out in the Paris negotiations, but I do not believe this will take place. I believe that Hanoi tends to equate the United States with the French, that it believes all it has to do is to persevere. For these reasons, Hanoi would have little to gain by negotiating a settlement at

this time. This is especially true if no condition at all is attached to our disengagement.

With this in mind, as well as the legislative options which were before us during consideration of the foreign aid bill, I voted for the Cooper amendment as amended by the Brooke proposal. This was, I believe, preferable to inaction.

After more than 10 years of war, the loss of over 45,000 American lives, the loss of millions of lives in Southeast Asia, destruction of many areas and a series of domestic problems at home, I believe the predominant mood of the Congress and the country supports an end to our involvement. I believe we have followed an honorable path. We have withdrawn gradually, over an almost 4-year period, providing the South Vietnamese and our other allies in Southeast Asia time to prepare for our eventual disengagement. We have provided a period during which other nations in Asia could stabilize and begin to seek their own paths, policies, and destinies. Asia is today a very different place from what it was in the early 1960's. Despite continued hostilities, many countries in that area are now more stable, more viable, more capable of fending for themselves.

During recent days, it has been obvious that there were three general policy options before the Senate. One was to take no action. Proponents of this course argued that it was the one which would permit the President to pursue the negotiations in Paris and which offered the best hope of a peaceful settlement. These are, obviously, crucial times for Vietnam. There is much diplomatic activity. Mr. Kissinger's untiring efforts must be commended. We in Congress do not, however, have access to information regarding the conduct of the current negotiations. We perhaps feel certain misgivings in that we are, as so many times before, waiting to be advised rather than being consulted. As I have already noted, despite my hopes, I do not believe the prospects for a settlement are overly bright, first because of the psychology of the leaders in Hanoi and, second, because the leaders in Saigon hold a veto over any plan which includes a cease-fire. Beyond that, I believe the Senate would be abdicating its responsibility if it failed to formulate a statement of policy, to share the burden for ending this war with the President and to provide the people of this land with the best judgment and thought their representatives can produce.

A second option was to provide for an unconditional withdrawal within a specified amount of time. I believe those who propose such a course are well-intentioned men, that they believe such a policy best serves the interest of our Nation. I cannot, however, agree with them. I believe that we must continue to seek a negotiated end to the war, that the least our Nation can do is to retain some pressure upon the North Vietnamese and their allies to release those men who have served our Nation so valiantly. They must not be sacrificed to the promise that a unilateral pullout will automatically result in their release. For that policy, too, is only a gamble.

A third option was for the Senate to set out its own policy statement, to take part of the responsibility for ending the hostilities in Southeast Asia. There were a number of ways in which this could be accomplished. There were a number of conditions which could be attached to the policy statement. As the parliamentary situation developed in the Senate, however, attention focused on a policy which called for the withdrawal of U.S. forces from all Indochina within 4 months, providing our prisoners of war were released. The policy contemplates a final termination of U.S. activities in Vietnam, Laos, and Cambodia. Yet it signifies our determination to secure the release of our prisoners and an accounting of our missing in action and to protect our forces as they withdraw. It is premised on the belief that the time has come—after more than 10 years of war and almost 4 years of withdrawal—for a termination of U.S. military operations in Indochina, that the continuing reduction in our forces and the fact that only 39,000 ground troops remain demonstrate we are on an irreversible course, that in effect the future of Asia must be decided by Asians.

I hope that this measure might contribute to negotiations which have been deadlocked for 4 years, that an indication of U.S. intent to withdraw from Vietnam might persuade the North Vietnamese that it is in their own interest to negotiate now and, perhaps, even to include in those negotiations a provision for a cease-fire.

As I noted earlier, through the end of last year, it was my position to support a gradual but continuous withdrawal of our forces from Southeast Asia, and I supported legislation designed to insure our adherence to that course of action. During this year, I have constantly reviewed several factors related to our involvement: the rising U.S. deficit and dollar instability, to which the war has contributed; the widespread destruction in Southeast Asia; and the seemingly irreversible withdrawal policy of this administration itself. It is, I believe, evident that, while the United States will continue to have interests in Southeast Asia, it is moving toward an end to direct military operations in Indochina. It is evident that our people want an end to the hostilities. There have been a number of proposals offered in the Senate this year to terminate our involvement. I have agreed with some and opposed others. I prefer a negotiated settlement. I prefer a cease-fire. I believe we must secure a return of our prisoners and an accounting of the missing in action. I oppose an unconditional withdrawal. I believe a contingency for the release of our prisoners of war not only signifies our determination to stand by these men but also assists our negotiating efforts. I do not, however, believe we are likely to obtain all that we desire—to write a final act with a perfect ending. A negotiated settlement and a cease-fire may not be in the cards—both because of the North Vietnamese and because of certain officials in Saigon. Nevertheless, I do not believe this can deter the United States from the withdrawal policy course which this administration charted and which I believe a growing number of our people support, provided we obtain the return of those men held as prisoners of war.

## GENOCIDE REMAINS A PRESSING ISSUE

Mr. PROXMIRE. Mr. President, once again I must rise to remind the Senate that genocide is still with us today.

Last June I cited the tragic conflict in Burundi between the ruling minority Tutsis and the majority Hutus as a contemporary example of genocide. At the time I had no official estimate of the number of persons who had died or were in need of assistance as a result of the civil strife.

Last Sunday's edition of the Washington Post reported that the Burundi Government has acknowledged to a U.N. mission that 80,000 persons have died since the end of April and that 500,000 more are in need of international aid.

The Organization of African Unity has refused to investigate the Burundi slaughter on the grounds that its charter forbids interference in its members' internal affairs. I do not advocate a change in the charter of the Organization of African Unity; however, I believe that some organization must concern itself with cases of genocide.

The Genocide Convention states that systematic extermination of racial, ethnic, cultural, and religious groups is not simply a matter of internal concern, but a violation of international law. The Convention allows the United Nations to investigate cases of genocide and determine what action is necessary.

The United States cannot maintain an air of disinterest as the U.N. issues statements such as: "The proportions of the human tragedy which the people of Burundi are experiencing are staggering." We cannot afford to continue to ignore the issue of genocide as though it were a thing of the past. Therefore, I call upon the Senate to consider the Genocide Convention and ratify it without further delay.

## THE 75TH ANNIVERSARY OF THE PICA CLUB, NORTHERN NEW JERSEY JOURNALISTIC SOCIETY

Mr. CASE. Mr. President, recently I had the pleasure of attending the annual outing of the Pica Club, a journalistic society of northern New Jersey. At this 76th anniversary celebration, the club installed its new officers for 1972–73: Daniel McKeown, of the Herald News, president; John Crivelli, of the Paterson News, vice-president; Phillip R. White, of the Nutley Sun, secretary; G. John Anderson, of the Herald News, treasurer; George W. Schultz, of the Argus-Bulletin, executive secretary, Anthony Verga, of the Paterson News, chairman of the entertainment committee; and Gerald Costello, of The Beacon, chairman of the executive committee.

I ask unanimous consent to have printed in the RECORD the remarks carried by The Pica News on that day, July 29, 1972, in honor of the new president, Daniel McKeown.

There being no objection, the re-

marks were ordered to be printed in the RECORD, as follows:

MCKEOWN WILL ASSUME HELM SUCCEEDING COSTELLO

Dan McKeown, up-county reporter for the Herald-News, is the new president of our esteemed Pica Club, as you all know.

You can blame fellows like Bill Schultz, George Homcy and Dick Paduch.

McKeown says he refuses to take the blame.

Like most fellows in the newspaper game, McKeown got around before settling down.

He has been with the Herald-News some 24 years and helped pioneer the upper-Passaic, Morris County area back in 1948. Then, he took over from the late Frank (Buck) Rogers, then editor of the Butler Argus. In those days, Bill Schultz was suburban editor of the Morning Call.

McKeown's first story with the Herald was a page one job. It involved the finding of wreckage of a plane in Fayson Lakes, Kinnelon. Two men were dead and the wreckage had been in the woods since winter. The late Joseph Rutter was a sergeant with the New Jersey State Police in those days. Later, as we all know, Joe went on to become superintendent of the state police.

McKeown's second day on the job saw him up in Newfoundland. A truck overturned onto an auto, killing both occupants. That was page one.

The third day saw another page one. An important person ended his own life in the exclusive section of Kinnelon, known as Smoke Rise.

Naturally, McKeown was riding high, all page one stuff.

Then, came stark reality. There were meetings like Planning Boards, Zoning Boards and the like to cover.

McKeown sort of wished he was back in the Navy riding a sleek destroyer.

But, Lee Stark, the late Bob Erwin, a past president of Pica, Al Ritch, Al Smith and Art McMahon, pitched in and helped McKeown along the rocky road of the night life beat.

Before joining the Herald-News (sounds like a club of some kind) McKeown worked with the Veterans Administration in Newark. Before that, six years with the U.S. Navy, serving time in nearly every theater of operations during World War II.

Let McKeown get going on his Navy experiences and you need to be wearing hip boots, as the tide is sure to come in. Don't get him started on Panama or the Panama Canal, he made 38 one-way crossings of the "big ditch."

(Did someone say it was one-way trip too many?)

McKeown attended Rutgers University and studied art and literature in some school near Greenwich Village, N.Y. Before being called up to active duty with the Navy in 1940, McKeown was assistant paymaster at Crucible Steel Co., Harrison. Before that he was paymaster and assistant office manager of a shade roller company in East Newark.

McKeown was born in N.Y.C., on the site of the recently abandoned Madison Square Garden. He lived in Kearny (little Ireland and Scotland) until accepting the "call" from the Herald-News and up-county.

McKeown is proud of his Irish heritage. His dad, the late Patrick McKeown, was a member of the I.R.A. He got caught blowing up a bridge or something and had his choice . . . jail in England or "get lost." He choose the latter and migrated to the U.S.A. The elder McKeown met his wife-to-be Ellen Hanlon on the boat coming over. That's romance.

Our new president is married to the former Monica Quinn, of North Arlington. They have two children, Mrs. Roy (Colleen) Nutt and Daniel Jr., 20, both of Butler.

## RETIREMENT OF GORDON F. HARRISON

Mr. JORDAN of North Carolina. Mr. President, I wish to announce to Members, officers, and staff of the Senate, and to his many other friends on Capitol Hill, the recent retirement of Gordon F. Harrison, who has served as staff director of the Senate Committee on Rules and Administration continuously from the 15th day of January 1955 to the 30th day of June 1972.

Gordon was appointed staff director by his close friend and associate, and fellow Rhode Islander, Senator Theodore Francis Green, when, at the commencement of the 84th Congress, Senator Green made an excellent choice to fill that important position is eloquently attested to by the fact that each of the successive Rules Committee chairmen—

Senator Thomas C. Hennings, Jr., of Missouri;

Senator Carl Hayden, of Arizona;

Senator MIKE MANSFIELD, of Montana; and myself,

Senator B. EVERETT JORDAN, of North Carolina, chose to retain Gordon as his staff director.

When I assumed the Chairmanship of the Committee on Rules and Administration in January 1963, at the commencement of the 88th Congress, it was my good fortune to have Gordon F. Harrison at hand to advise and assist me concerning the multifarious functions and the important jurisdictional responsibilities of the Committee on Rules and Administration. These diverse functions and responsibilities are unlike those of any other committee of the Senate, because they embrace not only the usual legislative duties but the entire gamut of Senate administration.

As the breadth of Gordon's knowledge concerning committee matters and his dedication and loyalty to the committee became increasingly evident to me, it was readily apparent how this man—Gordon F. Harrison—could and did demonstrate the unusual ability to serve five committee chairmen—of considerably diverse characters, representing widely separated regions, and employing differing approaches to problems—so faithfully and so well. Now that Gordon has retired from public service it is already painfully apparent that he will be sorely missed, not only by the Members and staff of the Committee on Rules and Administration but also by the Members and staff personnel on both sides of Capitol Hill.

In the course of his duties as staff director of the Committee on Rules and Administration, Gordon, probably more so than any other Senate staff member, was continually in contact with Members of the Senate, or their administrative or legislative assistants. To the extent he was able to provide the desired assistance, he did so quickly and efficiently. In those instances when the requests exceeded the authority or capacity of the committee to respond, he evidenced the diplomacy to say "no" in such a way, and with full and understandable reasons therefor, that he never alienated anyone.

I know that many Members and staff personnel will remember Gordon with affection and respect because of the gracious manner he used to decline requests when circumstances prevented their approval. But not only those in high places on Capitol Hill benefited from Gordon's knowledge, understanding, and compassion. Among those in more modest positions the phrase, "Have you talked to Gordon Harrison about your problem?" was a commonplace rejoinder. If Gordon has any weakness at all, it is his inability to turn any fellow away from his door.

There are many other commendations and tributes which could be paid to our good friend and now former Senate Staffer Gordon F. Harrison, but they are obvious to all who have been associated with him.

I should note especially that prior to his committee service he served as legislative assistant to Senator Green of Rhode Island, from 1937 to 1941. The details relating to Gordon's family, his education, his military service, and his service as a trial lawyer with the Civil Division of the Department of Justice, are contained in his biography printed in the current Congressional Staff Directory.

Mr. President, I ask unanimous consent that that biography and the Resolution of Commendation and Appreciation to Gordon F. Harrison, adopted by the Committee on Rules and Administration on June 30, 1972, be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

Harrison, Gordon F., staff director, Senate Com. on Rules and Administration and chief clerk, Joint Committee on the Library. Legal res. Cranston, R. I. Home, 6007 Softwood Trail, McLean, Va. Born Sept. 20, 1914 in Providence, R.I. to Albert and Ella (Morralley) Harrison. Married July 18, 1939 to Phyllis N. Swanson; children, Mrs. Naomi Opdycke and Peter Gordon. Providence Coll.; 1931–35, Ph. B.; Georgetown Univ., 1937–41, LL.B.; George Washington Univ., 1950–52, LL.M.; valedictorian of coll. class; 3 year staff mbr. of Georgetown Law Journal; recipient of 1952 George Washington Univ. annual award for international relations and world peace. Entered active duty as Lt. j.g., U.S. Navy, 1942; released as Lt. Cdr. 1946 after WWII svc. in Pacific Theater Opns., U.S.S. *Franklin;* promoted to Capt. 1960; active reservist; 1954–56, teacher of "Military Law" in Naval Res. Off. Sch.; former commanding officer of Naval Res. Law Company W–1. 1937–41, legis. asst. to Sen. Green, R.I.; 1947–54, trial atty. U.S. Dept. of Justice; 1955–pres., present position. Member: Amer. Bar Assn., Federal Bar Assn., D.C. Bar Assn., Amer. Society of International Law, Order of Kentucky Colonels.

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RESOLUTION OF COMMENDATION AND APPRECIATION TO GORDON F. HARRISON

Whereas Gordon F. Harrison has faithfully served as Staff Director of the Senate Committee on Rules and Administration continuously from the 15th day of January 1955 to the 30th day of June 1972; and

Whereas he was initially appointed to that position by Committee Chairman Theodore Francis Green, of Rhode Island, and has been continued therein by each of the successive Committee Chairmen—Thomas C. Hennings,

Jr., of Missouri; Carl Hayden, of Arizona; Mike Mansfield, of Montana; and B. Everett Jordan, of North Carolina; and

Whereas in the discharge of his responsibilities he has at all times achieved the highest degree of distinction, while constantly demonstrating exemplary loyalty and steadfast integrity so as to earn the enthusiastic respect and affection of the Members of the Senate and its staff personnel; and

Whereas he has retired from public service, where he will be sorely missed, to return to private life with the best wishes of all his associates: Now, therefore, be it

*Resolved*, That the Members of the Senate Committee on Rules and Administration unanimously commend Gordon F. Harrison and express their sincere appreciation to him for an outstanding period of service not only to the Committee, but thereby to the Senate, to the Congress, and to his fellow citizens as well.

In witness whereof, we have hereunto set our hands this 30th day of June 1972.

Mr. CANNON. Mr. President, Gordon Harrison has retired from the Senate. His career has been, and will continue to be, one of honor, distinction, and integrity.

Gordon Harrison has been an honors man all his life—in college; in the Navy, where he served with valor on the U.S.S. Carrier *Franklin*, and from which service he retired with the rank of captain in the Naval Reserve; in the Department of Justice, where he served as one of the outstanding lawyers of the Civil Division under the direction of Warren E. Burger, who was then an Assistant Attorney General; and as staff director and Chief Counsel of the Senate Committee on Rules and Administration, where he has been a guiding force since January of 1955.

Gordon was first appointed as chief counsel and staff director of the Rules Committee by Senator Theodore Francis Green of Rhode Island, and he continued to serve succeeding chairmen—Senators Thomas C. Hennings, Jr., of Missouri, Carl Hayden of Arizona, MIKE MANSFIELD of Montana, and the present chairman, B. EVERETT JORDAN of North Carolina.

He personifies all of the technical and ethical skills of his profession. He is a professional in the true sense of the word. Gordon is known to every Member of the Senate because he has served them truly and efficiently. He knows every facet of the Senate and has devoted all of his knowledge and energy in advising and assisting Members and staff concerning the law, practices, and procedures, and all of the infinitely varied, everyday problems which are presented to the Senate.

A more dedicated and intelligent and honorable man than Gordon F. Harrison will be more difficult to find than "a needle in a haystack." Everyone who knows him admires and respects him.

Gordon leaves a void in the Senate. He will be sorely missed.

We wish him well.

## RESOLUTIONS BY NATIONAL SOCIETY OF THE SONS OF THE AMERICAN REVOLUTION

Mr. THURMOND. Mr. President, at the recent 82d annual congress of the National Society of the Sons of the American Revolution, of which I am a member, 12 resolutions were adopted.

Included were resolutions which express support for President Nixon's Vietnam policy, and oppose general amnesty for those who have deserted from military service or have fled the country to avoid the draft. There are also resolutions which memorialize the Congress of the United States to continue support of Radio Free Europe and similar programs, and to join with the States in adopting a constitutional amendment to preserve neighborhood schools, to guarantee quality education to all children, and to prohibit any form of compulsory busing of students to achieve racial balance.

Mr. President, I ask unanimous consent that the resolutions be printed in the RECORD.

Mr. GOLDWATER. Mr. President, several weeks ago in Indianapolis, the National Society of the Sons of the American Revolution held their 82d annual congress and adopted a series of resolutions all of which were aimed at the common good of the American people and support the strengthening of our American principles.

Because of their importance to the country at this particular time, I join the distinguished Senator from South Carolina (Mr. THURMOND) in asking unanimous consent that the resolutions be printed in the RECORD.

There being no objection, the resolutions were ordered to be printed in the Record, as follows:

RESOLUTIONS OF THE NATIONAL SOCIETY OF THE SONS OF THE AMERICAN REVOLUTION

RESOLUTION NO. 1

Whereas, President Richard M. Nixon's policy regarding the war in Vietnam is to continue to seek to negotiate a just and honorable settlement and a return of American prisoners held by the Communist forces, but not to participate in a surrender of the freedom of the millions of South Vietnamese citizens nor in a surrender of the honor of our nation;

Now, therefore be it resolved, that the National Society, Sons of the American Revolution in its 82nd Annual Congress assembled hereby affirms its support of these policies as stated by The President of the United States and urges that he take all necessary and responsible action to effect an end to the conflict, a prompt return of American prisoners held by the Communists and the reasonable assurance of the freedom of the South Vietnamese people whom we have befriended from future political and military aggressions.

RESOLUTION NO. 2

Whereas, the National Society, Sons of the American Revolution has noted a rapid rise in public proposals that the United States should grant amnesty to those young men who have fled their country to avoid military service and those who have deserted from military service, and

Whereas, we believe those young men who have fled or deserted have refused to fulfill one of the most essential duties of citizenship and that it would be a violation of faith with those hundreds of thousands of brave men who have honorably served their country, those who are prisoners of war and those who have given their lives, the ultimate sacrifice;

Therefore be it resolved, that we express our strong opposition to such action; that we call upon our Senators and Representatives in the Congress and the President of the United States to resist the pressures being mounted for amnesty; and that the appropriate authorities prosecute those offenders swiftly and fully when and if they are apprehended.

RESOLUTION NO. 3

Whereas, truth constitutes the greatest weapon against communist falsehoods; and

Whereas, "Radio Free Europe" and similar agencies have done a commendable task, on a relatively modest budget, in penetrating the Iron Curtain and presenting essential and truthful news, thereby bringing a ray of hope and comfort to the enslaved masses laboring under the communist yoke;

Now, therefore be it resolved that the National Society, Sons of the American Revolution favors these programs and urges that they be continued.

RESOLUTION NO. 4

Whereas, many citizens are expressing concern for the moral decay, the spiritual dearth and the rise of destructive revolutionaries who are seeking to destroy the American way of life and undermine the principles of our Constitutional Republic; and

Whereas, every endeavor to make the fibre of our country stronger has little hope of success unless our citizens are inculcated with the need to observe the principles of love of country and our countrymen, justice and service; and

Whereas, the Chaplain General of the National Society in his report to this Congress has urged a National spiritual effort on the part of all Compatriots of the Society;

Now, therefore be it resolved that the National Society, Sons of the American Revolution at its 82nd Annual Congress assembled endorse the recommendation of the Chaplain General in said report and urgently ask all Chaplains of the State Societies and local Chapters of the Sons of the American Revolution and all Compatriots everywhere, to give earnest and active encouragement to all programs of the Society for a deepening of the spiritual motivations of our people.

RESOLUTION NO. 5

Whereas, for many years, certain agencies of the Judiciary and Executive Branches of the Federal Government have directed various local school districts to adopt courses of action which have encroached upon parental and local authority governing neighborhood schools; and

Whereas, such encroachment threatens to destroy our public schools and places in jeopardy the traditional control of Public Education by the States;

Now, therefore be it resolved that the National Society, Sons of the American Revolution in the 82nd Annual Congress assembled, urges the United States Congress to propose and the States to adopt a constitutional amendment which would assure the preservation of our neighborhood schools and promote the provision of a quality education to all children, and prohibiting any form of compulsory busing of students to achieve racial balance.

RESOLUTION NO. 6

Whereas, one of the most revered men in the United States, President Abraham Lincoln, directed that the song "Dixie" be played at events celebrating the end of the War Between the States; and

Whereas, "Dixie" is a most important part of Americana, and should be recognized as such by all patriotic citizens; and

Whereas, respect for America and its old and respected institutions and traditions, including the music which makes up a part of her history, should be displayed by all patriotic citizens;

Now, therefore be it resolved that the National Society, Sons of the American Revolution in its 82nd Annual Congress assembled endorses the right of all free citizens to free-

ly play and sing the song "Dixie" and other music forming a part of our American heritage, and urges all civil authorities to preserve this right as one of those fundamental freedoms which are so dear to the hearts of true Americans.

RESOLUTION NO. 7

Whereas, the California Society, Sons of the American Revolution has taken appropriate action to support the establishment of the Patton family home in the City of San Marino, California as a memorial to the late, General George S. Patton, Jr.;

Now, therefore be it resolved by the National Society, Sons of the American Revolution in its 82nd Annual Congress assembled that it endorses the action of the aforesaid California Society and urges the establishment and maintenance of the Patton Home in San Marino, California as a permanent memorial to the memory of General Patton.

RESOLUTION NO. 8

Whereas, the National Society, Sons of the American Revolution and the Indiana Society, Sons of the American Revolution lost a steadfast and valiant compatriot upon the passing of Compatriot James Arthur DeWeerd, D.D.; and

Whereas, upon the occasion of the 82nd Annual Congress being convened in his beloved State of Indiana, it is deemed fitting that a special tribute to our late Compatriot DeWeerd be adopted by this Congress;

Now, therefore be it resolved by the National Society, Sons of the American Revolution in its 82nd Annual Congress assembled, that we express our deepest regret upon the passing of Compatriot James Arthur DeWeerd, we extend our sincere sympathy to his family and many friends; and we express our deep gratitude for all of the dedicated service he gave during his lifetime to the Society and to the preservation of the principles upon which our Republic was founded.

RESOLUTION NO. 9

Whereas, the National Society, Sons of the American Revolution has learned with deep regret of the recent death of F.B.I. Director J. Edgar Hoover; and

Whereas, the 81st Annual Congress by its Resolution #7 has strongly approved Mr. Hoover's policies, leadership and dedication to law and order; and

Whereas, Mr. Hoover was the first recipient of the National Society's Law Enforcement Commendation Medal being presented to him by the then President General, Walter Sterling;

Now, therefore be it resolved by the National Society of the Sons of the American Revolution at its 82nd Annual Congress assembled that we express our deepest regret upon the passing of Mr. J. Edgar Hoover and extend our sincere sympathy to his family and many friends and we express our deep gratitude to the dedicated service he gave during his lifetime to the people of the United States of America and to the preservation of the principles upon which our Republic was founded.

RESOLUTION NO. 10

Whereas, the United Nations General Assembly has expelled loyal member of the U.N. the Nationalist Republic of China, and

Whereas, this action by the U.N. violated the principles of its own Charter, and

Whereas, Nationalist China was a peaceful, dues paying member of the U.N. and a friend of the United States, and

Whereas, the U.N. has admitted Communist China, a government which has slaughtered millions of its own people, and has imposed a constant reign of oppression and slavery, and

Whereas, Communist China, having been given a seat on the Security Council, can now veto any action by the U.N. thereby making it totally impotent as a force for peace, and

Whereas, many of the United Nations proponents seek to grant a total Power of Attorney over the internal affairs of its members which would thereby deprive the United States of its Sovereign Powers and make it subservient to the will of multitudinous, foreign countries, and

Whereas, competent testimony shows that certain foreign nations are using their membership in the U.N. to bring in spies and subversion to attack the United States internally;

Now, therefore be it resolved, that the National Society, Sons of the American Revolution again goes on record as opposing continuation of our membership in the United Nations.

RESOLUTION NO. 11

Whereas, it has been the policy of the National Society of the Sons of the American Revolution to re-affirm and re-adopt all previous Resolutions;

Now, therefore be it resolved, that the National Society does re-adopt and re-affirm all previous resolutions where applicable.

RESOLUTION NO. 12

Whereas, the 82nd Annual Congress of the National Society of the Sons of the American Revolution has been successful in every respect; and

Whereas, our appreciation should be extended to the individuals and groups that contributed to the success of this Congress;

Now, therefore be it resolved, that the National Society, Sons of the American Revolution hereby expresses its grateful appreciation to President General Eugene C. McGuire and to his charming and devoted wife, Paula, for the faithful performance by him of the arduous duties of his high office and the gracious giving of their talents to his outstanding administration; and

Be it further resolved: that our appreciation be given to our Executive Secretary, Warren S. Woodward, and his lovely wife, Gisela, for their vital role in the arrangements for, and execution of, the Congress, and

Be it further resolved: that our grateful appreciation and thanks be extended to:

Compatriot Marshall E. Miller, Chairman of the Indiana Society Congress Arrangements Committee, and his attractive wife, Marilyn, and Compatriot Jack K. Carmichael, President of the Indiana Society and Co-Chairman of the Indiana Society Congress Arrangements Committee, and members of the Indiana Society and their ladies who assisted them, and in particular, Compatriot and Mrs. Cyril L. Johnson, Compatriot and Mrs. Albert T. Morris, Walter C. Bridgewater, Troy G. Thurston, Lowell C. Reed, Adam Riggin and Estel L. Allen.

The Honorable Edgar D. Whitcomb, Governor of the State of Indiana and The Honorable Richard G. Lugar, Mayor of the City of Indianapolis and The Honorable John W. Walls, Senior Assistant Mayor of the City of Indianapolis for their well-received greetings and remarks to this Annual Congress;

Compatriot Fred J. Milligen, Speaker at the Monday luncheon;

Mr. M. Stanton Evans, Speaker at the Tuesday evening banquet;

Colonel (and Compatriot) Charles M. Duke, Jr. USAF, the first member of the Sons of the American Revolution to walk on the Moon, and Speaker at the Wednesday evening banquet, and his lovely wife, Dottie, who charmed everyone;

Mrs. Donald Spicer, President General, National Society, Daughters of the American Revolution; Mrs. Roy D. Allen, Senior National President, National Society, Children of the American Revolution; Mr. Philip F. Horne, National President, Children of the American Revolution; and to Mrs. Floyd H. Grigsby, State Regent, Indiana Society, Daughters of the American Revolution, for their attendance at and greetings to this 82nd Annual Congress;

Past President General Charles A. Anderson, M.D., for arranging the display of Compatriot S. Hubbard Scott's collection of historical, State and Territorial flags belonging to the Ohio Society, Sons of the American Revolution;

The Staff of the Indianapolis Hilton for their cooperation and assistance in connection with this 82nd Annual Congress of the Society.

Be it further resolved: That the National Society, Sons of the American Revolution, in its 82nd Annual Congress assembled, hereby expresses its sincere appreciation to all the many others whose efforts contributed to the success of this Congress.

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## NUCLEAR WEAPONS—FRAGMENTATION OF CONGRESSIONAL CONTROL: EXCELLENT ARTICLE BY SENATOR SYMINGTON

Mr. PROXMIRE. Mr. President, the distinguished Senator from Missouri, (Mr. SYMINGTON) authored an article published in the New York Sunday Times of July 31, 1972, which I believe merits the widespread attention of the public and especially of Members of Congress.

Senator SYMINGTON points to the almost complete absence of its oversight function by Congress concerning the deployment of nuclear weapons.

First of all, the administration is reluctant to give Congress more than token information concerning deployment.

Second, the functions are broken up between and among several committees. The Joint Committee on Atomic Energy has a right to information on warheads. But it does not evaluate deployment.

Further, the Armed Services Committee is given very little information with respect to the military aspects of nuclear deployment, and the Foreign Relations Committee, which properly should consider the foreign policy implications of such deployment, is also kept in the dark.

Senator SYMINGTON, the only Member of the Senate who is on all three committees, states authoritatively that:

Nowhere in the Congress are all the factors considered.

I think Senator SYMINGTON's article points out just one more area—and perhaps the most important one of all—where the executive branch has usurped congressional power through its policies of secrecy, and where the congressional branch has failed to assert its constitutional authority.

Senator SYMINGTON is absolutely right to state that the country would be far better off if Congress began to exercise its functions and if public examination of our nuclear policy were undertaken.

This article is one of the most important and thoughtful articles I have seen written by a Member of Congress. I commend it to the public and to the Senate. I ask unanimous consent to have printed in the RECORD the article by Senator SYMINGTON from the New York Times of July 30, 1972.

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

WHERE ARE OUR NUCLEAR WEAPONS?

(By STUART SYMINGTON)

WASHINGTON.—No aspect of national defense is so heavily veiled in secrecy as the deployment by this Government of nuclear weapons in foreign countries. Most people, including powerful members of Congress, not only take this secrecy for granted, but consider it justified.

Obviously some details of such deployment should be handled in secret. It would be unwise to publish the number of weapons deployed in each place, their precise locations, characteristics of the weapons and the storage and security arrangements involved; also the procedures and conditions under which they would be used.

The present Administration, however, makes no effort to distinguish between information which would be useful to potential enemies and that which would not. It prefers to say nothing at all about these nuclear weapons abroad. Comparable to the problems of an alcoholic in the family, the subject is never mentioned.

Through various releases and public statements, however, we know that thousands of United States nuclear weapons have been deployed abroad; that included are surface-to-surface missiles of intermediate range, air-to-ground missiles, tactical nuclear missiles, nuclear bombs and stockpiles of warheads. We were told by the Secretary of Defense over five years ago that there were about 7,000 nuclear warheads in Europe alone. (Since then this number has increased.)

We know also that there are nuclear bombs on aircraft carriers in Europe and the Far East and megaton nuclear missiles on Polaris submarines; also that some of our nuclear weapons are available for joint use with foreign forces.

Despite this common knowoledge, there is still an attitude in the executive branch that this vital aspect of national security should not be discussed.

Regardless of intent, the effect of such unwarranted concern for security is to stifle public examination and inhibit Congressional consideration of the broader policy aspects involved. As a result, a small group of officials in the executive branch are free to make major decisions regarding the nature and deployment of nuclear weapons without the necessity to explain their decisions either to the public or to the appropriate committees of the Congress.

This lack of any true Congressional oversight is compounded by a fragmentation of Congressional jurisdiction. The Atomic Energy Act gives the Joint Committee on Atomic Energy access to nuclear information, but the Joint Committee is not in a position to evaluate nuclear weapons deployments abroad within the broad context of over-all defense posture. That is the responsibility of the Armed Services Committee.

Within the framework of our diplomatic relations with foreign countries, such deployment is the responsibility of the Foreign Relations Committee.

These latter two committees, however, are given very little information about nuclear weapons deployments; nor is that information kept up to date. Nowhere in the Congress are all of the factors involved considered, even on a classified basis. As the only member of the Senate who sits on all three of these committees, I know only too well the fragmentary nature of the picture that is made available to the members of the individual committees.

Officials in the foreign countries where United States nuclear weapons are deployed are well aware of these weapons in their countries, as are most people living near these storage sites; and it is certain our potential adversaries have this knowledge.

In part, ignorance about this vital aspect of our national security is the fault of the Congress itself. A recently proposed amendment to the Foreign Assistance Act which would have prohibited the obligation or expenditure of funds for any agreement providing for the storage of nuclear weapons in a foreign country without the consent of the Senate was defeated under pressure from the executive branch by a vote of 65 to 17.

Many people do not realize that our current deployment of nuclear weapons is the result of decisions which were made many years ago. These deployments reflect strategic, political and technological considerations which may once have been valid, but which have been vastly altered during the intervening years.

In the past year only, for example, there have been further increases in Soviet air and naval activity adjacent to the territory of our Mediterranean allies, the SALT negotiations with the Soviet Union have produced a proposed treaty, the United States has opened a new relationship with the People's Republic of China (this can only affect, in major fashion, our presence on Taiwan), Okinawa has reverted to full Japanese sovereignty, and North and South Korea are now talking with each other.

These developments have a specific relation to our existing deployment of nuclear weapons; and as long as this excessive secrecy is allowed to continue, the most important single component of our defense posture cannot even be discussed in the Congress, let alone be understood by most of its members or the American people.

It is a procedure which results in the wasting of billions of dollars and one which bypasses the constitutional prerogatives of the legislative branch. Because the future of the country is involved, telling the people everything about this subject that would not aid a possible enemy is clearly in the national interest.

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## CHEMICALS IN OUR FOOD SUPPLY

Mr. NELSON. Mr. President, concern is mounting nationwide over the amount of chemicals in our food supply. According to Food and Drug Administration and industry figures, the average American eats about five pounds of food additives every year.

Colman McCarthy, writing in the Washington Post August 3, 1972, discusses this concern for what I believe is a major environmental and health issue.

On February 14, 1972, I introduced the Food Protection Act (S. 3163), which is designed to improve the testing and approval mechanisms for food additives at the Federal level. The bill is based on recommendations of the 1970 White House Conference on Food, Nutrition and Health.

It calls for nonpartisan, third-party testing of additives prior to approval; proof of necessity as well as safety; and nutrition standards for food products.

I recommend Mr. McCarthy's article to Senators, and ask unanimous consent that it be printed in the RECORD.

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

HAVE AN ADDITIVE FOR DINNER—WHAT'S IN IT FOR YOU?

(By Colman McCarthy)

Had any water, corn syrup, shortening, sugar, whey solids, food starch modified, dextrose, sodium caseinate, flavoring gelatin, whole milk solids, monosodium and diglycerides, salt, vinegar, polysorbate No. 60, vanilla, monosodium phosphate, guar gum, lecithin, artificial color, in a crust of wheat flour, sugar, shortening, water, dextrose, graham flour, sorghum grain flour, salt sodium bicarbonate ammonium bicarbonate, artificial flavoring and coloring lately? Probably so. Lemon cream pie—the end song of this harmony of additives from the chemical lab—is popular in the summer heat. It tastes good, looks good but is it good? Good, that is, for a person's bones, muscles and spirit that naturally rely on food for uplift?

The presence of chemicalized lemon pie on the dinner table—as compared with the fresh apples or peaches served in the era before food technologists got into the kitchen—is only one example among thousands of preservatives, defoamers, nutrients, emulsifiers, colorings, acid, plasticisers and thickening agents intentionally added to food by manufacturers. Food additives are hardly a major issue of American politics, yet with each citizen consuming some five pounds of these chemicals a year, the subject is at least in the stomach if not on the mind. As with most questions involving corporate profits, government regulation and the consumer's health and his habits, additives signify to some the blessings of angels and to others a degradation fit for animals. What is clear as Americans roam through the shopping aisles is that we have asked for the additives—in the name of convenience and in the pursuit of taste—or at least we have told the food technologists to make us happy at the table.

In a balanced and informative book, "Eater's Digest," published this week by Doubleday, microbiologist Michael Jacobson expresses the belief that the "general rule on the safety of food additives is that there is no general rule. Some are safe, others are hazardous. Some are safe at low concentrations, but toxic at high concentrations. Some are themselves safe but make possible the fabrication of unwholesome foods. Each chemical must be examined individually."

That's a problem. The consumer is a part-time buyer up against the full time sellers of the food industry. Even if someone develops a nose for additives and can sniff them out like a bird dog in the aisles, often they still remain hidden. Ice cream manufacturers, for example, are not legally required to list ingredients; ice cream heads who research their pleasure are usually amazed to learn that some ice creams contain 50 percent air.

Here and there, firms like Giant Foods, a Washington supermarket chain, and Coca-Cola, show concern for the public by listing ingredients voluntarily. But even after an additive is noted, the consumer may still be running in place. Michael Jacobson writes that a "problem with food standards is that they are so easy to get around. If a manufacturer wants to make something that is similar to a standardized food, but that contains filler, nutrients or other ingredients not permitted by the standard, all he has to do is call the product by another name. One food standard, for instance, assures consumers that a jar labeled 'peanut butter' contains at least 90 per cent peanuts. A manufacturer who wishes to market peanut butter composed of 50 per cent peanuts and 50 per cent filler could do so simply by calling his product 'imitation peanut butter' or 'peanut swirl.' To let the shopper know that it is to be used like peanut butter, it would be artificially colored to the same hue as real peanut butter and packaged in a peanut butter jar, perhaps with a label declaring 'great with jelly.' In other words, if your product doesn't meet the standard, just call it something else."

A second aspect of the additive problem is that even when their presence makes a once-natural food unhealthy and over-priced, few

citizens can work up the energy to care. With everything from air inversions to air wars to worry about, what's a little air in your ice cream or a drop of monosodium phosphate in your lemon pie? If you're going to protest something, whether from the left wing, the right wing ro the whole bird, at least let it be a cause more universal than the lining of your stomach. Moreover, Americans buy so many products of unknown hazard that alerting them to products that are merely neutral is all but impossible. Cigarettes are sold in packages clearly warning that the product is a health danger, yet in 1971 sales were at a record high. The Federal Trade Commission is calling for a more strongly worded statement, as if a louder bark from the sheepdogs will keep the flock from the cliff's edge.

Dangerous additives are well-known, if only because their tombstones of unsafety are clearly marked in the graveyard of banned substances. The Food and Drug Administration, seldom an over zealous guardian of the public health, created publicity when such additives as cyclamates and safrole were removed. In "Eater's Digest," however, a food industry official is quoted: "Consumers must learn tht chemical is not a dirty word, that our very bodies consist of nothing but chemicals — maintained and replenished by the chemicals in the foods we eat, the chemicals in the water we drink, and the chemicals of the air we breathe. Once consumers learn that those substances with the unfamiliar names are but a small addition to the vast numbers of chemicals provided by the more familiar food ingredients we will have made a considerable step forward."

It will indeed be a big step, especially because more and more public interest groups must be stepped over. James Turner, whose book "The Chemical Feast" three years ago was an early alert, has formed a group called Consumer Action for Improved Food and Drugs, he believes the food additive issue will grow. The increasing use of chemicals in food poses a serious problem of uncertainty. Ninety-five per cent of all mental retardation is of unknown origin; 30 to 50 per cent of all pregnancies resulting in spontaneous abortion, still or deformed births are of unknown cause. All causes of cancer are unknown. Increasing evidence relates each of these assaults on human well-being to various chemical causes. It would seem prudent, in view of this situation, to exclude all suspect chemicals from the food supply until they have been shown not to cause genetic damage, birth defects or cancer. This is not currently the policy of the food industry or the government,"

Most adults can remember the days of childhood when they either grew food in their own gardens or went to the vegetable and fruit stand for a snack. Now, however, we have nearly a whole generation that has been raised on additive food, made possible by chemicals bolstering fat, water and carbohydrates and void of vitamins, proteins and minerals. Fathers too busy with careers and mothers too nutty for liberation casually feed their children Cool Whip instead of cooled fruit, Corn Diggers instead of freshly dug vegetables. It is small wonder that when the Agriculture Department recently tried to get soft drinks removed from the Montgomery Couny, Md., high schools, the school officials protested, even though soft drinks were being sold in direct competition with milk. The officials reasoned that sodas should be sold in the school because otherwise the students would leave school at lunchtime to junk up at the hamburger and hot dog joints.

Additives are less of a sign of a deteriorating America than is the additive attitude. Nourishment is so absent from the minds of many citizens that large numbers are engaged in an ongoing pattern of strangeness: going on a diet to lose weight gained from empty food.

## CITIZEN BOB HOPE

Mr. GOLDWATER. Mr. President, an institution in American society, and one I am happy and proud to call a friend, is a man named Bob Hope. What can we say about a 69-year-old legend that goes on and on? When the legend is about a man such as Hope and exists "in his own time" we can not say quite enough.

This discovery, I am happy to say, was made by an excellent writer named C. Robert Jennings, in an article entitled "Citizen Hope," which he wrote recently for the Los Angeles Times West magazine. Mr. Jennings proposed the question I asked above as the first paragraph of his article. Then he answered it this way:

You can take the cowardly way out and say that writing about Bob Hope at this juncture in his life and our times is like writing a biography of Calvin Coolidge—it can be done, but why bother? That Bob Hope is his own case history, a living memorial to a pukka folk-hero—himself, the man and the myth one and indivisible. He is the Oscar and Niagara Falls, Betsy Ross and Disney Land, Shirley Temple and Coca-Cola, too. He is a Hollywood shrine, a National Historical Monument, an international icon that even cutthroat time cannot tarnish—he remains one of the world's ten most admired men.

Mr. President, because Mr. Jennings' article is one of the finest I have ever read about our friend Bob Hope, I ask unanimous consent that it be printed in the RECORD.

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

CITIZEN HOPE

(By C. Robert Jennings)

What can you say about a 69-year-old legend that refuses to die?

You can take the cowardly way out and say that writing about Bob Hope at this juncture in his life and our times is like writing a biography of Calvin Coolidge—it can be done, but why bother? That Bob Hope is his own case history, a living memorial to a pukka folk-hero—himself, the man and the myth one and indivisble. He is the Oscar and Niagara Falls, Betsy Ross and Disneyland, Shirley Temple and Coca-Cola, too. He is a Hollywood shrine, a National Historical Monument, an international icon that even cutthroat time cannot tarnish—he remains one of the world's 10 most admired men.

You can make it easy on yourself and do the Old Star Interview, mining the hoary biographical lode—born Leslie Townes Hope in 1903 in Eltham, England, one of seven sons of a stonemason, moved to Cleveland at age four, ho hum—unearthing enough gems along the way to keep the reader chuckling, even if they do have a way of sounding the same over the decades.

Or you can take the current tack, which is to misquote him ("War is beautiful"—*Life*); denigrate him ("The funny thing about Bob Hope is that he's not very funny"—*Look*); or make scurrilous references to his politics and sex life (*The New York Times*). But any way you go, it just won't fly.

You cannot explicate Bob Hope any more than you can parse champagne. Outside sharing scooped snoot and owlish views, he is in some deep sense the Richard Nixon of show business, at once self-made, simplistic *naif* and urbane, complex human being. (Unlike, Nixon, Hope is too loose and unrepressed to ever come apart in public.) So you observe, try to capture something of sinew and feeling, even indulge in a little Indian wrestling of egos—trusting that, in the accretion of the details of Hope's daunting busyness, the flying shards of colloquial speech, the gewgaws of personality at odd point of time and pressure, there might emerge some mosaic of the true man, if even a smudged one.

Even if the private person *has* long been submerged in the public myth, it still walks and talks like a man, takes Alka-Seltzer for sour stomach and eats cherry pie with vanilla ice cream.

I first met Bob Hope at one of his several homes, NBC in Burbank, after one of the intimidating sentries held me up at the gates because "it says here Jim Nabors will be coming to visit Mr. Hope, and you're obviously not Jim Nabors." After a few phone calls, I am cleared.

On Stage One, the Les Brown Band of Renown is rehearsing a George M. Cohan medley for a Hope special on vaulderville. Juliet Prowse and Sammy Davis, Jr., are jawing in a corner and a passel of dressers, go-fors, press agents and gag writers are milling about.

The familiar jaunty, slightly sarcastic voice calls from the star's dressing room: "Norm, did you do some golfin' blackouts for the [Palm Springs] show Monday?"

"Yeah, three or four." Then Norm Sullivan, who has written for Hope for 30 years and says he plans to "keep going until I get the hang of it," asks me if I have any golfing jokes. I apologize that I have not been involved in show business in a couple of years and. . . .

"Neither have we," says Mort Lachman, Hope's producer and long-time top writer. "This is a *factory*. Bob Hope is an industry." He explains that a few blocks away, in Hope's immense Toluca Lake spread, four secretaries labor full-time taking phone calls, answering the mail, sending out 8,000 Christmas cards, acknowledging, cataloging, and displaying countless gifts, trophies and honors, jockeying social and commercial dates. Jokes are filed alphabetically under subject headings in two concrete vaults there. In a film storage company in Hollywood, six more vaults are crammed with discs, tapes, kinescopes, recordings, videotapes and film footage, an impenetrable repository of Hopeiana for the ages.

Meanwhile, we wait. A Hope aide explains that there are so many people crowding him and such constant pressure that "he must parcel out time to each of us in chunks—even with Dolores—and nobody gets more than the other." Finally, Hope's personal press agent calls out, "Roberto wants to see you."

"Hi! How are ya'? Good to see ya'." I cannot find a voice, for he is shuffling through a soft-shoe routine all the while, looking another way. He has a slight stoop, a paunch, liver spots and brief hair, yet he looks remarkably fit, his oddly handsome face hardly creased at all by the years, his brown eyes clear and cool. Hope doesn't smoke and drinks little. "I'm booked every day right through March, could you believe that? But I *gotta* get to the dentist next week, maybe we could get together then."

How about right now, I brazen, during the break in the taping? No, he is off for some putting at Lakeside, his resident country club. He never mixes business and golf. How about the dinner break? No. He must go home and rest. There are no apologies. The famous crooked smile stays fixed, but his eyes tend to glaze over now, depthless like a rabbit's, and in the presence of this blank mien, I feel helpless, canceled. He has simply switched off, unconsciously perhaps, and he soft-shoes down the hall, humming a tune, swinging a golf club. I see my story sinking

like a stone and flop on his dressing room sofa, wondering: Maybe Hope means not ever having to say you're sorry. (Which turns out to be as false as it is facile.)

"It's demeaning having to wait around for somebody all the time," says Hope's press agent with acuity. But the man is clearly in perpetual orbit. We pore over Hope's schedule: rehearsing and taping the rest of this day, a benefit at Southern Methodist University in Dallas the next day, a benefit for St. Joseph's Hospital in Houston the next, an arthritis telethon in Hollywood the next, then down to Palm Springs for the Bob Hope Desert Classic with its attendant charity dinners and requisite Agnew jokes.

I clearly cannot nail down a decent story backstage at NBC (where in six hours I see Hope for two minutes). I am monumentally bored by golf and golf gags; besides, a week on the course seems journalistically untenable. I suggest spending the weekend with Hope in Texas, an impusive gesture perhaps, certainly a desperate one. To my surprise, considering the devastating reports of recent vintage by writers who have traveled with him, Hope sends his response by emissary: "Good idea." At this juncture, it seems not unlike being admitted to an audience with the Pope.

But Bob really isn't like that, says Mort Lachman over wine and sole just prior to the final taping. Of course he's busy, but he's the most approachable guy in the world—and most of those who approach him come from Ohio. "You're a star; if somebody intrudes, you speak. You know everybody in this country comes from Cleveland? "I'm so thrilled to meet you. I'm from Cleveland, too.' You smile, you never can tell, they might be sponsors."

During the taping of the night's show, in which he and Sammy Davis, Jr. are billed as "The Happiness Boys," the ad libs are funnier than the written material. Hope admits that he can no longer sort out what was written for him from what seeps naturally through his own funny bone or some honest ventricle. "I don't compartmentalize it," he was to tell me, and ultimately I came to see why: it doesn't matter one whit. Either way, he is a funny man. Limited and no classic clown—but funny.

"Up *there*?" he asks Les Brown, whose music is pitched too fast and too high for him. "What the hell's *that*? Wo, woo, boy, wha wha what *what*? Let me hear that. Down, boy. Hey, forget that tempo we had yesterday. Jesus! Slower, kid. [aside] This *is* my show isn't it? [then wickedly] And a little slower for Sam." At one point Les drowns them out and Hope says: "Don't make it too obvious."

Sammy upstages him and Hope ripostes: "I hope you fall in the pit." Sam reads Hope's line by mistake because "I got one eye and it was lookin' the other way." Says Hope: "That's *my* line. Why the hell can't he read *his* line? Is it too late to talk money? You can't come back tomorrow?" A flunky wipes his brow and Hope says: "That's not where I need it, honey."

They do it over and over, until Hope sags and says in his faggot accent: "Oh, my God, and we were *tho weady*." Another snag. Les Brown complains that he had not heard the line that was to bring him in, and Hope snaps, "If you had, you wouldn't be on the show." Hope has to take a break: "I'm gonna lie down and talk to my psychiatrist." And Sammy grouses: "It didn't take this long to do *Porgy and Bess*."

Back on stage, during a warm-up, Hope hums, sings to himself, pow-pow-pows the jokes and mutters "buderrrup, brrup, rup rup. . . ." He has a dancer's grace, a kind of sloping charm that is more evident in the flesh. He practices some of his Texas gags on the audience: "That Howard Hughes, I think he's just a wealthy rumor, don't you? . . . You know Clifford Irving is 6 feet, 4? 'Course, when he's not standing on Howard Hughes' money, he's 4 feet, 6 . . . I think Howard Hughes is alive and well and living inside Totie Fields . . ."

Then, when the light goes bad on his cue cards: "I can't see a goddam thing. I feel like Coy Bacon that day he couldn't see the football, he stomped his feet on the field and said, 'Damn!' " And so does Hope. He has the sort of androgynous style that, without such precision and control, could be bent to tedium and effeminacy.

Bob Hope always has the first window seat on the right of the plane, I am told, and Freddy the Maseur has the seat next to him. So around midnight I arrange with American Airlines to sit across the aisle from Hope on the noon flight to Dallas. Next day, at the check-in counter, a short, swart man with a Peruvian flight bag says to the attendant: "Mr. Hope is on the phone. You can't go without Mr. Hope." It is Freddy. He confides that once in New York, they sent the plane back for Mr. Hope.

In the first-class cabin, a portly couple try to plop down in Hope's seats only to be dislodged forthwith by several attendants, male and female. The woman is furious: "That's what we paid *extra* for," she shouts in a deep-dish drawl. "We paid first class just to get that leg space up there. I gotta big man here!" Without mentioning Hope, the attendants somehow subdue them, trundle them into the second row, though the lady is still steaming.

Ray Bolger dances aboard, red-faced, sad-eyed and twinkle-toed: "You wanna buy my autograph as the Scarecrow? I gotta lotta autographs for sale, and I can do the Scarecrow all *day*." He sings "Some Enchanted Evening" and says, "I've been dead for years. I'm really Ezio Pinza."

It is after takeoff time when Hope appears, the last one on the plane, smartly pressed, small cloth hat rakishly agely, swinging a number one wood. I try to say hello. He looks right through me, smiles and offers a perfunctory "Hi!" The entire cabin explodes into applause. It is a Star Entrance—calculated, perhaps, but the response is real. The adoration is almost palpable, thick with love vibrations. Everything will be all right now, we're all safe. It is a reassuring presence. "All right folks, down, down. Hiya, sweetheart. . . . How are ya, honey, nice to see ya. . . . Now don't get hysterical, honey. . . . Do I *have* to sign this on the barf bag? . . ." He embraces Bolger: "Shall we dance?" Even the disgruntled lady is pacified: "It's all right now," she says, patently thrilled with her sacrifice.

Hope returns to his seat, glances my way does a double take of recognition and says "Oh, *hi*", again in a way that implies apology over the earlier slight. He asks for *Time* but has to settle for *Newsweek*. When everyone else is having cocktails, he drinks ice water, then hot tea with milk.

An ex-Chrysler adman exchanges seats with Freddy and proceeds to talk to Hope nonstop for the entire trip. Periodically, Hope opens his black briefcase in an effort to study his lines, but the man drones on. "I can tell that guy's a bloody bore by his cufflinks," says the savvy blonde from Santa Monica sitting next to me. "And Bob is bored stiff—see the way he taps the spoon on the table."

Thus encouraged, I ask the Chrysler man if he would mind if I changed seats with him for a few minutes. To my astonishment, he replies that Hope "has too much on his mind," with which he gloms onto him again like a barnacle. Hope tolerates it because he is a decent, patient man, more conned than conning, with a healthy ego but no Star Temperament. He gives the man that vacant look that might vex a more sentimental being, but it doesn't work. Thus beleaguered, it is Hope's only defensive weapon.

Smiling tentatively my way, he seems to *want* me next to him now, and I remember what Mort Lachman had told me at dinner: "He'll even use you to keep a barrier, a pleasant barrier. People will then hesitate to intrude. Then he can either sleep or work or talk—he doesn't take much time to rehearse so he rehearses while doing other things. He may read the material to you, that way he gets reactions and also memorizes it at the same time." But neither of us is so lucky. The white spokes of Dallas skyscrapers are piercing the onrushing horizon. The sun slants toward dusk in the flatlands.

In Dallas, there is a ganglion of agitated fans, flunkies, attendants from cabin to terminal, where a small army of newsmen and photographers crowds Bob Hope. He is ready for them, too, speaking off the cuff for the most part. Did he see Martha Raye in Vietnam? "Yeah, and she's the only girl to have a billboard on the Ho Chi Minh Trail. I'm serious." How were the POW negotiations? "Very friendly and cordial—the guy said he knew me from *Road to Singapore*. I'm very hopeful. I think we'll have 'em out by July." Did he really think he could raise $10 million for their release? "Sure, but in view of what President Nixon offered—$2.5 billion—I feel like I offered the tip."

A new press agent appears on the scene and sweeps Hope toward a waiting Chrysler limousine, piloted by an impressively pneumatic airline stewardess. Fifty people trail us down the corridors. One woman asks why he is unshaven. "I figured I'd look awful pretty tonight, honey." A newsman wants to know if he got a shakedown before boarding. "They thought I was pretty silly wearing my parachute, but I always do. I'm studying Spanish all the time, but nothing happens." A photographer says, "Hey, you walk like a man, on TV you walk like a woman." Says Hope: "You got the wrong guy—that's Benny!"

The tall, distinguished man who had greeted Hope earlier seems lost in the shuffle. I introduce myself and he replies evenly: "I'm Willis Tate, president of Southern Methodist University—or at least I *was* as of this morning."

We go straight to the Bob Hope Theater, where rehearsals are in progress. Hope pauses before the stunning building to which he contributed a cool million and says: "Oh, well, somewhere in the world, every ham should have its hook." Buddy Rogers, actor-band leader of the '30s, now suzerain of Pickfair, is on stage playing every instrument in the band, a stunt he did in an early Carole Lombard film. Hope watches admiringly: "Why don't you *do* something, Buddy. My God, he's too much, isn't he? It's like *Wings* again."

Sheila MacRae does the title tune to *Company*, Shani Wallis sings "As Long As He Needs Me," and Hope tries to figure out where to put his cue cards: the rear of the theater is too far away—especially for a man who has had laser-beam eye surgery—and he can't dislodge the patrons on the front row. After all, they've paid $500 a seat for the Bob Hope Scholarship Fund. An aide makes alternate suggestions, and it is the first time he shows an edge: "Ya gotta intimate show, you can't *do* it that way, don't you understand what I'm saying?" Still, he never loses his temper.

That night he saunters on stage with the cocky assurance of a man who has spent all day learning his lines, though in a softer moment he has admitted that "if that guy hadn't talked to me on the plane, I would have all this new material in hand, edited it down, taken the clinkers out, tightened it, y'know?" Nobody knows the difference but Hope. He is so skillful at glancing off the cue cards, shuffled now by several college kids in the orchestra pit, that no one is aware he is reading at all.

He kicks off his act with a song that says a lot about Bob Hope:

*What gives an actor confidence?*
*Applause, applause.*
*Your future is cooked, once you are hooked*
*On sweet applause.*
*It gives us that drive, on which we all thrive,*
*It might even revive*
*Dear old Crosby. . . .*

A long-time Hope associate confides that he and Crosby have never been close friends, but find it commercially viable to continue using each other as "a clutch."

Hope's pauses remain the most potent in the business, his timing consummate, his trip-hammer delivery uncluttered and right on target, and the target is still often Bob Hope: "When I played golf with Billy Graham and Pat Boone, we were billed as The Supremes . . . but I don't trust a fella who kneels in the trap. . . . Fulton Sheen has a new hit album, *Those Wedding Bells Are Breaking Up That Old Gang of Mine*. . . . They're talkin' of puttin' a statue of me downtown, but nobody wants it but the pigeons. . . . I didn't intend to build this theater—I thought the chancellor was asking for my autograph and here I am . . . playing for the Methodists tonight, the Catholics tomorrow night. I'd hate to blow the hereafter on a technicality. . . . We just made one stop today, to pick up money and parachutes. . . . Got a great welcome from your mayor, Tom Landry. Your governor, Roger Staubach. . . . I realize why everyone was holding up their finger, to show me they're Number One. . . . Howard Hughes gave the movies the two best things it ever had: Jane Russell." And so it goes, like the proverbial bridal gown, something old, something new, something borrowed, something blue.

Hope closes each show as he does his Christmas-in-Vietnam spectacular: solemnly. Curiously, it brings out the best and worst in him, the most *feeling* Hope and the vaudevillian who does not perceive war, politics or culture acutely. In Texas he says, without benefit of script, "I've talked to Ky and the South Vietnamese are going to take over. So you can relax your minds about that. . . . Since I suggested we could raise $10 million to release the prisoners of war, more than one guy has said he'd put any amount of money in a Bangkok bank. . . . I checked with the surgeon general and I think the kids have licked the drug habit, it's a great move forward. The boys are in such good shape, they know they're coming home. History will record that we've achieved our mission in South Vietnam, keeping this country safe. . . We're there to save this country from slavery, otherwise we'd be just like Czechoslovakia."

To conservative Texas, this is not the naive twaddle of a deluded comic, but the eloquent orations of a Great American with a pipeline to the pulse of America and the White House, too. To pop-liberals, it is perhaps less appalling than baffling; but when they crucify him, Hope flaps his hands as if waving flies away and says: "Ya gotta look at the source."

Neverthless, when he takes time to organize his thoughts and quarterback a sign-off speech with his writers, neither the content nor the sincerity behind it can be faulted; e.g., of his recent trip to Nam: "Y'know, I've been making these trips for years and sometimes the job ain't pretty. There are a lot of forgotten people in this war that has eroded so deeply the fabric of our society—in hospitals, burn wards, and the POW camps. People meet me at airports and ask 'Can you do something?' The question is how can you stand by and do nothing? All any of us ever wanted to do is make the burden lighter for those guys who are making the sacrifices. Maybe we don't all demonstrate or join parades, but we're all antiwar . . . especially these guys right up close to it, the guys doing the miserable business, and signing the receipts for it. And when people ask me is this my last trip. I can only hope that this is our last war."

After the Dallas show, Hope mixes graciously, solicitously with the bewigged and bejeweled natives who flock on stage to greet him and drink an awful mock champagne. Even among the moneyed popinjays, there is awe beyond belief. "Is it really you, Bob Hope?" "No," cracks Hope, "I'm on tape." "You are a saint," "Thank you, darling . . ." Curiously and parenthetically. Hope's image is so powerful, so much with us and so long with us, that mentally I don't see the man in person differently than in print or on film (as one would with, say, Elizabeth Taylor). I almost have to keep reminding myself that I am standing next to Bob Hope, I should talk to him, or something.

Benefit parties are among the most boring tribal customs in America, and Hope manages to steal away early without giving anyone short shrift. Asked in the limousine if he picked the performers, he says: "Hell, no, I wouldn't pick that gang, they got too much talent."

In the penthouse suite of the Hilton Inn, Hope changes from tuxedo to suit (he has so many, his suite back home looks like a men's store), has a word or autograph for everyone in the hallways, elevator and lobby but somehow manages to keep moving. Someone's third cousin was once his script girl. Miraculously, he remembers. "We're from Kentucky but we're thinking of moving to the Valley," says one matron. "Should we?" Sure, says Bob, "Get yourself a little Kemtone and chicken wire and come on out. . . ." And he flows on through the crowds like mercury from a broken thermometer.

We repair to a barn of a building called the Losers Club. Hope is barely seated before he is surrounded by a harem of chicks. "What is this, Polly Adler's Follies?" he asks, sipping a vodka and orange juice. Some young guitar pluckers on stage keep repeating an obscenity. Finally, in midconversation, Hope says: "It's their *theme* song." They are replaced by Louis Prima and his carnival of a band, which Hope studies in profile and says: "That's some parade of noses, isn't it? I gotta picture of Dean Martin before he got *his* nose job, looks like Danny Thomas."

He is called on stage to a thunderous ovation. He smiles the familiar lopsided smile, then *pow!* "When did they take the bowling lanes out? . . . I'm the centerfold in *Field and Stream* this week. . . . You all look like you're wearing Dean Martin's old nose. You are a pretty bunch—everybody get a nose job. You know this is silly, I'd rather pay the check. . . . I knew Louis at the French Quarter—he was a towel boy. But I don't want to bore you with this marvelous material. Never seen such a crowd, whaddaya doin', givin' away marijuana?"

He introduces Ray Bolger, kisses him and says, "If I ever switch, it's you first." But no sooner has he found his way back to our instant harem than he says. "Oh, I got a great joke, I gotta go back."

A burly fellow comes up to his table to apologize for having buzzed his act in Africa in 1943. Hope remembers and responds jovially: "Hell, that wasn't as bad as the 82nd Airborne Division—they set off a charge under the stage during the show." People poke Louis Prima albums at him for autographs. "Hello, sweetheart . . . Hiya, glad to see ya . . . how *are* ya? . . ."

Finally, I ask if he is ever ruffled by the common herd. Not a bit, "but I can smell a *jerk* right off, y'know? Like a guy doing a routine, you can tell in the first coupla lines. I love it, otherwise I wouldn't travel. They're mostly *nice*. There are so many people on the *good* side, you don't have to worry about the others. Criticism? All you can argue with are the lies. When I read in *Time* that I was worth $500 million I fell into a plate of fettucini. If that were close to true, I wouldn't go to Vietnam. I'd just send for it." Through all the smoke and the harsh curlicues of sound, nobody is having more fun than Bob Hope. "Crosby hates being Crosby," says a close friend, "but Bob Hope *loves* being Bob Hope."

3 a.m. A motley gang has mysteriously descended upon Hope's hotel suite: a guy who runs a local beanery, the owner of the Losers, a magazine writer, a columnist, a couple of press agents, our bosomy "chauffeurette" as Hope calls her, an actor or two, some empty-eyed girls with alfalfa hair. Hope struts and beams through it all, takes a few golf swings in the middle of the living room, has a glass of milk and a steak sandwich which the restaurant owner has brought with him. "I loved the show tonight," he says. "Right out of Central Casting."

Somehow we manage to duck out, and at 4 a.m. we are doing a fast tandem number, almost a jog, alongside a major thoroughfare. It is Hope at his most relaxed. Even during his frequent 2 a.m. walks outside his own security-guarded digs in Toluca Lake, he is most often followed by a squad car. His talk now is candid, eclectic, free-wheeling. When he came to Hollywood from Broadway musical comedy in 1938, a famous producer warned him to watch his style—he was too faggy, too much the dandy, "but *The Cat and the Canary* changed all that. . . ." His wife loathed the song, "Thanks for the Memory," but Damon Runyon wrote a paean to the way Hope delivered it and, Hope feels, "It kept me in pictures."

With no egregious show of emotion, he recites many early failures: "Boy, did I bomb, I was such a fathead then. I *died* in Fort Worth till I cried, 'Get me a ticket back to my country,' then I died in Cincinnati, and I couldn't even get a *date* in Chicago. . . ." He was born an Episcopalian, became a "lapsed Presbyterian" (his father built the Euclid Avenue Presbyterian Church of Cleveland), now attends mass on Easter and Christmas, at which "the minister invariably looks down at me and says, 'Of course, some people only come to church twice a year. . . ."

Hope sleeps until early afternoon, when he must finish taping an educational TV show, a spontaneous, question-and-answer forum with SMU students, and meet with a delegation of POW wives.

Noon. "You'd better not go to Neiman-Marcus," a Hope aide warns our entourage in the bar. "We don't know *when* we'll go to Houston but when we go, we're gonna go fast. If he's ready and you're not here, he'll go without you."

Is the plane here? someone asks. Been here for three days. "Pilot's probably drunk by now," says Buddy Rogers, who is not too happy about the endless wait. "Hope's a *czar*," he says later, without malice but echoing our ennui and mounting paranoia. It is true that by the time Hope has had his vitamins, his breakfast, his massage, finished his duties and his pie a la mode, we are all tired and feeling slightly oppressed, men-and-ladies-in-waiting for several hours. Forrest Tucker tries to defend and explain Hope: "When they made this guy, they broke the mold. If he said, I want you to *walk* to Fairbanks, I'd put on my sneakers and take off . . . He's a businessman first, a showman second and a humanitarian third."

On the private chartered plane, a De Havilland jet, the same abrasive aide who hoofed with Hope in *Roberta* in 1933 (Hope is *that* loyal) tells his boss that the Catholic sisters have been to the Houston airport three times in four hours. It is the sort of intelligence that Hope cannot afford to assimilate, so he just seems to tune out, cold of shoulder and vitreous of eye. Tucker droops and Hope cracks: "Why don't you rest on the stage?"

En route, he confides that the steak sandwich didn't sit too well. "I was up at 6 for an Alka-Seltzer and at 12 I couldn't *move*.

I've been going like hell for eight days and didn't realize how tired I was, y'know, tryin' to do new things, new material, so I had a lot of stuff going up here [pointing to his head], You don't realize it 'cause you're *up*."

He talks about his highly publicized POW meeting with Nguyen Van Thanh, "premiere secretaire" to North Vietnam's ambassador to Laos. "He was absolutely adorable. I showed him these pictures of my grandchildren"—he pulls out a wad of family snapshots, credit cards, calling cards, memorabilia—"and invited him to come to Palm Springs and play golf. He served tea and cookies—'course he probably had a little marijuana in 'em."

We land, the sisters are all smiles and giggles, two huge Cadillac limousines in tow. Someone points out the clinic where Dr. Michael DeBakey performs his medical miracles. Says Hope: "I thought he had his office on the freeway."

That night on stage, George Kirby and Vicki Carr do their thing while Hope skips about in the wings humming to himself and fixing some new lines in his uncanny memory, though he has brought three people down from Dallas to manage cue cards from the first row.

The gags come once more like a string of firecrackers. "I've always tried to be a good man. I've had an audience with Loretta Young. I kneel before Charlton Heston. . . . Yorty has a sign: 'I'm Sam. Fly me to the White House.' . . . The stock market is better. My stocks went from the financial page to Help Wanted. . . ."

There is a big country club to afterwards, but around midnight Hope lays out $1,000 to charter a private plane to Dallas for "a meeting."

Next day we are on yet another charter, a Falcon jet, to Dallas to pick up Hope, then to Tucson for gas, and on to L.A. Hope is unusually easy, open, fresh as paint and funny—mostly with "locker room" jokes that would curl the hair of a Chinaman. Bob Hope Blue is very dirty, often scatological, astonishingly explicit and always with it. If the kids think he is old-fashioned, they should somehow manage to stage a stag night with Hope, who doesn't miss the latest wrinkle. He is hip, a secret swinger.

There is no holding back; he exfoliates the skin of lore and legend. On money (he has some $70 million in property on which he pays taxes of nearly $1 million a year): "I'm a poor millionaire," he says. "I got the richest poor mouth in the country. I resent it when they (*Fortune* magazine) put me in there with J. Paul Getty. I'm *serious*. Here I am begging for sympathy while taking a private plane home. But I've felt the pinch the past year. It's been *tight*. I've had a cash problem. . . ."

On politics: "For most of my life I made it a policy not to participate in political things. But the last couple of years I really became concerned about the problems. I thought I could help. A lotta people ask me to help. But I still don't speak out in any partisan way. Both sides still hear from me."

His conclaves with top-ranking statesmen are mostly social, though he did supply Agnew with a surefire stream of gags for a fund-raising dinner. When the President first invited him for dinner at the Western White House, Hope said to himself: I am going to eat every course and I may eat a chair—I want to get even. "The President came out with a sort of fawn cashmere coat on, very sporty, and I said, 'you like that California field mouse, huh?' He gave me a Democrat's laugh, aaaahh. Very little, y'know? Anyway, we sat down to eat and he picked up the wine and said, 'I was reading about Disraeli and his favorite wine was this Chateau Margaux, so I decided to get some. It cost $89 a bottle so if you don't drink it, don't mess it up because we're gonna pour it back in the bottle.' So I says, 'Mr. President, if you are in *that* kind of trouble with the budget, I'm not even gonna ask for a Bowser bag, the hell with it.' "

On being Bob Hope: "It's not a great talent, it's *experience*. The only thing I have is timing. I got into this 'cause I found there was money in jokes. It goes back to $5 a night in amateur shows in World War I. When you start like that, you have a lot more balance, even when you have lows. I worked theaters so small you couldn't take a bow, they were afraid you'd get dandruff in the lobby. . . . And I'm such a ham. Some body said if I was in a blizzard and two Eskimo dogs walked by, I'd do 10 minutes for them. But I'm not the kind of guy who's *on* all the time either. I don't *wanna* be on all the time. But I can get up *anywhere* if I have to and do five to seven minutes. I will walk through a hotel lobby and a guy grabs me and says, 'Hey be a funny guy to this lady,' so I try. They do ask the damnedest things. We had this new butler who announced there was a man sitting in my living room. I came down and says, what can I do for you? He says, 'Can you tell me how I can get Crosby's autograph?'

"In Washington recently, I really wanted to talk to the President about the prisoners but it was a dinner for DeWitt Wallace of *Reader's Digest* and someone says, the President wants you to say a few words. I said, 'Thank you, I haven't played the Palace for a long time. It's nice to see the President looking so well after his strenuous duties—now that the football season is over. I didn't think DeWitt went to dinners—it takes him a month to digest anything. The President said if there's ever a Wallace in the White House, I want it to be DeWitt.' " What else did the President say? "Hope gets to go to Vietnam with Miss World. I have to go to Peking with Kissinger."

Now that Bob Hope is staring, albeit gracefully, at the sunny side of 70, wouldn't he simply like to shut off the spotlight, cancel the moon? Hell, no. That would be an earthquake. "You belong to the public. You got nine people writing for you, eight people publicizing you, a large group, uh, that keep me moving—including the Red Cross. People come up, you don't turn them off. They say you have licorice breath or you're older than you look on TV or you're fatter, you're shorter. You still, uh, you still act *right*. You go on. Sure, you're on the phone all the time and I'd like *not* to get all those calls. Of course, if I didn't, I'd call *them* and ask *why*. And the laughs—that's therapy to a comedian. So many people in our business are so *sick* from having quit. I would have to buy an applause machine just to get up in the morning if I retired. Other day, Jack Benny said he was going to London to do a show in the West End and I asked him why. He said, 'I want to get on.' That's the whole thing." Fortunately for the rest of us, the room at the top has no exit.

We land at a small private airport near Hope's San Fernando Valley home. We are all wiped out—except Hope. He is lively as a hornet. They begin to unload his bags and Forrest Tucker chides him for not traveling lighter. "Whaddaya mean, those are my *clippings*." He shakes hands all around, he is off to some telethon. "Gotta stop by the house, I guess, get a little make up on: Number Eight—Keye Luke. Bye."

It is, of course, a temporary farewell—there will *always* be a Bob Hope.

THANKS FOR THE MEMORIES

It is, when you consider it, not all that remarkable a nose. You have a friend who has an odder one. But Bob Hope built a career on it—two careers, really. First there were all those Road pictures (above), with Hope and Bing Crosby patty-caking their way around the globe. Crosby, the straight man, always wound up with Dorothy Lamour, but it was Hope who made the pictures move. In between, Hope did numberless comedies with (from near right and around the horn) such leading ladies as Ethel Merman, Shirley Ross, Paulette Goddard, Dorothy Lamour (again), Vera Zorina, Lucille Ball and, preeminently (as she was in those days) Jane Russell. Then, sometime when we weren't looking. Hope became a folk figure, a cultural object. He met (opposite, top) Truman and Ike and JFK and LBJ and compared profiles with Nixon; participated in golf tournaments with Babe Ruth; was immortalized in golf carts, comic books and watches. He received an Oscar and an Emmy, but never for his comedy, always for his "contributions." And, increasingly, he became identified with the military. Supporting and entertaining the troops used to be a cheerful patriotic duty; it suddenly turned into a significant political act. Bob Hope had become his own monument.

## MISINTERPRETATION OF HIGHER EDUCATION AMENDMENTS TO GUARANTEED STUDENT LOAN PROGRAM

Mr. PELL. Mr. President, on August 1, I placed in the RECORD a statement concerning the misinterpretation by the Department of Health, Education, and Welfare of the recently passed Higher Education Amendments with regard to the guaranteed student loan program. As each day passes, this misinterpretation is causing untold hardship to thousands of students and their families.

Many of the points I raised in my statement have been touched upon in a letter I received today from the American Bankers Association. I ask unanimous consent that the letter be printed at this point in the RECORD.

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

THE AMERICAN BANKERS ASSOCIATION,
*Washington, D.C., August 3, 1972.*

Hon. CLAIBORNE PELL,
*Chairman, Subcommittee on Education, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: At the request of a number of our member banks, we are writing to ask your assistance in clarifying the proposed regulations (Title 45, Chapter 1, Part 177) relating to student eligibility for interest benefits under the recently passed Education Amendments of 1972 (P.L. 92-318), which were published by the Office of Education in the Federal Register of July 18, 1972.

As we interpret the proposed Regulations, they would seem to place students whose adjusted family income is $15,000 and less, and students whose adjusted family income is above $15,000, on the same footing regarding the students' eligibility for interest benefits. The Regulations indicate that both classes of students must receive recommendations from the student financial aid officers that they are eligible to receive these interest benefits. In reading the Public Law and the report of the Conferees, we feel that the Conferees' intention was to create a presumption of need in favor of students whose adjusted family income does not exceed $15,000. This would, in our opinion, mean that the only issue that can be addressed by the educational institution is the amount of the student's need and the amount of the loan it would recommend.

We are also under the impression that this recommendation would not be binding on the lender if he felt that a student whose adjusted family income was under $15,000 needed additional funds. The lender could, therefore, make additional funds available

and this additional amount would still be eligible for the interest subsidy.

This in turn raises the question of a time factor for these students with adjusted family incomes of over $15,000. Before a student whose adjusted family income is $15,000 and over can receive an interest subsidized loan he must have a recommendation for this subsidy from the college financial aid officer to the lender. However, with schools due to open in less than a month, and the great burden that will be placed on the financial aid officers to analyze these requests, we doubt that all of the students' applications will be processed in time. This will be especially true of those students whose family income exceeds $15,000, but because of various financial circumstances will be entitled to a subsidized loan.

If the paper work for the student, the government and the lender would not be overwhelming, would it be possible under the law for the lender to make a non-subsidized guaranteed student loan to these students, and then if a subsidized loan is recommended by the educational institution, convert the non-subsidized loan to a subsidized loan?

We think that these provisions relating to recommendations made by the educational institutions are highly desirable as they give the lending institution some guidelines. However, the proposed Regulations seem to make the recommendation by the educational institution binding on the lender with regard to both classes of students.

We also question whether it was the intention of the Conferees to eliminate those features of the previous law that included in the loan reasonable cost for transportation, books, and supplies. We examined OE Form 1260 and found no line item that would cover these additional expenses that might normally be included in the loan base.

These questions have caused considerable concern among lenders as to whether these loans will be subsidized or non-subsidized loans and, therefore, have delayed many lending institutions from making loans to needy students.

In addition, some confusion has arisen over whether a student may mail his application to the college financial aid officer for his recommendation or whether it must be done in person. This, again, has caused additional delays in the granting of loans to eligible students.

We would very much appreciate it if you would be willing to raise these questions with the Office of Education so that the issues may be resolved.

Sincerely,

CHARLES R. MCNEILL,
*Executive Director, Government Relations.*

Mr. PELL. Also, Mr. President, I call upon the education institutions of this country to defer the August due dates for fall semester tuition, taking into consideration the problems raised by the HEW action. Such deferral by the schools will ease the anxieties of scores of families who are at present completely adrift as to how they will finance the postsecondary education of their youngsters.

## DISCLOSURE OF FINANCIAL HOLDINGS AND OUTSIDE SOURCES OF INCOME

Mr. SCHWEIKER. Mr. President, as a U.S. Senator, I believe it is in the public interest to make a disclosure of my financial holdings and sources of outside income.

Therefore, Mr. President, I am today voluntarily making a disclosure of my financial holdings and my sources of income outside of my Senate salary and honoraria which have been disclosed in accordance with Senate Rules.

The stocks which my wife and I own are:

CPC International, Harleysville Life Insurance Co., National Gypsum Co., and the Scott Paper Co. My wife and I receive dividends from these stocks.

I hold no real estate other than that at Worcester, Pa., and McLean, Va. My other financial holdings are life insurance policies for the protection of my family, two automobiles, and household furnishings.

I hold no business directorship, business position, or partnership and receive no director's fees, consultant's fees, or salary—aside from my U.S. Senate salary. When I was first elected to Congress in 1960, I resigned all such business positions.

## FUELS USE TO RISE SHARPLY: EXISTING PROJECTIONS OF ENERGY USE INADEQUATE

Mr. JACKSON. Mr. President, there has been growing awareness in recent months over a number of increasingly critical energy problems and about the need, at the Federal level, for a coherent set of policies and institutional arrangements designed both to anticipate and effectively deal with these problems. Many of the energy problems which are now the focus of national attention—natural gas shortages, growing dependency on insecure foreign sources of oil, delays in siting electrical powerplants, equipment reliability in the areas of environmental control technology and nuclear power generation—are problems which should have been identified and made the subject of priority attention by Federal agencies years ago.

Unfortunately, the multitude of Federal agencies charged with energy policy development and program administration are apparently not equipped to anticipate emerging energy problems in advance of the time that they reach crisis proportion. Neither have they the ability to set in motion new initiatives and new programs designed to avoid such crisis situations and to analyze the range of options available in providing the public with adequate supplies of clean energy.

Part of the problem we face is institutional. For a variety of reasons the Federal Government has never organized around the concept of "energy policy development and administration." Instead, new Federal functions in the energy field have been adopted in a piecemeal, ad hoc fashion in response to specific problems. It is my view that if we are to come to terms with the many major problems inherent in balancing the Nation's energy requirements with environmental concerns and with secure and varied sources of supply we must have a major restructuring of our Federal energy agencies. The President's proposed Department of Natural Resources is one constructive proposal which has been offered. It is, however, very limited in the scope of its objectives and should not be regarded as a panacea for our organizational ills in the energy field.

Far more important than consolidating energy program administration and line agency functions as proposed in DNR is the real need to develop somewhere in the executive branch an institutional capability for consistent and full-time oversight and review of all Federal energy activities and the Nation's total energy system.

Another critical need is to develop an independent capacity at the Federal level to gather and analyze statistical data and information about the Nation's present and projected supplies and uses of energy. We have depended far too long on foundations, universities and the energy industries' capacity and willingness to make such data available.

If we are to formulate sound public policy to guide the Nation's use of energy, competent, detailed, independent, and reliable information is needed about present energy uses, emerging trends, and future requirements. Energy planning and administration at the Federal level—whether it involves price regulation, tax incentives, subsidies, environmental protection, or research and development—requires an accurate and independent data base if we are to have the tools needed to create the kind of future energy systems, environment, and economic conditions we desire.

Because of the close relationship between Federal policy decisions concerning the environment, the economy, and the quality of life available to the American people, it is time we had an official set of national and regional energy accounts similar to the national income and product accounts. The Government also should have an energy forecasting model like the economic forecasting models used by the Commerce Department, the Federal Reserve Board, and the Council of Economic Advisers. These information tools would improve Federal decisionmaking capability and encourage agencies to adopt a common terminology and classification concerning energy matters.

The inadequacies of present methods of gathering, analyzing, and using data for current and future descriptions of our national energy system were forcefully brought to my attention during the preparation of the committee print on "Energy Consumption Projections." This print was prepared pursuant to Senate Resolution 45, the Senate's study of national fuels and energy policy being conducted by the Interior Committee, and was released earlier this week.

During the preparation of the committee print on energy consumption projections, the energy policy study staff discovered serious deficiencies in our methods of gathering, analyzing and using data.

For example, projections published as late as 1967 and 1968 by the Atomic Energy Commission and others overestimated the amount of nuclear powered generating capacity available in 1970 by 50 to 300 percent.

On only one subject is there significant agreement. The projections do agree that by the year 2000, the United States is likely to be consuming each year an amount of energy about equal to the total used during the whole of the Nation's

first 100 years. This conclusion is supported by these forecasts, which were prepared between 1960 and 1971 whether by the Department of the Interior, the Atomic Energy Commission, the Chase Manhattan Bank, Resources for the Future, other Government agencies, industry groups, or independent scholars.

The projections compiled in the committee's survey can serve as a useful background for identifying areas of energy policy formulation needs, but even then they should all be used with some skepticism. The main lesson to be derived is that the information base is inadequate as a foundation for the confident development of public policies designed to meet the Nation's growing demand for clean energy.

The time has come when the Congress must consider the establishment of a new information system to coordinate data gathering, analysis, and forecasting of present and future energy requirements. Our Nation has too much at stake in terms of national security, health and welfare, the quality of our environment, and the stability of the Nation's economy to tolerate any longer the haphazard, uncoordinated, and too often unreliable energy information methods now available to Federal energy policymakers.

Mr. President, as chairman of the Senate's national fuels and energy policy study, authorized by Senate Resolution 45, I intend to recommend in the 93d Congress the creation of a new Federal energy information system designed to develop, collate, and analyze the data. This new system must have the capacity to develop hard objective data and must be totally independent. It must also be free of the promotional spirit for any specific energy resource that is usually associated with the mission-oriented Federal agencies which have responsibilities for the development and promotion of specific energy resources alternatives.

## IN MEMORIAM

Mr. HATFIELD. Mr. President, last Thursday, August 3, 1972, one of the most creative minds of recent times passed away. There was little attention paid to this event in the press, but the passing of Paul Goodman marks the end of a most exuberant, fruitful, and fertile life. Most appropriately—and coincidentally—the August 10, 1972, edition of the New York Review contains his last and latest article entitled "Politics Within Limits." In honor of his life I ask unanimous consent that the article be printed in the RECORD.

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

POLITICS WITHIN LIMITS

(By Paul Goodman)

1. My social ideas are temperamentally mine—I have not really changed them in forty years—but they do not derive logically from by biases, as a doctrine. I would abhor a politics, pedagogy, or town-planning that was deduced from metaphysics, or epistemology, or even scientifically deduced rather than being pragmatic and not immoral. One must not manipulate real people because of an idea or a confirmed hypothesis. Indeed, I say "not immoral" rather than "moral" because positive morality, when used as a principle for action, can be more abstract and imperial than anything. There are far too many missionaries among my friends.

But instead of being abstract or moral, my corresponding defect is that I am an artist and fundamentally unpolitical. I don't (timidly) bestir myself to oppose anything or try to change it unless I first have imagined a simpler and more artistic way to do it, neater, making use of available and cheap materials, less senseless, less wasteful. If a bad situation is not amenable to my flash of inventiveness, I find it hard to identify with it as mine; I feel there's nothing that I can contribute. Meantime people are suffering. But a political person ploughs into the situation and makes a difference in it just by his action. Sometimes a good idea then turns up.

Artistic visions have their virtues. (Let me speak no evil of the creator spirit.) They are better than carping criticism. They give people a ray of possibility instead of the gloom of metaphysical necessity. Activism and ideology both do more harm than good. But art has the unpolitical self-sufficiency of art. I am not zealous to make my models real. And they have the timidity of being personal; I draw no strength from my fellows; I cannot lead and find it hard to follow.

One cannot rely on artists for a political message. Tolstoy makes war seem sublime and attractive. Homer makes it senseless and horrible.

2. But I mustn't overstate my diffidence. I, like anybody else, see outrages that take me by the throat, and no question of not identifying with them as mine. Cruelty and insults to the beauty of the world that keep me indignant. Lies, triviality, and vulgarity that suddenly make me sick. The powers-that-be do not know what it is to be magnanimous; often they are simply officious and spiteful. As Malatesta used to say, you try to do your thing and they intervene, and then *you* are to blame for the fight that happens. Worst of all, it is clear from their earth-destroying actions that these people are demented, sacrilegious, and will bring down doom on themselves and those associated with them; so sometimes I am superstitiously afraid to belong to the same tribe and walk the same ground as our political leaders.

Yet people have a right to be crazy, stupid, or arrogant. It is our speciality as human beings. Our mistake is to arm anybody with collective power. Anarchy is the only safe polity.

It is a moral disaster to suppress indignation, nausea, and scorn; it is a political (and soon moral) disaster to make them into a program.

It is a common misconception that anarchists hold that "human nature is good" and therefore men can rule themselves. But we tend rather to be pessimistic. We are phlegmatic because we do not have ideas. And men in power are especially likely to be stupid because they are out of touch with concrete finite experience and instead keep interfering with other people's initiative, so they make them stupid too. Imagine being deified lie Mao Tse-tung or Kim Il Sung, what that must do to a man's character. Or habitually thinking the unthinkable, like our Pentagon.

3. I must also mention the odd abstraction "Society," since it has exercised such a superstitious compulsion on political scientists since the time of Bentham, Comte, Hegel, and Marx; instead of the loose matrix of face-to-face communities, private fantasies, and shifting subsocieties in which most people mostly live their lives. It is understandable that fatherly czars or divine-right monarchs would have the delusion that all the sparrows are constantly under their tutelage as one Society; and that Manchester economists would sternly rule out of existence all family, local, and non-cash transactions that cannot be summed up on the stock exchange. The usual strategy of Enlightenment philosophers, however, was to cut such big fictions down to size and to have simple, concrete abuses to reform. But it was as if, to substitute for the slogan *L'Ancien Regime,* it was necessary to have a concept equally grand, Society.

Comte and Bentham wanted to manufacture the big fiction of Society into a reality—Comte knew that it started as a fiction—in order to use it to tidy up "everything" or at least "the greatest good for the greatest number." For metaphysical reasons, Hegel was satisfied that the more socialized a man, and the more self-conscious of it, the more real he was. But the pathetic case is Marx, who concentrated on Society and indeed wanted to empower Society, precisely to get rid of it and go back to simpler personal and community existence.

Certainly there are occasions when my existence as a mere member of Society is overwhelmingly important and not at all an abstraction, for example when they herd me into a big air liner, with its back-up of thousands of anonymous operatives and their schedules and instruments, not to mention hijackers. But even so, after the initial shock, I soon recover and become restive for a more attractive seat, mate, or look for a couple of empties so I can stretch out and go to sleep, or I press my nose to the window and watch the clouds and the receding earth.

Usually my need for Society is satisfied by a very loose criterion: "Lucky is the man who can band together with enough of those likeminded with himself—it needs only a couple of hundred—to reassure him that he is sane, even though eight million others are quite batty." (*Empire City,* lv, 19, i.)

One reason I haven't learned anything in forty years is that the political truth is so simple that a boy can see it: Society with a big S can do very little for people, except to be tolerable so we can go on about the more important business of life.

4. Most anarchist philosophers start from a lust for freedom. Sometimes this is a metaphysico-moral imperative, with missionary zeal attached, but mostly it is a deep animal cry or religious yearning, like the hymn of the prisoners in *Fidelio.* They have seen or suffered too much restraint—serfdom, factory slavery, deprived of liberties, colonized by an imperialist, befuddled by the church.

My own experience, however, has by and large been roomy enough. "They" have not managed to constrict it too much, though I have suffered a few of the usual baits, many of the punishments, and very many of the threats. I do not need to shake off restraint in order to be myself. My usual gripe has been not that I am imprisoned, but that I am in exile or was born on the wrong planet. My real trouble is that the world is impractical for me; by impatience and cowardice I make it even less practical than it could be.

For me, the chief principle of anarchism is not freedom but autonomy, the ability to initiate a task and do it one's own way. Without having to take orders from authorities who do not know the actual problem and the available means. External direction may sometimes be inevitable, as in emergencies, but it is at a cost to vitality. Behavior is more graceful, forceful, and discriminating without the intervention of the state, wardens, bureaucrats, corporation executives, central planners, and university presidents. These tend to create chronic emergencies that make themselves necessary. In most cases, the use of power to do a job is inefficient in the fairly short run. Extrinsic power inhibits intrinsic function. "Soul is self-moving," says Aristotle.

The weakness of "my" anarchism is that the lust for freedom is a powerful motive for

political change, whereas autonomy is not. Autonomous people protect themselves stubbornly but by less strenuous means, including plenty of passive resistance. They do their thing anyway.

The pathos of oppressed people, however, is that, if they break free, they don't know what to do. Not having been autonomous, they don't know what it's like, and before they learn, they have new managers who are not in a hurry to abdicate. And the oppressed hope for too much from New Society, instead of being vigilant to live their lives. They had to rely on one another in the battle, but their solidarity becomes an abstraction and to deviate is called counterrevolutionary.

The possibility of my weaker position is that autonomous people might see that the present situation is disastrous for them, and that their autonomy is whittled away. They cannot help but see it. There is not enough useful work and it is hard to do it honestly or to practice a profession nobly. Arts and sciences are corrupted. Modest enterprise must be blown out of all proportion to survive. The young cannot find their vocations. Talent is stifled by credentials. Formal civil liberties are lost to bugs and Interpol. Taxes are squandered on war, schoolteachers, and overhead. Etc., etc. The remedies for all this might be piecemeal and undramatic, but they must be fundamental, for many of the institutions cannot be recast and the system as a whole is impossible. A good deal could be made tolerable by wiping a good deal off the slate.

The aim of politics is to increase autonomy, to get Society out of the way and open up new space. I like the Marxist formula "the withering away of the State," but it is the method, not the result.

5. The central organization of administration, production, and distribution is sometimes unavoidable, but it mathematically guarantees stupidity. Information reported from the field must be abstracted, and it loses content at every level; by the time it reaches headquarters it may say nothing relevant. Or it may say what (it is guessed) headquarters wants to hear. To have something to report, the facts of the field are molded into standard form and are no longer plastic. Those in headquarters cannot use their wits because they are not in touch. Those in the field lose their wits because they have to speak a foreign tongue, and can't initiate anything anyway. On the basis of the misinformation it receives, headquarters decides, and a directive is sent down that may fit nobody in particular. At each level it is enforced on those below in order to satisfy those above, rather than to do the work. When it is applied in the field, it may be quite irrelevant, or it may destroy the village in order to save it.

The criteria for the sucecss of such operations are abstractions like Gross National Product, Standard of Living, body count, passenger-miles, PhDs awarded. These at best have no relation to the common wealth, satisfaction of life, peace, experience of travel, or knowing anything. But at worst they impede the common wealth, peace, experience of travel, etc.

Nevertheless, central organization, which mathematically guarantees stupidity, is some times unavoidable; and just by existing, it exerts disproportionate power. This is a puzzler. The Articles of Confederation and the acrimoniously debated Federalist Constitution gave an answer that worked pretty well, in quite simple conditions, for almost thirty years. In my opinion, we would have had a more experimental and interesting country for a longer time if we had just amended the Articles. We wouldn't have had the Tariff of 1817.

6. I suppose the most sickening aspect of modern highly organized societies is the prisons and insane asylums, vast enclaves of the indigestible, which the rest live vaguely aware of, with low-grade anxiety.

We have been getting rid of the stupid but at least human notions of punishment, revenge, "paying the debt," and so forth. But instead, there persists and grows the God-like assumption of "correcting" and "rehabilitating" the deviant. There is no evidence that we know how; and in both prisons and asylums it comes to the same thing, trying to beat people into shape, treating the inmates like inferior animals, and finally just keeping the whole mess out of sight.

The only rational motive for confining anyone is to protect ourselves from injury that is likely to be repeated. In insane asylums, more than 90 percent are harmless and need not be confined. And in prisons, what is the point of confining those. I don't know what percent, but it must be fairly large—who have committed one-time crimes, e.g., most man-slaughters and passional or family crimes, while they pay up or alone? People ought indeed to atone for the harm they have done, to get over their guilt and be "rehabilitated," but this is much more likely to occur by trying to accept them back into the community rather than isolating and making them desperate. Certainly the old confession on the public square was a better idea.

It is doubtful that punishing some deters others. Varying the penalties has no statistical effect on occurrence, but only measures the degree of abstract social disapproval. And it is obvious that the great majority who do not steal, bribe, forge, etc., refrain because of their life style, more subtle influences than gross legal threats: other cultures, and some of our own subcultures, have other styles and other habits; for example, the youth counter-culture has increased shoplifting and forging official documents.

The chief reason that so-called "moral legislation" has no influence on deterring vices is that temptation to the vices does not occur in the same psychological context as rational calculation of legal risks—unlike business fraud or risking a parking ticket. And it is likely that much authentic criminal behavior is compulsive in the same way. (But we must remember that our theories about criminal psychology and sociology come mainly from caught criminals, a special minority.)

There *are* inveterate lawbreakers and "psychopathic personalities" who cannot be trusted not to commit the same or worse crimes. (I think they will exist with any social institutions whatever.) It is unrealistic to expect other people not to panic because of them, and so we feel we have to confine them instead of lynching them. But our present theory of "correction" in fact leads to 70 percent recidivism, usually for more serious felonies; to a state of war and terrorism between prisoners and guards; and to increasing prison riots. Why not say honestly, "We're locking you up simply because we're afraid of you. It is not necessarily a reflection on you and we're sorry for it. Therefore, in *your* terms, how can we make your confinement as painless and profitable to you as we can? We will give you as many creature satisfactions as we can afford, not lock you in cells, let you live in your own style, find and pursue your own work—so long as *we* are safe from you. The persisting, and perhaps insoluble, problem is how you will protect yourselves from one another."

It may be objected, of course, that many sober and hard-working citizens who aren't criminals are never given this much consideration by society. No, they aren't, and *that* is a pity.

1. Writing *Communitas*, my brother and I used only one methodical criterion: diminish intermediary services that are not directly productive or directly enjoyed, like commuting, packaging, sewer lines, blue books. These do not pay off as experience, but they clutter it up and rigidly predetermine it—you walk where the streets go, you study to pass the examination. The social wealth and time of life that go into intermediaries cannot be used for something else. There are slums of engineering. Economists of the infrastructure do not think enough about this when they saddle underdeveloped regions with dead weight.

It is melancholy to consider the fate of John Dewey's instrumentalism, the idea that meaning and value are imbedded in means and operations, that the end in view is *in* practice. Instrumentalism was attacked as anti-intellectual, as base because it omitted ideals; but indeed it was an attempt to rescue intellect from being otiose and merely genteel. It was part of the same impulse as functionalism to rescue architecture, and industrial democracy and agrarian populism to rescue democracy. These meant to dignify the everyday and work-a-day from being servile means for Sunday goals. Now, however, we take it for granted that immense means are employed and operations carried on *instead* of meaning and value. No end in view, no experience, nothing practical. A university is administered to ensure its smooth administration. The government makes work in order to diminish unemployment. A candidate runs for office in order to be elected. A war is fought to use new weapons. Only the last of these sounds harsh.

8. At best, survivals of the past, for example "Western culture," and the busy business of present society must also be crushing weights on anybody's poor finite experience, unless he can somehow appropriate them as his own by education and vocation.

Most people in most ages pick up a good store of folk ways and folk songs in the same way as they learn the language, however that is. They prudently manage to screen out most of the high thought and culture that is not for them, unless they are harassed by schoolteachers; yet they also get wonder-full flashes of it; on solemn religious occasions; from works of high music, art, and architecture that have become like folk ways; from important civic occasions that give food for profound thought, like constitutional crises, struggles for social justice, lawsuits; and most jobs and crafts, whether mechanics or farming or cooking or child-rearing, involve a good deal of fundamental science and high tradition that intelligent people pick up. Ordinary life can be culturally rich, and sometimes has been. It is a dubious society when the workdays, holidays, and election days do not provide enough spirit for most people, and we try to give a liberal education abstractly by lessons in school. It cannot be done.

In critical periods, alienated young people may choose on principle not to take on the traditions at all. At the end of the Middle Ages, the *moderni* declared they were throwing out the past, and they deserted the Scholastic regent professors and set up their own colleges. The youth of *Siturm un Drang* threw out courtly manners and morals. Today seems to be a similar time. Young people astoundingly might not know "Greensleeves" and "Annie Laurie"; they do not become thoughtful on days that commemorate events that happened thousands of years ago—like Huck Finn, they aren't interested in people who are dead; they simply take for granted what Harvey and Newton had to puzzle out; they don't care that Tyrannosaurus lorded it over the Cretaceous era. The curriculum of a Free University might be, typically, Sensitivity Training, Psychedelic Experience, Multi-Media, Astronomy, Castro's Cuba, History of Women, and Black Studies. These are not the major Humanities, yet it is better to study what they *can* appropriate as experience than what they can't. (I am puzzled that they do not study nothing, a deeply

philosophical subject. They seem to have to go to school.)

Some of us, finally, live *in* the high culture, its spirit reviving in us and being more or less relevant to 1972, not with an easy adjustment. Our contemporaries are as likely to be Seami and Calderon as people we can talk to. People like us have a use. It would be woeful if the great moments of spirit did not survive. And the present institutions are lifeless if their spirit is not revived. But I don't know any method of teaching what we know, namely, that Beethoven, the Reformers, the authors of *The Federalist* were real people and meant what they did. The great difficulty is that, in order to know them in our terms, it is first necessary to make the abnegation of learning them in their terms. And the less culture one has to begin with, the harder this is to do.

9. Vocation is taking on the business of the community so it is not a drag. If I find what I am good at and good for, that my community can use and will support, securely doing this, I can find myself further; and the social work is humanized because a person is really doing it.

Having a vocation is always somewhat of a miracle, like falling in love and it works out. I can understand why Luther said that a man is justified by his vocation, for it is already a proof of God's favor. Naturally, it is psychologically easier if the family or community has provided intimate models to a child, and if it encourages him as he follows his own bent. It is harder if a child is poor or is restricted by his status, high or low, and has to take what offers or what he must. Faraday's career is a good example of both advantage and deprivation, and of the miracle. His father was a journeyman blacksmith. When he was adolescent, they apprenticed him to a bookbinder for seven years. Although he could hardly read, he used to take home the books of natural philosophy that came into the shop for rebinding, and copy out the diagrams. The clients talked to him—he must have been likable as well as smart. They invited him to lectures. Because of his ability to fashion apparatus, at twenty he became the laboratory assistant of Humphrey Davy. So he had the right background, he had the right hardships to make him make an effort, and he had the genius of Faraday.

Our present practice is poor. Big Society has slots to fill; the young are tested for their aptitudes and schooled to fill the slots. There are no intimate models. The actual jobs are distanct and unknown. Talent is co-opted; it does not develop at the youth's choice and time. A strong talent may well balk and deny his very talent. This is abstract.

But there may be an even more lifeless future, now widely proposed. In our changing world, the young must be trained to be adaptable, to "play various roles." This will "free" people from being "tied down." Young people I have talked to like this idea; they want to be "just human" and not limited to a vocation or profession. They want to be "into" various activities. As, presumably, Shakespeare was heavily "into" writing plays and Niels Bohr was "into" atomic physics. It is a curious view of personality and commitment.

10. To be a citizen is the common vocation. It is onerous unless one has an authentic talent for it, which I don't have, but we have to take over society as our (hopefully finite) experience or it takes us over infinitely. Even when I can only gripe, I write letters to the editor. I gave a collection of them the explanatory title *The Society I Live in Is Mine.*

A child or adolescent has the right to a naive patriotism, loyal pride in the place where he is thrown—he didn't choose to be born here. Without a sneaking nostalgia that there is *some* sense, honorable history, and good intentions in these people, we are in a harsh exile indeed.

For a child, even the idiot patriotism of nationalism is better than none. My little daughter, now nine, is going to an Hawaiian public school where they inundate the kids with "Columbia the Gem of the Ocean" and the Pledge of Allegiance, plus some pathetic Hawaiian—the school is 95 percent quarter-Polynesian. But in New York she had been attending a "progressive" private school where instead of "America the Beautiful" they were likely to sing.

O ugly for polluted skies,
grain grown with pesticides

and I am just as pleased that (for a few months) she is reading about the shot heard round the world and Thomas Jefferson without mention of his being a slaveholder. I see that it makes her happier to believe the noble rather than the base. It is touching.

11. "I have no idea what is the secret mission of the Navy vessels lying off my lanai in Waimanalo, but I wish they would get it over with and stop obstructing the horizon"—letter to the *Honolulu Star-Bulletin.* In fact they were practicing living in an underwater habitat built by the Oceanic Institute, nothing objectionable. But my resentment was that the Navy just sat there day after day, as if they owned the place.

I like Hegel's idea that property is an extension of personality, it is obviously so if we consider my tools, my clothes, my room, and my view of the horizon. And I would prefer to consider big capital property in the same light rather than that it is purely made by statute, State power. Big capital is the extension of cooperative personality, past and present; it is largely our common inheritance that has been sequestered by a few.

Socialists object to any theory of natural property. They would in fact usually allow private use in clothes, tools, and so forth, but not as a natural right, rather as a right given by the collective. I think this dispiriting; in order to assert my right and do my business, I would first have to take myself abstractly, as a member of all society. To get capital for a new venture, I would sooner appeal to a tight-fisted businessman who might have a mind than to a collective bureaucracy that is likely to have none. To be sure, all that I myself ever need is somebody with a little printing press.

The issue of property has been wrongly put. The question is not whether personality extends into the environment—of course it does—but what kind of personality a man has. If he is exclusive and squeamish and rides roughshod over people, then his property will also be like that and will be objectionable. If he imagines that huge holdings do not enclose the commons, exploit the common wealth, and deprive other people, he is a fool. If he has a monopoly and does not consult my interest, he makes me subservient and why should I put up with it? If the Navy would explain to me how it is temporarily appropriating that stretch of water for an interesting experiment, I might feel that my property in that stretch of water is being improved. I would willingly cooperate. My horizon would no longer be obstructed. To be sure, I distrust any experiments of the Navy, but that is another story.

Nor is the issue between "private property" and "social property." Who would want to be private? We exist mainly, though not altogether, as community animals. To be a private individual is largely pathological. For a society to act as a collective is largely pathological.

12. The error of those who are mistakenly called "conservative" is not their laissez-faire economics. It is probable that competitive free enterprise is a more productive system than mercantilism, monopoly capitalism, or socialist collectivism. But as in the past, free enterprises still parcel out the commons as if it were on the market. They treat moral, cultural, and aesthetic affairs that belong to the community as if they were economic affairs, e.g., giving access to the young, conserving the environment, helping the needy. But these are necessary for society to be tolerable at all. The tolerable background for any economic activity cannot be an object of economic activity.

And they make a corresponding mistake in their economics. In most of our present production, the chief value comes from the genius of Watt, Faraday, Rutherford, etc., from the industry of our fathers who cleared the woods and laid out the roads, and from natural resources. We all happen to have inherited these gold mines. It is unreasonable for a few who control capital and thereby can make use of the inheritance not to pay everybody royalties, e.g., Theobald's guaranteed income.

13. Equalitarians object to special privilege; for instance, they don't like it that my sheepskin promises to me "all the rights, privileges, and immunities " of a doctor of philosophy. But my ancestor Abelard and his students fought and suffered for those rights and immunities; we (maybe) need them to do our thing; I am not at all willing to renounce them—indeed, I am a stickler for them.

Again, the issue is put wrongly. It would be better if every person and his community of interest had far more rights, privileges, and immunities. Children have special rights, privileges, and immunities. Those who have worn themselves out bringing up children have special rights, privileges, and immunities—I guiltlessly say, "Young man, tote my bag." As a writer I need liberties and immunities that do not belong to a man who will never write a line; he does not care about freedom of the press, and in fact he won't defend it. The real issue is that many rights, privileges, and immunities that once had an historical warrant, and enhanced experience and activity, have now become a racket. For example, professionals do need a peer group and are professionally responsible only to their peer group, their oath, and the nature of things; but the economic blackmail of the medical associations is a racket.

Any professional peer group is likely to develop a secret language and mystify the laity, but I find this acceptable if it helps them do their thing. What is unacceptable is for them to get the State to certify them as the only practitioners and make them exempt from competition and criticism. Compulsory mystification is like compulsory miseducation. The pretext is to protect the public from quacks; the effect is to destroy people's inquisitiveness and natural prudence and to increase quackery, including the quackery of certified professionals.

I am suspicious of equal law for everybody, like the *jus gentium* of the Romans that emerged with an empire from which no one could escape. It is safer to have a bewildering tangle of unique prerogatives, and lots of borders to flee across.

14. The main reason that Jefferson was a champion of freehold farming as a way of life was that it was independent of political pressures. It kept open the possibility of anarchy that he hankered for—"Let Shays' men go. If you discourage mutiny, what check is there on government?" If a farmer doesn't like the trend, he can withdraw from the market, eat his own crops, and prudently stay out of debt. If he has a freehold, they can't throw him off his land. (In Jefferson's day, he couldn't be drafted.) Other kinds of tenure have a similar privilege, academic tenure or seniority on the job, but of course the whole enterprise can shut down.

My own admiration for farming is its competence. The wonderfully direct connection between causes and effects, whether the seeds, the soil, the weather, the breeding,

the plumbing in the barn, or the engine of the tractor; and of course growing it and then eating it. Needless to say, a farmer understands most of this only empirically, practically, not scientifically. He is not altogether in control. That too is very good; there are gods.

Wordsworth had a good insight of the beauty and morality of rural life. The ecology of a country scene is so exquisitely complicated that we finally have to take it as just given. This simplifies its morality, we can relax a little. But I can't take the traffic or housing in Manhattan as given; it is an artifact and I have to do something about it. Also, the country scene has been so worked over for millions of years that it is bound to have unity and style, heroic in scale, minute in detail. But for various well-known reasons, the man-made scene is bound to be ugly. If people change their ways, it could become at least modest.

15. Professions and sciences are sacred because they devote themselves—indeed, in a priestly way—to the natures not made by us but that enable us to make sense and not live wishes, hopes, and nightmares. Being observant, accurate, humble, and austerely self-denying, scientists and professionals accumulate the reward of their Calvinist virtues. Great powers flow through them—which they can use to our disadvantage. Therefore they ought to bind themselves by oath to benefit and not harm the community, and it is better if this oath is public and explicit, like the Hippocratic oath.

When, instead, they come on like petty clerks of the powers-that-be and as petty bankers of their own economic interests, the forces of nature are unleashed without human beings to interpret and exorcize them.

We others, artists and literary men, are easygoing toward nature and mix into our service a good deal of ourselves. So we accumulate little force, but it is domesticated. We do not need to bind ourselves with an oath, except not to censor.

16. Futurologists take current trends, that may or may not be good, and by extrapolating them for twenty years perform the sleight of hand of making them into norms that we must learn to conform to and prepare ourselves for. As a group they are extraordinarily slavish to the *status quo*—science fiction writers are often far more critical and daring. They seem to want to delete from primary experience its risky property of passing into the Next, beyond a horizon that very swiftly becomes dim and dark. Aristotle: "The past and present are necessary, the future is possible."

Luckily, human beings have enormous resources of anxiety, common sense, boredom, virtue, and perversity, to distort or reverse almost any trend you want.

The mania of planning for the future springs, of course, from the fact that current technology, urbanization, population, and communications are intractable—or at least the managers have lost their pragmatic inventiveness—so that it seems to be less desperate to grin and codify them. As Kafka advised, "Leopards break into the temple; make it part of the ritual."

My own prediction, however, is that there will be increasing disorder for twenty years, and that might be very well. Some things—some times—break up into fragments of just the right size and shape. People en masse learn only by being frightened anyway—10,000 dead one morning of the smog, a city wiped out by an accidental bomb. It's not that we are stupid, but it takes a big fact, not a syllogism, to warrant a big response. If only the process of disorder is not aggravated by reactionary Law and Order, liberal Futurology, and radical idealism.

17. I am bemused, as I spell out this politics of mine, at the consistent package of conservative biases, the ideology of a peasant or a small entrepreneur who carries his office and capital under his hat. Localism, ruralism, face-to-face organization, distrust of planning, clinging to property, natural rights, historical privileges and immunities, letters to the editor that view with alarm, carrying on the family craft, piecemeal reforms, make do, and let me alone.

No. It is not a possessive peasant nor a threatened small entrepreneur, but a small child who needs the security of routine. There is no father. Mother is away all day at work. The child is self-reliant because he has to be. It is lonely, but nobody bugs him, and the sun is pouring through the window.

Where the emphasis in a philosophy of experience is on the foreground empirical facts, as in Dewey, we come out with a bias toward experiment and a politics of progressivism. Where the emphasis is on the phenomenology, the horizons and backgrounds of experience, we come out with conservation and conservatism. The difference is the old principle of acculturation from tribe to tribe: if the new item is a plough or a technique for baking pottery, it diffuses rapidly; if it is a change of taboo, child-rearing, or aesthetics, it is resisted, it diffuses slowly or not at all. In such acculturation, there is no "future shock." (The shocks come with colonialism.)

Since as experience I want the concrete and finite, with structure and tendency, a next so I can live on a little, and a dark surrounding, politically I want only that the children have bright eyes, the river be clean, food and sex be available, and nobody be pushed around. There must not be horrors that take me by the throat, so I can experience nothing; but it is indifferent to me what the Growth Rate is, or if some people are rich and others poor, so long as they are *pauvres*, decently poor, and not *misérables* (Péguy's distinction). I myself never found that much difference between being very poor and modestly rich.

Idolatry makes me uneasy. I don't like my country to be a Great Power. I am squeamish about masses of people enthusiastically building a New Society.

The great conservative solutions are those that diminish tension by changing 2 percent of this and 4 percent of that. When they work, you don't notice them. Liberals like to solve a problem by adding on a new agency and throwing money at it, a ringing statement that the problem has been solved. Radicals like to go to the root, which is a terrible way of gardening, though it is sometimes sadly necessary in dentistry.

Finally, like Luther, but unlike Hegel or Marx, I think that the way to overcome alienation is to go home and not on a tour through history and the realms of being.

*Schultz, the neighbor's big black dog,*
*used to * * * on our scraggly lawn,*
*but we feed him marrow bones*
*and he treats our lawn like his own home.*

*The kids of Fulton Houses in New York*
*smashed windows on our pretty block for spite,*
*we gave them hockey sticks to play with*
*and they smashed more windows.*

*The dog is an anarchist like me,*
*he has a careless dignity*
*—that is, we never think about it,*
*which comes to the same thing.*

*The kids are political like you,*
*they want to win their dignity.*
*They won't.*
*But maybe their children will be friendly dogs*
*and wag their tails with my grandchildren.*

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FROM LA GAYA SCINEZA—AGING AND SICK

(By Paul Goodman)

It's poignant and gloomy to me who am grounded
to see the young how they race and clamber
tote heavy loads and sing all night
and sleep away and snore.

It's simply boring to hear them repeating
the ideology of nineteen thirty
that was inauthentic also the first time.
They'd lend me a little of their vitality
if I could hang around condoning their politics,
but I lash out and make them dislike me,
so teach them nothing, gloomier myself.

I know it's no advantage to be right,
*la gaya scienza* is nature's way.
What an ugly character I have!
Able to love only the kid
that I can talk to seriously,
imposing the heavy weight of my attentiveness
that of course neither of us can sustain.

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I sit in my old car
as in my body and we go well.
I do not sit as confidently
in my body and we go erratically.

If I were a mechanic and could hear
the misses and rattles of my old car
as I know the signs and portents of my body,
I wouldn't drive so fast to Honolulu.

I wouldn't speed so happily by Koko
and glance delighted at the wine-blue sea
toward Molokai, as if I were still healthy,
as if my old car never yet broke down.

I'll stop for this dark fellow by the road
who wants a ride. How beautiful he is
still wet from the big surf at Sandy Beach,
even if he is the angel of death.

Yet, it is better not to live in fear
for "Of all things," the Zendavesta says,
"the fear of them is worse than the things themselves
—only hell is worse than the fear of it."

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## AN UNWELCOME ANNIVERSARY

Mr. HUGHES. Mr. President, 8 years ago today, I repeat—8 years ago—the United States began bombing North Vietnam. At that time, our attacks were said to be in response to unprovoked attacks on two U.S. destroyers in the Gulf of Tonkin.

Eight years later, we are still bombing North Vietnam. In fact, we have dropped an estimated 600,000-plus tons of munitions on that country—as much as we expended in all of the Korean War.

And all the promises and predictions that these attacks could end the war have not come to pass.

The time has come, Mr. President, for a full investigation into the air war. Nothing comparable has even been undertaken since the extensive hearings by the Armed Services Committee in 1967. Yet now we find that our involvement in the Indochina conflict is largely confined to an air war.

We need to know why the bombing has not produced the predicted results. We need to know whether the tremendous costs are equaled by any benefits. In view of the Lavelle affair, we need to know whether the command and control system is such that we can believe the officials who deny that we are bombing dikes or other civilian facilities.

Unless we pull the evidence together and prod the administration into analyzing what they have not studied in recent years, we may still be bombing, still destroying, and still debating another 8 years from now.

Already the distinguished chairman of the Armed Services Committee (Mr. STENNIS) has promised hearings both

into the Lavelle case and into the legislation I introduced earlier requiring the declassification of certain facts about the air war.

I intend to use these hearings to press for adequate and comprehensive answers to the questions I have raised.

To help the Congress evaluate the air war, I hope that the administration will conduct and present to us its own new study of the effectiveness of the bombing. Last February I asked Secretary Laird whether there had been any studies comparable to the Jason study of 1967 on the effectiveness of the bombing. He replied:

While we have continued to evaluate the requirements and effectiveness of our interdiction efforts, there have been no further studies with a scope and detail comparable to that of the Jason study to which you refer.

Now that the Pentagon papers are publicly available, we know that an intelligence estimate on October 9, 1964, concluded that a systematic program of air attacks was not likely to halt North Vietnamese attacks in the South. Even the report by McGeorge Bundy at the start of regular raids in February 1965, expressed some doubt that a policy of sustained reprisals would succeed in changing the course of the war.

The evidence was available in 1964 and in 1965. By 1967 the Defense Department had in hand the famous Jason study of the effectiveness of the bombing. Its forthright conclusions were:

The U.S. bombing of North Vietnam has had no measurable effect on Hanoi's ability to mount and support military operations in the South.

The bombing campaign against NVN has not discernibly weakened the determination of the North Vietnamese leaders to continue to direct and support the insurgency in the south.

We are unable to devise a bombing campaign in the North to reduce the flow of infiltrating personnel into the South.

When a new administration took office in 1969, it requested new judgments on the bombing. The fact that the conclusions were heatedly contested should have given rise to further probing. According to the National Security Study Memorandum No. 1, as reprinted in the CONGRESSIONAL RECORD:

All agencies acknowledge that sound analysis of the effectiveness of B-52 strikes is currently impossible for several reasons. The consensus is that some strikes are very effective, some clearly wasted, and a majority with indeterminate results. There are sharp differences on casualty estimates.

The MACV/JCS and State/CIA/OSD fundamentally disagree over whether our bombing campaign either prior to or after November has reduced the enemy's throughput of supplies so that the enemy in South Vietnam receives less than he needs there. The MACV/JSC feel that the bombing has succeeded; State/CIA/OSD think it has failed.

This debate apparently continues. Only last December, Air Force Secretary Seamans proudly displayed charts showing that enemy infiltration of supplies along the Ho Chi Minh trails had been cut by more than half in 1970–71, compared with 1969–70. In the last 2 months of 1971, only 150 tons of supplies was said to have made it through the U.S. rain of bombs. Needless to say, those tiny amounts were still sufficient to permit the North Vietnamese to launch widespread and powerful offensives throughout South Vietnam.

When will we learn, Mr. President? When will we admit that massive bombing such as we are inflicting on this small peasant country can never be totally effective against a determined people—unless, perhaps, we abandon all of our humanity and seek to obliterate all signs of life?

The controversy over the bombing of the dikes shows that we are moving tragically close to that policy of striking purely civilian targets at the risk of terrifying civilian casualties.

We need the facts in order to make a judgment on this air war. We must reassure ourselves and other nations that we are not violating our words by unauthorized deeds. As former U.N. Ambassador Charles Yost wrote the other day:

The cold hard truth is that we cannot beat a small enemy "back to the stone age," abandoning moral and military restraints in our war against him, without dangerously sapping the reservoir of international respect which our forefathers built up over two centuries and on which any claim we may have to world leadership must rest.

## SALES OF NATURAL GAS

Mr. TOWER. Mr. President, on August 3, 1972, the Federal Power Commission announced the adoption of a new administrative rule, entitled "Optional Procedure for Certificating New Producer Sales of Natural Gas."

This rule purports to eliminate price control by the Federal Power Commission over reserve of natural gas, discovered and sold in interstate commerce after April 6, 1972.

The Federal Power Commission has surely taken a most courageous stand. In the policy statement issued with the rule, the Commissioners unanimously acknowledged the seriousness of the natural gas shortage presently facing the Nation. They further stated that the primary remedy for this shortage was to allow the free market to set the price of this highly desirable energy resource so as to stimulate exploration for new domestic reserves of natural gas.

This is indeed laudable, but I fear that the issuance of this rule will not achieve the desired result. The producer uncertainty which has existed since the Federal Power Commission began regulating prices in 1954, will probably not be dispelled by the issuance of this new rule.

This is so for two reasons:

First, promulgation of this rule will undoubtedly provoke long legal proceedings to determine whether the Federal Power Commission can issue such a rule under the 1954 Phillips decision and the Natural Gas Act of 1938.

Second, even if the rule is eventually upheld, there would exist the real fear that what the Federal Power Commission can do administratively, the Federal Power Commission can likewise undo.

I firmly believe that the only solution to this problem is to legislatively remove the responsibility for setting or reviewing prices of domestically produced natural gas from the Federal Power Commission.

Therefore, I shall continue to urge favorable consideration of S. 2442, legislation I introduced to return the function of determining the price of natural gas to the free market.

## THE ADMINISTRATION SPEAKS OUT ON THE DIKES

Mr. HUGHES. Mr. President, there is the sequence of administration responses to allegations about the bombing of dikes and dams in North Vietnam.

April 30—President Nixon:

It would result in an enormous number of civilian casualties. That is something we want to avoid.

May 9—New York Times:

In Washington, a Pentagon spokesman said it was possible that North Vietnamese missiles fired at the American planes had missed and fallen back on the dikes.

June 9—New York Times:

In an afternoon briefing, Lt. Gen. George J. Eade of the Air Force also denied that the dikes had been hit. "We haven't targeted any dikes," General Eade said in a review of the bombing campaign. He also said that he was not aware of any dikes struck by accident.

July 13—New York Times:

Mr. Henkin said: "We have stated that there is always a possibility that dikes may be hit."

July 16—New York Times:

Another military source said, "A military target is targeted, and if it happens to be near a dike, then it gets hit."

July 17—Secretary Laird:

Now, there are occasions, of course, when a dam or dike could possibly be hit when an anti-aircraft installation is placed on a dam or a dike or when there is a roadway or a bridgework that is also tied in with a dam or dike formation. There may have been one or two examples of that kind of military target where an anti-aircraft battalion or battery is located in a region where there are various water reservoirs or dams or dikes.

July 26—State Department press officer Charles Bray:

There has been no indication of any but the most incidental and minor impact on the system of levees as a result of our strikes against military installations.

July 27—President Nixon:

If it were the policy of the United States to bomb the dikes, we could take them out . . . in a week.

July 28—State Department intelligence report:

A few dikes have been hit by stray bombs directed at military-associated targets nearby. . . . Bomb craters were detected at 12 locations. Because a large number of North Vietnamese dikes serve as bases for roadways, the maze they create throughout the delta makes it almost inevitable that air attacks directed against transportation targets cause scattered damage to dikes.

## TRADE WITH JAPAN

Mr. SAXBE. Mr. President, the recent reports about our increasing unfavorable balance of trade have me deeply dis-

turbed. I do not consider myself a protectionist nor would my voting record or statements in the past support such an accusation. However, I do not believe that such an unfavorable balance can be permitted to continue. Therefore, we must listen to those people advocating policies which would bring our trade balance out of the red.

Our trade imbalance with Japan will probably reach a $3.8 billion deficit this year. The Japanese believe that the past revaluation of the yen along with the removal of some import restrictions will rectify the problem. Do not bet on it. Japan has the third largest gross national products in the world. It will maintain a growth rate double ours in the 1980's. Japanese per capital income will then equal ours, and then Japan will absorb one-third of the national resources entering international trade.

Therefore, I hope that the meeting between President Nixon and Prime Minister Tanaka will infuse the trade negotiations between our two countries with increased vitality. Japan is our friend in the Pacific and must remain so. I believe that the Japanese-American cooperation is a must for our future security in Asia. Nevertheless, our economic security is as important to our military security as is the Japanese-American friendship. When we look at the facts, we find that most liberalization of trading policies with Japan has been a facade. Their tariff structure is still high, second to the United Kingdom and Canada. There must be further efforts on the part of the Japanese to open up their markets to the United States and to resolve our trade imbalance. They must increase their importation of our goods, for example, weapons purchases and uranium. They must remove their stringent investment restrictions upon American capital. They must simplify their complex system of trading companies which eliminates the possibility of American goods reaching the Japanese consumer. Japanese companies must reflect the current revaluation of the yen in their export prices since all have not done so. American companies must be allowed to penetrate the Japanese market. As of now, they are limited quantitatively and qualitatively, that is, the number of stores, the size of stores and the type of stores. The Japanese Government could promote American imports because of the closeness between their Government and industry. Government procurement of American goods would encourage the Japanese psychologically to use American goods. An expanded Japanese foreign aid program would help take the burden off of us and especially in light of recent developments in Congress. Finally, the Japanese should be encouraged to use a fiscal and monetary policy which increases their growth in housing, schools, hospitals and roads instead of factories.

Frank Nemec, President of Lykes-Youngstown, "advocates a heavy dose of protectionism and a couple more evaluations of the dollar" in the August 1 issue of Forbes. I ask unanimous consent that it be placed in the RECORD. I hope that his tough talk makes sense. It does to me.

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

GARRISON STATE

Frank Nemec, the 220-pound president of Lykes-Youngstown, the ailing New Orleans-based steel and steamship conglomerate, thinks he knows what's needed to make steel stocks a good buy again: a heavy dose of protectionism and a couple more devaluations of the dollar.

"By 1975," says Nemec, a tough-talking steelman who is a student of international economics, "the U.S. will face up to the fact that we are a have-not nation. It doesn't matter who's elected President. When the Europeans and Japanese want something besides dollars from us, we'll have to become a garrison state, a protectionist citadel."

Steel is one industry that has already tried protectionism; the second so-called voluntary quota on steel imports has been in effect since May of this year. But that isn't what Nemec means: "I'm not worried about foreign steel imports taking those extra profitable marginal tons from domestic mills. I'm going on the premise that within a few years no foreign steel at all will be admitted into America, because our balance of payments will be so bad we simply can't afford the luxury of taking in items which we can make ourselves. By 1985 the petroleum account import balance would probably be adversely affected to the tune of $46 billion, and everyone will be enormously aware of the importance of earning foreign exchange.

"How will we export?" Nemec asks rhetorically. "Japan and Europe won't buy enough of our goods, so we'll have to sell to the undeveloped nations. Only we won't be able to compete on price. Look at steel. Our industry is already more efficient than the Japanese; it produces steel with fewer man-hours per ton. But our wage cost is $78 per ton, vs. $23 for Japan. That means we'll have to rig our currency just like other nations in our spot have done. That little dollar adjustment Nixon made wasn't near enough: I expect at least two more in the future. That's the only way to reorient our currency so we can sell abroad."

Tough talk? That it is. But the problem is not just the steel industry's; it's the central problem of the U.S. economy today.

## THE RIGHTS OF HANDICAPPED CHILDREN

Mr. HUMPHREY. Mr. President, on August 1, a major Federal court decision was handed down, affirming the right of handicapped children to a public education. Basing his decision on the fifth amendment guarantees to due process of law, U.S. District Court Judge Joseph C. Waddy ordered that the District of Columbia provide educational services for handicapped and emotionally disturbed children within 30 days. Last year, the District of Columbia school system reported that over 12,000 handicapped, emotionally disturbed, and retarded children were being denied adequate care.

Judge Waddy's decision is of particular significance in directly confronting two serious problems of educational discrimination against handicapped children. First, it rejects the frequent complaint of local officials that additional cost and special facility requirements prohibit the provision of educational services for the handicapped. The court opinion flatly rejects this excuse, noting that it calls upon the handicapped child alone to suffer for budgetary constraints and administrative inefficiencies.

Second, the court opinion brings to light the problem of covert discrimination against handicapped children, whether intended or sanctioned, by requiring public hearing procedures in connection with disciplinary suspensions or student transfers by the school system, as well as the continued provision for the child's education during a suspension period.

Moreover, Judge Waddy's opinion points to the morally inexcusable fact that millions of physically handicapped and mentally retarded children across America are a "lost statistic," isolated from society, and ignored by local jurisdictions. The decision, ordering the District of Columbia to identify, within 45 days, those children needing special education facilities, takes note of the fact that District of Columbia school system estimates of the number of handicapped or disturbed children completely deprived of any education have ranged from a few hundred to several thousand—in other words, no one really knows.

It was in response to those harsh realities, all too common to school systems across the Nation, that I introduced S. 3044, to protect the civil rights of the handicapped by amending the Civil Rights Act of 1964 to prohibit discrimination on the basis of physical or mental handicap in federally assisted programs. Referred to the Senate Committee on the Judiciary, this bill has been cosponsored by Senator PERCY and 16 other Senators. It is my understanding that the House Committee on the Judiciary will shortly hold hearings on a counterpart bill, H.R. 12154, by Representative CHARLES A. VANIK of Ohio. I urge that this legislation be enacted in this session of Congress to end the denial of constitutional rights to millions of American children, youth, and adults, and to enable them to obtain the education and services essential for the fullest development and utilization of their capabilities. Congress must be the advocate for these Americans who have a right to dignity and self-respect as equal and contributing members of society.

Mr. President, I ask unanimous consent that an article in the Washington Post of August 2, 1972 on the decision of U.S. District Court Judge Joseph C. Waddy be printed in the RECORD.

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

JUDGE ORDERS SCHOOLING OF HANDICAPPED CHILDREN

(By Jim Mann)

A federal judge here declared yesterday that handicapped and emotionally disturbed children have a constitutional right to a public education and ordered the District of Columbia to offer all such children educational facilities within 30 days.

In a sweeping opinion, U.S. District Court Judge Joseph C. Waddy also directed the District school system to establish elaborate hearing procedures under which no pupil could be placed in a special education program or be suspended from school for more than two days without a public hearing.

The judge also ordered the District to come up with a written, comprehensive plan for providing special education facilities and identifying those children who need them within 45 days. He threatened to appoint a special master for the school system if his order is not carried out. The 30-day deadline applies to children already known to the system.

The ruling by Waddy comes after a year of litigation and controversy regarding the admitted failure of the District to provide a public education for handicapped, disturbed and retarded children.

According to a 1971 report by the D.C. school system to the Department of Health, Education and Welfare, an estimated 12,340 handicapped children were being deprived of adequate care for the 1971–72 school year.

School authorities have been unable to say how many handicapped or disturbed children have been completely deprived of any education here. The estimates range from a few hundred to several thousand.

Waddy's opinion may also have some national impact. It is the first court decision in the nation stating explicitly that handicapped children have a constitutional right to a public education, according to Stanley Herr, the attorney who represented the children in the case.

During the past year of litigation, the District and the school board had generally conceded that there was an obligation to provide public education for the handicapped, but said they faced a number of obstacles in providing such education. Waddy said yesterday that none of those obstacles mattered.

For example, the objection was raised that it is impossible to provide special education for the handicapped unless Congress appropriates millions of dollars for that purpose.

But Waddy said yesterday, "The inadequacies of the District of Columbia public school system, whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child."

The judge also cited what he said was a "lack of communication" among the D.C. school board, School Supt. Hugh J. Scott and his staff, and the D.C. government in developing special education programs. For the future, he clearly placed responsibility for carrying out his orders with the school board.

A spokesman for the corporation counsel's office, which represented the District in the court case, said he would have no comment on Waddy's opinion. Scott could not be reached for comment.

Waddy devoted a considerable portion of his ruling to the creation of public hearing procedures within the school system.

The school system, the judge said, "shall not suspend a child from the public schools for disciplinary reasons for any period in excess of two days without affording him a hearing . . . and without providing for his education during the period of any such suspension."

That provision came in response to a claim that emotionally disturbed children, or children thought to be disturbed, were being denied a public education through disciplinary suspensions.

In addition, Waddy wrote, any children thought by school officials or their parents or guardians to be in need of special education "shall neither be placed in, transferred from or to, nor denied placement in such a program unless (the school system) shall have first notified their parents or guardians of such proposed placement, transfer or denial; the reasons therefor; and of the right to a hearing before a hearing officer if there is an objection."

In such public hearing, the children or their guardians have the right to have legal counsel present and to have a tape recording made of the hearing, Waddy said.

In addition, the parents of school children were given access to all school records and tests for purposes of these public hearings.

Waddy did not say how the hearing officer would be appointed, but said he "shall be an employee of the District of Columbia, but shall not be an officer, employee or agent of the public school system."

The judge based his assertion that handicapped children have a constitutional right to public education on the Fifth Amendment guarantees to due process of law. He cited several other famous educational decisions as precedents, including the 1954 Supreme Court decision outlawing segregated schools and the 1967 decision by Judge J. Skelly Wright outlawing the so-called track system here.

The case was brought on behalf of handicapped children by the National Law Office of the National Legal Aid and Defender Association, with attorneys Herr, Julian Tepper and Pat Wald handling the case.

## CANCER RESEARCH AT FORT DETRICK

Mr. MATHIAS. Mr. President, the conversion of the Fort Detrick Army Laboratories from bacteriological warfare to cancer research was a project that long occupied my distinguished colleague from Maryland (Mr. BEALL) and me for a long period of time. It was gratifying when our efforts were ultimately successful and President Nixon himself took part in ceremonies marking the change from military to medical scientific purposes.

At that ceremony the President expressed his hope that the facilities would be utilized so as to benefit from research done in all the countries of the world and so as to be beneficial to all the peoples of the world. It is again gratifying to see this good intention brought to fulfillment by yesterday's visit to Fort Detrick by Dr. Boris V. Petrovsky, Minister of Health of the Union of Soviet Socialist Republics. A story appearing in the Washington Post today describes the visit.

Mr. President, I ask unanimous consent that an article appearing in the Washington Post of August 2, 1972, about the Army's new lab be printed in the RECORD.

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

RUSSIANS SEE ARMY'S LABS NOW USED IN CANCER WORK

(By Stuart Auerbach)

Russian feet walked the corridors yesterday of the Army's formerly supersecret germ warfare laboratory at Ft. Detrick, Md.—now being turned into a civilian-run cancer research facility.

It was the first public tour of what White House health adviser Dr. Roger O. Egeberg called "the decontaminated Ft. Detrick," and it was a vivid illustration of the mutual desire of Russia and the United States to ease Cold War tensions.

The visit, part of a tour of America by Soviet Minister of Health Dr. Boris V. Petrovsky under the Russian-U.S. health accords signed in Moscow last May by President Nixon, provided tangible evidence of the conversion of instruments of war to peaceful uses.

"As a physician and surgeon who took part in World War II against Nazi facism," said Petrovsky, "I can only welcome such an undertaking.

"It would be, of course, very interesting to see all the laboratories working full steam and doing the work for the benefit of all humanity and for the benefit of human health," he continued.

In answer to a newsman's question, if the Soviets have converted germ warfare labs to peaceful uses, Petrovsky said he could only speak for the Ministry of Health, which has never had such facilities.

Ft. Detrick, which is 50 miles from Washington near Frederick, Md., was the Army's principal chemical and biological warefare research facility until President Nixon said in November, 1969, that the U.S. would no longer make such weapons.

The $33 million laboratory facility was turned over to the National Cancer Institute last October and the work to renovate the labs for cancer research started in late June.

But there are still some signs of the labs' former super secret status, including chain link fences topped with barbed wire around the buildings and signs such as "Absolutely No Entrance Without Proper Escort" on doors.

Former employees, most of whom were laid off when the Army closed down the labs, "are anxious to get started working in cancer research," Dr. William Payne of the Cancer Institute told the Russian visitors.

In one lab, a scientist had started already—growing mouse tissue cultures for use with viruses that are known to cause cancer in animals.

Petrovsky beamed when he was told that one set of labs would be set aside for use by foreign scientists, including cancer specialists from Russia. This offer was first made by President Nixon when he toured the facility last October and repeated twice more yesterday by American health officials.

"We extend a very warm welcome for Soviet scientists to work with ours at this facility," said Dr. Frank J. Rauscher, President Nixon's man to head the expanded war on cancer.

Ft. Detrick wore its most festive dress for the visit. A coffee table was adorned with sets of tiny crossed Russian and American flags, and two large flags stood in the small conference room where speeches were made.

The Russian delegation was obviously impressed with what it saw. All five members kept snapping pictures of the laboratories, themselves and their American hosts.

A surgeon who still does open heart operations as well as running the Ministry of Health, Petrovsky said American health services are well known to the Russians.

"We are critical in our regard toward private enterprise in the field of medicine," Petrovsky said at a news conference.

"But we have a profound respect for medical science and those medical centers that perform good medical treatment."

"All of us—American medical scientists and we Soviet scientists—have much to learn from each other," he said.

The delegation membefs visited a health center in New York where they met with Secretary of Health, Education and Welfare Elliott L. Richardson and toured the National Institutes of Health. From Ft. Detrick the Russians flew to San Francisco, where they spent yesterday afternoon touring the Kaiser Permanente prepaid group practice offices.

The Russians also will visit Los Angeles, Houston and Atlanta. In Houston, they will hold separate meetings with famed heart surgeons Dr. Michael DeBakey and Dr. Denton Cooley and will see Dr. Lee Clark, director of the M. D. Anderson cancer institute. In Atlanta they will visit the Center for Disease Control.

## JOHN W. BILL

Mr. WILLIAMS. Mr. President, I would like to take this opportunity to salute

the memory of a truly great man, John W. Bill, who died this summer.

John Bill devoted his life to helping the cause of disabled veterans. He was active in the formation of the National Disabled Veterans organization and founded the first chapter of the DAV in New Jersey. That chapter, in Passaic, N.J., started with a handful of members. Its membership now numbers 450.

Mr. Bill retired 3 years ago as the National Service officer of the Newark regional office of the DAV after half century of service.

But his retirement in no way marked any cessation of his activities in behalf of the cause to which he was devoted. At the time of his death, he was chairman of the State DAV Legislation and Service Committee.

These facts only indicate the service Mr. Bill performed. No words are sufficient to describe his dedication.

He helped mold the conscience of New Jersey—and America—to the almost unpayable debt that we owe to our disabled veterans. He constantly was in the forefront of the fight to pass the most just legislation to help disabled veterans. And because of his personality and nature, he was able to reach people—to convince them of his justice—in a way few other people have.

Mr. President, I think that disabled veterans—and all veterans and their families—owe a debt of gratitude to Mr. Bill for what he was able to accomplish.

Personally, I am honored that I knew him.

Will Rogers, in one of his most famous statements said that he never met a man he did not like.

To turn that around a bit, I can say that I never met a man who knew John Bill and did not like him. I think that says a lot for a man.

## JUDGE ORDERS SCHOOLING OF HANDICAPPED CHILDREN

Mr. WILLIAMS. Mr. President, a historically significant decision was handed down on August 1 in the District of Columbia by U.S. District Court Judge Joseph C. Waddy. In a sweeping opinion, Judge Waddy declared that handicapped and emotionally disturbed children have a constitutional right to a public education, and ordered the District of Columbia to offer all such children educational services within 30 days.

The impact of this decision on the District's public school system will be massive. The city must insure that handicapped children have access to public education within 30 days, must submit a written comprehnsive plan describing the facilities to be utilized and must identify all children needing services within 45 days.

In addition, the city must immediately institute full due process procedures. Judge Waddy specified that these procedures must provide public hearings for any student suspended for more than 2 days, or when students are thought to have been unduly denied educational services or wrongly transferred to and from special education classes. Parents can request all school records of pupils, and suspended students must be provided education services while out of school. The judge also indicated that he would appoint a special master to oversee compliance if the District failed to carry out his decision orders promptly and effectively.

This court decision is the most recent in a series of cases that have been litigated in the last several months which involve the rights of the handicapped to equal protection of the law. It is also the most far reaching. This case includes in its sweep not only all mentally retarded, emotionally disturbed and physically handicapped children, but it carries the full weight of a U.S. district court decision, rather than a consent decree. It is the most comprehensive ruling on behalf of equal opportunity for handicapped children and will have a vital impact on litigation of this nature for years to come. Most importantly, it will provide encouragement to a growing number of parents and organizations offering services to handicapped children for it makes clear that these children must not be denied basic rights guaranteed under the Constitution.

Presently there are 6 million known handicapped children of school age in the United States. Only 40 percent of these children receive special educational services. One million of these children are denied services entirely. The District of Columbia itself admits that it has no accurate figures on the number of handicapped children in the city. As Judge Waddy's order indicates, this Nation has a long way to go in insuring the rights of handicapped children. It was for this reason I introduced for myself, Senator RANDOLPH, and Senator MAGNUSON, on May 16, 1972, S. 3614, the Education for All Handicapped Children's Act. We have been joined by many cosponsors since that time, but I believe that Judge Waddy's order reinforces the need for action. I am therefore pleased to draw this decision to the attention of the Senate.

I ask unanimous consent that the Washington Post article concerning Judge Waddy's decision be printed immediately after the text of my remarks.

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

JUDGE ORDERS SCHOOLING OF HANDICAPPED CHILDREN

(By Jim Mann)

A federal judge here declared yesterday that handicapped and emotionally disturbed children have a constitutional right to a public education and ordered the District of Columbia to offer all such children educational facilities within 30 days.

In a sweeping opinion, U.S. District Court Judge Joseph C. Waddy also directed the District school system to establish elaborate hearing procedures under which no pupil could be placed in a special education program or be suspended from school for more than two days without a public hearing.

The Judge also ordered the District to come up with a written, comprehensive plan for providing special education facilities and identifying those children who need them within 45 days.. He threatened to appoint a special master for the school system if his order is not carried out. The 30-day deadline applies to children already known to the system.

The ruling by Waddy comes after a year of litigation and controversy regarding the admitted failure of the District to provide a public education for handicapped, disturbed and retarded children.

According to a 1971 report by the D.C. school system to the Department of Health, Education and Welfare, an estimated 12,340 handicapped children were being deprived of adequate care for the 1971–72 school year.

School authorities have been unable to say how many handicapped or disturbed children have been completely deprived of any education here. The estimates range from a few hundred to several thousand.

Waddy's opinion may also have some national impact. It is the first court decision in the nation stating explicitly that handicapped children have a constitutional right to a public education, according to Stanley Herr, the attorney who represented the children in the case.

During the past year of litigation, the District and the school board had generally conceded that there was an obligation to provide public education for the handicapped, but said they faced a number of obstacles in providing such education. Waddy said yesterday that none of those obstacles mattered.

For example, the objection was raised that it is impossible to provide special education for the handicapped unless Congress appropriates millions of dollars for that purpose.

But Waddy said yesterday, "The inadequacies of the District of Columbia public school system, whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child."

The judge also cited what he said was a "lack of communication" among the D.C. school board, School Supt. Hugh J. Scott and his staff, and the D.C. government in developing special education programs. For the future, he clearly placed responsibility for carrying out his orders with the school board.

A spokesman for the corporation counsel's office, which represented the District in the court case, said he would have no comment on Waddy's opinion. Scott could not be reached for comment.

Waddy devoted a considerable portion of his ruling to the creation of public hearing procedures within the school system.

The school system, the judge said, "shall not suspend a child from the public schools for disciplinary reasons for any period in excess of two days without affording him a hearing . . . and without providing for his education during the period of any such suspension."

That provision came in response to a claim that emotionally disturbed children, or children thought to be disturbed, were being denied a public education through disciplinary suspensions.

In addition, Waddy wrote, any children thought by school officials or their parents or guardians to be in need of special education "shall neither be placed in, transferred from or to, nor denied placement in such a program unless (the school system) shall have first notified their parents or guardians of such proposed placement, transfer or denial; the reasons therefor; and of the right to a hearing before a hearing officer if there is an objection."

In such public hearing, the children or their guardians have the right to have legal counsel present and to have a tape recording made of the hearing, Waddy said.

In addition, the parents of school children were given access to all school records and tests for purposes of these public hearings.

Waddy did not say how the hearing officer would be appointed, but said he "shall be an employee of the District of Columbia, but shall not be an officer, employee or agent of the public school system."

The judge based his assertion that handicapped children have a constitutional right to public education on the Fifth Amendment guarantees to due process of law. He cited several other famous educational decisions as precedents, including the 1954 Supreme Court decision outlawing segregated schools and the 1967 decision by Judge J. Skelly Wright outlawing the so-called track system here.

The case was brought on behalf of handicapped children by the National Law Office of the National Legal Aid and Defender Association, with attorneys Herr, Julian Tepper and Pat Wald handling the case.

## SAIGON OFFICIALS EXECUTED

Mr. THURMOND. Mr. President, I ask unanimous consent to have printed in the RECORD an article from today's Washington Evening Star and Daily News, by Joseph B. Treaster, under the heading "Saigon Officials Executed," so that the world can see how the Communists are killing civilians in the Vietnam war.

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

SAIGON OFFICIALS EXECUTED

(By Joseph B. Treaster)

SAIGON.—Communist political officers have publicly executed hundreds of Saigon government officials and imprisoned thousands of others during their occupation of northern Binh Dinh Province, according to allied intelligence officials.

The officials say they have confirmed the deaths of about 250 persons through eyewitness reports and believe the total number of dead is in the vicinity of 500.

THREE PRISON CAMPS

Escapees have pinpointed three large prison camps, in the rugged An Lao Valley of Central South Vietnam, which are said to hold about 6,000 persons, officials say.

The main victims of the Communists were said to be hamlet and village chiefs and their deputies, pacification workers, police and militiamen. But teachers, doctors, nurses and minor administrative staff workers were among those reportedly imprisoned, as well as some regular soldiers.

Lengthy interviews with people who lived in northern Binh Dinh during the nearly three months of unchallenged Communist occupation generally corroborated the findings of the intelligence officials.

WORST SINCE TET OFFENSIVE

The executions in Binh Dinh appear to be the most massive deliberate assault on individuals connected with the Saigon government since the massacres in Hue during the 1968 Tet offensive, when more than 2,600 persons were killed.

Some American officials see the executions in Binh Dinh as a microcosm of the kind of "bloodbath" that President Nixon has predicted would occur if the Communists succeeded in taking over South Vietnam by force.

Such violence, these officials say, would especially be expected if a Communist victory were "sudden and decisive."

Other American officials, however, say history suggests a sudden and decisive victory "just isn't in the cards for either side."

POSSIBLE CONCILIATORY ATTITUDE

These officials feel if the North Vietnamese Communists eventually gain control of South Vietnam through a gradual political settlement they might adopt a conciliatory attitude, toward their former opponents in hopes of uniting the country.

Those who firmly subscribe to the bloodbath theory, though, are convinced that any kind of Communist take-over would result in the execution of many officials in the Saigon regime.

Some Americans studying North Vietnamese and Vietcong affairs say they have been surprised by the particularly harsh tactics of the Communists in Binh Dinh Province, which has a long history of party activity. They suggest that some of the killing may have been inspired by a desire for revenge toward former party members who have in recent years worked with the Saigon government. Another possibility, they say, is that the killings represent some sort of intraparty conflict, perhaps, between Northern and Southern factions.

While a few executions have been reported in other areas captured by the North Vietnamese in the current offensive, there has been nothing of the magnitude of the reported events in Binh Dinh.

This is so, officials say, because the districts in Binh Dinh fell rather suddenly—in a few days, as compared to a few weeks in Quang Tri—and many Saigon government officials were "caught in place."

Another important factor is that after the fall of northern Binh Dinh in April, nearly three months passed before Saigon government troops attempted to retake the territory. Left alone, the Communists were able to implement their programs among the more than 200,000 people of the region. In most of the other captured areas the fighting never fully subsided.

## DEVELOPMENT OF COASTAL REGIONS

Mr. ROTH. Mr. President, 2 weeks ago I rose to commend my distinguished colleague, Senator BOGGS, for his foresight in offering legislation to guarantee any coastal State a meaningful role in determining whether federally sponsored offshore facilities would be in the best interest of the State's population. I emphasized that such congressional action is vitally needed to preserve the shorelines of Delaware and other Eastern States from the harmful effects often associated with certain heavy industrial development. As many of my colleagues know, Delaware's Coastal Zoning Act has become a piece of model legislation, to be followed by other States which desire to protect themselves from potential environmental damage offshore.

As introduced by Senator BOGGS, S. 3844 would grant each Governor the authority to veto the construction of any offshore project which he deems hazardous to the proper development of his State's coastal region. This amendment to the Water Pollution Control Act has received the plaudits of numerous State chief executives from Hawaii to South Carolina. In an editorial, the Washington Star and Daily News of Friday, August 4, 1972, recognized the need for this bill and stated that offshore terminal facilities should not be built "without environmental safeguards of unquestionable effectiveness." I urge my colleagues to support S. 3384 and ask unanimous consent that this editorial be printed in the RECORD.

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

CONCERN ABOUT SEABORNE OIL

Both Maryland senators, we're glad to note, have joined Senator J. Caleb Boggs of Delaware in sponsoring legislation to give the states some say-so about those giant oil-unloading terminals envisioned off the nation's seacoasts.

The bill has been offered not too soon. Proof of that is seen in a controversy earlier this year, regarding the Maryland coastline. To the astonishment of about everyone, a pipeline company proposed to build a massive unloading platform 25 miles at sea off Assateague Island, a priceless nature preserve that includes a national seashore and state park. Not only that—the company planned to pipe the oil to the mainland *across* Assateague, in volume of up to a million barrels a day. Governor Mandel and other Maryland officials quickly lowered the boom on the idea, but no one doubted that similar plans would be advanced for other locations.

Sure enough, the oil people now want to construct a 200-acre, $500-million artificial island eight miles off the coast of Delaware, not far above Rehoboth Beach. This would be a mammoth terminal, accommodating the supertankers that bring in that ever-more-vital foreign crude oil. And this venture is supported in a study released the other day by the Commerce Department's Maritime Administration.

Further, as Boggs told the Senate, more studies of possible offshore terminal sites are underway along the cost from Maine to Virginia. As the nation's energy needs continue to swell, and its dependence on oil imports, more prosposals for these installations will be cropping up. Eastern and Gulf Coast harbors are too shallow for the huge new tankers. The ships must, the reasoning says, be unloaded at offshore transfer terminals, and their sticky cargoes brought ashore in smaller vessels or through underwater pipelines.

Something of that sort may be inevitable, but certainly it should be held to a severe minimum. Perhaps one or two facilities would suffice for the whole East Coast, but none at all should be built without environmental safeguards of unquestionable effectiveness. And the states should be able to demand that the terminals be located so as not to imperil beaches, wildlife refuges and the fishing industry.

The Senate legislation would give them that power. A governor could veto an offshore project—even beyond the present bounds of state jurisdiction—if he determined it posed a danger to the state's coastal zone. This would be achieved through extending the federal Water Pollution Control Act, which seems a reasonable device. For there's no fairness in obliging a state to risk a fouled seashore because of some facility it had nothing to say about in the first place. Since it would bear the penalties of any misjudgment, it should share the decision-making responsibility.

## ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that today, August 4, 1972, he presented to the President of the United States the following enrolled bills:

S. 247. An act for the relief of Albert G. Feller and Flora Feller; and

S. 3284. An act to increase the authorization for appropriation for completing work in the Missouri River Basin by the Secretary of the Interior.

## ORDER OF PROCEDURE ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the recognition of the two leaders on

Monday next, there be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes; at the conclusion of which the Chair lay before the Senate Calendar No. 953, S. 2057, a bill to amend the Gun Control Act of 1968; that the unfinished business, Senate Joint Resolution 241, be temporarily laid aside and remain in temporarily-laid-aside status until the close of business on Monday; and that it be in order, no later than 5 p.m., for the distinguished majority leader or his designee to call up any second track item which at that time he wishes to call up.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for Monday is as follows:

The Senate will convene at 10 a.m. After the two leaders have been recognized under the standing order, there will be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes.

At the conclusion of routine morning business, the Chair will lay before the Senate S. 2507, a bill to amend the Gun Control Act of 1968. There is no agreement on that bill. Amendments may be called up. Yea-and-nay votes can occur thereon.

At some time during the afternoon, no later than 5 p.m., the distinguished majority leader or his designee, under the order entered, will proceed to set aside the Gun Control Act of 1968, if action has not been completed on that bill, and the Senate will proceed to the consideration of the second track item and that will be the national no-fault motor vehicle insurance bill, S. 945.

There is no agreement on that bill. Amendments may be called up. Yea and nay votes can occur thereon.

So, Senators are alerted to the fact that yea and nay votes can be expected on the amendments to these two bills on Monday next.

Conference reports, of course, can be called up at any time and rollcall votes can result thereon.

The interim agreement, Senate Joint Resolution 241, remains the unfinished business before the Senate.

## QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ADJOURNMENT TO MONDAY, AUGUST 7, 1972

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 10 o'clock a.m. on Monday next.

The motion was agreed to; and at 6:09 p.m. the Senate adjourned until Monday, August 7, 1972, at 10 o'clock a.m.

## CONFIRMATIONS

Executive nominations confirmed by the Senate August 4, 1972:

IN THE AIR FORCE

The following officer to be placed on the retired list in the grade of lieutenant general under the provisions of section 8962, title 10 of the United States Code:

Lieutenant General Marvin L. McNickle, [redacted] R (Major General, Regular Air Force) United States Air Force.

The following named officer under the provisions of title 10, United States Code, section 8066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 8066, in grade as follows:

*To Be Lieutenant General*

Major General William G. Moore, Jr., [redacted] FR (Major General, Regular Air Force) United States Air Force.

IN THE ARMY

The U.S. Army Reserve officers named herein for promotion as Reserve commissioned officers of the Army, under the provisions of title 10, United States Code, section 593(a) and 3384:

*To be major general*

Brig. Gen. Robert Frank Cocklin, SSAN [redacted].

Brig. Gen. Merrill Brown Evans, SSAN [redacted].

Brig. Gen. James Otis Freese, SSAN [redacted].

Brig. Gen. Wilbur Frank Munch, SSAN [redacted].

Brig. Gen. Warren Earl Myers, SSAN [redacted].

*To be brigadier general*

Col. Ogbourne Duke Butler, Jr., SSAN [redacted] Field Artillery.

Col. Leston Neal Carmichael, SSAN [redacted] Field Artillery.

Col. Mike Pete Cokinos, SSAN [redacted], Field Artillery.

Col. Richard Holcomb Cooper, SSAN [redacted] Corps of Engineers.

Col. Sumner Zalman Kaplan, SSAN [redacted] Corps of Engineers.

Col. Kenneth Allert Kuykendall, SSAN [redacted] Corps of Engineers.

Col. Myron Sidney Lewis, SSAN [redacted] Field Artillery.

Col. John Howard McLain, SSAN [redacted] Field Artillery.

Col. Edwin Delmer Miller, SSAN [redacted] Infantry.

Col. Edmund Warren Montgomery II, SSAN [redacted] Judge Advocate General Corps.

Col. John Henry Neiler, SSAN [redacted], Signal Corps.

Col. Alfred Karl Nelson, SSAN [redacted], Field Artillery.

Col. Norris Ewel Sills, SSAN [redacted], Chemical Corps.

Col. Walter Livingston Starks, SSAN [redacted] Infantry.

Col. John Erle Thames, SSAN [redacted], Infantry.

Col. Jon Martin Zumsteg, SSAN [redacted] Dental Corps.

The Army National Guard of the United States officers named herein for appointment as Reserve commissioned officers of the Army under the provisions of title 10, United States Code, section 593(a) and 3385:

*To be brigadier general*

Col. Joseph Earle Brown, Jr., SSAN [redacted] Infantry.

Col. John Martin Calhoun, SSAN [redacted] Armor.

Col. Murray Kitt, SSAN [redacted], Armor.

The Army National Guard of the United States officers named herein for appointment as Reserve commissioned officers of the Army under the provisions of title 10, United States Code, section 593(a) and 3392:

*To be brigadier general*

Col. William Eugene Hall, SSAN [redacted] Armor.

Col. Ansel Martin Stroud, Jr., SSAN [redacted] Infantry.

Col. Emmett Hudson Walker, Jr., SSAN [redacted] Field Artillery.

The Army National Guard officers named herein for appointment as Reserve commissioned officers of the Army, under the provisions of Title 10, United States Code, Section 593(a) and 3392:

*To be major general*

Brig. Gen. O'Neil James Daigle, Jr., SSN [redacted] Adjutant General's Corps.

Brig. Gen. William John McCaddin, SSN [redacted] Adjutant General's Corps.

Brig. Gen. Charles Arthur Rollo, SSN [redacted] Adjutant General's Corps.

Brig. Gen. Dana Lee Stewart, [redacted] Adjutant General's Corps.

The following-named 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 major general*

Brig. Gen. Herbert Eric Wolff, [redacted], Army of the United States (colonel, U.S. Army).

Brig. Gen. John Kirk Singlaub, [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. Sam Sims Walker, [redacted], Army of the United States (colonel, U.S. Army).

Brig. Gen. William Roy Wolfe, Jr., [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. Charles Robert Myer, [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. Gordon James Duquemin, [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. Henry Everett Emerson, [redacted] Army of the United States (lieutenant colonel, U.S. Army).

Brig. Gen. Herbert Ardis Schulke, Jr., [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. Charles James Simmons, [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. Charles Echols Spragins, [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. George Magoun Wallace II, [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. DeWitt Clinton Smith, Jr., [redacted] Army of the United States (lieutenant colonel, U.S. Army).

Brig. Gen. Jonathan Rowell Burton, [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. Harold Robert Aaron, [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. Wilbur Henry Vinson, Jr., [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. John Royster Thurman III, [redacted] Army of the United States (colonel, U.S. Army).

Brig. Gen. Kenneth Banks Cooper, [redacted]

xxx-... Army of the United States (colonel, U.S. Army).

Brig. Gen. Peter George Olenchuk, xxx-xx-x... xxx-x... Army of the United States (colonel, U.S. Army).

Brig. Gen. Charles Maurice Hall, xxx-xx-xx... xxx-... Army of the United States (colonel, U.S. Army).

Brig. Gen. Daniel Orrin Graham, xxx-xx-x... xxx-x... Army of the United States (colonel, U.S. Army).

Brig. Gen. John Murphy Dunn, xxx-xx-xxxx xxx-x... Army of the United States (lieutenant colonel, U.S. Army).

Brig. Gen. Eugene Priest Forrester, xxx-xx-x... xxx-x... Army of the United States (lieutenant colonel, U.S. Army).

Brig. Gen. William Johnston Maddox, Jr., xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Brig. Gen. Thomas Howard Tackaberry, xxx-xx-xxxx Army of the United States (lieutenant colonel, U.S. Army).

Brig. Gen. George Anthony Rebh, xxx-xx-x... xxx-... Army of the United States (colonel, U.S. Army).

Brig. Gen. Homer Duggins Smith, Jr., xxx-... xxx-xx-xxxx Army of the United States (lieutenant colonel, U.S. Army).

Brig. Gen. Richard Edward McConnell, xxx-... xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Brig. Gen. Patrick William Powers, xxx-... xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Brig. Gen. Joseph Corbett McDonough, xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Brig. Gen. Donn Albert Starry, xxx-xx-xxxx, Army of the United States (lieutenant colonel, U.S. Army).

Brig. Gen. Cecil Walton Hospelhorn, xxx-... xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Brig. Gen. James Frank Hamlet, xxx-xx-xxxx xxx-x... Army of the United States (lieutenant colonel, U.S. Army).

Brig. Gen. Chester M. McKeen, Jr., xxx-... xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Brig. Gen. Sylvan Edwin Salter, xxx-xx-xx... xxx-x... Army of the United States (colonel, U.S. Army).

2. 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 3306:

*To be brigadier general*

Brig. Gen. John Kirk Singlaub, xxx-xx-xxxx xxx-x... Army of the United States (colonel, U.S. Army).

Brig. Gen. George Anthony Rebh, xxx-xx-x... xxx-x... Army of the United States (colonel, U.S. Army).

Maj. Gen. John Louis Klingenhagen, xxx-... xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Brig. Gen. Jonathan Rowell Burton, xxx-... xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Brig. Gen. Harold Robert Aaron, xxx-xx-xx... xxx-x... Army of the United States (colonel, U.S. Army).

Maj. Gen. James Joseph Ursano, xxx-xx-xxxx xxx-x... Army of the United States (colonel, U.S. Army).

Maj. Gen. Jeffrey Greenwood Smith, xxx-... xxx-xx-x... Army of the United States (colonel, U.S. Army).

Maj. Gen. Harold Arthur Kissinger, xxx-... xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Maj. Gen. Harold Burton Gibson, Jr., xxx-... xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Brig. Gen. Cecil Walton Hospelhorn, xxx-... xxx-xx-x... Army of the United States (colonel, U.S. Army).

Maj. Gen. George Monroe Bush, xxx-xx-xx... xxx-x... Army of the United States (colonel, U.S. Army).

Maj. Gen. Richard Hulbert Groves, xxx-xx-x... xxx-x... Army of the United States (colonel, U.S. Army).

Maj. Gen. John Charles Bernett, xxx-xx-xx... xxx-x... Army of the United States (colonel, U.S. Army).

Brig. Gen. Patrick William Powers, xxx-... xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Maj. Gen. Thomas Edward Fitzpatrick, Jr., xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Brig. Gen. George Magoun Wallace II, xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Maj. Gen. Robert Neale Mackinnon, xxx-... xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Maj. Gen. Harold Gregory Moore, xxx-xx-x... xxx-... Army of the United States (colonel, U.S. Army).

Brig. Gen. Charles Echols Spragins, xxx-xx-x... xxx-... Army of the United States (colonel, U.S. Army).

Maj. Gen. John Terrell Carley, xxx-xx-xxxx xxx-... Army of the United States (colonel, U.S. Army).

Brig. Gen. Peter George Olenchuk, xxx-xx-x... [redacted] Army of the United States (colonel, U.S. Army).

Maj. Gen. Frank Anton Hinrichs, xxx-xx-x... xxx-x... Army of the United States (colonel, U.S. Army).

Maj. Gen. Curtis Wheaton Chapman, Jr., xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Brig. Gen. Chester M. McKeen, Jr., xxx-... xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

Brig. Gen. Dean Van Lydegraf, xxx-xx-xxxx, Army of the United States (colonel, U.S. Army).

Brig. Gen. Kenneth Banks Cooper, xxx-xx-x... xxx-x... Army of the United States (colonel, U.S. Army).

Maj. Gen. Dennis Philip McAuliffe, xxx-xx-x... xxx-... Army of the United States (colonel, U.S. Army).

Brig. Gen. Richard Edward McConnell, xxx-... xxx-xx-x... Army of the United States (colonel, U.S. Army).

Maj. Gen. Robert Carter McAlister, xxx-xx-x... xxx-... Army of the United States (colonel, U.S. Army).

Maj. Gen. Herbert Joseph McChrystal, Jr., xxx-xx-xxxx Army of the United States (colonel, U.S. Army).

IN THE NAVY

Rear Adm. William T. Rapp, 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.

Rear Adm. William J. Moran, 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.

Vice Adm. Maurice F. Weisner, U.S. Navy, for appointment as Vice Chief of Naval Operations in the Department of the Navy pursuant to title 10, United States Code, section 5085.

Vice Adm. Maurice F. Weisner, U.S. Navy, having been designated for commands and other duties of great importance and responsibility determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of admiral while so serving.

Rear Adm. William D. Houser, 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.

Rear Adm. Frank H. Price, Jr., 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 MARINE CORPS

Lt. Gen. William K. Jones, U.S. Marine Corps, when retired, to be placed on the retired list in the grade of lieutenant general in accordance with the provisions of title 10, United States Code, section 5233.

In accordance with the provisions of title 10, United States Code, section 5232, Maj. Gen. Louis H. Wilson, Jr., U.S. Marine Corps, having been designated, for commands and other duties determined by the President to be within the contemplation of said section, for appointment to the grade of lieutenant general whole so serving.

IN THE AIR FORCE

Air Force nominations beginning Katherine E. Hamlin, to be colonel, and ending Philip O. Malberg, to be lieutenant colonel, which nominations were received by the Senate and appeared in the Congressional Record on June 26, 1972;

Air Force nominations beginning Carroll N. Anderson, to be lieutenant colonel, and ending Donald J. Kerr, to be lieutenant colonel, which nominations were received by the Senate and appeared in the Congressional Record on July 17, 1972; and

Air Force nominations beginning John H. Mead, to be captain, and ending Belisario D. J. Flores, to be lieutenant colonel, which nominations were received by the Senate and appeared in the Congressional Record on July 26, 1972.

IN THE ARMY

Army nominations beginning Bruce L. Livingstone, to be colonel, and ending Keith R. Titus, to be second lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on July 17, 1972; and

Army nominations beginning John C. McCormack, to be major, and ending William J. Taylor, Jr., to be lieutenant colonel, which nominations were received by the Senate and appeared in the Congressional Record on July 20, 1972.

IN THE MARINE CORPS

Capt. Jack T. Kline, U.S. Marine Corps, for appointment to the grade of major; and

Marine Corps nominations beginning John C. Langenus, to be first lieutenant, and ending James C. Zimmerman, to be first lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on June 23, 1972.