| "If the amount with respect to which the tentative tax to be computed is: | The tentative tax is: |
|---|---|
| Over $1,000,000 but not over $1,250,000 | $386,200, plus 47 percent of the excess of such amount over $1,000,000. |
| Over $1,250,000 but not over $1,500,000 | $503,700, plus 50 percent of the excess of such amount over $1,250,000. |
| Over $1,500,000 but not over $2,000,000 | $628,700, plus 53 percent of the excess of such amount over $1,500,000. |
| Over $2,000,000 but not over $2,500,000 | $893,700, plus 57 percent of the excess of such amount over $2,000,000. |
| Over $2,500,000 but not over $3,000,000 | $1,178,700, plus 61 percent of the excess of such amount over $2,500,000. |
| Over $3,000,000 but not over $3,500,000 | $1,483,700, plus 65 percent of the excess of such amount over $3,000,000. |
| Over $3,500,000 but not over $4,000,000 | $1,808,700, plus 69 percent of the excess of such amount over $3,500,000. |
| Over $4,000,000 | $2,153,700, plus 72 percent of the excess of such amount over $4,000,000. |

Page 16, line 8, strike out "$153,000" and insert in lieu thereof "$142,000".

Page 16, strike out lines 18 through 20 and insert: "1977, by substituting '$112,000' for '$142,000', and

"(B) in the case of a decedent dying during 1978, by substituting '$127,000' for '$142,000'."

Page 55, line 17, strike out "$345,800" and insert in lieu thereof "$386,200".

## FACTUAL DESCRIPTION OF BILLS AND RESOLUTIONS INTRODUCED

Prepared by the Congressional Research Service pursuant to clause 5(d) of House Rule X. Previous listing appeared in the CONGRESSIONAL RECORD of August 26, 1976, page 27914:

HOUSE JOINT RESOLUTIONS

H.J. Res. 1031. July 22, 1976. Post Office and Civil Service. Designates the John Philip Sousa composition known as the "The Stars and Stripes Forever" as the national march of the United States.

H.J. Res. 1032. July 26, 1976. Post Office and Civil Service. Authorizes and requires the President to issue a proclamation designating the week of October 17, 1976, as "National Credit Union Week."

H.J. Res. 1033.—July 27, 1976. Interior and Insular Affairs. Withdraws from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto; all minerals in a specified area within the Los Padres National Forest, California.

H.J. Res. 1034—July 27, 1976. Education and Labor; Post Office and Civil Service. Calls for the publication of economic and social statistics for Americans of East Asian or Pacific Island origin or descent.

H.J. Res. 1035.—July 28, 1976. Judiciary. Proposed an amendment to the Constitution of the United States to provide for a single six-year term for the President, and to limit to six the number of consecutive Congresses in which Senators and Representatives may serve.

H.J. Res. 1036.—July 28, 1976. Education and Labor. Authorizes and requests the President to issue a proclamation recognizing the contribution made by Americans who are working as school volunteers.

H.J. Res. 1037. July 28, 1976. Post Office and Civil Service. Designates the week beginning October 3, 1976, and ending October 9, 1976, as "National Gifted Children Week."

H. J. Res. 1038.—July 28, 1976. Post Office and Civil Service. Designates the week beginning on November 7, 1976, as "National Respiratory Therapy Week."

H.J. Res. 1039. July 30, 1976. Post Office and Civil Service. Designates the week beginning October 3, 1976, and ending October 9, 1976, as "National Gifted Children Week."

H.J. Res. 1040. August 2, 1976. House Administration. Authorizes the American Hungarian Bicentennial Monument, Incorporated, to erect a memorial in honor of the late Colonel Michael Korvats de Fabrici in the District of Columbia.

H.J. Res. 1041. August 2, 1976. Post Office and Civil Service. Designates September 8 of each year as "National Cancer Prevention Day."

H.J. Res. 1042. August 2, 1976. Post Office and Civil Service. Designates September 8 of each year as "National Cancer Prevention Day."

H.J. Res. 1043. August 2, 1976. Post Office and Civil Service. Designates September 8 of each year as "National Cancer Prevention Day."

H.J. Res. 1044. August 2, 1976. Judiciary. Proposes a constitutional amendment which provides that no law varying the compensation for the services of the Senators and Representatives shall take effect until an election of Representatives shall have intervened.

H.J. Res. 1045. August 2, 1976. Judiciary. Proposes a constitutional amendment to establish a Court of the States which shall have jurisdiction to hear and determine all cases arising under this or the tenth article of amendment to the Constitution, upon appeal from the Supreme Court.

H.J. Res. 1046. August 5, 1976. Judiciary. Proposes a constitutional amendment providing that the term of office of a Representative shall be four years. Limits the service of a Representative to three consecutive terms.

H.J. Res. 1047. August 5, 1976. Education and Labor; Post Office and Civil Service. Calls for the publication of economic and social statistics for Americans of Slavic origin or descent.

H.J. Res. 1048. August 10, 1976. Government Operations. Expresses the general policy of the United States Government to rely upon private commercial sources for the goods and services required to meet Government needs.

H.J. Res. 1049. August 10, 1976. Post Office and Civil Service. Authorizes the President to proclaim October 15 of each year as National Poetry Day.

H.J. Res. 1050. August 10, 1976. Judiciary. Proposes a constitutional amendment which provides that the term of office for Members of the House shall be three years. Limits to five the number of terms which a Representative may serve. Sets an age limit for Senators and Representatives.

# SENATE—*Monday, August 30, 1976*

*(Legislative day of Friday, August 27, 1976)*

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by Hon. JESSE HELMS, a Senator from the State of North Carolina.

PRAYER

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

O Lord, our heavenly Father, almighty and everlasting God, who hast safely brought us to the beginning of this day; defend us in the same with Thy mighty power; and grant that this day we fall into no sin, neither run into any kind of danger; but that all our doings, being ordered by Thy governance, may be righteous in Thy sight; through Jesus Christ our Lord.

O Lord our Governor, whose glory is in all the world; we commend this Nation to Thy merciful care, that being guided by Thy providence, we may dwell secure in Thy peace. Grant to the President of the United States, and to all in authority, wisdom and strength to know and to do Thy will. Fill them with the love of truth and righteousness; and make them ever mindful of their calling to serve this people in Thy fear; through Jesus Christ our Lord, who liveth and reigneth with Thee and the Holy Ghost, one God, world without end. Amen.

—COMMON PRAYER.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, D.C., August 30, 1976.*

*To the Senate:*

Being temporarily absent from the Senate on official duties, I appoint Hon. WILLIAM PROXMIRE, a Senator from the State of Wisconsin, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
*President pro tempore.*

Mr. PROXMIRE thereupon took the chair as Acting President pro tempore.

## THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Friday, August 27, 1976, be approved.

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

## ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, it is my intention at the conclusion of morning business to call up, as the Senate has previously agreed to, calendar No. 903, S. 158. It is also my intention to consult with the distinguished Senator from Virginia (Mr. WILLIAM L. SCOTT) to see if it would be possible to reach an agreement to vote on the New River bill no later than 4 o'clock this afternoon, with the proviso that the distinguished Senator from Virginia, the senior Senator (Mr. HARRY F. BYRD, JR.), who is unavoidably absent at this time, would be given 1 hour's time prior to the vote. If that agreement can be arrived at and agreed to then that would allow time for further debate on the Allen amendment today. I hope that it will be possible to achieve this agreement. I only make this statement at this time to notify the Senate of the leadership's intention.

Mr. ALLEN. Mr. President, will the majority leader yield?

Mr. MANSFIELD. I yield.

Mr. ALLEN. As I understood the distinguished majority leader, we would be occupied with the New River bill until 4 o'clock this afternoon.

Mr. MANSFIELD. Until not later than 4 p.m., and I make the time that late because of a situation affecting a Senator, which I am sure the Senator understands.

Mr. ALLEN. How long would it be the thought of the distinguished majority leader that we might have to debate not only the Allen amendment but also the Byrd amendment?

Mr. MANSFIELD. I would say that beginning no later than 4 p.m., or approximately 4 p.m.; that would be up to the Senators most interested to decide.

Mr. ALLEN. It would not be the intention of the leadership to adjourn at an early hour then, would it, prior to some meaningful discussion of these two substitutes?

Mr. MANSFIELD. No; not at all.

Mr. ALLEN. Will the distinguished Senator yield in order that I might make a parliamentary inquiry affecting this situation?

Mr. MANSFIELD. I yield.

Mr. ALLEN. A parliamentary inquiry, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. ALLEN. The leadership has the authority under the previous order to call up the New River bill, which I supported, and I have a prepared statement to make in favor of the bill. Assuming that the bill is called up, will the Senator from Alabama under the rules have a right to call up the House message with respect to H.R. 8532, the antitrust amendments bill?

The ACTING PRESIDENT pro tempore. The Senator could move to take that up.

Mr. ALLEN. It does not take a motion, I believe. I feel he has a right to call up a House message. He might motion to call up a conference report, but he has, as a matter of right, the right to ask that it be laid before the Senate; is that not correct?

The ACTING PRESIDENT pro tempore. That is correct. But once it is up it would take a motion to proceed to it if objection were made.

Mr. ALLEN. I hope the Chair will give me an opportunity to convince him otherwise on that because a House amendment can be laid before the Senate without a motion.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. ALLEN. I yield.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. ROBERT C. BYRD. I support the Chair in what the Chair has said. The distinguished Senator from Alabama would have the right or any Senator would have a right to ask the Chair to lay before the Senate a message from the House of Representatives, that being a privileged matter, but once the clerk states it no Senator would be entitled to debate it because a point of order could be raised against a Senator beginning to debate it, offering an amendment to it, or making any motion in regard to it except a motion to proceed. And if the Senator sought to do that, began to debate it, I would make a point of order that he was proceeding out of order because it would be necessary for a motion to be offered to proceed to the consideration of that matter. As I indicated to the Senator last Friday, it would require a motion.

The ACTING PRESIDENT pro tempore. The Chair will read to the Senator from Alabama a precedent from the rules:

Under consideration of amendments between Houses, a motion to consider, upon objection:

It is in order to take up such amendments on motion, and where the House amendments to a Senate bill have been laid before the Senate, a motion to agree thereto, upon objection, is not in order until the Senate on motion has proceeded to their consideration.

Mr. ALLEN. I thank the Chair for this information. I do understand that there will be ample time to debate the amendments.

Mr. MANSFIELD. Yes. On the basis of what has been stated, it will be up to those most vitally concerned to carry the burden and maintain the interest at that time.

So I would hope it would be possible. This is, I must repeat, subject to the agreement of the distinguished Senator from Virginia (Mr. WILLIAM L. SCOTT) that we could arrive at an agreement to vote not later than 4 p.m. on the New River bill, with the proviso that 30 minutes of the time before the vote would be given to the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.).

## EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations beginning with the Air Force.

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

The ACTING PRESIDENT pro tempore. The nomination will be stated.

## U.S. AIR FORCE

The second assistant legislative clerk read the nominations of Lt. Gen. Donald G. Nunn, brigadier general, Regular Air Force, to be lieutenant general, and Lt. Gen. James T. Stewart, major general, Regular Air Force, to be lieutenant general.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed.

## U.S. NAVY

The second assistant legislative clerk read the nomination of Rear Adm. Alfred J. Whittle, Jr. to be vice admiral.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

## NOMINATIONS PLACED ON THE SECRETARY'S DESK

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

Mr. MANSFIELD. I ask unanimous consent that the nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

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

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

(All nominations confirmed today are printed at the end of the Senate proceedings.)

## LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

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

## ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the Senator from North Carolina seek recognition?

Mr. HELMS. Mr. President, I thank the Chair, but I yield back the time allotted.

## ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business, for not to exceed 15 minutes, with statements therein limited to 5 minutes each.

## ANTITRUST CIVIL PROCESS ACT AMENDMENTS OF 1976

Mr. ALLEN. Mr. President, on last Friday, the House message on H.R. 8532, containing an amendment of the House to the Senate amendment to the House bill, was brought up for consideration. A substitute was offered by the distinguished assistant majority leader. No copies were available for any Senator to examine. No word of explanation was given on last Friday, the time of the submission of that substitute, of the contents of the substitute, which embodied the whole ramifications of the entire bill and would send that particular substitute back to the House for acceptance.

Mr. President, on page 28272 of the RECORD appears a statement by the distinguished senior Senator from Michigan (Mr. PHILIP A. HART) which does seek to give some explanation of this substitute. To set the record straight, this speech was not delivered on the floor of the Senate; it was not read on the floor by any person. The Senator from Alabama, who was in the Chamber every minute of the time that this message was under consideration, can attest to the fact that no word of explanation by any Senator was given as to the contents of the substitute.

I give that information for the record.

Mr. President, there is pending to the Byrd substitute a substitute by the Senator from Alabama which would provide for a substitute which consists of the Senate bill as passed by the Senate on June 11, with two exceptions: one, the effective date is changed to January 1, 1977; two, the ultimate bill is to be named the Hart-Scott-Rodino bill, and that provision is in the Byrd substitute.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield for a question?

Mr. ALLEN. I yield.

Mr. ROBERT C. BYRD. Would the Senator mind referring to this measure as the Hart-Scott-Rodino substitute? My name is not on the substitute.

Mr. ALLEN. The Senator offered it.

Mr. ROBERT C. BYRD. I offered it for them, and the Senator very well knows that it is not the Byrd substitute. If he wishes to continue to needle me, that is all right—I will take it in good humor—but my name is not on it.

Mr. ALLEN. I beg the Senator's pardon. The Senator from Alabama is not seeking to needle the distinguished Senator from West Virginia. The Senator from Alabama did not hear the distinguished Senator from West Virginia say that he was offering it on behalf of anybody but himself.

Mr. ROBERT C. BYRD. I did not say I was offering it on behalf of anyone, or anything to that extent, and if the Senator will look at the bill, the Senator will not see my name on the bill.

The Senator very well knows that I had to make the motion, that it was my motion, but that does not entitle me to the honor of being an author of the substitute.

Mr. ALLEN. If the Senator wishes to disavow any connection with the bill, I can understand that position.

Mr. ROBERT C. BYRD. I am not wishing to disavow anything. I may very well vote for the substitute, or I may vote against it, but the leadership does have some responsibilities.

Mr. ALLEN. Would it be correct to say "the substitute offered by the distinguished Senator from West Virginia?"

The ACTING PRESIDENT pro tempore. The 5 minutes of the Senator from Alabama have expired.

Mr. MANSFIELD. Mr. President, I yield my 5 minutes to the distinguished Senator from Alabama.

Mr. ROBERT C. BYRD. Yes, that would be all right.

Mr. ALLEN. I thank the Senator.

Mr. ROBERT C. BYRD. I thank the Senator from Alabama.

Mr. ALLEN. During the last few days, there has been a contention that a compromise was agreed upon, that compromise being the Senate bill. I do not feel that a compromise was reached, other than that the bill might be voted on, and it was voted on.

I note from Mr. HART's statement that was inserted in the RECORD that he has this statement to make:

> The Senator from Alabama made it clear that he did not believe that the compromise agreement of June 10 precluded him—

I thought it was June 11, but I may be wrong.

> from exercising any of his rights under the rules of the Senate. My own recollection is that there was no specific discussion during those negotiations last June with respect to either a motion to appoint conferees or a motion to accept a conference report.

Certainly, there was no discussion as to that, and the only discussion had was with respect to the passage of the bill.

Mr. President, if, in fact, there was a compromise and that compromise was the provisions of the Senate amendment to the House bill—that is, the Senate amendment to H.R. 8532—if the proponents of the proposed legislation say there was a compromise, I am going to give them, and the substitute I have pending will give them, an opportunity to stand by that compromise, if in fact there was a compromise. So we are going to see if there was a compromise.

If there was a compromise, I assume that those who are now pushing the bill will vote for my substitute. They are going to be given that right, and we will see whether or not there was a compromise. If there was a compromise, my substitute will be adopted; and I stand on that test as to whether there was a compromise, in fact.

So the pending business will be, I assume—I ask the Chair that parliamentary question—when the House message with respect to H.R. 8532 becomes the pending business, what will be the pending question?

The ACTING PRESIDENT pro tempore. The amendment of the Senator from Alabama to the amendment offered by the Senator from West Virginia.

Mr. ALLEN. Is it not a substitute? Is it not in the form of a substitute?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. ALLEN. Very well.

I issue this challenge to those who support the antitrust bill: If there was in fact a compromise on agreeing to the Senate amendments to H.R. 8532, here is their chance to assert, on the Senate floor, by their votes, that there was in fact a compromise. I will be willing to abide by that decision. I do not think there was a compromise, and my vote will so indicate.

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

The ACTING PRESIDENT pro tempore. Is there further morning business?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HELMS. Mr. President, I ask unanimous consent that Mr. Carl Gullick and Dr. James B. Lucier be accorded the privilege of the floor during discussion of the New River bill and any votes thereon.

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

Mr. WILLIAM L. SCOTT. Will the Senator yield for a unanimous-consent request?

Mr. HELMS. Yes.

Mr. WILLIAM L. SCOTT. I ask unanimous consent that Jim Roberts of my staff be granted the privileges of the floor during the consideration of the pending bill.

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

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The 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 (Mr. MORGAN). Without objection, it is so ordered.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Roddy, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations and one withdrawing the nomination of Warren B. Rudman, of New Hampshire, to be an Interstate Commerce Commissioner which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## MESSAGE FROM THE HOUSE

ENROLLED BILL SIGNED

At 12:29 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its clerks, announced that the Speaker has signed the enrolled bill (H.R. 9153) granting the consent of Congress to the New Hampshire-Vermont Interstate Sewage Waste Disposal Facilities Compact.

The enrolled bill was subsequently signed by the President pro tempore.

## COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT OF THE COMPTROLLER GENERAL—(S. DOC. NO. 94- )*

A letter from the Acting Comptroller General of the United States transmitting, pursuant to law, a report on the rescission and deferral proposals in the President's July 28, 1976, special message (with an accompanying report); jointly, pursuant to the order of January 30, 1975, to the Committees on Appropriation, the Budget, Agriculture and Forestry, and Labor and Public Welfare; and ordered to be printed.

REPORT OF THE DEPARTMENT OF THE INTERIOR

A letter from the Deputy Assistant Secretary of the Interior transmitting, pursuant to law, a report entitled "Critical Water Problems Facing the Eleven Western States" (with and accompanying report); to the Committee on Interior and Insular Affairs.

REPORT OF THE BOARD OF FOREIGN SCHOLARSHIPS

A letter from the Chairman of the Board of Foreign Scholarships transmitting, pursuant to law, a report on exchanges (with an accompanying report); to the Committee on Foreign Relations.

INTERNATIONAL AGREEMENTS OTHER THAN TREATIES

A letter dated August 27, 1976, from the Acting Assistant Legal Adviser for Treaty Affairs of the Department of State transmitting, pursuant to law, copies of international agreements other than treaties entered into during the past 60 days (with accompanying papers); to the Committee on Foreign Relations.

REPORT OF THE OFFICE OF MANAGEMENT AND BUDGET

A letter from the Deputy Director of the Office of Management and Budget transmitting, pursuant to law, a report on recommendations to the President by the Federal Council on the Aging (with an accompanying report); to the Committee on Labor and Public Welfare.

PROPOSED CONSTRUCTION BY THE DEPARTMENT OF TRANSPORTATION

A letter from the Secretary of Transportation transmitting, pursuant to law, a prospectus for certain proposed construction near Atlantic City, N.J. (with accompanying papers); to the Committee on Public Works.

REPORTS OF THE COMPTROLLER GENERAL

A letter from the Comptroller General transmitting, pursuant to law, a report entitled "Smugglers, Illicit Documents, and Schemes Are Undermining U.S. Controls Over Immigration" (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General transmitting, pursuant to law, a report entitled "Recruiting and Retaining Federal Physicians and Dentists: Problems Progress, and Actions Needed for the Future" (with an accompanying report); to the Committee on Veterans' Affairs.

## PETITIONS

The ACTING PRESIDENT pro tempore laid before the Senate the following petitions, which were referred as indicated:

An excerpt from the minutes of a meeting of the Pacific Yearly Meeting of the Religious Society of Friends (Quakers) meeting at St. Mary's College, Moraga, Calif., relating to the proliferation of nuclear weapons; to the Committee on Foreign Relations.

Two resolutions adopted by the auxiliary to the American Optometric Association, one relating to passenger restraint systems, and one relating to the need for pedacyclist education; to the Committee on Public Works.

A letter from a corporation transmitting a brochure on a system for maximizing fuel economy; to the Committee on Interior and Insular Affairs.

House Joint Resolution No. 78 adopted by the Legislature of the State of Alabama; to the Committee on Agriculture and Forestry:

HOUSE JOINT RESOLUTION 78

"Whereas, the cost of food continues to rise; and

"Whereas, it is important for Americans to grow some of their own food; and

"Whereas, growing one's own food instills the 'back to nature movement and saves the consumer money'; now therefore

"Be it resolved by the Legislature of Alabama, both houses thereof concurring, That the United States Congress is hereby memorialized to pass House bill 5626 allowing food stamp recipients to use twenty dollars of stamps to buy seed and supplies to grow enough food to eat, can and freeze.

"Be it further resolved, That copies of this resolution be sent to the Vice President of the United States, the President Pro Tempore of the Senate, the Speaker of the House, and to each member of the Alabama delegation with the request that this resolution be read in both Houses of Congress."

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SPARKMAN, from the Committee on Foreign Relations:

Without amendment:

S. 3621. A bill to amend the International Claims Settlement Act of 1949 to provide for the determination of the validity and amounts of claims of nationals of the United States against the German Democratic Republic (Rept. No. 94-1188).

By Mr. JOHNSTON, from the Committee on Interior and Insular Affairs:

With an amendment:

H.R. 11455. An act to amend the act establishing the Indiana-Dunes National Lakeshore to provide for the expansion of the lakeshore, and for other purposes (Rept. No. 94-1189).

By Mr. HANSEN, from the Committee on Interior and Insular Affairs:

With an amendment:

S. 3430. A bill to amend the act approved August 18, 1970, providing for improvement in the administration of the National Park System by the Secretary of the Interior and clarifying authorities applicable to the National Park System, and for other purposes (Rept. No. 94-1190).

## 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. STONE:

S. 3780. A bill to amend the Federal Election Campaign Act of 1971 with respect to the filing of reports with State officers. Referred to the Committee on Rules and Administration.

By Mr. THURMOND:

S. 3781. A bill to amend title 10, United States Code, to authorize a tuition assistance program for eligible enlisted members of the Selected Reserve of the Ready Reserve of the Armed Forces. Referred to the Committee on Armed Services.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. STONE:

S. 3780. A bill to amend the Federal Election Campaign Act of 1971 with respect to the filing of reports with State officers. Referred to the Committee on Rules and Administration.

Mr. STONE. Mr. President, today I am introducing a bill to amend section 316 (2 U.S.C. 439) of the Federal Election Campaign Act of 1971, which places certain responsibilities with regard to the public availability of Federal campaign finance reports, on the State Secretaries of State. This section provides:

(a) "Appropriate State" defined. A copy of each statement required to be filed with the Commission by this chapter shall be filed with the Secretary of State (or, if there is no office of Secretary of State, the equivalent State officer) of the appropriate State. For purposes of this subsection, the term "appropriate State" means—

(1) for reports relating to expenditures and contributions in connection with the campaign for nomination for election, or election, of a candidate to the office of President or Vice President of the United States, each State in which an expenditure is made by him or on his behalf, and

(2) for reports relating to expenditures and contributions in connection with the campaign for nomination for election, or election, of a candidate to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, the State in which he seeks election.

(b) Duties of State Officers. It shall be the duty of the Secretary of State, or the equivalent State officer, under subsection (a) of this section—

(1) to receive and maintain in an orderly manner all reports and statements required by this chapter to be filed with him;

(2) to preserve such reports and statements for a period of 10 years from date of receipt, except that reports and statements relating solely to candidates for the House of Representatives shall be preservd for only 5 years from the date of receipt;

(3) to make the reports and statements filed with him available for public inspection and copying during regular office hours,

commencing as soon as practicable but not later than the end of the day during which it was received, and to permit copying of any such report or statement by hand or by duplicating machine, requested by any person, at the expense of such person; and

(4) to compile and maintain a current list of all statements or parts of statements pertaining to each candidate.

As a former Secretary of State of Florida, I am very aware of the problems that State officials have encountered with the State filing requirements. A number of these difficulties surfaced as long as 4 years ago when Francis Valeo, the Secretary of the Senate, wrote to 34 secretaries of state, pursuant to his authority as supervisory officer of Senate Elections. The purpose of his letter was to determine the degree of compliance and the extent of the problems that State officials had encountered in administering the act. Seventeen States responded and the replies were printed in the Federal Campaign Disclosure at the State Level With Respect to Elections for the U.S. Senate in 1972.

Two problems that were mentioned frequently were the long period of time that the States were required to preserve the reports—10 years, in most cases—which is creating storage problems, and the expense involved in complying with the section.

Mr. Valeo testified about these difficulties before the Subcommittee on Privileges and Elections of the Senate Rules Committee in 1973, during hearings which the subcommittee held on proposed amendments to the Federal Election Campaign Act. While extensive amendments were made to the act—Federal Election Campaign Act Amendments of 1974—the section relating to the filing of reports with secretaries of state remains essentially unchanged.

In October 1975, I wrote to all State secretaries asking their comments on section 316, with particular emphasis on the report preservation requirement. Thirty-seven States responded. Of these, 33 States expressed the desire to see the report preservation time shortened. Other problems which were mentioned were the need for Federal assistance, and the irrelevance to any one State of much of the documents filed in the States by multicandidate committees.

Shortly after I wrote to State officials, the Federal Election Commission sent a detailed questionnaire to each secretary of state—or equivalent State official. As of March 2, 1976, 47 States and the District of Columbia had responded. The results of this survey support the conclusions which I have drawn from my own informal survey and they form the basis for the legislation that I am introducing today.

The first subsection of my bill allows the States more flexibility in determining where the Federal election campaign reports are filed. The FEC survey revealed that 14 of the 47 jurisdictions have one office receiving Federal election reports and another receiving State reports. The comments that I received from State officials indicate that many would like to be able to keep all of their campaign reports—Federal and State—in the office that they had established to receive State reports. However, the way the law is worded, Federal reports must be filed in the office of secretary of state or if there is no secretary of state, with the equivalent State official. This wording, which was probably inadvertent, has created problems for a number of States which have a secretary of state but which would like to be able to send the Federal reports to the separate board or commission that they set up to handle State reports. In their survey report, the FEC recommends:

That an amendment be offered to allow the states the discretion of selecting the location of the state office where these reports should be filed and maintained (p. 13).

My bill would allow the Governor of each State to designate the proper office in which to file Federal campaign reports. It is not the intention of the bill to take away from any State secretary of state the duties under the Federal law if that office is the proper one to perform these functions. However, in those States, such as Washington, in which the secretary of state's office would be duplicating a job already performed for State reports by a separate State commission, the Governor could designate the commission as the office in which the reports are to be field. This makes sense administratively, and it also would make public review easier as all election campaign reports would be available at the same location.

The problem of storing all of the Federal reports that have to be filed with the States is one which nearly all the States have mentioned. The present law requires the Commission to preserve reports and statements filed with it for 10 years. My bill would not change this requirement. What the bill would change is the unnecessarily long period of time during which the States are required to preserve their duplicate copies. Currently all reports and statements must be preserved by the States for 10 years, with the exception of reports relating to candidates for election to the House of Representatives, which must be kept for 5 years. Given the fact that the statute of limitations on prosecutions has been shortened to 3 years and that the FEC must preserve all of the reports for 10 years, there is little reason not to allow the States more leeway in this area. To quote from the recommendations at the end of the FEC survey report (p. 13):

The overwhelming sentiment of most state elections offices was that the requirements for storage of federal reports was much too long. Many of the suggestions seemed to concentrate on retaining records for the term of the office sought or for shortening the Senate record retention period from 10 to 5 years. As a number of State officials have suggested, the Commission could then become the sole repository of these reports after these new time periods elapse.

My bill shortens to 3 years the time that reports relating to candidates for the House must be preserved. All other reports and statements may be destroyed after 5 years from the date of receipt. Let me stress that this provision is permissive in the sense that if any State feels that there will be a demand for these records beyond the 5- or 3-year period, it may keep them beyond that time. A State is not required to destroy the records, but after 5—or 3—years a State will be free to destroy or retain the reports, as it sees fit.

The bill also specifically allows the States to microfilm the reports and destroy the originals as soon as they are microfilmed. The microfilmed record is then subject to the 5- or 3-year retention requirement. Twenty-eight States which responded to the FEC survey indicated that they had access to microfilm or microfiche equipment but only two States use it for their Federal reports. Many States are uncertain as to whether the statute allows them to microfilm and whether or not they can then destroy the originals. My bill would eliminate any uncertainty on this question. Allowing the States to microfilm the reports would alleviate their storage problem to a large extent.

Reports filed by multicandidate committees make up the bulk of the papers field in the States. The FEC survey found that in 29 of the States that responded, 60 percent or more of the reports on file came from national, multicandidate committees. The FEC reports conclude—page 11:

Most states felt that there was little, if any, interest in multi-candidate committee reports in their states. This relative lack of interest coupled with the almost two to one ratio of multi-candidate to within state reports that have to be received, processed and stored prompted a number of states to comment that the benefits of public access to these multi-candidate reports were not worth the cost of maintaining, processing, and storing them.

The FEC has proposed a regulation which would allow a multicandidate committee with contributes to a Presidential candidate, to file only with the Secretary of State in the State in which the recipient and contributing committees have their headquarters. While I agree with the intent of the regulation, I have doubts that this purpose can be accomplished by regulation as it would not be consistent with the present statutory language. Even if it can be accomplished by regulation, I think that the question of where these reports should best be filed is one which merits further study. Subsection (c) of my bill does not change the site of the filings, but it does give the States the option to sort through the report and throw away any portions which do not relate to expenditures made in, or to candidates from, that State.

Finally, the bill authorizes an annual appropriation of $500,000 to reimburse the States for their expenses in administering section 316. To quote once again from the conclusions reached in the FEC survey (p. 12):

It should be noted that the responsibility for receiving, processing, making available for public inspection and storing these federal reports does, in fact, impose a heavy burden on most state elections offices. For the most part, state election officers have limited staff, money and space with which to perform their normal state elections functions and these federal reporting requirements present an additional burden on already overworked offices, especially during an election period.

More information will need to be gathered on the expenses to the States of administering the Federal election

campaign laws. The $500,000 figure may prove too low, but it will serve as a focal point for discussion. If we are serious about giving the public easy access to campaign reporting information, then we should be willing to help the States with the financial burden which it imposes on them.

At the end of my remarks I shall have printed a table which combines the results of my informal survey with the results of the FEC survey.

The Federal Election Commission and, in particular, their Clearinghouse on Election Administration which conducted the survey to which I have been referring, have been very responsive to the problems raised by State election officials. I know that they are doing everything possible, within the framework of the act, to ease the burden on the States. But I think they have done as much as they can do without action from Congress. I believe that my bill will solve many of the problems that the States are facing in administering this act.

Mr. President, I ask unanimous consent that the text of the bill and the table to which I referred be printed in the RECORD.

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

S. 3780

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) section 316(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 439(a)) is amended by striking out "the Secretary of State (or, if there is no office of Secretary of State, the equivalent State officer)" and inserting in lieu thereof "the Secretary of State, or if different, the officer of the government of each State who is charged by State law with maintaining State election campaign reports, to be designated by the Governor of that State".

(b) Section 316(b) of such Act (2 U.S.C. 439(b) is amended—

(1) by striking out "the Secretary of State, or the equivalent State officer," and inserting in lieu thereof the following: "the Secretary of State, or the officer designated", and

(2) by striking out paragraph (2) thereof and inserting in lieu thereof the following:

"(2) to preserve such reports and statements (either in the original filed form or in a facsimile copy of microfilm or otherwise) for a period of 5 years from date of receipt, except that reports and statements relating solely to candidates from the House of Representatives shall be preserved for only 3 years from the date of receipt;".

(c) Section 316 of such Act (2 U.S.C. 439) is amended by adding at the end thereof the following new subsection:

"(c) If a report filed with the State officer under subsection (a)(2) relates to candidates for election from other States, the duty of the State officer under subsection (b) to preserve and make the report available extends only to those portions of that report which relate to candidates for election in that State.".

(d) There is authorized to be appropriated to the Federal Election Commission the sum of $500,000 for use by the Commission in reimbursing State offices with whom statements are filed under section 316 of the Federal Election Campaign Act of 1971 for expenses incurred in carrying out their duties under that section. The Commission shall pay a reimbursement to a State upon application made therefor by the Governor and upon proof satisfactory to the Commission that the amount claimed as reimbursement accurately reflects additional cost imposed on the State government as a result of such section 316.

| | States which indicated that the report retention time should be shortened | Other offices, departments, agencies in your building that use microfilm or microfiche | | Reports (Federal) stored in what form | | | Reports fill | | | What percent Federal reports come from candidates running in your State and what percent come from national multicandidate committees? | | Does the State use the same office for non-Federal campaign reports? | | States which asked for Federal funds |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Yes | No | Original | Microfilm | Microfiche | File drawers | Cartridges | Cards | Multi-candidate | State | Yes | No | |
| Alabama | X | | X | X | | | 10 | | | 99 | | X | | |
| Alaska | | | | | | | | | | | | | | |
| Arizona | | | X | X | | | 5 | | | | | X | | |
| Arkansas | | X | | | X | | 9 | | | 80 | 20 | X | | |
| California | | X | | X | | | 3 | | | 70 | 30 | X | | |
| Colorado | X | X | | X | | | 4 | | | 25 | 75 | X | | X |
| Connecticut | X | X | | X | | | 6 | | | 75 | 25 | X | | |
| Delaware | X | X | | X | | | 6 | | | 90 | 10 | | X | |
| Florida | X | X | | X | | | 5 | | | 85 | 15 | X | | |
| Georgia | | X | | X | | | 15 | | | | | X | | X |
| Hawaii | | | X | X | | | 6 | | | 30 | 65 | X | | X |
| Idaho | X | X | | X | | | | | | 75 | 25 | X | | X |
| Illinois | X | | | | | | | | | | | | | |
| Indiana | | X | | X | | | 13 | | | 40 | 60 | | X | |
| Iowa | X | X | | X | | | 10 | | | 15 | 85 | | X | X |
| Kansas | X | | X | X | | | 14 | | | 65 | 35 | X | | |
| Kentucky | | | | | | | | | | | | | | |
| Louisiana | X | X | | X | | | 10 | | | 85 | 15 | | X | |
| Maine | X | | X | X | | | 1 | | | 5 | 95 | X | | |
| Maryland | | | X | X | | | 6 | | | 10 | 90 | X | | |
| Massachusetts | X | X | | X | | | 8 | | | 66 | 33 | | X | |
| Michigan | X | | X | X | | | 10 | | | | | X | | |
| Minnesota | X | X | | X | | | 8 | | | 85 | 15 | | X | |
| Mississippi | X | X | | X | | | | | | | | X | | |
| Missouri | X | | X | X | | | 8 | | | 25 | 75 | X | | |
| Montana | X | | X | X | | | (1) | | | 95 | 5 | | X | |
| Nebraska | X | X | | X | | | 15 | | | 90 | 10 | X | | X |
| Nevada | X | | | X | | | | | | 87.5 | 12.5 | X | | X |
| New Hampshire | X | | | X | | | 8 | | | 95 | 5 | X | | |
| New Jersey | X | X | | X | | | 10 | | | 25 | 75 | | X | |
| New Mexico | X | | X | X | | | (2) | | | 95 | 5 | X | | |
| New York | X | | X | X | | | 5 | | | 50 | 50 | X | | |
| North Carolina | | | X | X | | | 5 | | | 85-90 | 10-15 | X | | |
| North Dakota | X | X | | X | | | 7 | | | 80 | 20 | | X | |
| Ohio | X | X | | X | | | 15 | | | 60 | 40 | X | | |
| Oklahoma | X | | | | | | | | | | | | X | |
| Oregon | | | X | X | | | 10 | | | 92 | 8 | X | | |
| Pennsylvania | X | X | | X | X | | 20 | 10 | | 65 | 35 | X | | |
| Rhode Island | X | X | | X | | | 6 | | | 80 | 20 | | X | |
| South Carolina | X | X | | X | | | | | | 75 | 25 | X | | |
| South Dakota | X | X | | X | | | 10 | | | 70 | 20 | X | | |
| Tennessee | X | | | X | | | 2-5 | | | 65 | 35 | X | | |
| Texas | X | X | | X | | | | | | | | X | | |
| Utah | | X | | X | | | | | | 90 | 10 | | X | X |
| Vermont | X | | X | X | | | 10 | | | 40 | 60 | X | | |
| Virginia | | X | | | | X | (3) | | | | | X | | |
| Washington | X | | X | X | | | 5 | | | 60 | 40 | | X | |
| West Virginia | X | X | | | | | 2 | | | 90 | 10 | X | | |
| Wisconsin | X | X | | | | | 10 | | | | | X | | |
| Wyoming | X | X | | | | | 6 | | | 90 | 10 | X | | |
| District of Columbia | | | X | | | | | | | | | | X | |

[1] 15-ft open shelf.
[2] 10 ft.[3]
[3] 10 boxes.

By Mr. THURMOND:

S. 3781. A bill to amend title 10, United States Code, to authorize a tuition assistance program for eligible enlisted members of the Selected Reserve of the Ready Reserve of the Armed Forces. Referred to the Committee on Armed Services.

Mr. THURMOND. Mr. President, today I send to the desk a bill to amend title 10, United States Code, to authorize a tuition assistance program for enlisted members of the National Guard and Selected Reserve of the Ready Reserve.

This legislation is in response to the declining enlisted strength of the National Guard and Reserve components. As of June 1, 1976, the six Reserve and Guard components were below authorized strength by about 72,000 personnel, approximately 69,000 of that number in the enlisted grades.

Especially hard hit were the Army Guard and Army Reserve units, short about 33,000 and 19,000 respectively.

Mr. President, the Guard and Reserve are our most economical military force. They provide us with fighting and support units at about one-fifth the cost of regular units. We cannot permit their strength to fall below the already minimum manning levels. To do so will ultimately be more costly than this tuition program.

This bill would provide tuition assistance to enlisted members of the Selected Reserve and National Guard who have completed their initial period of active duty training and are not on active duty for more than 30 days.

The tuition assistance would be limited to 50 percent during the initial 6 years and would be increased to 75 percent in subsequent years. Not more than 6 semester hours, or 9 quarter hours, would be allowed in a single term. It would permit aid for personnel attending only accredited institutions and allows enough flexibility for the service secretary to tailor the program to available funds.

While it is late in the session, Congress needs to consider this legislation or face even deeper Reserve component shortfalls.

Mr. President, I send this bill to the desk for reference to the appropriate committee and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3781

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That chapter 101 of title 10, United States Code, is amended by inserting the following new section after section 2001 and a corresponding item in the chapter analysis:

"§ 2001a. Enlisted members of the Selected Reserve of the Ready Reserve of the armed forces: tuition assistance program

"(a) To increase active participation in the reserve components, the Secretary of a military department under regulations prescribed by him and approved by the Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, may establish and maintain a program to provide tuition assistance to eligible enlisted members of the Selected Reserve of the Ready Reserve of an armed force under his jurisdiction to enable such members to pursue studies at a post-secondary educational level.

"(b) Tuition assistance may be authorized under this section for an enlisted member if such member—

"(1) is a member of the Selected Reserve of the Ready Reserve of his armed force;

"(2) is not on active duty for a period of more than 30 days;

"(3) has completed his initial period of active duty for training; and

"(4) is receiving education at a post-secondary level from an accredited civilian educational institution (including a college or university) or training at a technical or trade institution.

"(c) Tuition assistance under this section may not be—

"(1) provided for more than 6 semester hours, or its equivalent, in any one term;

"(2) exceed an amount equal to 50 per centum of the tuition cost, or equivalent fee, if, when the term begins, the member has less than 6 years of qualifying service computed under subsection (d) (3) of this section;

"(3) exceed an amount equal to 75 per centum of the tuition cost, or equivalent fee, if, when the term begins, the member has at least 6 years of qualifying service computed under subsection (d) (3) of this section.

"(d) For the purpose of subsection (c) of this section—

"(1) 'term' means—

"(A) 'semester' in the case of an institution operated on a semester basis;

"(B) 'quarter' in the case of an institution operated on a quarter basis; and

"(C) the period of time prescribed in regulations of the Secretary concerned in the case of an institution operated on a basis other than semester or quarter;

"(2) the equivalent of 6 semester hours is (A) 9 quarter hours in the case of an institution operated on a quarter basis, and (B) the number of hours prescribed in regulations of the Secretary concerned in the case of an institution operated on a basis other than semester or quarter; and

"(3) a member's qualifying service is the total of—

"(A) his service on active duty (other than for training); and

"(B) any period of assignment to a unit of the Selected Reserve of the Ready Reserve of an armed force during which his participation in training programs of the unit was satisfactory, as determined under regulations of the Secretary concerned.".

SEC. 2. There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

## ADDITIONAL COSPONSORS

S. 3182

At the request of Mr. TAFT, the Senator from New York (Mr. BUCKLEY) was added as a cosponsor of S. 3182, to amend the Occupational Safety and Health Act of 1970.

S. 3554

At the request of Mr. PROXMIRE, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 3554, to establish a National Commission on Neighborhoods.

S. 3581

At the request of Mr. TAFT, the Senator from Maine (Mr. HATHAWAY) was added as a cosponsor of S. 3581, to establish an Office of Maritime Affairs Coordinator.

S. 3652

At the request of Mr. GARN, the Senator from Texas (Mr. BENTSEN), was added as cosponsor of S. 3652, to amend the Consumer Credit Protection Act.

S. 3704

At the request of Mr. HUGH SCOTT, the Senator from Michigan (Mr. ROBERT P. GRIFFIN) was added as a cosponsor of S. 3704, the mushroom import limitations bill.

SENATE RESOLUTION 525

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senator from Georgia (Mr. TALMADGE), the Senator from Ohio (Mr. TAFT), the Senator from New York (Mr. BUCKLEY), the Senator from Tennessee (Mr. BAKER), and the Senator from New Mexico (Mr. DOMENICI) be added as cosponsors of Senate Resolution 525, to designate the Philip A. Hart Office Building.

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

## MOTIONS SUBMITTED FOR PRINTING

### ANTITRUST CIVIL PROCESS ACT AMENDMENTS OF 1976—H.R. 8532

Mr. ALLEN submitted 11 motions which were ordered to be printed and to lie on the table, in connection with the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes, as follows:

Motion to concur in House Amendment to Senate Amendment to the bill (H.R. 8532) to amened the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes, with an amendment.

I move that the Senate concur in the House Amendment to the Senate Amendment to H.R. 8532, with an amendment as follows:

At the end of the House Amendment add the following new title:

"IV. EXEMPTIONS

"SEC. 401. Nothing in any title of this Act shall apply, or be applied to, producers of livestock, poultry, agricultural crops, raw fish products, or other producers or processors of food for human or animal consumption."

Motion to concur in House Amendment to Senate Amendment to the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust Actions, and for other purposes, with an amendment.

I move that the Senate concur in the House Amendment to the Senate Amendment to H.R. 8532, with an amendment as follows:

At the end of the House Amendment add the following new section:

"SEC. 304. Any attorney fees awarded under the provisions of this title shall be based upon the quantity and quality of service rendered or the amount paid by the State for such services, whichever is less."

Motion to concur in House Amendment to Senate Amendment to the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes, with an amendment.

I move that the Senate concur in the House Amendment to the Senate Amendment to H.R. 8532, with an amendment as follows:

At the end of the House Amendment add the following new section:

"SEC. 304. In the event an antitrust investigator as defined in this Act shall recommend to the Attorney General, or the As-

sistant Attorney General in charge of the Antitrust Division of the Department of Justice, that a civil or criminal proceeding be instituted against any person who has responded to a demand pursuant to Section 3 of this Act, the antitrust investigator shall advise such person of the nature of any indicated antitrust violations as they pertain to him. Upon request, such person shall have the right to submit a written statement setting forth his position in regard to the subject matter of the investigation, which statement shall be forwarded to the Attorney General or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, with the recommendation of the investigator."

Motion to concur in House Amendment to Senate amendment to the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust action, and for other purposes, with an amendment.

I move that the Senate concur in the House Amendment to the Senate Amendment to H.R. 8532, with an amendment as follows:

At the end of the House Amendment add the following new section:

"SEC. 304. This Act shall be effective January 1, 1977."

Motion to concur in House Amendment to Senate Amendment to the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes, with an amendment.

I move that the Senate concur in the House Amendment to the Senate Amendment to H.R. 8532, with an amendment as follows:

At the end of the House Amendment add the following new section:

"SEC. 304. This Act shall be effective July 1, 1977."

Motion intended to be proposed by Mr. ALLEN in connection with the bill (H.R. 8532), an Act to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes:

I move that the Senate concur in the House Amendment to the Senate Amendment to H.R. 8532, with an amendment as follows:

Strike titles I and II, that is, on page 1 starting at the end of the Table of Contents strike all through Section 204(b) on page 30.

Motion to concur in House Amendment to Senate Amendment to the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes, with an amendment.

I move that the Senate concur in the House Amendment to the Senate Amendment to H.R. 8352, with an amendment as follows:

At the end of the House Amendment add the following new section:

"SEC. 304. No civil investigative demand permitted by this Act shall be issued to a person who has not been determined to be a potential defendant in a criminal or civil proceeding by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division."

Motion to concur in House Amendment to Senate Amendment to the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes, with an amendment.

I move that the Senate concur in the House Amendment to the Senate Amendment to H.R. 8532, with an amendment as follows:

At the end of the House Amendment add the following new section:

"SEC. 304. No person may participate in bringing an action under this title while seeking the nomination for election or election, to any state or federal public office."

Motion to concur in House Amendment to Senate Amendment to the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes, with an amendment.

I move that the Senate concur in the House Amendment to the Senate Amendment to H.R. 8532, with an amendment as follows:

At the end of the House Amendment add the following new section:

"SEC. 304. In bringing action under this title, if the State fails to establish that the defendant acted in willful violation of the antitrust laws, only actual damages shall be recoverable."

Motion to concur in House Amendment to Senate Amendment to the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes, with an amendment.

I move that the Senate concur in the House Amendment to the Senate Amendment to H.R. 8532, with an amendment as follows:

At the end of the House Amendment add the following new section:

"SEC. 304. In any action brought under this Title, the court shall award reasonable attorneys' fees and costs to a prevailing defendant. For purposes of this section, the term 'attorneys' fees and costs' is defined to include the reasonable expenses of witnesses or expert witnesses, the reasonable cost of any studies, analyses, engineering reports, tests, or projects which the court finds necessary to the litigation of the action, and reasonable attorneys' fees based upon the actual time expended by an attorney of a party and his or her staff in advising and representing a party (at prevailing rates for such services, including any reasonable risk factor component)."

Motion to concur in House Amendment to Senate Amendment to the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes, with an amendment.

I move that the Senate concur in the House Amendment to the Senate Amendment to H.R. 8532, with an amendment as follows:

At the end of the House Amendment add the following new section:

"SEC. 304. No attorney fees permitted by this Act may be assessed against any defendant who did not act in an obdurate, dilatory, mendacious, or oppressive fashion during the conduct of the litigation."

## AMENDMENTS SUBMITTED FOR PRINTING

### INDIAN HEALTH CARE IMPROVEMENT ACT—S. 522

AMENDMENT NO. 2233

(Ordered to be printed and to lie on the table.)

Mr. JACKSON. Mr. President, I am submitting an amendment to the amended House version of S. 522, the Indian Health Care Improvement Act, for myself and Senator PAUL J. FANNIN, the distinguished ranking minority member of the Committee on Interior and Insular Affairs.

When the Senate takes up the House-passed version of S. 522, I shall move to have the language of this amendment substituted for the House version of S. 522.

My amendment consists of several clarifying and technical changes, with the exception of two substantive changes as follows:

The first substantive change would alter the definition of "Indian tribe" in section 4(d) to include not just Alaska Native villages and groups but also regional and village corporations. This would bring this definition in conformity with the definition of Indian tribe in the Indian Self-Determination and Education Assistance Act (88 Stat. 2203). Most of the programs in S. 522 in which Indian tribes would participate would require activities which would be difficult for the usually small Native villages and groups to perform. In most cases, the regional corporations with their wider jurisdiction and more skilled manpower, would be the entities most capable of participating effectively in S. 522's programs.

The second substantive amendment in section 201(e) would make both a significant clarifying change and a critically important substantive change.

Section 201(e) limits the total funding authorized for health services in fiscal year 1978 to $5 million. The health service authorizations for nine services contain no dollar figures; instead, each authorization states "sums as provided in subsection (e)." However, one health service authorization—treatment and control of alcoholism—does not refer to subsection (e) and has a specific dollar figure: $4 million. If the $4 million alcoholism authorization is included in the limitation, then the total funds available to the other nine services under the $5 million ceiling would be $1 million. We assume that the purpose of subsection (e) was to limit the total appropriations for the other nine services to $5 million and not $1 million.

The proposed change would, we believe, clarify the intent of subsection (e)—by removing the alcoholism program from its purview—and eliminate an otherwise debilitating restriction on some of the bill's most important programs.

The substantive change would be to raise the total authorization limitation on those nine health service programs from $5 million to $10,025,000 and provide for a ceiling on positions of 425. The Senate bill specifically apportioned a total of $12,775,000 and 455 positions among the 9 health services and the bill reported by the House Indian Affairs Subcommittee specifically apportioned $10,025,000 and 425 positions. We understand that the principal reason for the dramatic reduction in authorizations for the first year—by 61 percent from the Senate bill and by 50 percent from the House Indian Affairs Subcommittee-reported bill—was to diminish the bill's budgetary impact in fiscal year 1977. However, later amendments moved the initial authorizations back to fiscal year 1978. We, therefore, believe that the principal constraint on the first year authorizations for these critically needed services has been removed. Although we would prefer the full totals of $12,775,000 and 455 positions found in the Senate bill, to enhance these amendments' acceptability to the House of Representatives we suggest restoring the lower authorizations approved by the House Indian Affairs Subcommittee.

I am submitting these clarifying and substantive changes as an amendment so that interested Members of the Senate

will have an opportunity to study such changes prior to Senate consideration of the House-passed version of S. 522. I am hopeful that Senate action can be completed prior to the Labor Day recess.

## ANTITRUST CIVIL PROCESS ACT AMENDMENTS OF 1976—H.R. 8532

AMENDMENTS NOS. 2234 THROUGH 2243

(Ordered to lie on the table and to be printed.)

Mr. ALLEN submitted 10 amendments intended to be proposed by him to the pending amendment in the nature of a substitute to the House amendment to the Senate amendment to the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes.

## PUBLIC PARTICIPATION IN FEDERAL PROCEEDINGS—S. 2715

AMENDMENT NO. 2244

(Ordered to be printed and to lie on the table.)

Mr. BUCKLEY submitted an amendment intended to be proposed by him to the bill (S. 2715) to amend the Administrative Procedure Act to permit awards of reasonable attorney fees and other expenses for participation in proceedings before Federal regulatory agencies, and for other purposes.

## STATE AND LOCAL FISCAL ASSISTANCE AMENDMENTS OF 1976—H.R. 13367

AMENDMENTS NOS. 2245 AND 2246

(Ordered to be printed and to lie on the table.)

Mr. HUGH SCOTT. Mr. President, today I am submitting two amendments to H.R. 13367, the State and Local Fiscal Assistance Amendments of 1976. These amendments would provide only minor procedural changes in the administration of the revenue-sharing program, but these changes would make it much easier for small communities to provide a better and less costly service to their citizens.

Congressman GARY MYERS first brought these amendments to my attention when the House of Representatives failed to pass these improvements to H.R. 13367 due to the time constraints and controlled debate under which the bill was reported by the House Rules Committee. Since then I have heard from many citizens of small jurisdictions who have expressed their enthusiasm and support for these amendments.

The first amendment is aimed at communities whose revenue-sharing entitlement amounts to $2,000 or less. The Secretary of the Treasury would be authorized to issue full payment at the beginning of the fiscal year instead of forcing the jurisdiction to wait for four quarterly payments. Obviously, this minor change would provide more budgetary flexibility for small communities and would decrease administrative costs.

The second amendment would permit government units to join together and publish their proposed use reports in the same newspaper. The reports could be published in much less space and at a cheaper cost to the community. At the same time, the public will be better able to compare projects, budgets, and revenue-sharing expenditures with other communities who cooperate in this program requirement. This amendment does not eliminate in any way the quantity or quality of public disclosure under the act.

I strongly urge my colleagues to lend their support to these important modifications.

I ask unanimous consent that these amendments be printed in the RECORD.

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

AMENDMENT NO. 2245

On page 2, immediately before line 1, insert the following:

PAYMENTS OF LESS THAN $2,000

SEC. 3. Section 102 of the Act is amended by striking out the period at the end of the second sentence thereof and inserting in lieu thereof the following: ", except that, where the Secretary determines that the entitlement of a unit of local government to funds made available under this subtitle for an entitlement period will be less than $2,000, the payment not later than 5 days after the close of the first quarter of such entitlement period.".

Redesignate the following sections and any reference thereto accordingly.

AMENDMENT NO. 2246

On page 2, immediately after line 21, insert the following:

"(3) COOPERATIVE PUBLICATION.—No provision of this subsection shal. be deemed to prevent units of local government served by the same newspaper of general circulation from combining and consolidating the information required to be published under this subsection in a single joint publication, provided such a joint publication clearly identifies the required information pertaining to each such unit."

## NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nomination has been referred to and is now pending before the Committee on the Judiciary:

Frank J. Violanti, of Illinois, to be U.S. attorney for the district of the Canal Zone for the term of 8 years, vice Lester Engler, resigning.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in this nomination to file with the committee, in writing, on or before Monday, September 6, 1976, any representations or objections they may wish to present concerning the above nomination with a further statement whether it is their intention to appear at any hearing which may be scheduled.

## ADDITIONAL STATEMENTS

### THE HONOR SYSTEM CONTROVERSY AT WEST POINT

Mr. BARTLETT. Mr. President, the current honor system controversy at the U.S. Military Academy at West Point has received a great deal of attention recently, both in the press and the Congress.

In two recent letters to the Secretary of the Army, Martin Hoffmann, I have outlined some of my thoughts and concerns regarding this situation, and I ask unanimous consent that those letters be printed in the RECORD.

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

WASHINGTON, D.C., *August 30, 1976*.

Hon. MARTIN R. HOFFMANN,
*Secretary of the Army,*
*The Pentagon,*
*Washington, D.C.*

DEAR MR. SECRETARY: It is encouraging to me that you have become personally involved in the current West Point honor situation.

However, after having reviewed your statement of August 23rd, reflected upon your testimony, and personally discussed the matter with you, I still have concerns about the way in which you have proposed to resolve, for the present and the future, the problems of the honor system at West Point.

First, you stated on August 23rd that the honor system is "fundamentally sound" and doggedly disagreed with my contention that the honor system is patently unsound.

It is inconceivable to me that an honor system wih massive non-toleration, cheating, and alleged cheating is working. Obviously, it has broken down. An honor system should promote honor, not tolerate dishonor. It should be fair and just.

Though the West Point honor system has failed periodically, the Department of the Army has refused to admit that failure, but stubbornly continued that same unsupported, and hence unworkable, honor system to this day.

Except for the cadet who reported his own cheating on the EE 304 take-home problem, the massive cheating "found and reported" on this examination did not result from nontoleration or reporting of honor violations by cadets, but from the conclusive evidence obtained from intensive inspection directed by the officers at West Point of the EE 304 take-home problem.

It is significant that the officer defense counsels for cadets implicated in the cheating are overwhelmingly convinced that cheating has been pervasive at West Point and that many who cheated have not been reported or found guilty.

The starting point for the development of a sound workable honor system in the future is a candid appraisal of the current honor system, and a courageous admission of its failure, that it is not "alive and well."

Second, I am disappointed with the method you have chosen to judge the Cadets implicated in the EE 304 cheating scandal. While both you and General Berry have indicated that you support discretion and intermediate penalties for violations of a future new West Point Honor System, you have chosen to treat all violators equally in this current instance with a single sanction penalty of expulsion with the right to reapply for admission, and no requirement of two years service as an enlisted man.

Your penalty provision is open-ended, indeterminate, and delayed. There is no prescribed course of conduct for the Cadets to follow during the expulsionary period. It is doubtful that you have sufficient appointments to allow all of those Cadets who might wish to re-apply for admission, and whom you might desire to readmit, to actually be readmitted. Therefore, most likely, a large number of Cadets would, by hopefully following your procedures, be disappointed by being turned down at a later date for readmission. The penalties imposed must, out of fairness, be definitive, reasonably swift, and final.

If you believe the current honor system is inadequate, unfair and unjust for the future, you should believe it is equally inade-

quate, unfair and unjust for the present violations.

Your goal must be justice, not support of an unjust, unworkable honor system.

Three, Mr. Secretary, you indicated that you would instruct your Blue Ribbon Committee in their review of violations of the honor system at West Point to investigate the breadth, depth, and extent of cheating at West Point by the cadets of the current classes, as well as those in the recent past. I applaud you for this. Obviously, the honor system breaks down when cadets tolerate cheating and so painfully many have.

Mr. Secretary, new cadets are entitled to more than a system of dishonor in which cheating under the system is tolerated pervasively by their peers. This is the situation now in the Class of '77. Common sense leads me to think it possible, if not probable, that this may have been or may be the situation in other classes.

In a system where cheating has been flagrantly tolerated, is it fair to continue the single penalty provision of expulsion which has led to the unwillingness of cadets to report violators whom they do not believe deserve expulsion? I think not, Mr. Secretary. The system is so rigid that a cadet cannot even discuss the specific failures of the honor system with an officer without guaranteeing his own dismissal.

Although I am not involving myself in individual cases, I would expect that some violators deserve expulsion, some deserve suspension for varying lengths of time, and some deserve lesser, but nonetheless, stringent penalties.

I can't understand why, in this current controversy, a person who turns himself in should be expelled rather than receive a lesser penalty. This cleansing action would strengthen the individual cadet's character and help prepare the cadets to develop a workable and sensible system. Your adoption of a sensible but discretionary system of flexible sanction penalties would encourage honor in a system that desperately needs it.

If you do not set an example for the cadets, the cadets probably will not significantly change the honor system. Why, Mr. Secretary? Because they would be afraid to oppose the mystique and power of an honor system that is the nearest thing to God in the minds of those at West Point. It seems apparent that the honor system is frequently confused with the honor code.

These cadets are young men capable of leading our fighting units in the near future, but Mr. Secretary, while cadets, they are lower than a private, and too frightened to make the changes the system needs—changes that might not coincide with the conventional opinion of West Point officers. The cadets do not enjoy the freedom of expressing their thoughts and ideas on the honor system as do students in a college environment.

Cadets can, as has been the case, exist under an honor system substantially forced on them. But, the honor system will not work if the cadets do not support it—obviously they have not.

Mr. Secretary, you must work with the cadets to make certain that they do develop a workable honor system that they will support and, by which, they and the West Point officials, and you, may provide justice and honor in the future at West Point.

In summary, Mr. Secretary, it is my opinion that the cadets do support the honor code, but do not support the honor system. If they did, there would not be periodic failure in the system erupting in public. The cadets fail to support the code because they are unwilling to report violations for offenses they consider not deserving of expulsion. Their vote last summer clearly indicates they believe the single punishment of expulsion is too inflexible and too severe in all cases, which is the thinking today of virtually everyone familiar with the West Point honor system. A cadet, by not turning in himself or another cadet, tears slightly the edge of the fabric of the system. The growing number of cadets who tolerate the system finally tear it asunder. However, if there was discretion and were intermediate penalties, the cadets would be more eager to support the honor system.

Mr. Secretary, you have initiated efforts to resolve the problems at West Point. Your efforts must continue, and I hope you will give consideration to my suggestion that the use of flexible penalties will ultimately lead to a strengthening of the honor system at West Point. Give temporary honor system a chance to work now.

Sincerely,

DEWEY F. BARTLETT,
*U.S. Senate.*

P.S.: I have asked Mr. Fred Ruth of my staff to go this afternoon to West Point to look into the current honor problems so that we may be more familiar with them. I would appreciate Mr. Ruth receiving every reasonable courtesy.

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WASHINGTON, D.C.,
*August 12, 1976.*

Hon. MARTIN R. HOFFMAN,
*Secretary of the Army,*
*The Pentagon,*
*Washington, D.C.*

DEAR SECRETARY HOFFMAN: The Honor Code rightfully has the seat of honor at West Point, yet beneficially pervades the cadet and officer life at the Academy as well as in the Army itself. But the Honor System has failed—failed to achieve the integrity of the Honor Code. This is clearly shown by the 199 cadets implicated and the 73 cadets found to have violated the Honor System to date. Further investigations by five Internal Review Sub-Panels currently are in progress.

Moreover, the Honor System, as far as the alleged violations on the take home examination of EE 304 is concerned, is no longer permitted to be a cadet responsibility—a cadet administered Honor System. General Berry, the Superintendent of West Point, by establishing the Internal Sub-Panels has superseded and usurped cadet authority. In effect by unilateral action, he has terminated, at least temporarily, the student administered Honor System, perhaps creating deep resentment among the cadets who will be called upon to develop and substantially approve a new and better Honor System.

I have attended all of the several meetings of Senator Nunn's Manpower Subcommittee on the West Point Honor System and the alleged violations and two meetings of the West Point Board of Visitors on the same subject. Testimony from virtually everyone, including cadets and officers at West Point and others, has been overwhelmingly convincing that the present Honor System is too rigid, that the system should be completely reviewed and overhauled, and that discretional use of more than a single sanction penalty be provided.

What concerns me, Mr. Secretary, is that this nearly unanimous opinion on the present system goes beyond the system's rigidity and inadequacy. It is really saying that the present system is not structured to provide just and fair treatment for those processed through it.

Yesterday, I recommended to the Board of Visitors at West Point that you, as Secretary of the Army, use discretion in your review of those recommended for dismissal because of honor violations. This, of course, is authority you already have, but I do believe that such backing by the Board of Visitors will be helpful. I have full confidence that you will seek diligently for justice in every decision you review.

But honestly, Mr. Secretary, I have doubts that it will be possible for you to achieve justice unless you become personally involved now in the honor violation matter. It could very well be that you would find necessary some adjustments in the present Honor System (with cadet approval) in order for this system to provide just and fair play for those it has been and is currently processing. I am referring to such changes as discretion in assessing penalties by Cadet Honor Boards, Officer Review Boards, and the Superintendent. For this reason, I recommend that the Board of Visitors request you to become personally involved now in the manner in which current honor cases have been and are being disposed.

In order for an Honor System to be successful it must have virtually unanimous support from the cadets. It is obvious from the review of a referendum last year at West Point, in which over half (54%) of the cadets voted to change the single sanction penalties to multi-sanction penalties, that solid support from the cadets at West Point did not, and does not, exist for the present Honor System. It follows directly and is most significant that an Honor System that is not well supported is conducive to flagrant cheating.

It is my opinion that the current honor scandal is, most likely, not an isolated incident, but rather is symptomatic of a system in which violations have frequently occurred and have been tolerated for years. Unfortunately, the officers at West Point have approached the current honor scandal as if it is an isolated incident and that cheating has not been and is not widespread at the Academy. Therefore, I suggest you make a thorough, objective investigation on cheating at West Point, not limited to the Class of '77 or the EE 304 examination. Such an in-depth investigation has not been made. It is most unlikely that the West Point Officers could make an objective study.

The current Honor System at West Point does not even provide any way for changes to be made in the system and there has been no record keeping for establishing precedents, "case law", if you will. It is significant that the major responsibility for structuring and maintaining the present Honor System has been invested in the officers stationed at West Point, but not the Cadets.

In order for an Honor System to be successful, the violators must receive their just due and, certainly, serious violations have occurred in the current honor scandal and should be resolved by expulsion. Mr. Secretary, I suggest that you see that the Honor System at West Point is returned to the Corps of Cadets for suggested changes and precise guidelines to be developed and implemented for its operation. I suggested that you see that a group of cadets be immediately appointed to rewrite a new Honor System which meets the Superintendent's approval and to submit it to the cadets for a referendum. Just as the Constitution of the United States is a living document and contains specific procedures to be followed for its amendment, so should the Honor System at West Point have set procedures for change.

I suggest, Mr. Secretary, that you study the feasibility of the Honor System applying only or mainly to the academic environment at the Academy so that enforcement of regulations would be entirely or mainly accomplished independent of the Honor System.

I recommend also Mr. Secretary, that you establish a "Permanent Office of Honor" at the Academy. This office with sufficient qualified personnel would be available to and work under the direct supervision of the Cadet Honor Committee. The staff would provide necessary secretarial work, compile records on honor violation cases for prec-

edence and for consistency, and generally work towards the entire improvement and strengthening of the Honor System.

It is significant that 823 cadets were given one single take home examination to be completed over a two week period. This kind of exposure to temptation may be an imprudent and unnecessary form of faculty entrapment.

I have not mentioned many significant suggested improvements that have been made during our oversight hearings on the Honor System, I will see that they will be handed to you so that you may make certain that they will be brought to the attention of the Cadet Corps for their approval or disapproval. Above all, Mr. Secretary, this Honor System should always be the property of the Cadets—during crisis and at calm times.

In testimony during the hearings conducted by the Senate Armed Services Subcommittee on Manpower and Personnel, it appears that the acedemic community at West Point is not of the caliber it should be. The level of teaching experience for the majority of the faculty is extremely low—three years—the obvious result of the military practice of rotating officers to different assignments. There is a dearth of Ph. D's. I strongly recommend that you take such steps as to achieve an experienced faculty possessing high academic credentials and composed of a minimum of 30% civilians.

But I ask you, Mr. Secretary, can justice prevail in a system not supported by the majority of cadets, nor created by all the cadets, nor totally administered by the cadets, and that is considered unworkable by virtually all knowledgeable people.

Creating a just honor system for the future does not provide justice for the present.

It is my opinion that both the cadets at West Point and the Army officers charged with its operation share in the responsibility of the failure and demise of the present Honor System. You as Secretary of the Army are charged with the ultimate responsibility that out of the current controversy justice will prevail now and have a good prospect of prevailing in the future. In my opinion, you cannot fulfill your responsibility without intervening in the controversy at West Point.

I urge you to take immediate action to make the necessary but tough decision that only you can make.

Sincerely,

DEWEY F. BARTLETT,
*U.S. Senate.*

## HAWAII HIGHLY ENDORSES AGPLANE PROGRAM

Mr. MOSS. Mr. President, the Governor of Hawaii, the Honorable George R. Ariyoshi, has written me a very interesting letter regarding the use of agricultural airplanes and the aerial application of fertilizers and pesticides in his State. He says flatly that such application "is one of the 'saviors' of agriculture." Regarding the proposed program of improved agplane technology development by NASA he says:

> Any technological improvements in this direction would help to reduce costs and increase productivity. We, therefore, highly endorse the development of such a program as proposed by your Committee and appreciate this opportunity to comment on it.

Mr. President, I ask unanimous consent that Governor Ariyoshi's letter be printed in the RECORD.

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

JUNE 21, 1976.

Hon. FRANK E. MOSS,
*Chairman, Committee on Aeronautics and Space Sciences, U.S. Senate, Washington, D.C.*

DEAR SENATOR MOSS: Thank you for your letter of June 4, 1976, regarding an aerial applications program for improvements in agricultural aircraft.

Both of our leading agricultural industries, sugar and pineapple, engage in the aerial application of fertilizers and pesticides. With the cost of labor and materials skyrocketing, aerial application is one of the "saviors" of agriculture. As such, any technological improvements in this direction would help to reduce costs and increase productivity.

We, therefore, highly endorse the development of such a program as proposed by your Committee and appreciate this opportunity to comment on it.

With warm personal regards, I remain,

Yours very truly,

GEORGE R. ARIYOSHI.

## MEDICAID FRAUD AND BUDGET CUTS

Mr. BUCKLEY. Mr. President, today we are confronted with still more revelations about rampant corruption in the medicaid program. The report of the Senate's Subcommittee on Long-Term Health Care would be shocking if we had not already known that thousands of persons are systematically looting medicaid. In the process, they are not only stealing billions from the taxpayers. They are also devouring the financial resources set aside for the poor. They deserve the harshest penalties of the law.

But the subcommittee's report implicates more than medicaid cheats. It rightly blames the city and State officials whose incompetence and unconcern have turned medicaid into a free-for-all. In New York City alone, $2.5 billion is spent yearly for this program. That is 10 times its original cost only 10 years ago. Someone has betrayed the taxpayers of that city and of the entire country, and it certainly is not the poor and the sick.

Last spring, during the Senate's consideration of the first concurrent resolution on the budget, I called for a $1 billion decrease in Federal spending in the field of health—function 550 of the budget. I insisted that that amount could easily be cut out of the waste and fraud which afflict Federal health care programs. The Senate did not heed my suggestion. And so, today I make it again. I again call for a significant decrease—at least $1 billion—in function 550. I intend to press for such a reduction tomorrow when the Budget Committee takes up this function in the second concurrent resolution on the budget. In light of today's expose of medicaid, the taxpayers will be watching to see if the Congress will at last do its duty and crack down hard on health care crime. Like the taxpayers, I am not optimistic about the Senate's response.

Now that the American people have learned the ugly truth—that as much as $3.5 billion of their taxes is lost every year by medicaid alone—perhaps the Congress will be forced to seek realistic, hard-headed solutions to this odoriferous welfare mess. Every American who is covered by health insurance from a private insurance company knows that the Federal Government could purchase from those companies similar coverage for the poor at a small fraction of the cost of medicaid. Why, then, will this Congress not allow that? Why will the Federal Government not even experiment with this possible alternative, Why, indeed? It is no wonder that many Americans have lost faith in their Government.

It has not safeguarded their taxes. It has not protected the interests of the poor. It has little claim to the confidence of the American people.

## ADM. NOEL GAYLER

Mr. JOHNSTON. Mr. President, today in Hawaii a distinguished American citizen and naval officer completes over 41 years of patriotic and dedicated service to the United States of America.

Adm. Noel Gayler, the commander in chief, Pacific, is retiring. His career in the service of our Nation exemplifies the moral courage, self-sacrifice, and high sense of patriotism that we have come to expect of our military leaders.

For the last 4 years Admiral Gayler has been the senior U.S. military commander in the Pacific and Indian Ocean areas. He directed Army, Navy, Marine, and Air Force operations across the more than 100-million square miles of the Pacific Command, an area that extends from the Arctic to the Antarctic and from the West coast of the Americas to the East coast of Africa.

Admiral Gayler, son of Navy Capt. Ernest R. Gayler and Anne Yates "Roberts" Gayler, was born on Christmas Day, 1914, in Birmingham, Ala.

He entered the U.S. Naval Academy from Hawaii, graduated in 1935, and won his aviator's wings at Pensacola, Fla., in 1940, after 5 years of fleet service in battleships and destroyers.

Both before and during World War II, he served as a carrier-based fighter pilot in the Pacific theater. He also served as the experimental fighter test pilot in the Flight Test Division of the Naval Air Test Center. He completed the war as air operations officer on the staff of the Commander Second Carrier Task Force during the knockout strikes against Japan. He was three times awarded the Navy Cross.

He has served as Deputy Director, Special Devices Center; head, Fighter Design Branch, Bureau of Aeronautics; with the Weapons System Evaluation Group of the Joint Chiefs of Staff; as commander, Air Development Squadron Three; in the Air Warfare Division, Office of the Chief of Naval Operations; and as Pacific Fleet operations officer. He put the Navy's first jet through flight test and holds the record for the longest jet flight ever made from an aircraft carrier. He has also served as the naval aide to the Secretary of the Navy, Thomas S. Gates, Jr.; and as commanding officer of the attack carrier U.S.S. *Ranger*.

After selection to flag rank in 1960, he served as naval attaché in London. In 1962 and 1963, he commanded Carrier Division 20 in the U.S. Atlantic Fleet. He then served as director, develop-

ment programs, and later as Assistant Chief of Naval Operations—development. In 1967 as a vice admiral he became Deputy Director of the Joint Strategic Target Planning Staff. In 1969 he became Director, National Security Agency, Fort George G. Meade, Md., which he ran for 3 years.

On September 1, 1972, he became commander in chief, Pacific. Admiral Gayler has commanded our reduced military resources in the Pacific during a time of soul-searching and self-doubt at home and intense tests of our will in his area of responsibility.

Upon becoming the ninth naval officer to serve as commander in chief, Pacific, he was immediately plunged into the thick of the crises in Southeast Asia. In December 1972 he supervised the bombing of Hanoi and the blockade of Haiphong. These actions brought Hanoi to the bargaining table and led directly to the release of our prisoners of war the following year. In the spring of 1975, he commanded the delicate extraction of American citizens from besieged Phnom Penh in Cambodia. He also commanded the airlift of orphans, refugees, and American citizens from Vietnam. He was responsible for the planning and execution of the successful rescue of the U.S.S. *Mayaguez* and its crew from the hands of the Khmer Rouge.

But the tragedies and heartbreak of Southeast Asia were not his only concerns. He continued to bolster the United States and allied position in the strategic North Asian area. He has continually reassured the leaders and people of Asia of the continuing will of the United States to meet its commitments in that area.

A forthright and articulate spokesman of America's interests in the Pacific area, he has continually warned the American people and its executive and congressional leadership of the growing menace of the Soviet Union's naval buildup in the Pacific and Indian Oceans.

Mr. President, it is truly fitting and proper that we honor this dedicated, intelligent, great American. Certainly in these traubled times our country can ill afford to lose men of such outstanding capabilities.

We can hope that our country will continue to benefit from the advice and talents of this patriotic American. As a highly deserved tribute, I ask unanimous consent to have printed in the RECORD Admiral Gayler's article "The Pacific Command" for the consideration of my colleagues.

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

THE PACIFIC COMMAND

(By Adm. Noel Gayler)

This is a time of great change. The entire Pacific and Asia are in a state of flux seeking new directions, finding new leaders. I think the historic future lies in the great Pacific basin where most of mankind lives.

The Pacific and the Indian Oceans are a vast and complex area. There are problems and there are opportunities. I hope to be accurate in describing things as they might be, to the betterment of the United States and the region.

I have not forgotten that I am a military officer with a chain of responsibility which extends from the President to the Secretary of Defense, to the Chairman of the Joint Chiefs of Staff, and the Chiefs of Staff as a body to me; and from me to the Navy and Air Force component commanders, the U.S. Army CINCPAC Support Group, the commanders of established subordinate unified commands, representatives, and Military Assistance and Advisory Groups.

I do, however, want to address the political and economic and even sociological matters, as well as the military. They are indivisible. The Communists have learned this lesson well.

The military theater I am talking about now extends from the West Coast of the Americas to the east coast of Africa and includes all American forces of all services. It's helpful to me to think about it as six regions: America, Pacific Ocean, with our State of Hawaii in the middle of it and a bridge both to the ocean cultures and to the cultures of the Far East, Australia (Australia and New Zealand), Maritime Soviet Russia, for the USSR has two ends, and the Pacific end also is very important in the military sense as well as in many other ways; Asia (Northeast Asia, China, Southeast Asia, South Asia), the Indian Ocean (South Asia again, the Middle East and East Africa).

Now it is very natural to look principally at Europe, at NATO, and at the Middle East with all of their enormous importance. But I think we should also look to the West, and note particularly that in this vast area and Asia the change, and the rate of change, are probably the greatest in the world. A revolutionary area—revolutionary in so many ways. The impact of communications. Small villages, which for millenia have never known anything going on more than 20 miles away are now tied into the world through television, transistor radios, jet travel. They see the rest of the world and they want some of what the other fellow has.

The growth of industrial technology. Not only fully developed countries like Japan, but many other countries are having what I think you could call their third industrial revolution and will not only increase their capability to compete in world markets and their standard of living, but will have profound social changes as a result.

We see in Asia population growth at an unprecedented rate, and as one consequence, enormous migration to the cities. With the exception of the city of Phnom Penh, which was kind of abolished by the Communists when they took over, all of the great cities of Asia are swollen from in-migration as well as population growth; and they are suffering the social consequences of overcrowding.

The gap between the rich and the poor, both people and countries is, I'm afraid, increasing, if anything.

In all of the countries in this region political consciousness—almost unprecedented political consciousness—is increasing. And nationalism is strong. The consequence of rivalries, the consequence of the gap between what they are likely to have and what they hope to have, this renewed ethnic and national consciousness, and the impact of the new Communist technologies of control—all of this means that we can expect strife in this part of the world unless we and others can effectively dampen it.

So from the standpoint of importance, from the standpoint of change, from the standpoint of danger, from the standpoint of opportunity, this is an enormously important part of the world. Quite simply, it is where two-thirds of the human race lives.

Now let me discuss briefly some of the most important aspects of our relationships with the countries in this vast part of the world.

First, Maritime Soviet Russia. The military power of the Soviet state is still increasing at an open-ended rate. I'm not one of those who sees Russians, or even Communists, under every bed. And I do not ascribe any motivation or intention to Soviet Russia. But I must observe, and ask you to observe, the quite extraordinary current military buildup. No fewer than four Intercontinental Ballistic Missile systems, with all of the enormous developmental expenses involved, are under current deployment. A very long-range submarine-launch ballistic missile is already in Fleet service with at least two kinds of large nuclear submarines to carry them. Guided missile systems abound as if they were going out of style; two supersonic bombers operational and at least three new kinds of high-performance fighter deployed; and the continuous reequipping of their enormous armies with all of the latest materiel under development. Hardly a week goes by that I don't see some new Soviet fighting vehicle being introduced. And you know, of course, the Navy story—a story that is largely the story of one gifted and extremely effective naval officer, Admiral Sergei Gorshkov, who has been head of the Soviet Navy for 19 years and has brought it from a second-class coastal defense force to a first-class, seven-ocean Navy operationally capable, technically capable, well-drilled, and designed specifically to interrupt control of the sea. Admiral Gorshkov is not only a leader, but a thinker; and his writings on naval subjects mark him as a naval thinker comparable to our own Admiral Mahan, as well as a most effective leader and administrator. He understands sea power, the political, as well as the military use for it. He wants it for the fatherland and he's well on his way. He has a blueprint; he's effective in carrying it out; and he isn't finished yet. Previously they have specialized in submarines and guided missile ships.

Now, the Soviet Navy, in addition to all else, is challenging air control with the construction of new aircraft carriers to operate high-performance VSTOL (Vertical Short Take-off and Landing) aircraft and helicopters. With forty-odd division organizations opposite China, with their powerful fleet based in the Vladivostok area, and her strong integral air forces, the Soviet navy is a major factor in the Pacific.

Turning to the countries of Northeast Asia, Japan is, of course, our most important ally. Important because of its economic weight, its growing political clout, and its key strategic position, as well as the excellent understanding which exists between the Japanese and ourselves. I welcome the continuation and maturing of our security relationship with Japan which I think is developing along lines which are very much in the Japanese interest as well as in the United States interest. This is a complementary security relationship in which each partner contributes that which it best can to the common security of Northeast Asia, the Pacific Ocean areas and the United States. For our part, of course, it is the nuclear umbrella and the capability to deal with long-range threats. On the part of the Japanese and, in my order of importance, first, the bases which they make available to us which are absolutely essential to our being able to carry out our mission. Second, the access to the great Japanese industrial economy. And third, the defensive contributions of the small, but technically competent, Japanese Self-Defense Forces. These forces, by Japanese decision, will concentrate on air defense of the Japanese homeland and antisubmarine defense and sea surveillance of the waters in the Japanese region. Thus, it is a mission which is cearly defensive, consistent with the Japanese constitution, and yet potentially very useful as a component of our joint effort. One paradoxical consequence of the fall of Indochina is that the Japanese, as well as government, have be-

come more conscious of and more engaged in security affairs with us, and this is an excellent development.

We turn to two Koreas—North and South. A bitter and uneasy truce, a military stalemate, but no contest economically. South Korea is winning that one hands down, in spite of the temporary setbacks due to the energy crisis. The Korean talent for hard work and good planning is paying off, unfettered by Communist economic control. As for the military situation, the threat remains and will remain while Kim Il Sung in the North maintains a posture ready to reunify the peninsula by military force whenever he thinks he can do it. I believe that the South Korean forces are in quite good shape to withstand an attack and the deficiencies that they have, they are moving out to correct—almost entirely with their own money. American forces there are an added and needed deterrence again agression and I believe that they should stay there until they are no longer needed.

The Peoples Republic of China is very much in the news these days. I have little to add to what you know, except an appraisal of the thrust of the military capability. Numerically, they have the world's greatest land army which is disposed both to trade space for time in the event of a Soviet attack, and for internal security in that vast country. The Chinese Air Force is not small, is concentrated on tactical types, particularly fighters and attack airplanes, and is becoming more competent with every year. Their Navy is not small either; runs mostly to patrol types and submarines although they have a few larger ships including guided missile ships. And in the strategic nuclear field, I think they have made clear their intent to get a secure nuclear strike force of intercontinental range. When they achieve this, and I know of no reason why they will not, they will then have a secure nuclear deterrent. And it is, of course, true that a rocket which could fly from China to Moscow could also fly to the United States. The Chinese attitude toward the United States is reasonably encouraging, and it is seen to be that by its neighboring countries. I do not see Chinese military aggression on a major scale as being in the cards, but I have no doubt that she will continue through party mechanisms to support the insurgencies and their allies which plague so many countries of Asia.

In southeast Asia we see mostly what we expected to see with the fall of Saigon: Vietnam integrated under strict Communist rule. Laos, with a fully Communist government under Vietnamese domination. Thailand, plagued with insurgencies and threatened by her Communist neighbors. Communist Cambodia, however, has interests and ideas of its own, and bitter fighting has more than once broken out between the Cambodian Communists and the Vietnamese over border territories. In the general sense, Hanoi can be seen to be facing toward Soviet Russia, and Cambodia toward China.

Indonesia, enormous in population and in resources and determined to evolve with a national resilience against trouble, still maintains a neutral, but friendly relationship with the United States.

Our classic allies, Australia and New Zealand, whatever their political situation will, in my judgment, maintain their full and traditional friendship and alliance with the United States.

The Indian Ocean, too, is enormous in area. Sometimes I illustrate this by superimposing a map of the United States on the middle of that ocean. It touches no significant land anywhere. Along the boundaries of the Indian Ocean are some of the largest and most populous states in the world: South Asia, the Middle East, and East Africa. The complexities there defy thumbnail description. One thing is clear and that is that the sea routes which traverse the Indian Ocean both from the Red Sea, the exit to the Suez Canal and from the Persian Gulf where more than 80 percent of the Middle East oil is shipped are vital to most of the countries of the world. The trade routes extending around South Africa to Europe, the trade routes running through the Indonesian Straits to Japan, East Asia and the United States. It is important that the Indian Ocean remain what it is now—an ocean available for the peaceful trade and the commerce, and the interconnection of all nations. And it is important that no one perceive that in a military sense the Indian Ocean has become a Soviet lake. We have no desire to dominate it but we cannot see it fall under the domination of any single power. Our strategy, therefore, is not to maintain a large force in the Indian Ocean area at all, but occasionally—once in a while go in there with a sizable naval force in order to demonstrate that the Indian Ocean is no one's lake. And here is where the tiny atoll of Diego Garcia comes in. It's right in the middle, an ideal place for communications and for observation; potentially a fleet anchorage, a storage place for oil, a few spare parts and a runway to support heavy logistic and patrol aircraft—nothing more. It's a big convenience and a cost avoidance, and it makes sense but it can in no way be considered to be a major operating base.

You're all familiar with the controversy that attended the discovery of the military missile, naval and air base at Berbera in Somaliland built by the Soviet Union on the southern edge of the Gulf of Aden. The facts are now well established and it is, indeed, not the only base under development in that country by the Soviets. From there they are in a position to dominate the approaches to the Suez Canal and to the Persian Gulf.

In Pacific Oceania, in the Trust Territory of the Pacific Islands, the strategic importance of those places to us as bases, in my view, primarily is that it gives us a capability to prevent hostile powers from establishing bases athwart our lines of communication and that we could establish in the area a fallback for our forward strategy if we have to have a fallback.

Pacific Oceania has great diversity. The U.S. has, I believe, a special responsiiblity for many of these islands and island groups with whose peoples we have had close and friendly relations for a long time. I am thinking particularly of Guam, the Trust Territory of the Pacific Islands which includes the 2,000 islands of Micronesia and of our responsibilities to share with other responsible countries (like New Zealand and Australia and to a certain extent, France and Great Britain) to protect our interests.

Now let me discuss our military forces in the command, and that discussion will be broad. As I said earlier, political, economic, military and sociological considerations are inseparable. In the Pacific Command that is institutionalized in our excellent working relationship with our American ambassadors in the region, with the State Department, and the other portions of government concerned with foreign affairs.

In fact, since World War II, there have been no purely military considerations. That is just as well considering the capabilities of modern weapons. Everything that we have had to do has had a political component, and usually political constraints. Sometimes dominant constraints. Nonetheless, we have major and indispensable functions. The protection of the United States, the maintenance of a free and secure system for the commerce, and politics of the region, the advancement of American policy.

And in the Pacific, of particular importance, is keeping open the lines of communication—sea and air—the life blood of so many of the countries and the peoples of this area, not the least the United States. Now among other ways, how we do this is with an American presence. Again, economic, political, cultural, as well as military. But the military is an indispensable component. And I think that presence is a good and necessary thing because it biases toward peaceful evolution, rather than warlike change. Because it provides an umbrella under which developing nations can get on with their nation building and with their regional associations which we very much support. Without our forward presence it would be extremely difficult if not impossible to provide for advancement of American policy, or even for the basic security of the United States.

The basic idea of the military component is the perception of power. I don't for a minute suggest that any of the countries in the region are necessarily going to start torpedoing each other's tankers or major aggressive incursion across the borders or amphibious attacks. What I do believe is that the perception of who has the power is a vital political fact. If it is perceived that a major military power is dominant in a critical area then that is a fact to which all of the nations in the area must accommodate. The best use of military power takes place when its presence is so clear, the inference so obvious, that no one tests it. Deterrence is accomplished. As an example, for many years the Republic of China on Taiwan has not been threatened in a military way, and the reason, of course, has been the presence of the American 7th Fleet and 7th Air Force. No patrols needed, no shots fired, no threats exchanged, just the fact of the power. It would be profoundly destabilizing in all of this vast area if that perception of American power should change.

Now for our military forces in the Pacific themselves. We have 125 thousand Navy, 49 thousand Air Force, 51 thousand Army and 61 thousand Marines—a total of a little over 286 thousand in this whole vast area. It's not really very much. They are based principally in Hawaii, 38 thousand; Guam, 6 thousand; Japan, including Okinawa, 51 thousand; the Philippines, 14 thousand; and in Korea 40 thousand. The remainder are principally Navy forces afloat and Navy and Marine units on the West Coast. In Taiwan and Thailand, we are in the process of drawing down almost to zero. Our other forces in the theater are very small. Our principal military concerns are to be able to: maintain open the sea and the air lines of communication, and our sea and air presence; achieve, if we must, local air superiority and presence; deter against war at every level.

So far as the nuclear war is concerned, Pacific forces, of course, are a small part of our national global force. And I believe that those forces, and our tactical nuclear forces are adequate in this area.

From the conventional level, and in this area that is by far the most important, we must be able to secure against interference with the contact between nations and against ground action and adventurism such as is possible, but I think unlikely, so long as we are there in Korea.

As for logistics, that fancy word which means beans, bullets, people, supplies, everything, I am concerned with the adequacy of our airlift and the sealift available. I have already noted the great importance of Japan. One other note, and that is that there are really two supply routes to the Middle East. One is the classic route through the Atlantic and the Mediterranean which is far shorter but maybe less secure in both a political and military sense, and the other the longer

route from the West Coast of America through the Pacific and Indian Oceans to the same destinations. In some circumstances, the long way around may be the shortest way home.

The Navy is at full strain and has been for some years. The many areas to patrol, the tempo of operations, the necessity for continuous drill, training and tactical work means that men, ships and aircraft have been worked pretty hard, and are still being worked pretty hard.

Our capability for antisubmarine warfare, for ocean surveillance, to provide tactical air and sea control, and sealift are my greatest concerns.

For the Air Force, two major elements: tactical air and air transport. I really only have one major problem with the Air Force in the Pacific: there isn't enough of it. And I am deeply concerned that we are deploying so much back to the United States.

For the Army and the Marines, if I can lump them together for one moment, my concerns are that they continue to be properly based with a considerable component forward and that they be supported in such a way that they can be ready in both the strategic and the tactical sense. And as for the size of the forces, I observe only that in the theater where middlesize countries like Korea dispose of twenty divisions on each side, the total of our ground forces in the Pacific is two and two thirds divisions. Not very much.

The men and women in the Pacific forces are as good as any we have ever had in character, in capability, in determination to make a contribution. It's an all-volunteer force now and that's paying off in great benefits in morale, in capability, and in long-term cost avoidance, although admittedly, the front-end costs are high. I am often asked about morale and I think I can tell you that morale depends more than anything else on their perceived support by their country—America, and by the Congress. It would be particularly handy to avoid what can be seen as continuous sniping, or anything which can be construed as a breach of contract—particularly with our younger people.

Finally, I wish to mention the importance of our bases, particularly in Japan and in the Philippines. Each, needed for strategic reasons; and for both physical and monetary reasons—and I can tell you that at our present force levels or anything that we are conceivably likely to get, we would be severely handicapped without these bases.

Our major military concern is in fact the same concern that we see so much elsewhere—that of cost. We are making determined efforts at cost avoidance through efficiency, through cross servicing and by improving the teeth to tail ratio of our forces. But there is a limit to that. There are military specialists who are required and there are staff officers who are required, there are support facilities that are required, and there is research and development, as well as a requirement for training and advanced operations if we're not to become obsolete. In any case, the cost squeeze is hurting badly. The military suffers from three distinct inflations: the normal inflation, which is a problem for the entire country but which drives our base costs up, as indeed it does for everybody else. On top of that the temporary, recoverable, but with us now, first costs of the all-volunteer forces and the personnel costs elsewhere. Let me say again that it is not fair to take that problem out of the hide of our enlisted men and officers. And, of course, the costs of military hardware itself, in its increasing, but usually necessary, complexity. The result is that we're hard put to find the resources to do our job. There are adverse effects on our force levels, on our force capability, on our modernization and, I'm very sorry to say, on our people.

If the capability I have been talking about as so necessary is to be effective, it must be real. They say that in old pre-war China, in old imperial China, the strength of gunboats was judged by the number of stacks. And when somebody showed up with a seven-stacker, he was king of all he surveyed. Well, those days are gone for better or for worse. There are shrewd and competent military appraisers everywhere. And if our capacity is to be effective, it has got to be actual. There are also very important tangibles. I think we Americans can no longer expect, in case of trouble, that we will have the most of everything. We are quite likely to be the smaller force. That means we've got to be the smarter one—smarter in technology, smarter in savvy, in doctrine and in tactics. In point of fact, almost the most important single aspect of our military capability will be how smart our generals and admirals and commanders are. And the kind of smarts that I'm talking about can be developed and identified only through exercises. I have to tell you that I envy the scope and the sophistication of the Soviet military exercises that I see in this theater. And I'm particularly distressed at any prospective cut in our own exercise capability. And there's another problem of cost and that is that it generates an apparent withdrawal from the world. I see a great many of the policy makers in many of the countries of the East, and privately or publicly they are all concerned by what they perceive as the American withdrawal from the Pacific and from Asia. And I can wave my hands all I want to and tell them about squadrons and ships earmarked back home in case of necessity, but it makes no impression at all in their view; and I have to tell you I don't think they're wrong. The presence that's there, where they can see it, is what counts to them.

The United States has before it many considerations. Let me put some before you. The importance of the perception of power, the importance that deterrence be adequate across the board:

The question of the freedom of our action versus our perceived reliability as an ally.

The potential stress, not only between East and West, the Warsaw Pact and the West, but between North and South. Most non-Communist Asians are very conscious of their Asianness and of their nationalism, but they are not anti-American. And the Communists in China are far more reasonable than the new ones in Vietnam.

The importance of consultation and of participation by our friends, particularly in Japan.

American vulnerability, is a fact in a tough world, where major countries talk openly of going to war as a means of attaining their political objectives, and where the slaughter of the innocents is almost accepted as a legitimate means of political expression. In this world I think it will be very handy to keep our American powder dry.

You have to consider morality—what is right in foreign affairs. It's not a complete guide to what we ought to do but it's a very good beginning.

And, finally, I think we have to pay attention for the sake of us all, to reestablishment of American unity, ending the adversary relationship which sometimes exists for example between the Congress and the executive; between the military and the press; between patriotic Americans and patriotic Americans. I think Congress and the news media can contribute greatly to public education.

So we have our vulnerabilities and we need to pull ourselves together. But I do not for a minute believe that America is on the skids. We have reserves of strength, and of will that have yet to be tapped; and we have a place, a key place, a unique place in the development of the world toward what it ought to be.

Of the things I advocate as the way to go, I would put long-term planning at the top of the list—planning for a little bit more than tomorrow's horizon. Long-term planning can be sophisticated, but it can also be simple.

I think our objectives can be quite clear: To maintain our forward presence. To maintain the bilateral understandings with many a friend, which collectively mean peace and stability, To maintain a no-nonsense stance toward the major military powers, a supportive stance toward the lesser nonaligned nations; and a reliable stance toward our allies. To keep up our military strength and work to the best of our ability toward peace and the rule of law in the world.

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## NEW YORK JETS COACH PRAISES AIR FORCE PERSONNEL IN EUROPE

Mr. HELMS. Mr. President, I would like to share with my colleagues a letter sent to me by a close personal friend and former constituent, who now resides in New York.

He is Lou Holtz, head coach for the New York Jets professional football team, who for many years was head coach of the North Carolina State University football team in Raleigh, N.C.

Coach Holtz is an outstanding citizen, highly respected throughout the country for his drive, contagious enthusiasm, and dedicated commitment to Christian principles. He has inspired thousands of young people to develop high standards of moral conduct and has helped them to understand the importance of strong character and personal integrity in their daily lives.

Recently coach Holtz toured facilities of the U.S. Air Force in Europe. Upon his return he wrote to me to share his observations as to the dedication and efficiency of our Air Force personnel and operations there.

Lou Holtz' observations, as stated in his letter to me, are very encouraging. We all owe a debt of gratitude to those who serve in the military, in defense of our country. I know all Senators share my pride in, and my gratitude to, those young men and women serving in the Air Force in Europe, and elsewhere at home and abroad.

I ask unanimous consent that Mr. Holtz' letter be printed in the RECORD.

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

NEW YORK JETS,
*June 29, 1976.*

Senator JESSE HELMS,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR HELMS: I hope this letter finds you enjoying good health. I am hopeful we will be able to get together this summer and allow me to reciprocate the numerous kindnesses you have extended to my family and me in the past.

I would like to talk to you about so many things, but time and space do not allow. However, I would like to convey briefly a few of the wonderful experiences that I enjoyed on my recent trip to Europe lecturing for the United States Air Force. If our football

team here with the Jets could be run with half the degree of efficiency that our Air Force is, we would not have any problems except to decide where we want to house our team for the Super Bowl this year.

Going to Europe this year for the Air Force was a hardship on me to a certain extent, because I, like you, have so many things to do in such a short period of time. However, I returned to the United States convinced that we have the greatest country in the world and by far, the most dedicated Air Force. It was a healthy experience for me to watch people under pressure operate with a great deal of confidence and efficiency. Even though they were involved in numerous projects, they were extremely courteous and hospitable.

Colonel Spencer, Major John Granger and Sargeant Dave Zwicky of Ramstein Air Force Base in Germany, and Joe Shosid from Houston, Texas were primarily responsible for my being invited to go to Europe. I wish there was some way I could repay them for their efforts on my behalf, but how do you ever repay good friends?

While there, I had the opportunity to meet with General Richard H. Ellis, who is Commander of the Allied Air Forces in Central Europe, and Commander-in-Chief for the United States Air Forces in Europe. We had a super visit with him. Even though he was extremely busy, he took the time to spend an hour with us and answered numerous questions I had concerning the reason for his success and how he handled the multiple operations of the Air Force in Europe. You know from past experiences that I can ask a lot of questions in a very short period. He is an outstanding individual, extremely successful, I came away from our visit convinced that he would be a success regardless of the field of endeavor he chose. His modesty and frankness really impressed me.

I lectured at Ramstein Air Force Base in Germany and Bentwaters Air Force Base in England. I was extremely impressed with the efficiency of the operation at both bases. I understand that Major General Evan Rosencrans, Colonel Job Larson and Colonel Walter Williams, are the ones who were primarily responsible for the efficiency with which my trip to Bentwaters was handled. It was easy to do an outstanding job in Bentwaters because the Air Force coaches were enthusiastic and the previously mentioned people left absolutely nothing to chance. I left Bentwaters and headed for the clinic at Ramstein. This clinic was another repetition of outstanding efficiency. Brigadier General Cornelius Nugteren, and Colonel Jerry Welsh proved conclusively once again that we have outstanding men in our Armed Services.

Senator Helms, you and I believe along the same lines in so many things, and it really disturbs me when I see the sacrifice that our Armed Services are making to keep our country free, and I cannot understand why we can't place more emphasis on national defense and less on our give-away programs. If anybody should be allowed to wallow in self pity it is our Armed Service people overseas. However, never once did I hear a derogatory comment or any sign of self pity. From my observations, they are a group of dedicated individuals and are doing one heck of a fine job.

One problem that was brought to my attention by numerous servicemen in Europe, is that they miss football on TV. The games they do see are usually a couple of weeks old. We can video tape the football games right here at our Jet offices, put them on an airplane to Frankfurt, Germany and they could be shown on the Armed Services TV network the next day. I am sure that this would raise the morale of the Forces to an even greater height. At the present time, I have written Pete Rozelle of the NFL and Walt Byers of the NCAA in an attempt to receive permission to do the above. I am hopeful I will receive an affirmative answer.

In closing, Senator Helms, please tell your wife and family that the Holtz's send their love and their prayers. I remember you quite often in mine because I know what an important role you are playing in the future of our country. Keep up the good work and let me know how I can ever possibly reciprocate the numerous kindnesses you have bestowed upon me. I am sure that Senators are similar to our servicemen in Europe, in that you do not receive enough thanks for the outstanding job that you and some of your peers are doing. Please accept my sincere thanks.

Best wishes.

Sincerely,

LOU HOLTZ,
*Head Coach.*

## MIKE REXROAD RETIRES

Mr. McGEE. Mr. President, at the close of business on Tuesday, August 31, the Committee on Appropriations will lose another of its longtime and valued employees with the retirement of Vorley M. "Mike" Rexroad. Mike's retirement will bring to a close a long and distinguished career in which he has devoted his entire adult life to public service in various roles.

Mike Rexroad began his distinguished military career with service in the Army Air Corps early in World War II. He served in the Flying Training Command and also served overseas with the Office of Strategic Services during that war. He served with distinction for several years during the Korean conflict as a counter-intelligence officer in the Office of Special Investigations of the U.S. Air Force. He has maintained both his interest and proficiency in the Air Force, and at the present time holds the rank of general in the Air Force Reserve.

In addition to his military service, Mike has served a long and distinguished career with the Committee on Appropriations. He served on the staff briefly in 1955, returned in 1958 and has been a member of that professional staff in charge of the Military Construction Appropriations Subcommittee since that date. It is that role from which he will retire tomorrow.

Not only has Mike compiled a distinguished career in the service of his Government, but he has also been active in the academic community, both as a student and as a teacher. He began his academic career as a high school teacher in West Virginia just prior to our entry into World War II. Interspersed with his Federal career to which I have made reference, he found the time to pursue his educational pursuits with advanced degrees and further graduate work in universities in New Mexico and New York, pursuing areas of public administration, law, government, and economics. He has also taught at the university level in both New Mexico and New York as well as assuming some administrative roles in those institutions.

During his service on the Appropriations Committee staff, all of us have relied heavily on Mike. He has been a capable and cooperative staff member. He has been a professional staff man in the truest meaning of that term. In addition to that, he was a friend.

I do not know what plans Mike has for the immediate future. I know him well enough to predict that his retirement from the staff of the Appropriations Committee will not mean his retirement from an active and productive life. But it is obvious that he is well prepared and well equipped to assume what role he might choose and to meet any further goals which he might set for himself. That has been his history and I am confident that will be his future. Whatever direction the future takes him—or he takes the future—I wish him the very best.

## IN THE NEXT QUARTER CENTURY FOOD PRICES WILL GO UP

Mr. HRUSKA. Mr. President, much has been written about the energy crisis that has been with us now for some time. Part of the problem we face was caused by artificially low prices brought on by restrictive Government regulations and plentiful supply of oil from overseas.

All of a sudden, about 3 years ago, the situation changed. Our foreign oil supplies were cut off and energy prices doubled, even trebled. They will go higher. Our life style has changed because of this new, higher energy cost. There are more conservation efforts. There is a concerted attempt to develop alternative energy sources.

In a recent article in the Omaha World-Herald, Dr. Robert L. Coppersmith, an economist at New Mexico State University, points out that our experiences in the Great Plains with soaring energy costs may be duplicated by the rise in the cost of food.

Dr. Coppersmith says:

> During the next quarter century in the Great Plains, society must be prepared to accept an increase in the real costs of food as well as an increase in the money costs.
>
> Environmental restrictions, water use costs, labor problems, possible capital shortages, increased competition for land from nonagricultural industry as a result of capital flight to avoid inflation, all made more severe by more government interference through a bloated bureaucracy, point to an increase in future real costs of food and fiber.

To maintain our quality of life, Dr. Coppersmith sees some basic changes in attitude that are going to be required:

> If our agriculture is to rise to the occasion and make its maximum contribution to our quality of life, we in agriculture and many of our publics will have to make some strenuous adjustments in thoughts and actions. These adjustments will require us to:
>
> 1. Re-evaluate the historical idea that farmers, ranchers and agri-business can continuously produce more agricultural products and sell them at a lower real cost.
>
> 2. Change the prevailing attitude of consumers indicating their belief in a right to relatively cheap food.
>
> 3. Decrease the burden on agriculture caused by unnecessary, impractical, and costly laws and regulations imposed by bureaucratic agencies and misguided legislators in response to ill-informed but often articulate nonagricultural pressure groups.

Dr. Coppersmith points out the problems that excessive governmental regu-

lation causes for agriculture and the consumer:

There is nothing in agriculture as frustrating as unnecessary but costly government regulation. Such regulations eventually lead to a smaller supply of food at a higher price. In the final analysis, such increased costs are borne by consumers, who, ironically, are often the people the regulations were originally designed to protect.

What this means is that continuing low cattle and grain prices will mean less production. Less production will translate into greater product demand and result in higher prices for consumers at the supermarket. As Dr. Coppersmith says, there must be an understanding of the agriculture production system and the realization of the cost of food.

Mr. President, so that my colleagues and others interested in Dr. Coppersmith's very important ideas may read them, I ask unanimous consent that the article, "Reconciliation of Conflicting Demands Is Midlands Key to the Quality of Life," be printed in the RECORD.

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

[From the Omaha World Herald, July 18, 1976]

RECONCILIATION OF CONFLICTING DEMANDS IS MIDLANDS KEY TO THE "QUALITY OF LIFE"

(By Dr. Robert L. Coppersmith)

The quality of life in today's world is an elusive concept—seldom adequately defined, often excessively maligned.

At one end of the spectrum, extremists cry out for the "good old days" when man, untrained and untamed, was bound to scratch out his existence without help from science and technology. At the other end of the spectrum, an equally devout group of extremists cry out for more crash programs of modern science and technology to help man live fully in a complicated world.

Each side has its own language, a jargon to be used by the faithful. Each group has its own high priests. Each group gathers in evangelistic fervor at its own ill-conceived temple of truth. Each group speaks but does not hear. Each group listens but is unable to understand any jargon foreign to its own.

It is from these uncompromising viewpoints that we must begin a search for intelligent compromise. We must not be bound by an "all or nothing at all" approach. The rule of reason must prevail.

If the quality of life in the Great Plains is to be maintained, changed, and improved during the next quarter century, it is crucial that we seek a road to reasonable reconciliation.

This road involves trade-offs to achieve an acceptable balance between the things that were, the things that are, and the things that can be. It is futile for man to ignore his past. It will be fatal if we try to live our future there.

If our agriculture is to rise to the occasion and make its maximum contribution to our quality of life, we in agriculture and many of our publics will have to make some strenuous adjustments in thoughts and actions. These adjustments will require us to:

1. Re-evaluate the historical idea that farmers, ranchers and agri-business can continuously produce more agricultural products and sell them at a lower real cost.

2. Change the prevailing attitude of consumers indicating their belief in a right to relatively cheap food.

3. Decrease the burden of agriculture caused by unnecessary, impractical, and costly laws and regulations imposed by bureaucratic agencies and misguided legislators in response to ill-informed but often articulate nonagricultural pressure groups.

Our history shows that during the last four to five decades, our agriculturists have, generally, been able to consistently produce more food and fiber at a decreasing real cost per unit.

This was made possible by the use of more and better management and scientific technology in the areas of chemical fertilizer, new crop varieties, chemical additives and controls, machinery, water use, animal and plant disease control, increased use of capital, and improved farm management and marketing.

During much of this period of time, money costs of production went up as inflation decreased, but real costs per unit for the most part went down if measured by the per cent of consumer disposable income spent on food and fiber.

During the next quarter century in the Great Plains, society must be prepared to accept an increase in the real costs of food as well as an increase in the money costs.

Environmental restrictions, water use costs, labor problems, possible capital shortages, increased competition for land from nonagricultural industry as a result of capital flight to avoid inflation, all made more severe by more government interference through a bloated bureaucracy, point to an increase in future real costs of food and fiber.

Public policy planners and agricultural leaders must be alert to these conditions if we are to put forth the necessary programs to maintain and improve our quality of life in the Great Plains as well as the rest of the nation.

During the last 40 years or more, consumers have become accustomed to food costs decreasing as a proportion of their total living costs.

For many years, the U.S. Department of Agriculture proudly published and many agricultural leaders proudly quoted a series of statistical data showing the decrease in the percentage of disposable income spent on food.

Equally popular and quoted was the statistical data series showing how many people, in addition to himself, one farmer could feed. This number always went up while the percentage of disposable income spent for food always went down.

Most secretaries of agriculture revelled in these statistics, and, if one could determine to what group the secretary would be speaking, it was relatively easy to guess which speech he would use to impress the audience with the efficiency of agriculture.

Consumers were set aglow by the "cheap food" speech while farm audiences were regaled with the "high production per man" speech.

Sometimes during 1973 and 1974, the statistical data on percentage of income spent on food showed an increase of a few tenths of a per cent. This change destroyed the value of the "cheap food" speech to consumers. Close behind this came the World Food Conference in Rome. Several of our agricultural leaders attended, and some returned wallowing in compassion for the less well-fed and overpopulated nations of the world.

In dealing with consumers and our other publics, we must avoid meaningless cliches. We need to tell our story as it is and do so in a way it can be understood and accepted. Our national slogan to consumers should not be, "If you eat, you are involved in agriculture." It should now be, "If you want to eat in the future, you must become involved in a healthy agriculture."

Our publics may find our agriculture confusing. Let's make sure they don't find the agriculture industry confused.

Agriculture was the "ugly duckling of the Depression." During the 1960s it became the "sobsister for subsidy" in the minds of some consumers and urban politicians. Today, agriculture is considered the "darling of our democracy," as a result of its being used as a partial cure for our balance of payments problem and as a bargaining tool in trading "food for crude."

Agriculture must exploit this new-found fondness to enable it to gain and keep favorable support from both consumer and political leaders.

There is nothing in agriculture as frustrating as unnecessary but costly government regulation. Such regulations eventually lead to a smaller supply of food at a higher price. In the final analysis, such increased costs are borne by consumers, who, ironically, are often the people the regulations were originally designed to protect.

Incomplete or inaccurate information in the hands of the incompetent is dangerous to our agriculture. There is perhaps nothing as immortal as a fake idea seen in print, flashed on TV, or spoken by a charismatic charlatan before a group of well-intentioned but emotionally-scarred misfits.

The incompetent, the charlatans, and the emotionally-scarred offer nothing positive in the way of problem solution. Their approach is to destroy, regulate, strangle, frustrate and agitate those who would produce food.

If allowed full sway, the end result of this approach would leave us with empty granaries, empty meat counters and grocery shelves and perhaps a vegetable supply consisting almost solely of "poke greens picked from the banks of the Pedernales River."

We must achieve a balance—a trade-off, if you please—between the benefits of our actions in relation to their costs, both economic and social. Such a balance can be achieved only if we choose a road to reasonable reconciliation.

A dogmatic, uncomprising attitude cannot succeed in a democratic society. The road to reasonable reconciliation need not be dogmatic and cannot be uncompromising. Proper arrangement of our priorities, along with dedicated research and action programs, can keep the negative effects of our actions to a minimum while permitting positive contributions to our quality of life.

## PAPERWORK AND HIGHER EDUCATION

Mr. McINTYRE. Mr. President, on Thursday, August 26, the Senate passed an amendment I cosponsored with several other Senators that is designed to cut the paperwork that the Department of Health, Education, and Welfare's Office of Education and Office of Civil Rights can impose on the Nation's educational institutions.

Newsweek, in its August 30 edition, further amplified the problems facing higher educational institutions in dealing with Federal paperwork and redtape.

Because of its timeliness, I ask unanimous consent that the Newsweek article be printed in the RECORD at the conclusion of my remarks.

It is my hope that the conferees on the Higher Education Act amendments, S. 2657, will take the gist of this article to heart and insist that the paperwork amendment be included in the bill sent to the President for his signature.

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

[From Newsweek magazine, Aug. 30, 1976]

RED TAPE BLUES

The U.S. Government gives colleges and universities nearly $9 billion a year. But there is a catch. Frustrated educators find that they are spending a lot of this largesse not to teach students but to comply with arcane bureaucratic regulations. The University of Illinois, for example, may soon have to spend $557,000 to correct a minor violation of the Occupational Safety and Health Act. The school must repair an elevated walkway connecting the buildings of its Chicago Circle campus; the solid granite slabs that form its banisters fall 5 inches short of the OSHA specification that all railings must stand 42 inches high. Federal inspectors recently warned Stanford that the university's 6,000 chromium-plated fire extinguishers did not meet U.S. standards, which require that all such devices must be colored red. Exasperated officials figured out a way to comply: they wrapped the offending fixtures in red tape.

Since the mid-1960s, when both government funds and regulations began to accelerate at an unprecedented rate, the nation's colleges have labored especially hard to comply. They must meet all the standards required of corporate and industrial employers, such as health and hiring regulations, and at the same time fulfill a set of obligations designed for educational institutions alone. Every Federal regulation means inspections, corrections, record keeping and the possibility of costly court battles if a school's compliance is challenged. By the best estimates available, the Byzantine Federal rules now cost colleges and universities almost $2 billion a year—a figure that is roughly equal to the entire sum the institutions raise through voluntary donations. Noncompliance, of course, can be even more expensive. A school that does not meet the government's standards is in danger of losing its Federal assistance.

The American Council on Education has completed a new study of the problem that highlights the colleges' worst troubles. Using detailed figures of six representative institutions, from the private College of Wooster in Ohio to the cosmopolitan University of Illinois, ACE has determined that compliance costs between 1 and 4 per cent of the schools' operating budgets—enough in these tight times to force cuts in departmental funds. Many of the newest regulations, the report notes, concern employment, an area that hits the labor-intensive colleges much harder than it does an ordinary manufacturing concern.

Bureaucrats are little moved by protests that a university academic department is different from a factory assembly line. A college may want to add more blacks to its faculty, but that can be difficult when its only job openings are in eighteenth-century French literature or sub-particle physics and there are not enough black Ph.D.'s to go around. In their search for more women and blacks, many institutions have hired special personnel officers—and even outside "head hunters"—to prove their good faith.

Obligations: While most colleges support the principles that the Federal regulations are designed to uphold—from fair hiring to environmental protection—they deplore the sheer complexity of the bureaucratic demands. In order to fulfill their obligations under the new educational privacy act, for example, school officials not only must keep complete student records, but must painstakingly note every occasion on which anyone, anywhere, requests access to them. At Ohio State, this process costs $250,000 a year. Harvard president Derek Bok reports that the Harvard faculty spent more than 60,000 hours in the school year 1974–75 meeting the record-keeping requirements of Federal programs. "It's not hard to imagine a day," says Duke president Terry Sanford, "when faculties and administrators will spend all of their time just filling out government forms."

Perhaps worst of all, some educators see a threat of government intrusion in the classrooms themselves. When the Department of Health, Education and Welfare recently proposed a review of all college curriculums to root out racism and sexism, so many schools protested the censorship implications that HEW withdrew the request. Yale President Kingman Brewster thinks that interference is inevitable when the government spends so much money on higher education. "It's the old syndrome," he says. " 'Now that I have bought the button, I have a right to design the coat'."

The last straw for some weary college administrators proved to be the regulations against sex discrimination in education known as Title IX, which, among other things, ordered schools to equalize their spending on athletic opportunities for both men and women. Last spring, two institutions—Hillsdale College in Michigan and Brigham Young University in Utah—refused to comply, and invited the government to retaliate. Neither of these colleges receives direct Federal money for any of its programs. But they do stand to lose all Federal financial aid to their students, about $200,000 for Hillsdale and $6 million to $7 million for Brigham Young.

For the many colleges whose Federal assistance is a fiscal necessity, however, such nose-thumbing is not feasible. Most administrators simply want to persuade the Federal government to make sense of its regulations. But even that lobbying effort runs into Catch-22. This fall, bills will be considered in Congress that may result in new Federal regulations limiting college lobbying.

## BICENTENNIAL LAND HERITAGE PROGRAM

Mr. HANSEN. Mr. President, Sunday, August 29, President Gerald R. Ford, at Yellowstone National Park, unveiled a program to significantly expand our national parklands, wildlife sanctuaries, and historic sites, and to rehabilitate facilities in them, some of which have deteriorated in the past few years due to increased use.

I was with the President when he made this historic conservation initiative, and I am proud of the leadership he is exerting in this crucial area.

As ranking minority member on the Parks and Recreation Subcommittee, I am well aware of the love Americans have for these resources, and of the need future generations will have for more lands and improved facilities in them.

President Ford has already taken important initiatives in the conservation area by approving 400 additional staff positions for the National Park Service and recommending passage of legislation which will assure expanded recreational opportunities along with affording permanent protection for America's unique natural resources.

While the specifics are yet to be considered and debated, I am confident all Americans will agree and applaud the President for his vision and concern for improving the quality of life of our children's children.

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

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

BICENTENNIAL LAND HERITAGE PROGRAM

The President is proposing to establish a 10-year program to double America's heritage of national parks, recreation areas, wildlife refuges, urban parks, and historic sites. This new commitment will be a Bicentennial gift that the American people will give to this and future generations of Americans.

BACKGROUND

Because of the vision of our forefathers, today's citizens have inherited vast and irreplaceable gifts of parks, historic sites, wildlife sanctuaries, and recreation areas. The National Park Service's 287 units comprise 31.0 million acres. The Wildlife Refuge System's 378 units comprise 32.2 million acres. Yet, with our Nation's growth, these resources are often overcrowded and overused. At the same time, many areas which would make superb parks, sanctuaries, or recreation areas are being lost forever because land values often make other uses more attractive in the short term.

The proposed initial commitment of $1.5 billion over 10 years would be a sound investment in America's priceless natural resources and avoid loss forever of an American heritage that cannot be replaced. It would mark again this Nation's commitment to preserve the best of our vast and beautiful continent. It would expand permanently the natural treasures future generations of Americans will inherit before these resources are priced out of the public domain.

DESCRIPTION OF PROGRAM

An appropriation request will be submitted to establish a $1.5 billion, 10-year program to:

provide $141 million to be used to acquire new parks, wildlife refuges, and recreation areas and historic sites through the Land and Water Conservation.

provide $700 million to develop new and existing parklands and refuges into recreation and conservation resources ready to serve the public.

provide $459 million for upgrading and increased staffing of current system of national parks and wildlife refuges.

provide $200 million of additional funds to the Community Development Bloc Grant Fund to be available to upgrade existing parks, particularly in urban areas.

*A. Programs included and funding*

1. Acquisition of new parks, wildlife refuges, recreation areas, and historic sites. ($141 million immediate appropriation from the Land and Water Conservation Fund to remain available for 10 years.) Additions to the National Park System—$110 million for parks, national rivers, recreation areas, and historic sites. Additions to the National Wildlife Refuge System—$31 million for the preservation of natural areas and habitat for wildlife, including endangered species.

The National Park Service currently purchases approximately 60,000 acres annually, utilizing approximately $77 million from the Land and Water Conservation Fund. At this time, 559,608 additional acres and $449,631,713 are required to acquire lands in congressionally authorized park and recreation areas and historic sites of the National Park System. Such purchases would be made in future years to the Land and Water Conservation Fund.

The Fish and Wildlife Service currently acquires approximately 85,000 acres annually, utilizing funds available from the Migratory Birds Conservation Account ($19.5 million in

1976) and the Land and Water Conservation Fund ($9.4 million in 1976). The President's Bicentennial Land Heritage Program will initially more than double the nation's total acreage of parks, recreation areas, and wildlife refuges. Over the 10-year period, it will continue to add acreage by building upon a growing Land and Water Conservation Fund. The Bicentennial Land Heritage Program will over these 10 years be annually coordinated with the increases in the Fund so as to best supplement, support and develop acreage added by expansions in the Land and Water Conservation Fund.

2. *Development of these new and existing parklands and refuges into recreation and conservation resources ready to serve the public.* ($700 million immediate appropriation to remain available for 10 years over and above existing development programs and funding for units already in the National Park and Wildlife Refuge Systems.)

Such funds are generally to be used to implement pary and refuge master plans, which include visitor facilities, roads and trails, resource management tools, and such additional improvements as may be necessary for effective park and refuge management.

National park units—$500 million

National wildlife refuges—$200 million

3. *Upgrading and increased staffing of current systems and national parks and wildlife refuges.* ($459 million, of which $259 million immediate appropriation to remain available for ten years for upgrading, and $200 million over ten years to be appropriated approximately $20 million annually for increased staffing.

Upgrading—$259 million for rehabilitation of deteriorated facilities with $194.3 million for national parks and $64.7 million for wildlife refuges, with emphasis to be given to those areas where public use opportunities are greatest.

Increased staffing—$200 million and approximately 1,500 permanent positions, with 1,000 for national parks and 500 for wildlife refuges to bring the present field employment up to a level that will insure the protection of the natural resources and meet the increasing public demand. ($20 million annually for ten years—$13 million for the National Park Service and $7 million for the Fish and Wildlife Service.)

4. *Increased funding of cities and states to be available for parks and recreation areas.*

The Community Development Bloc Grant Progam at the Department of Housing and Urban Development makes available funds—on both a formula and discretionary basis to communities and states for community development purposes, including the development of parks and recreation areas. $200 million will be added to the FY 1977 level of $3.2 billion. Recipients will be urged to give high priority to upgrading existing parks, particularly in urban areas.

*B. Spending requirements*

While most of the program (all but $180 million) would be appropriated in FY 1977, spending in terms of outlays in FY 1977 would be about $185 million.

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## AN IMPROPER ROLE FOR THE CORPS OF ENGINEERS

Mr. MUSKIE. Mr. President, when the Committee on Public Works met last week to develop a committee amendment to S. 2710, I differed from a majority of my colleagues on the question of how dredge and fill materials should be regulated and by whom. I voted against proposals that were offered, including the successful Baker-Randolph amendment.

Because of my position on section 404, I shall explain my views in greater detail. The Senate needs to be aware of the history of this section. And the Senate needs to understand the degree to which the Corps of Engineers has abused its discretion, exceeded the intent of the Congress, and acted in a manner inconsistent with what I believe to be good public policy.

I shall attempt to put this issue in perspective and to provide the reasons why I am inclined to support striking section 404 from the act. I share my colleagues concern with the obvious and unwarranted extension of the Corps of Engineers' regulations into activities which were not intended by the Congress.

Section 404 was included in the 1972 act as an exception to the otherwise comprehensive regulatory program. It has had a damaging effect. It has not led to the end of open water discharge of dredge spoil—its primary purpose—as intended. It has led to a perception of needless interference into the affairs of farmers, foresters, miners, and others.

The confusion, the irritation, the divisiveness caused by the corps' attempted regulatory activity under section 404 must cease. That is why I have suggested repeal of section 404 to restore the basic Federal/State regulatory program under sections 402 and 208 of the act. In this way, point sources of discharge of pollutants, including dredge and fill material, would be regulated, as appropriate, by the Federal and State governments.

But more important to many Senators is that repeal would get the Corps of Engineers out of the business of regulating most farming, forestry, construction and mining activities. Without section 404, the intent that these activities be subject to State and local processes under section 208 will be restored.

Repealing section 404 would avoid the redundancy of permit programs and the cumbersome regulations that have resulted. The enactment of section 404 was premised upon regulation by the corps of the discharge of dredge spoil as a part of its authority to protect navigation. The corps has not done this.

I am afraid that the corps will have to find its justification in an area other than purported environmental regulatory effort. While the corps appears to regulate wetlands in the public interest, it continues to allow open water discharge of dredge spoil.

Mr. President, many have argued that section 404 is essential for environmental protection. Some environmentalists have become enamoured with the newly found interest of the Corps of Engineers in environmental protection. I reject the position of the environmentalists on this issue. To the extent that dredge and fill material is actually discharged from a point source into the navigable waters as defined in the Clean Water Act, it will be subject to regulation by the Environmental Protection Agency.

The proposed amendment from the House provides an excellent example of what happens from legislating exceptions. The House amendment would only compound the problem. Exceptions legislated on exceptions result in a law which is complicated and application of which is uneven. Redtape, overlap, frustrations are all functions of creating exceptions, especially exceptions which create authority for new agencies, new procedures, new criteria. The public becomes confused. And the Government loses credibility. Creating multiauthority to control the discharge of pollutants into the navigable waters was not good policy in 1972. The proposed amendments by the House make it clear that it is not acceptable in 1976.

Legislating by exception is an all too frequent practice by the Congress. We must adopt comprehensive programs which are coherent and which are as understandable as possible. People should be given the assurance that they can understand both procedural and substantive requirements which are required by Congress. This is best done by working with uniform administration. Creating exceptions, separate definitions, and separate procedures for matters which fall within a single heading such as the control of discharge of pollutants does a disservice to the American people. We confuse, we erode credibility as we give special interests special protection.

I urge my colleagues to review this statement carefully. The confusion under section 404 as intensified by the House action cannot be corrected by an amendment. There is only one way to inform a public agency that the Congress absolutely rejects confusion in the law brought about by legislating exceptions—that is through repeal of those exceptions.

Mr. President, in order to help the Senate understand the issue, let me summarize its history. It reveals how acts of Congress can become distorted almost beyond recognition at the hands of the executive branch.

### LEGISLATIVE HISTORY

The section of the 1972 act which the House proposes to amend was not in the bill (S. 2770) which the Senate passed in 1971. An amendment which would have added a section 404-like provision was defeated in the Senate Public Works Committee by a vote of 9 to 6. During the Senate debate on this bill, S. 2770, Senator STENNIS offered an amendment similar to the amendment defeated in committee which would have added a section 404 to regulate, through the Corps of Engineers, the discharge of dredge spoil. As floor manager of the bill, I responded with an amendment to section 402 regarding EPA's authority to issue permits for the discharge of pollutants so as to provide for review by the Corps of Engineers of the impacts on navigation whenever dredge spoil was to be discharged. My amendment was adopted.

For those who are interested in reviewing the issues discussed at that time, I refer to the debate which has been reproduced in the legislative history documents printed as a committee print by the Committee on Public Works on pages 1386 to 1393. The philosophy of the Public Works Committee, and ultimately of the Senate at that time, was that the program authorizing the discharge of pollutants into the navigable waters of the United States would be best administered through a single program under the direction of the Environmental Protection Agency with the authority to delegate that program to States upon the

qualification of State programs. Dredge spoil and fill were definitely considered pollutants. I continue to support that position.

In 1971, the House Committee on Public Works added a section 404 which separated the regulation of the discharge of dredge or fill material into the navigable waters from section 402 and placed the jurisdiction for the issuance of such permits with the Army Corps of Engineers. In addition, the House bill would have exempted Federal projects involving dredge or fill material from the 404 permit procedure and would have given EPA only a limited consultative, not authoritative, role in the issuance of permits for the discharge of dredge or fill. The text of this provision appears on page 1063 of the legislative history, volume 1. The provision reported by the House Public Works Committee was adopted by the full House.

As a result of conference, a provision was adopted which, although it provided authority for the Corps of Engineers rather than EPA to issue permits regarding the discharge of dredge or fill material in the navigable waters, gave the Environmental Protection Agency a veto role over the choice of any disposal site in the navigable waters specified by the Corps and did not include the exemption for Federal activities originally provided in the House bill. This provision became law.

This program authorizing the disposal of dredge and fill material at selected sites was an extension of the Rivers and Harbors Act of 1970 which authorized the corps to provide diked disposal areas, so as to, in the words of the Senate report on S. 2770, "reduce as much as possible the need to dispose of dredge spoil in the open waters." Public Law 92-500 struck the limitation on the corps' diked disposal authority which, prior to 1972, was restricted to the Great Lakes. Thus, the program was made applicable to all the Nation's waters after enactment of the 1972 act.

ADMINISTRATIVE HISTORY

However, the corps has not carried out this provision of section 404. It has not designated sites for the disposal of dredge spoil. It has not reduced or eliminated the open water discharge of dredge spoil. The practice continues unabated. The corps has not carried out the law.

I wrote to the Corps of Engineers, Senator BUCKLEY and I wrote to the Corps of Engineers, the staff of the Subcommittee on Environmental Pollution met with the Corps of Engineers, to urge that they pull in their horns, comply with the law, and cease to extend their jurisdiction beyond that which Congress intended. All of these discussions were to no avail.

Somehow the limited exception to the general permit program under section 402 of the act has become a major exception by the broadening of the charge of the corps under section 404 to all discharges of dredge or fill material, notwithstanding whether at specified sites or not. This has resulted in a confused, complicated program. This duality could have been, in large measure, avoided. Under the section 402 permit program, the Environmental Protection Agency was to issue permits for the discharge of all pollutants, including dredge or fill material, except for the discharge at specified sites of material dredged from the navigable waters.

One of the most important features of the 1972 Water Pollution Control Act was its definition of "navigable waters." This term was intentionally defined broadly to protect the Federal interest in the integrity of the Nation's waters. The expanded definition eliminated the arbitrary political distinctions of water which were not recognized by the natural system we were trying to protect. The Congress recognized in 1972 that the water system of the United States was a single aquatic system and that biological integrity could not be achieved and maintained without a comprehensive program for regulation of the discharge of pollutants into that system. This definition was in contrast to an earlier narrow Federal interest in interstate waters and to earlier definitions of navigable waters by various Federal agencies, including the U.S. Army Corps of Engineers under authority of other law. The Corps of Engineers' role under section 404 of Public Law 92-500 was a compromise to utilize the permit system that the corps had in place under section 10 of the Rivers and Harbors Act. It was not designed simply to protect the commercial interest of the Federal Government in the navigable waters.

With respect to the corps' role in water pollution prorgams, the most important definitions were in the context of section 10 of the Rivers and Harbors Act of 1899 and section 13—better known as the Refuse Act—of the Rivers and Harbors Act of 1899. These two sections, which authorized protection of navigable waters by the Corps of Engineers with respect to navigation, had different descriptions of navigable waters and have resulted in extensive litigation on that question.

As a result of the special section of the 1972 Water Act for the regulation of the discharge of dredge or fill material at specified sites, the Corps of Engineers had to somehow incorporate this new definition into its existing authority under sections 10 and 13 of the 1899 act. In doing so, it found itself perplexed as to the scope of the new provision. This uncertainty resulted in an extended period of rulemaking activity which only reached interim final stage in July of 1975, almost 3 years after enactment of the 1972 act.

This rulemaking activity was surrounded with bitter controversy within the administration and among all interested parties throughout the United States. The rules which have been adopted primarily through the energy of Russell Train, the Administrator of EPA, can be described as reaching middle ground, although some controversy continues. Notwithstanding the fact that these regulations have taken nearly 4 years to put into place, the House of Representatives, without any public hearings on this complicated issue, has now passed a provision which would create a new cloud of uncertainty over the program to protect and enhance the quality of the Nation's waters.

The House-passed provision would compound errors which were first made by legislating the section 404 exception. In fact, the proposed amendment would intensify the complexity of the 1972 act by creating additional exceptions to the fabric of the Federal Water Pollution Control Act. The House bill would withdraw from regulation many important polluting activities. The House provision achieves this result in several respects.

PROPOSED HOUSE AMENDMENT

First, the House provision creates an entirely new definition of navigable waters to govern the scope of the corps regulation of the discharge of dredge or fill material. This new definition would seriously restrict the waters into which the discharge of significant dredge or fill pollutants would be regulated. This is totally without support and is unacceptable.

Second, the House bill would reinstate, although in different language, the exception for Federal activities which the Congress rejected in 1972.

Third, the House, not content to limit the corps' authority, would further limit the role of the Federal Water Pollution Control Act by precluding any regulation under section 402 of the discharge of dredge or fill material in the navigable waters other than those under the new limited definitions of the House bill. The consequences of such restriction are that for the purposes of dredge or fill, the House would restore the old 1965 act limitation on Federal law which was so decisively rejected in 1972.

Fourth, the House bill would add a provision allowing the corps to authorize a State to issue permits under section 404. This provision would be added, notwithstanding the fact that without the special legislative exemption for dredge or fill materials under section 404, the permit program would be fully authorized for transfer to the States under the established and separate procedures of section 402 of the act. Twenty-seven States to date have been authorized under section 402, a provision that includes, as the House bill does not, sufficient criteria to protect the Federal interest in the integrity of the Nation's water.

A PREFERRED PROPOSAL

Mr. President, in 1972 the Committee on Public Works, the Senate and Congress worked very hard to enact a law to protect and enhance the integrity of the waters of the United States. The 1972 act attempted to establish an appropriate balance between the Federal and State governments. It attempted to create a Federal role as needed and maintain a State and local role where one was appropriate. For example, nonprofit sources such as agricultural activity, forestry practices, road building, and the like are to be regulated under section 208 by State and local governments. We did not want a mammoth Federal presence involved in these activities. But under section 404, insisted on by the House as

it relates to the dicharge of dredge or fill material, we got just that.

Section 402, with its delegation provision both achieves the Federal purpose of protection of water, while providing for administration by qualified States.

Mr. President, as I stated earlier, I prefer that the Senate respond to the problems that have arisen in the 404 program with an amendment to the Water Pollution Control Act to strike section 404 so that the discharge of the dredge or fill materials will be regulated within the overall fabric of the 1972 act. The discharge of dredge or fill material into the navigable waters of the United States would then be regulated pursuant to section 402 of the act in accordance with its provisions for authorization of State regulation where a State has demonstrated the capability to administer the program. This avoids creating exceptions and the procedural and substantive complexity that exceptions bring. The number of permit issuing agencies would be reduced. There would be no ambiguity as to the relationship of the discharge of dredge or fill material under section 402 and the activities which are otherwise regulated under section 208. It would also be clear that Federal facilities would be treated as any other citizen, in accord with section 313, and not subject to any special exemptions. It would also be clear that the States could implement the program if they qualify under appropriate criteria.

But more important to many Senators is that this approach would get the Corps of Engineers out of the business of regulating most farming, forestry, construction and mining activities. Without section 404, the intent that these activities be subject to State and local processes under section 208 would be restored.

I print at this point in the RECORD support for this position—basically the position of the Senate in 1972—given by the then Administrator of the Environmental Protection Agency William Ruckelshaus, in a letter to the House of Representatives at the time they were marking up the 1972 amendments to the Water Pollution Control Act. Mr. Ruckelshaus stated as follows:

Section 404, "Permits for Dredged or Fill Materials," would let the Corps issue permits for dredge or fill in navigable waters subject to EPA criteria and review, but no recommendation of EPA need be followed where the Secretary of the Army determines" there is no economically feasible alternative reasonably available." The bill would allow the Secretary to govern Federal dredge and fill projects by regulations rather than permits.

We are strongly opposed to this action. We believe that all permits for discharges into navigable waters or the oceans should either be issued by EPA or subject to EPA review and concurrence with respect to environmental considerations. Moreover, we believe that it is overly complex and would be very difficult to administer.

When this committee amendment is adopted, the Baker-Randolph proposal becomes part of the Senate bill. I will not try to amend it; I will not offer my proposal. We will send Baker-Randolph back to the House. Maybe they will adopt it, maybe we will go to conference. I intend to continue to search for a solution and to continue to develop a position. I appreciate the efforts that have been made so far and hope they will continue.

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## LAFAYETTE COUNTY, MO., HONORS THE MARQUIS DE LAFAYETTE

Mr. SYMINGTON. Mr. President, on July 24 as a part of our Bicentennial, I had the privilege of joining the citizens of Lafayette County, Mo., in a celebration at Lexington, their county seat, in honoring a great friend of the American Revolution whose name was bestowed on this county in 1825, the Marquis de Lafayette.

Not even a year had passed since the signing of the Declaration of Independence when the marquis came to this country to assist our forefathers in establishing a nation where the preservation of individual liberty would be the foundation of government.

Throughout his life, Lafayette would serve as an ambassador of good will between the Republics of France and America, laying the foundations for ties which still link our nations today.

Missouri heritage is particularly rich in French cultural and political influence, as it was Frenchmen who first explored and settled our State.

The occasion was brightened by the presence of the mayor and his family of Chavaniac-Lafayette, France, the birthplace of the marquis and sister community of Lafayette County.

I had the honor to dedicate a bust of the marquis for the Lafayette County Courthouse done by the noted American sculptress and native of Lexington, Carey Boone Nelson.

Many people devoted much time and energy in preparing this splendid event. I especially noted the fine efforts of the Wentworth Military Academy; the Missouri National Guard, Company C, 110th Engineer Brigade; the Lexington-Lafayette Chapter of the Daughters of the American Revolution; the Lexington Woman's Club; the Lexington Garden Club; the Lafayette-Lexington Chapter, UDC; and the Lafayette County Bicentennial Committee chaired by Charles G. Coy, editor of the Lexington Advertiser-News.

I ask unanimous consent that a resolution offered by Missouri State Senator Ike Skelton of Lexington and passed by the Missouri State Senate praising this celebration, my dedicatory remarks, and the newspaper review in the Lexington Advertiser-News be printed in the RECORD.

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

### RESOLUTION

Whereas, the members of the Missouri Senate, Seventy-eighth General Assembly, are proud to extend their warmest welcome to M. and Mme. Georges Autuche and their son, Jean Marie Autuche, of Chavaniac-Lafayette, France, on their visit to Missouri; and

Whereas, M. Autuche is the mayor of Chavaniac-Lafayette, the sister community of Lafayette County, Missouri; and

Whereas, Chavaniac-Lafayette is the birthplace of the great French soldier and patriot, the Marquis de Lafayette, for whom Lafayette County was named in 1825; and

Whereas, in this Bicentennial Year of American Independence, on this land formerly owned by France, we must take this opportunity to recognize the indispensable contribution of the Marquis de Lafayette and the French people in the winning of American Independence and the development of our nation, and to renew the strong ties of friendship between the American and French peoples, a friendship rooted in a deep love of liberty and independence; and

Whereas, it is thus most fitting and proper that the Autuches are here to take part in the ceremonies in Lexington, Missouri, dedicating a bronze bust of the Marquis de Lafayette which will be placed in the Lafayette County Courthouse; and

Whereas, the bust was commissioned by the Lafayette County Bicentennial Commission and was sculptured by the internationally known sculptress Carey Boone Nelson, a native of Lexington; and

Whereas, the visit of our honored guests from France also provides the opportunity to recognize the Sister City Program of Sister Cities International which has contributed to building a better climate of world understanding through the interchange of information, ideas and people in the fields of education, government, culture, and economic and social relations;

Now, therefore, be it resolved that the members of the Missouri Senate, Seventy-eighth General Assembly, express heartfelt appreciation to M. and Mme. Autuche and their son, Jean Marie, for their participation in this great event and extend to them best wishes during their stay in our state; and

Be it further resolved that the Secretary of the Senate be instructed to prepare properly inscribed copies of this resolution for presentation to M. and Mme. Georges Autuche of Chavaniac-Lafayette, France; Jean Marie Autuche of Chavaniac-Lafayette, France; Carey Boone Nelson of New York; Charles Coy, Chairman of Lafayette County Bicentennial Commission and the Lafayette County Court, Lexington, Missouri.

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### THE BICENTENNIAL AND A GREAT FRENCH GENTLEMAN

It is a pleasure indeed to join with you at this bicentennial celebration; a celebration which honors here, in a Missouri county that bears his name, that consistent and courageous friend of the American Revolution, that ardent champion of democratic ideals, the Marquis de Lafayette.

The Marquis left France as a very young man—twenty years old to the exact—in order to lend assistance to the cause of an even younger nation. When he arrived, a single year had not passed since the signing of our Declaration of Independence.

Those first years were full of heavy hardships for this new nation. But we were blessed with the extraordinary energy and idealism of those determined to turn dreams into reality by establishing a country where the preservation of individual liberty would be the foundation of government; and that too was the ambition of our new young friend.

Throughout his life Lafayette remained a dedicated friend of the United States. He urged his own countrymen to follow the example of representative government set by the new government of the United States.

He would serve frequently as an Ambassador of good will between the republics of France and America. His was a primary contribution to laying the foundation of those ties which still link our nations today.

The people of our State share a strong cultural and political heritage with France. Missouri was first explored by such Frenchmen as La Salle, Marquette and Joliet. Later, French settlements were founded. The names of many of our municipalities reflect this French heritage—Paris, St. Louis, Napoleon,

Laclede, Versailles, St. Charles, Ste. Genevieve, of course, Lafayette County, and many others.

It is widely known that the authors of our Declaration of Independence and Constitution were influenced by the writings of such French philosophers as Voltaire and Montesquieu; and the year 1789 was not only the year of our own constitution, but also the year when the French people, in their Declaration of the Rights of Men, enshrined in their own history the principles of liberty and equality for all.

Today this legacy of democratic thought and institutions enables the citizens of both nations to enjoy unparalleled social justice and economic prosperity.

These freedoms have not gone unchallenged. Twice in this century Frenchmen and Americans joined against forces threatening our liberties. Twice we together emerged victorious. A dedication to man's inalienable rights provided the strength necessary to overcome tremendous adversities.

Now we must look to the future. We must continue to meet and resist any danger from international threats and internal conflicts. We must work to build those three pillars of true national security—(1) military strength, (2) a sound economy, and (3) credibility, faith of the people in their government.

As of today, democracies are a minority in the family of nations. As the world faces many unique and unprecedented problems—nuclear proliferation, scarce energy, hunger and human want—an increasing number of nations have now turned to authoritarian solutions. But hopefully we will continue to build a better future by remaining true to those common principles forged in 1776 and 1789.

In the past, the people in France and the people of the United States have worked and have fought together for freedom. Today let us continue that fight, not only for ourselves, but for all people who seek the right to life, liberty and the pursuit of happiness.

On this day, as we celebrate this Bicentennial, let us reaffirm our total trust in the democratic ideals and principles of liberty which were set forth by this nation two hundred years ago; and for which the gentleman we honor today, the Marquis de Lafayette, struggled not only in his own homeland, but also in these United States of America.

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[From the Lexington Advertiser-News, July 26, 1976]

A GOOD TIME WAS HAD BY ALL

(By Lu Jaworsky)

The dedication and unveiling of the bust of the Marquis de Lafayette went off like clockwork Saturday afternoon on the Court house lawn. The good planning and hard work that went into the event were plainly evident and produced a historic day that everyone in Lexington and all Lafayette County can be justly proud of.

Even the weather cooperated and though a bit warm the day was clear as the gentle breezes brought out the glory in the Bicentennial, French and American flags that were prominently displayed.

The Courthouse lawn was an ideal setting as hundreds of enthusiastic onlookers sat on lawnchairs, blankets, the Courthouse steps and on the grass. Young and old alike listened attentively and seemed to enjoy the pomp of the occasion.

The affair started shortly after 2 p.m. with the arrival of U.S. Senator Stuart Symington. The Rev. John W. Pfister, president of the Lexington Ministerial Alliance, gave a moving invocation and Master of Ceremonies Charles G. Coy welcomed the dignitaries and spectators.

The presentation of colors was deftly handled by the Wentworth Military Academy Honor Guard. The National Guard Company "C" Colonial Guard in their Red, White and Blue Bicentennial uniforms added vivid color to the pageantry and set the tone with a deafening musket blast that must have been heard in Carroll County.

A well practiced French National Anthem was sung by the LHS French Club, and although not many could accept the invitation to join in, the strains of the Marseilles was strangely moving though few could understand the words. The club later presented Mayor Autuche a bouquet of long stemmed roses.

Everyone understood the words of our National Anthem sung by the Bicentennial Choir in their usual professional manner.

The first speaker of the day was Mayor Georges Autuche who gave a gracious and well received speech as translated by interpreter Mark Poindexter, former news editor of the Adviser News. The mayor spoke on Franco-American friendship and the contribution of Lafayette to American independence.

He said "I find myself in America as I do in France. The only difference, alas, is that we speak another language, but I can see by your eyes that we understand each other. I will take back to France a message of good will from the many friends I have made here."

Next to speak was Jacques Charles Chicoineau, president of the French Society of St. Louis. He spoke on the life of the Marquis de Lafayette and the strong historic bounds that link the French and American Peoples.

Carey Boone Nelson next livened up the proceedings with an enthusiastic plea to enjoy the occasion as a joyous celebration. She said that the Marquis first heard about the American struggle at a party and this should be carried over to today's proceedings.

Mrs. Nelson, a Lexington native, is a sculptor of world renown and presently lives on Staten Island, New York. Her bronze bust of the Marquis will rest on a pedestal of Lafayette County walnut and will grace the Courthouse for a long time to come.

Next to speak was State Senator Ike Skelton, vice-chairman of the Missouri Bicentennial Commission, who spoke on Lafayette County history and how the county changed its name from Lillard to Lafayette County.

He also presented Mayor Autuche a resolution from the Missouri Senate marking the occasion. Skelton ended his remarks with "We are all sons of Lafayette."

Upon receiving the resolution, Mayor Autuche said "I will take this proclamation back to France with me and I will also take in my heart the State of Missouri."

The principle address by U.S. Senator Stuart Symington, marked the importance and national significance of the occasion.

"The people of our State share a strong cultural and political heritage with France. Missouri was first explored by such Frenchmen as La Salle, Marquette and Joliet. Later, French settlements were founded. The names of many of our municipalities reflect this French heritage—Paris, St. Louis, Napoleon, Laclede, Versailles, St. Charles, Ste. Genevieve, of course, Lafayette County, and many others.

It is widely known that the authors of our Declaration of Independence and Constitution were influenced by the writings of such French philosophers as Voltaire and Montesquieu and the year 1789 was not only the year of our own constitution, but also the year when the French people, in their Declaration of the Rights of Man, enshrined in their own history the principles of liberty and equality for all," Symington said.

Charles G. Coy, president of the Lafayette County Bicentennial Commission, then presented Mayor Autuche, Senator Symington, Carrie Boone Nelson and State Senator Ike Skelton, with a matched set of Lafayette County Medals and pewter Bicentennial plates. Bicentennial Medals were also presented to the other dignitaries.

Mayor James Hensevelt then presented his French counterpart a Lexington Bicentennial Plate bearing the new City Seal. He said that the day was a very special occasion for him, for not only was he celebrating the birthday of our country, but also his 52nd birthday.

Hensevelt then introduced Shirley Anderson and called her "the workhorse of our Bicentennial celebration."

Judge C. L. Summers then received a copy of the Charter national from Charles G. Coy.

Mrs. R. W. VanAmburg, representing the DAR, thanked Carrie Boone Nelson for her outstanding work.

Mayor Autuche presented Charles G. Coy a portrait of Lafayette made from native French stone.

A benediction by Father Russ ended the dedication ceremony.

The DAR sponsored brunch at the Holiday Inn Saturday morning drew over 200 to honor the Autuches and Carrie Boone Nelson. The food was good and plentiful and music was provided by Roseanne Gortenburg, a student at the UMKC Conservatory of Music, who delighted everyone with selections on the harp.

Following the unveiling, many attended the reception at the Fellowship Hall of the First Presbyterian Church sponsored by the Lexington Woman's Club and Garden Club. Carey Butler Boone was presented a certificate of appreciation by Mrs. James Shelby, president of the Lexington Woman's Club. Mrs. Boone is the mother of Carrie Boone Nelson.

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## THE ONLY FEDERAL JUDGE IN NEW HAMPSHIRE

Mr. McINTYRE. Mr. President, the September issue of Yankee magazine features an article titled: "The Only Federal Judge in New Hampshire."

The article profiles Judge Hugh H. Bownes, a man whose friendship I cherish and whose character I profoundly admire.

The author of the article, Andy Merton, has done a superb job of capturing in words the essence of a man of extraordinary wisdom, integrity and, above all, courage.

Merton writes, in a sentence highlighted typographically in the make-up of the article, that—

> A strong case can be made that the three most powerful men in the Granite State are Governor Meldrim Thomson, Publisher William Loeb—and Judge Hugh Henry Bownes.

The significance of that sentence is this: More often than not, Governor Thomson and Publisher Loeb, of the Manchester Union Leader, are pitted against the only Federal judge in New Hampshire.

It is to Judge Bownes everlasting credit that he does not flinch before such powerful adversaries. He makes his decisions on the law, the Constitution and the Bill of Rights. He makes them serene in the confidence that he has honored all three. And no matter how unpalatable those decisions may be for the Governor and Mr. Loeb—and all who think as they think—Judge Bownes stands firm, letting their verbal arrows blunt themselves against the shield of judicial integrity.

Because I believe all who read this article will be moved and inspired, I ask unanimous consent that the text of

Mr. Merton's article on Judge Bownes be printed in the RECORD.

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

THE ONLY FEDERAL JUDGE IN NEW HAMPSHIRE

(By Andy Merton)

All New Hampshire license plates bear the same motto, "Live Free or Die." Last February 9, New Hampshire Federal District Court Judge Hugh Henry Bownes and two other judges ruled unanimously that state law forbidding drivers from covering up that motto violated the First Amendment to the Constitution—the free speech amendment. New Hampshire motorists may live free of the motto if they choose to do so, the judges ruled.

On February 11, New Hampshire Governor Meldrim Thompson commented on the ruling: "If the un-American decisions of misguided federal judges are allowed to continue unchallenged and unchecked, the judiciary will succeed in doing what no enemy has been able to do—namely, destroy America."

Also on February 11, William Loeb's Manchester Union Leader took exception to the decision in an editorial headlined, "How About Pink License Plates?" The editorial said, in part: "The ruling consists of lousy law, lousy logic, and lousy theology—and constitutes the best exemple conceivable of why judges should not be appointed for life."

This viewing-with-alarm did not change the fact that New Hampshire drivers may now cover up the motto without fear of prosecution. Nor did it bother Bownes, who says calmly, "I never read the Manchester Union Leader."

Hugh H. Bownes is the only federal judge in New Hampshire. He is short and solid, with a round, unremarkable face and thinning graying hair. At 56 he is in good physical condition; despite a leg permanently damaged in World War II, he rides to and from the new courthouse building in Concord on a bicycle, four miles each way. Going home, the last mile is uphill. Bownes has a tenacious look about him, like a man hurrying through a crowd. He likes things to happen on time. He fines lawyers who are late to court. George Bruno, head of New Hampshire's Legal Assistance Program, recalls that Bownes once fined him five dollars—a dollar for every minute Bruno was late—and then suspended the fine because there was a snowstorm.

Facing Bownes's desk in the judge's chambers on the fifth floor of the courthouse is a sign that says simply, "Slow." (Bownes says, "I should pay attention to it, but I don't.") Bownes's clerk, William Barry, points out that last year Bownes handled 452 cases, making him the ninth busiest federal judge in the country. The case load has increased by 90 percent since 1970, it is likely that Congress will create a second federal district judgeship for New Hampshire within the next year.

President Lyndon B. Johnson appointed Bownes to the judgeship in 1968. Since then, he has made dozens of rulings with which William Loeb, publisher of New Hampshire's only state-wide daily newspaper, and Meldrim Thomson, New Hampshire's governor, have strongly disagreed. He has, for example, decreed that homosexuals have the same rights as other individuals; that prison inmates may not be placed in solitary confinement or transferred without due process; that long-haired detainees awaiting trial in a county jail need not submit to haircuts; that women on welfare are entitled to state-subsidized abortions; that a New Hampshire law authorizing prayer in schools is "patently unconstitutional." He has also blocked construction of a superhighway through Franconia Notch. And in what he says was his most difficult decision, he allowed three of the Chicago 7 anti-war radicals—Abbie Hoffman, Jerry Rubin, and David Dellinger—to speak on the campus of the University of New Hampshire.

That was in the spring in 1970. President Nixon had ordered the bombing of Cambodia. College campuses across the country were in turmoil. The UNH student government invited Hoffman, Rubin, and Dellinger to appear on campus May 5. The UNH president, John McConnell, declared that he should be the one to make the final decision on allowing the three on campus. McConnell was caught between almost 10,000 angry students on one side and William Loeb and conservative politicians on the other. He deliberated for five days while the tension built.

On May 3, McConnell decided to allow the three to speak.

On May 4, in Ohio, National Guardsmen fired into a crowd of protesters at Kent State University. Four students were killed.

The State of New Hampshire asked Judge Bownes to forbid the Chicago 3 from appearing on the UNH campus. In Durham, there was talk of a strike.

Bownes ruled that the three could appear, but that their performance must take place between 3:30 and 6:30 p.m. "We had word that workers from surrounding towns planned to invade the campus," he says now. Still, "If it had not been for Kent State, there would have been no time restriction at all. But I had visions of somebody lying in a pool of blood. That was a tough decision, and I felt pretty lonely. I had a tough day."

Rubin, Hoffman, and Dellinger did not show up on time, and it was widely understood that they were purposely disobeying the court order. When they did show up, at 7:30, Attorney General Warren Rudman allowed them to speak. Their remarks consisted mostly of obscenities. But there was no violence. Bownes later cited Student Body President Mark Wefers for contempt of court—a citation that was later overturned on appeal.

A case can be made that the three most powerful men in New Hampshire are Thomson, Loeb, and Bownes—the chief executive, the owner of the chief medium of communication, and the lone federal judge. There is no single legislator or businessman able to make things happen, or not happen, as these three can. It is a fine balance. Thomson and Loeb speak for conservatives; Bownes was a liberal Democrat before he became a judge. (Thomson and Loeb think Bowne's liberal instincts influence his decisions). The three men have only one thing in common—all of them were born and grew up outside New Hampshire. Thomson is from Georgia, Loeb from Long Island, New York.

Hugh H. Bownes was born in New York City in 1920. His parents were both Irish Protestant immigrants. His father was a union printer. When Hugh Bownes was 12, Franklin D. Roosevelt was elected President.

My Democratic philosophy came about because my father started out with the union movement in New York, and we were poor," he says. "Roosevelt did a lot of things for the poor people. The country was supposedly going to the dogs. Democracy and the free enterprise system were saved by FDR. I always thought, and still do, that he was one of the greatest Presidents we ever had."

When Bownes came to New Hampshire in 1948, after graduating from Columbia Law School, he asked his new boss, Laconia attorney Arthur Nighswander, what political party he should join. "I told him all the county officers were Republicans," says Nighswander, "that if he wanted to get along, he should join the G.O.P. The next thing I knew, he had become a Democrat." Bownes says, "I was a Democrat at heart—by upbringing, by training, by inclination, by emotion. I just felt that I couldn't be a Republican and take an active part in Republican politics. It would be contrary to my personal beliefs."

Bownes was lucky to land in Laconia, where the fledgling New Hampshire Democratic Party was at least an active force. Thomas McIntyre, now New Hampshire's senior senator, was there, as was J. Oliva Huot, who went on to serve a term in Congress. All of them served as mayor of Laconia. (Bownes's term was 1963–65.) They became active in national politics in 1952, when Tennessee Senator Estes Kefauver came north seeking the presidential nomination. They backed Kefauver again in 1956, the year he wound up as Adlai Stevenson's running mate. McIntyre remembers the drive with Bownes to the 1956 Democratic convention in Chicago as "the closest experience we ever had." In 1962, with Bownes serving as Democratic National Committeeman from New Hampshire, McIntyre was elected to the U.S. Senate.

Six years later, when Federal District Court Judge Aloysius Conner died, McIntyre turned first to outgoing Democratic Governor John King—but King, after expressing interest in the job, turned it down to run for the Senate against Norris Cotton. (He lost). McIntyre then turned to Bownes, who had been an associate justice of the New Hampshire Superior Court since 1966. "In Hugh Bownes, you had the dream," says McIntyre. "He was a topnotch lawyer. He was a good Democrat. And he was a close friend."

President Johnson announced Bownes's nomination on July 18, 1968. Bownes came up for confirmation before the Senate Judiciary Committee one week later. It was supposed to be a routine matter. McIntyre remembers it as "a day of horror for me."

On that day, Bownes brought his wife, Irja, to Washington, where McIntyre planned to throw a party celebrating the event. McIntyre got up and "gave a little speech to Committee Chairman James Eastland about the qualities of this man." Bownes also made some remarks.

As Bownes spoke, Senator Strom Thurmond entered the hearing room and whispered something to Eastland. Eastland announced that Thurmond had filed an objection to the nomination. Thurmond had received a telegram from William Loeb. It was a long telegram, listing Bownes's liberal credentials and mentioning a feud that had simmered for years between Bownes and New Hampshire Congressman Louis Wyman. "I was paralyzed," says McIntyre. "I didn't know what to do. I ran in to my senior senator, Norris Cotton, and we got in touch with Strom Thurmond. And finally Thurmond agreed to see us.

"Well, the objection was all centered around the Loeb telegram. It was in my opinion a scurrilous telegram, and a mean one because of the timing. If we had had it a week or ten days ahead of time, we would not have been put in this embarrassing position."

McIntyre, Bownes, and Cotton persuaded Thurmond to withdraw his objection. Bownes thinks his war record helped convince Thurmond of his patriotism.

Bownes had been scheduled to enter Columbia Law School on a scholarship in 1941. Instead, he enlisted in the Marines. Three years and one silver star later, he was standing in shallow water off Guam, directing the transfer of troops from amphibious vehicles to the beach. He was approached by a colonel from a nearby engineering outfit. Some Japanese soldiers had barricaded themselves in caves along the shore. Bownes and the colonel discussed the use of flamethrowers to flush them out. As they talked, a mortar shell exploded a few feet away. "And the next minute I was sitting on my butt in the water with my leg up in the air and blood coming out," says Bownes.

He thought at first it was a minor wound, but it wasn't. A nerve in his right leg was

injured; he lost a lot of blood; gangrene set in. Bownes spent most of the next two years in Navy hospitals. For a while, he thought he would lose the leg. He did lose his heel, a toe, and the flexibility of the foot below the ankle.

Bownes is proud of his record as a Marine. His years in the service, however, did not stop him from feeling bad about having to sentence a number of draft evaders to jail during the Vietnam war. In December 1968 Bownes sentenced a young man to five years at Pennsylvania's Allenwood Prison Farm. Shortly after being incarcerated, the man wrote to Bownes asking for a review of the sentence. Bownes wrote back:

"Your letter is not an easy one to answer. As a matter of fact, the sentence that I gave to you was one of the most difficult things that I ever did in my life.

"I understand and respect your conscientiously held beliefs. I want you to understand, however, that I, too, have a conscience and that conscience compels me to uphold the law to the best of my ability.

"I would also like to point out to you that there are many young Americans who feel honestly that the Vietnam war is immoral and wrong. Many of these young Americans have, however, obeyed the law and some of them have paid for that obedience with their lives in the jungles and swamps of Vietnam. That also is a great waste."

Warren Rudman, a Republican who was attorney general of New Hampshire from 1970–75, admires Bownes for his devotion to due process, and to the law. "I don't think he has an ego problem," says Rudman. "He's not worried about building a record. The State of New Hampshire was never treated unfairly during my six years . . . . I have never known Bownes to bend precedent."

Bownes has what amounts to a religious feeling about the Constitution and the Bill of Rights. Sometimes it shows up in his carefully drafted, carefully written opinions. Ruling in favor of the Gay Students Organization of the University of New Hampshire in 1974, Bownes wrote:

"In essence, this case is quite simple. The First Amendment guarantees all individuals, including university students, the right to organize and associate 'to further their personal beliefs . . . .' A university must recognize any bona fide student organization and grant to that organization the rights and privileges which normally flow from such recognition. Moreover . . . the 14th Amendment requires that the privilege be available to all organizations on an equal basis. From this it follows that the GSO has the same right to be recognized, to use campus facilities, and to hold functions, social or otherwise, as every other organization on the UNH campus."

Terri Lavelle, director of the New Hampshire Civil Liberties Union, sees Bownes's role as "protecting our Constitutional freedoms—interpreting them for the individual. Often you hear that there is too much concern for minorities, and not enough for the majority. Bownes is sensitive to the rights of individuals, no matter who they are. He is a very strong person."

Bownes's concern for the rights of individuals—even unpopular individuals—first surfaced in New Hampshire in the 1950s, during the Joe McCarthy era. The state legislature had appointed Louis Wyman a one-man committee to investigate possible subversive activities. Bownes's law partner, Arthur Nighswander, was president of the State Bar Association. "In those days," says Nighswander, "there were many lawyers who would tell you, 'I've defended murderers and rapists, but I'll never defend a Communist.' "

Dr. William Uphaus was a pacifist who ran a camp called the New Hampshire World Federation Center in Conway. Louis Wyman wanted Uphaus's guest registers for 1954 and 1955. Uphaus refused to turn them over; Wyman subpoenaed them. And Arthur Nighswander appointed Bownes to represent Uphaus. "There were not too many high points for us," says Bownes with a smile.

The New Hampshire Supreme Court ruled 3–2 in favor of Wyman, and the case went to the U.S. Supreme Court. "I told Uphaus, 'Don't worry, you'll never go to jail.' " says Bownes. But he was wrong. In 1959 the Supreme Court ruled 5–4 against Uphaus, who was sent to jail for a year; he was 68 at the time.

"Uphaus was a sincere, devout radical," says Bownes. "I believed in the principles he was fighting for, and had a great deal of admiration for him and his wife. There were people in the background who wanted him to become a martyr—and, in fact, he became one—but I really believed it (forcing Uphaus to turn over his records) was an abridgement of his rights."

But, says Bownes, Uphaus "had good lawyers, and he got due process. He wasn't spirited away in the night."

During the past three years judges have been in the news more than usual. John Sirica took an active role in forcing Watergate plumbers to reveal higher-ups who were involved in the coverup. W. Arthur Garrity has been in control of Boston's public school sytsem since busing to achieve integration was ordered two years ago. Frank M. Johnson of Alabama and Gordon West of Louisiana are running the prisons in those states. Like them, Hugh Bownes has been labeled an "activist judge," and a "liberal judge." But he says, "I find the term 'activist' elusive. For example, no one is more conservative or careful to follow precedent than Judge Garrity. He got stuck with the (busing) base—few judges would have taken the time to write the decision he wrote. I admire particularly the way he has stood up as a man and a human being under the stress that he is continually subjected to."

Bownes says judges do not want to take over the functions of other branches of government: "The judiciary is pushed into the situation because of the failure of responsible officials and legislatures—supposedly responsible—to meet their constitutional obligations."

Of his own decisions—particularly those involving civil liberties—Bownes says, "Any of these decisions would have been made by any federal judge worth his salt, whether he was a rock-ribbed Republican before he became a judge, or a liberal Democrat. I think the Bay Students case was mandated by the Constitution. The prayer decision was clearly mandated by the Supreme Court. The Franconia Notch case was decided in accord with the federal Environmental Protection Act."

Bownes reacts calmly to the criticism of his decisions by William Loeb and the Manchester Union Leader. "I don't see how you can set any limits on the freedom of the press . . . I believe with Thomas Jefferson that there shouldn't be any limits," he says. "At times the press is irresponsible to the extent of being mischievous, but that's the price you have to pay. And I think it's well worth it. The Union Leader has every right to slam the hell out of me if they don't like what I do."

Recently Bownes disqualified himself from a case involving William Loeb and Kevin Cash, author of "Who The Hell Is William Loeb?" Loeb's attorney requested that Bownes turn the matter over to another judge. The attorney cited numerous attacks by Loeb upon Bownes, and said Bownes could not possibly be objective in presiding over such a case.

"I felt," says Bownes, "that if Loeb feels I'm prejudiced against him, there is no way that I can convince him that I'm not. I was afraid of leaning over backwards in order to be fair . . . also it is important, not only that justice be done, but that the plaintiff (Loeb) feels that justice is being done."

Most attorneys in New Hampshire—Republicans and Democrats—feel that Bownes serves justice well. Gus McDonough, a prominent Manchester defense attorney, says Bownes "is more concerned with seeing justice done than worrying about whether people criticize him or not. He has a broad back; he's a good strong guy." And another Manchester attorney, Joseph Millimet, says the way Bownes runs his court—oblivious to the criticism of the moment—is one of the best arguments for the continued lifetime appointment of judges.

"Ever since this country was formed," says Hugh Bownes, "there has been a struggle to sustain the Bill of Rights against the encroachments that politicians in power—with honorable purposes—attempt to make. And this is the way it is going to be until, heaven forbid, some maniac reaches power and is able to persuade the country to do away with the Bill of Rights. But the Bill of Rights and the Constitution of the United States are the commandments. They are what we live by."

## AMERICA'S ENERGY CRISIS CONTINUES

Mr. STONE. Mr. President, on August 27, 1976, the Senate adopted Senate Joint Resolution 206 which calls upon the President to convene a national leadership conference on energy policy. I introduced this resolution because the country as yet does not have a comprehensive, national energy policy. This is the case despite the fact that our dependence on foreign sources of energy is increasing and our vulnerability to any future embargo is greater than ever before.

A number of newspaper editorials over the past year have called upon Congress and the President to work together in developing an effective energy policy. These editorials wisely underscore the fact that the adoption of such a policy is absolutely critical to the well-being of our country. One of the best editorials in this respect that I have read appeared in the Pensacola Journal on August 12, 1976. Mr. President, I ask unanimous consent that the editorial, "A Grim Forecast," be printed in the RECORD.

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

### A GRIM FORECAST

Anyone who doubts that America's energy shortage is serious should consider the attitude of the majority of the Organization of Petroleum Exporting Countries as they prepare for a December meeting to discuss new oil prices.

Alone among the major producers, Saudi Arabia is attempting to hold prices at the current $11.51 a barrel. Saudi Oil Minister Sheik Ahmed Zaki Yamani said his country will resist other members of the cartel (OPEC) who wants a "very drastic increase," perhaps a quadrupling of oil prices next year.

Failing to hold the line, the Saudis then will attempt to convince the other OPEC nations that any increase over 10 per cent will be unreasonable.

The struggle for an inordinate price increase is led by Iran, a major producer of crude oil and a nation with much influence among other cartel countries.

This is a dismal prospect. The United States now is well on its way to importing 50 per cent of its petroleum needs. Of this 50 per cent, 82 per cent is supplied by OPEC nations. The effect on the American economy would be devastating if Iran succeeds in getting just half the price increase it is fighting for.

Painting a dismal picture blacker is this nation's natural gas shortage projected for

the coming winter. Shortages of past years have had an economic impact with some industries curtailing operations because of fuel shortages. But durng none of these years have domestic consumers suffered.

Prospects for this winter are grim, Federal Power Commission officials say. Projections forecast natural gas shortages for residential use, even after industry is drastically curtailed. If their projections are correct there will be cold homes this winter.

In sections of the country where electric utilities have not converted to alternate fuels such as coal there will be a drastic increase in power bills. The price of consumer goods will reflect the increased cost of OPEC oil, as will gasoline at the pumps.

This very possible quadrupling of the price of OPEC oil does not come as a surprise. Anyone following the news is aware that it has been a long-time Irani project.

But the U.S. Congress has performed as if there were no problem. After years of waiting, America has no real energy policy. Perhaps the 95th Congress will be stirred to action during a cold winter following December.

## RESPONSIBILITY FOR GENOCIDE

Mr. PROXMIRE. Mr. President, the most important aspect of article IV of the Genocide Convention is that it extends the responsibility for genocidal acts beyond the traditional scope of responsibility.

Before World War II only nations had been widely judged to be subject to the pains and penalties of international law. Indeed, this line of defense was taken by the men who stood trial at Nuremberg and Tokyo. The defendants maintained that they could not be blamed or punished for their evil acts against humanity because they were "just carrying out the orders of their government."

The international war crimes trials refused to accept this specious argument and ruled against the defendants. The position of the courts was that these men had committed war crimes and did bear some responsibility for ordering and participating in reprehensible acts against humanity. Thus, these trials set a precedent that high government officials could be held accountable to the international community for their actions.

It was in this spirit that article IV of the convention was written. This article states:

> Persons committing genocide or any of the other acts enumerated in article constitutionally responsible rulers, public officials or private individuals.

Mr. President, it is important that this body not forget the lessons of Nuremburg and the atrocities that preceded it. Neither governments nor individuals should be permitted to commit such heinous crimes without engendering the moral indignation of the world community.

This convention, with its affirmation of the importance of human life, reflects the same important values that were so well expressed in our Declaration of Independence and Constitution. It deserves our rededication today through ratification of this important human rights convention.

## DR. GEORGE V. IRONS OF SAMFORD UNIVERSITY

Mr. SPARKMAN. Mr. President, in 1933 Dr. George V. Irons, Sr., joined the faculty of Howard College in Birmingham, Ala. A member of one of Alabama's most distinguished families, Dr. Irons was a Phi Beta Kappa graduate of the University of Alabama where he distinguished himself as captain of Alabama varsity track and cross country teams and as one of the South's greatest long distance runners. During those depression years as a professor, there was little hope of financial reward from Howard College which was indebted some $400,000. However, Dr. Irons gave a wealth of leadership, dedication, and promise sorely needed by Howard.

During the next 43 years, Howard College, now Samford University, grew from a small financially troubled college to one of America's leading private educational institutions. Today, Samford has an enrollment of over 3,700 students and is fourth in size among the Nation's 43 Baptist senior colleges and universities. Samford is now Alabama's largest privately supported institution of higher learning. It has the largest professional school of law in Alabama—Cumberland School of Law—and excellent schools of business, nursing, pharmacy education, and music.

Samford University's remarkable and sustained growth as an educational institution has been achieved only through the strength and dedication of its faculty and administration. Dr. George Irons played a major role in Samford University's remarkable dynamic development.

Dr. Irons has also been recently honored by Freedom Foundation at Valley Forge, Pa., and his achievements have led directly to 16 consecutive Freedom Foundation medals and awards honoring Samford University for its advancement of the American way of life.

On May 28, 1976, Samford University properly honored Dr. George Irons at its annual candlelight dinner for his notable and enduring services to the university. Over 43 years, Dr. Irons distinguished himself at Samford. His greatest hallmark is the high esteem in which he is held by Samford's faculty, student body, and alumni.

Dr. Irons is a fine example of patriotism, scholarship, and dedicated citizenship. I ask unanimous consent to have printed in the RECORD an article which appeared in the Birmingham Post-Herald, together with a resolution adopted by the Samford University faculty in honor of Dr. Irons.

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

[From the Birmingham Post-Herald, May 28, 1976]

### IRONS "LUCKY TO BE HIRED;" NOW RETIRING AFTER 43 YEARS

(By Dale Grisham)

When Dr. George V. Irons leads Samford University's graduation processional Saturday-night, it will be his last official act as a faculty member after 43 years as a history professor there.

Irons said he was "lucky to be hired" in 1933 when he joined Samford's faculty, "because jobs were scarce in the Depression."

"We were accepting a side of beef and 12 dozen eggs for tuition in those years," he said. "Those were hard times. Nobody had cash, so we took produce instead."

In spite of the bad economic situation, there was still a lot of "lively school spirit," according to Irons. "The biggest event of the years was the Howard-Birmingham-Southern game. No matter who won the SEC, that game was the big game around here. We called it the Battle of the Marne, which was the first big battle of World War I. There was a lot of horseplay. We'd steal mascots and go through all sorts of negotiations to get them back. There were always gags, but it was fun to us."

Irons said one big difference between his past students and students of today is that those today react unfavorably to traditional class methods. He cited the increased use of simulation and class participation as examples, saying that students today "don't go in for the 'yellowed notes' lectures."

"Students now are more dubious about untested truths," he said. "They are better informed because of the influence of the mass media. They have quick, inquiring minds and they want documentation of facts. Nearly all of them are from Missouri, so to speak; they want to be shown, and I think that is good. It's a new generation. There's no question about it."

Irons received his PhD from Duke University in 1936. He served as head of Samford's department of history and political science for 22 years. A member of Phi Beta Kappa, Irons also holds the rank of Distinguished Professor of History.

Irons said that he will miss the classroom but plans to spend a lot of time researching at Samford's library. He said two of his special research projects are the secession of Georgia and early aviation in Birmingham. "I also plan to write about the severe discipline in the old Baptist churches in the 1840's and 50's," he said. "They would put members out of the church for doing anything associated with evil, like card playing, dancing, drinking . . . or consorting with Methodists," he added, smiling.

About his retirement, Irons said, "I've had a good time here, but it's time to go. I tell people not to pity my gray hairs, but to think of all the fun I've had putting them there."

### GEORGE VERNON IRONS—A RESOLUTION

There have been few who have made contributions to Howard College and Samford University that would equal that of Dr. George Vernon Irons. For his long and distinguished teaching career, Dr. Irons would have earned a permanent place in our history, but his service to students, alumni, civic and professional groups, public and private education, and to the Baptist denomination add a unique lustre to his lifetime of achievement.

Born in Demopolis, Alabama, Dr. Irons received his doctoral degree in 1933 from Duke University, with post-doctoral studies at a number of major universities. He began his career in teaching as assistant principal at Perry County High School, 1925–1927. He was Master at the Darlington School for Boys in Rome, Georgia, 1927–1931, and an assistant in the history department at Duke University, 1931–1933. He came to Howard College in September 1933 and, completing his 43rd year of service, now holds the rank of Distinguished Professor of History at Samford University. He has served in many capacities during this time, including chairman of the division of social sciences and, for 22 years, head of the department of history and political science.

Dr. Irons came to old Howard College in the Great Depression years and, in the college's near bankruptcy period of the late 1930's, served as teacher and men's counsellor for the football players in old Renfroe Hall virtually without pay, until World War II brought in the Navy V-12 students. After a period of active military duty as Col. Irons, he returned to serve as veterans advisor at Howard. One of his services during his tour of military duty was the writing and publication of the War Department training manuals on antiaircraft automatic weapons and antiaircraft searchlights. In the 1940's and 1950's, he was a significant contributor to the implementation of the new "nuclear curriculum" of the post-war years, co-author of special syllabi for both U.S. and history of western civilization courses. During this time he published a number of articles in scholarly journals.

Over these years, Dr. Irons has discharged his duties in the department of history and political science and in the university committees with great distinction, having served on virtually every faculty committee, the graduate council, the academic council, and numerous ad hoc and special university committees. In his long career, he has brought experience, good judgment, and wisdom to the solutions of problems in almost every area of university life.

He has been active in a number of professional and academic groups including the executive board and editorial board of the Alabama Historical Association. He has served as the treasurer of the Alabama Writers' Conclave, as vice president of the Alabama Academy of Science, and has a member of the Southern Historical Association, the Alabama Guidance Council, the Alabama United Daughters of the Confederacy, the Alabama Baptist Historical Society, the Southern Baptist Historical Association, the Jefferson County Judicial Commission, and the Jefferson County Mental Health Association.

Many honors have come to Dr. Irons, including membership in Phi Beta Kappa, Phi Alpha Theta, Omicron Delta Kappa, Pi Gabba Mu, and Kappa Phi Kappa. He was an associate director of the Freedoms Foundation in Valley Forge, Pennsylvania, and has won the George Washington Medal awarded by the Freedoms Foundation. He is listed in "Who's Who in America," "Who's Who in the South and Southwest," "Directory of American Scholars," "Who's Who in American Education," and many other reference biographies. For years, he has prepared the university's entry in the annual Freedom's Foundation program and thus has been instrumental in the university's having won sixteen consecutive citations from the Freedom's Foundation for the university's programs that emphasize patriotism and good citizenship.

Dr. Irons was married to the late Velma Wright Irons of Wedowee, Alabama, whose memory has been preserved in the American citizenship award given in her honor each awards day at Samford. Their two sons are Dr. George V. Irons, Jr., a North Carolina Heart Specialist, and William Lee Irons, a Birmingham attorney. A longtime member of the Ruhama Baptist Church, Dr. Irons is a deacon now at the Southside Baptist Church. He holds a commission in the U.S. Army Reserve and is affectionately known by many as Col. Irons.

A great respected and beloved teacher and colleague, he has had the university annual, the Entre Nous, dedicated to him on four occasions: 1941, 1960, 1969, and 1974. He has been featured many times in the "Samford Today." His students still correspond with him from all over the United States and the world. The department's files are heavy with testimonial letters from hudreds, in classes that reach back to the 1930's, expressing affection and appreciation for him, and letters from friends, ranging from the President of the United States, Governors of Alabama, Members of the Congress, leaders in Education, and many cultural and civic leaders of the Birmingham area.

Dr. Irons was elected by his peers as faculty marshal, and in his brilliant blue grab he has served at many graduations with dignity and distinction. In 1972 his colleagues in the department inaugurated in his honor a number of George V. Irons scholarships for students, funded by gifts from alumni and friends each year in honor of Dr. Irons. On April 10, 1974, the university proclaimed "George V. Irons Day," and gifts and ceremonies involving all aspects of the University attested to the universal esteem in which Dr. Irons is held by students, faculty, administration, trustees, and friends of the university. Certainly, in the long history of the university, Dr. Irons must be ranked at the very top in terms of his widespread, beneficent influence, the love that former students evidence for him, and his impeccable character and qualities of modesty, humility, kindness, and selfless service to the university.

Dr. Irons is simply a unique person—one-of-a-kind, alert, witty, friendly, and charming in his own admirable way—one whose loss from the active teaching profession will be felt deeply in many areas of life. His retirement brings a sense of loss but also one of joy in the knowledge that he will still be active, indulging in the long-sought aim of relaxed reading and writing in the library and continuing on campus the many, many close associations and friendships that go back over the years. Therefore, we take this occasion to salute one of the truly great ones, Dr. George Vernon Irons, and wish him happiness, continued good health, and a full measure of joy in the years ahead.

## BUDGET ALLOCATIONS UNDER JURISDICTION OF COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. PROXMIRE. Mr. President, in accordance with section 302(b) of the Budget Act, I am submitting to the Senate the fiscal year 1977 budget allocations for programs under the jurisdiction of the Committee on Banking, Housing, and Urban Affairs.

The committee does not have jurisdiction over any entitlement programs which require subsequent appropriations. The allocations for the programs within the spending jurisdiction of the committee are based on estimates provided by the Senate Budget Committee, in conjunction with the Congressional Budget Office.

It should be noted that the estimate for the Federal Housing Administration Fund under function 400 differs from that initially estimated by the Congressional Budget Office. This difference arises because the budget authority figure under the committee's jurisdiction is dependent, in a residual manner, upon the action of the Appropriations Committee. The Appropriations Committee appears likely to approve a figure different from that originally assumed by the Congressional Budget Office and the Senate Budget Committee. Accordingly, the figure for FHA budget authority under the jurisdiction of the Banking Committee has been modified in light of the more recent estimates available to the committee.

I ask unanimous consent that the above-mentioned report of the Committee on Banking, Housing and Urban Affairs be printed in the RECORD.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS—REPORT TO THE SENATE PURSUANT TO SEC. 302(b) OF THE CONGRESSIONAL BUDGET ACT

[In thousands of dollars]

| | Function and program | Budget authority | Outlays |
|---|---|---|---|
| 050 | Defense production guarantees, 07-40-4080-0-3-051 | 0 | 200 |
| 150 | Export-Import Bank of the U.S. Fund, 30-48-4027-0-3-153 | 2,925,000 | 0 |
| 400 | Rural housing insurance fund, 05-75-4141-0-3-401 | 1,170 | 1,170 |
| | Department of Treasury—Assessment funds (trust revolving fund), 15-57-8413-0-8-403. | 0 | 3,874 |
| | FHA administration fund, 25-02-4070-0-3-401 | 841 | 472 |
| | Government National Mortgage Association management and liquidating functions, 25-03-4016-0-3-401. | 0 | −21,400 |
| | Emergency Home Purchase Assistance Act, 25-03-4205-0-3-401 | 3,500 | 3,500 |
| | Guarantees of mortgage-backed securities, 25-03-4238-0-3-401 | 0 | −16,806 |
| 400 | FHA Administration—National insurance development fund, 25-226-4235-0-3-403 | 0 | −1,758 |
| | Interstate land sales special fund, 25-27-5270-0-2-403 | 450 | 450 |
| | Emergency loan guarantee fund, 30-44-4057-0-3-403 | 0 | −4,507 |
| | FDIC trust revolving fund, 30-64-8419-0-8-401 | 0 | −767,281 |
| | Federal Home Loan Bank Board revolving fund, 30-68-4035-0-3-401 | 0 | 92,320 |
| | FSLIC fund, 30-68-4037-0-3-401 | 0 | −328,875 |
| | Federal Credit Union operating fund, 31-34-4056-0-3-401 | 0 | −48 |
| | Credit Union share insurance fund, 31-34-4468-0-3-401 | 0 | −21,131 |
| 450 | Revolving fund (liquidating programs), 25-02-4015-0-3-451; New communities fund, 25-12-4237-0-3-451; Disaster loan fund, 32-45-4153-0-3-453 | 34,000 | 41,000 |
| 500 | College housing loans and other expenses, 25-02-4058-0-3-502 | 27,976 | 30,010 |
| 600 | Homeownership and rental housing assistance, 25-02-0148-0-1-604 | 68 | 0 |
| | Annual contributions for assisted housing 25-02-4041-0-3-604 | 5,500 | 0 |
| | Rental housing assistance fund, 25-02-4041-0-3-604 | 0 | −3,728 |
| | Nonprofit sponsor assistance, 25-02-4042-0-3-604 | 0 | 2,360 |
| 800 | Liquidation of Reconstruction Finance Corporation, 15-05-4170-0-3-803 | 0 | −424 |
| | Coinage profit fund, 15-25-5811-0-2-803 | 3,500 | 3,500 |
| 900 | Department of Treasury—Interest on uninvested funds, 15-10-1860-0-1-902 | 8 | 8 |
| | Multiple functions—GNMA participation sales fund, 25-03-4206-0-3-999 | 0 | −1,765 |

SUMMARY

| Function | Budget authority | Outlays |
|---|---|---|
| 050 | 0 | 200 |
| 150 | 2,925,000 | 0 |
| 400 | 5,961 | −1,060,020 |
| 450 | 34,000 | 41,000 |
| 500 | 29,976 | 30,010 |
| 600 | 5,568 | −1,368 |
| 800 | 3,500 | 3,076 |
| 900 | 8 | 0 |
| Multiple function | 0 | −1,765 |
| Total | 3,004,013 | −988,859 |

## INDIA, PAKISTAN, AND TAIWAN; AND THE NEED FOR A STRICT NUCLEAR NONPROLIFERATION LAW

Mr. RIBICOFF. Mr. President, in recent weeks there have been several important and disturbing developments in the international nuclear community that serve to point up the need for congressional action this year on legislation that would impose strict controls on U.S. nuclear exports and would establish clear objectives in our dealings with other nations in seeking to curb the spread of nuclear weapons capability around the world.

Among the most significant developments:

On August 9, I released a letter from Secretary of State Kissinger acknowledging that there is a "high probability" that U.S.-supplied heavy water was used by India to produce its nuclear explosion of 1974;

Recent press reports indicate that Secretary Kissinger has been unsuccessful thus far in his efforts to prevent the planned export of a plutonium reprocessing plant by France to Pakistan—a sensitive facility that would give Pakistan the capability to equal India's dubious feat;

According to yesterday's Washington Post, U.S. intelligence reports indicate that Taiwan has been secretly reprocessing spent fuel from a research reactor—a development, which is confirmed, would comprise the first known violation of the Nuclear Non-Proliferation Treaty by a party to the treaty; and

The United States has concluded negotiations with Israel and Egypt, and is in the final stages of negotiation with Iran, on agreements that would permit the first major exports of U.S. nuclear technology to these countries under conditions that some experts believe are insufficient to prevent the spread of nuclear weapons to the Middle East.

Each of these developments, Mr. President, helps to sensitize the Congress and the American people to the need for taking effective action before the global spread of nuclear weapons technology runs out of control. Last week, there were two major actions in the Senate which provide hope that Congress will work its will on this terrible problem of proliferation in the little time remaining to act before Congress adjourns this year and in the early days of the next Congress in 1977.

In the first of these actions, the Senate Foreign Relations Committee reported the Nuclear Explosive Proliferation Control Act of 1976, which would establish strict criteria to govern U.S. nuclear policy as well as to serve as objectives in talks with nuclear supplier and customer nations. The bill is virtually identical to S. 3770, which was introduced by Senator PASTORE, the distinguished chairman of the Joint Committee on Atomic Energy, as a compromise substitute to S. 1439, the Export Reorganization Act of 1976, which had been reported by the Senate Committee on Government Operations. Senator PASTORE's bill is now pending before the Joint Committee. As chairman of the Government Operations Committee, I have worked closely with Senators GLENN and PERCY in inquiring into the proliferation problem and in developing organizational approaches for dealing effectively with it. I am very pleased that we have been able to work closely with the Joint Committee and the Foreign Relations Committee, and I hope very much that the Senate and the House soon will have the chance to vote on the resulting compromise measure, which combines important policy and organizational provisions.

I ask unanimous consent that an article from the Washington Post of August 2, 1976, "Hill Moves to Toughen Curbs on Exports of Atomic Material" describing Senate action on the bill, as well as the text of section 15 of the bill, containing the criteria that would govern U.S. nuclear exports 18 months after enactment of the act, be printed in the RECORD, as exhibits G and H respectively at the conclusion of my remarks.

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

(See exhibits G and H.)

Mr. RIBICOFF. In the other significant Senate action, the distinguished majority leader, Senator MANSFIELD, introduced and won approval of Senate Resolution 253, establishing the study on U.S. Security and Foreign Policy Interests in Middle East, Europe, and Other Areas. I am honored to have been named cochairman with Senator BAKER of this study, which will explore the problem of nuclear proliferation and focus in particular on the proposed nuclear agreements with Egypt, Iran, and Israel. These agreements are due to be presented to the Congress for its consideration early next year, and I anticipate that the delegation of 12 Senators headed by Senator BAKER and me will develop important information and recommendations in the course of visits to the International Atomic Energy Agency in Vienna, as well as to Iran, Egypt, and Israel. These visits are due to take place after the November election.

Mr. President, I ask unanimous consent that an article from the Washington Post, "Nuclear Reactors Sales Overseas Target of Study," describing the purpose and the membership of the study, be printed in the RECORD as exhibit I at the conclusion of my remarks.

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

(See exhibit I.)

Mr. RIBICOFF. Mr. President, the growing concern of Congress with the nuclear proliferation problem has been analyzed in considerable detail in two articles that appeared recently in Business Week and the New York Times. I ask unanimous consent that these articles, "Why the Nuclear Power Race Worries the United States," from the August 23 issue of Business Week, and "Conflict Continues Over U.S. Effort To Halt Spread of Nuclear Weapons," from the August 24 New York Times, be printed as exhibits J and K at the close of my remarks.

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

(See exhibits J and K.)

Mr. RIBICOFF. These articles make clear that if the nuclear weapons club is not to be enlarged, the United States and the other nuclear supplier nations will have to agree soon to competitive ground rules that will limit nuclear exports to nations willing to accept international safeguards and to give a no-explosion pledge with respect to all of their nuclear activities, and also willing to agree to forego the reprocessing of plutonium and enrichment of uranium on a national basis.

The importance of attaining adherence to these ground rules by all the nuclear suppliers is made clear in the recent disturbing developments involving India, Pakistan, and Taiwan.

With respect to India, I am deeply disturbed by the disclosures contained in Secretary of State Kissinger's letter to me indicating that India has misused our peaceful nuclear assistance to develop its version of an atomic bomb. India proceeded with its nuclear explosion program, using plutonium derived from U.S.-supplied material, over the formal objections of the United States. To make matters worse, the Kissinger letter indicates that the United States is not prepared to restrict India's use of plutonium derived from the large quantities of heavy water we have provided for its research and power reactors to prevent use of the plutonium in devices that are no different than atomic bombs.

I wish to note, Mr. President, that the Secretary in his letter states that India has enough of its own indigenously produced heavy water to supply the research reactor in question and that, therefore, "U.S. heavy water was not essential to the production of plutonium for India's 1974 test." The fact remains, however, that India would not be able to operate its ambitious nuclear program, including a large heavy-water powerplant, without the substantial amount of heavy water provided by the United States. I believe, therefore, that the United States should use its still considerable leverage in the supply of heavy water and enriched uranium to India to insure that the plutonium derived from this material will not be separated and stockpiled on a national basis and will not be used for further nuclear explosions.

Mr. President, I ask unanimous consent that my original public announcement of the Kissinger letter, the text of the Kissinger letter, news coverage of the disclosures contained in the letter from the New York Times and the Washington Post, and editorial comment on the disclosures from the New York Times and the Hartford Courant be printed as ex-

hibits A through F in the RECORD at the conclusion of my remarks.

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

(See exhibits A through F.)

Mr. RIBICOFF. Our loose nuclear dealings with India have set a very dangerous precedent that may, in fact, encourage other developing nations, particularly Pakistan, to develop national plutonium stockpiles of their own that could easily be utilized for weapons purposes. The difficulty that Secretary Kissinger is encountering in seeking to prevent the French-Pakistani deal involving a reprocessing plant indicates that considerable damage has been done and may, in fact, be irreversible without some strong concessions from India. Clearly, even the threatened cutoff of economic and military assistance by the United States may be insufficient to pressure Pakistan to give up its nuclear-explosive option if India is free to pursue its present dangerous course. All the more reason, therefore, that the United States should not give India the required approval to begin reprocessing U.S.-derived plutonium, and should aggressively pursue present negotiations to buy back the spent fuel containing unreprocessed plutonium from the U.S.-supplied Tarapur nuclear powerplants.

I ask unanimous consent that articles from the Washington Post and the New York Times, dated August 8, describing Pakistan's refusal to drop plans for a reprocessing plant, and an article from the New York Times of August 25, describing France's refusal to drop plans to export the plant, be printed as exhibits L, M, and N at the conclusion of my remarks.

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

(See exhibits L, M, and N.)

Mr. RIBICOFF. Further complicating the proliferation problem is the report, based on U.S. intelligence sources, that Taiwan may be secretly reprocessing plutonium in order to develop a nuclear arsenal. Taiwan is a party to the NPT and, as such, would be violating the treaty if it undertakes any nuclear activity—particularly the development of weapons-grade material—outside of the safeguards of the IAEA. If, in fact, Taiwan has engaged in such a dangerous unsafeguarded activity, it would be subject to strict international sanctions, as provided in the IAEA statute, and would also be subject to a cutoff of further nuclear assistance by the United States and other nuclear supplier nations.

It also should be noted, according to the Washington Post story, that although the United States turned down a request from Taiwan to purchase a reprocessing plant, the United States did provide certain component parts, such as special leaded glass, and also trained a Taiwanese nuclear scientist in reprocessing techniques for a full year at ERDA's Argonne Laboratory near Chicago.

This is yet another example of the action-hand not knowing what the policy-hand is doing in U.S. nonproliferation efforts.

I ask unanimous consent that the article, "Taiwan Seen Reprocessing Nuclear Fuel," from the Washington Post of August 29, be printed as exhibit O in the RECORD at the close of my remarks.

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

(See exhibit O.)

Mr. RIBICOFF. Finally, Mr. President, there is a report of a downward trend in the use of nuclear power in Europe, and of growing public opposition in Europe to the development of the breeder reactor, which will generate more plutonium than it consumes as fuel, as well as opposition to the continued export of weapons-sensitive fuel facilities by West Germany and France. These developments are discussed in an editorial, "Europe's Nuclear Turn," in the New York Times, of August 26, and I ask unanimous consent that this editorial be printed in the RECORD as exhibit P at the close of my remarks.

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

(See exhibit P.)

Mr. RIBICOFF. The editorial concludes as follows:

> With public concern now growing in West Europe, chances are improved for American efforts to win supplier agreement on embargo of plutonium reprocessing plants. That would help pin down the agreement of Third World countries, such as Iran and Pakistan, to ship their spent fuel rods back to supplier countries in exchange for safe uranium fuel, rather than to engage in dangerous plutonium extraction at home.

The international nuclear climate may be right, therefore, for enactment of the legislation that I discussed above. The Nuclear Explosion Proliferation Control Act would establish criteria governing U.S. nuclear exports that other nuclear supplier nations can still be persuaded to follow. Among these criteria are an embargo on reprocessing plants and a requirement that spent fuel rods be shipped back to supplier countries. I hope very much, Mr. President, that the Congress will give priority attention to these matters of utmost concern for the security of the United States and the benefit of all mankind.

EXHIBIT A

KISSINGER LETTER ON INDIAN NUCLEAR EXPLOSION

WASHINGTON, D.C.—Senator Abe Ribicoff (D-Conn.) today released a letter he received from Secretary of State Kissinger acknowledging that "misinterpretation" of assurances given by the Indian government and of technical data had led the State Department to the "incorrect" conclusion that no U.S. peaceful nuclear assistance was involved in India's nuclear explosion of 1974.

Kissinger, reporting the results of a staff inquiry that he had ordered at Ribicoff's request, stated that there now was a "high probability" that heavy water supplied by the United States was used by India to operate an unsafeguarded reactor during the period that plutonium was produced for India's so-called "peaceful nuclear explosion"—a device equivalent to the plutonium bomb that destroyed Nagasaki.

Ribicoff, Chairman of the Senate Government Operations Committee, said: "I am deeply disturbed by these disclosures by Secretary of State Kissinger because they indicate that India has misused our peaceful nuclear assistance to develop its version of an atomic bomb. Furthermore, India proceeded with its nuclear explosion program, using plutonium derived from U.S.-supplied material, over the formal objections of the United States. To make matters worse, the Kissinger letter indicates that the United States is not prepared to restrict India's use of plutonium derived from the large quantities of heavy water we have provided for its research and power reactors to prevent use of the plutonium in devices that are no different than atomic bombs."

Ribicoff, whose Committee has been inquiring into the adequacy of Federal interagency controls over the nuclear export program, was critical of the secrecy that has surrounded U.S. nuclear relations with India. On June 16, he made the first public disclosure that the United States had provided India with a rare and expensive substance, heavy water, required to operate an unsafeguarded research reactor that produced the plutonium used by India to set off its nuclear explosion. "The United States never publicly acknowledged that shipment of heavy water to India either before or after the 1974 nuclear test; nor did the State Department divulge the details of India's formal disagreement with the U.S. position that a nuclear explosion does not constitute a 'peaceful use' of our nuclear assistance."

The 1956 contract under which the United States exported the heavy water to India required that the material be used only for "research into and the use of atomic energy for peaceful purposes." The heavy water was placed in the CIRUS research reactor and was the essential ingredient for transforming the reactor's natural uranium fuel, which is unsuitable for use in a nuclear weapon, into plutonium, which is atom bomb material. A staff analysis attached to the Kissinger letter noted that in 1970, the United States sent an aide memoire to India stating that the United States would not consider use of the CIRUS plutonium in a nuclear explosive device of any kind to be a peaceful use of our nuclear assistance.

"India went ahead and used the CIRUS plutonium for its nuclear explosion anyway, and the State Department's public response was to pin the blame on Canada, which had exported the CIRUS reactor to India," Ribicoff said. When Ribicoff called on Kissinger in June to account for the role of the U.S. heavy water in India's nuclear explosion, the State Department responded by citing a letter from the Indian ambassador in 1974 and technical data supplied by the Energy Research and Development Administration to support the official United States position that U.S.-supplied heavy water was not present in the CIRUS reactor when the plutonium used in the explosion was produced.

Kissinger, in his letter to Ribicoff, stated that the staff review "establishes that in earlier efforts the previously indicated heavy water loss rate and certain related calculations were incorrect. Consequently, there is high probability—because of India's practice of co-mingling heavy water—that some U.S. heavy water remained in the CIRUS reactor during the period in question" (when the plutonium for the explosion was produced). The staff analysis forwarded by Kissinger stated that the earlier estimate that all U.S.-supplied heavy water in the CIRUS reactor had been depleted "was a misinterpretation of the loss rate estimates, and a miscalculation of the results of such a loss rate on any U.S. heavy water in the reactor."

The staff analysis also cited Indian Ambassador Kaul's 1974 letter to Kissinger in which Kaul stated, "We did not use or divert Canadian material; in fact, we used 100 percent Indian material, Indian technology and Indian personnel." The State Department staff analysis went on to say: "This statement makes no specific representation regarding the heavy water used in the CIRUS reactor that produced the plutonium. A reasonable reading of the letter and considera-

tion of its context, does not indicate that any such representation was intended."

Ribicoff said: "This hardly seems like a reasonable interpretation of India's position in view of the fact that the State Department had never specifically inquired of India as to whether or not it used our heavy water in preparing for its nuclear explosion. It appears that we did not ask because we were afraid as to what the answer might be. Instead, we did not acknowledge our heavy water export to India, choosing to let Canada take the heat for India's nuclear test. Canada immediately cut India off from further nuclear assistance because of India's violation of its peaceful-use commitment. Our reaction was to look the other way."

Kissinger stated in his letter to Ribicoff that the United States had made known to the Indian government "our displeasure with the test" and withheld shipments of enriched uranium fuel for the Indian Tarapur nuclear reactors until assurance was obtained that the plutonium from these reactors "would not contribute to India's nuclear explosive program". Ribicoff noted, however, that no scheduled fuel shipment was actually held up, and that the assurance obtained from India was not a commitment to refrain from using the plutonium for nuclear explosions, but rather a so-called "functional equivalent"—namely to use the plutonium only for recycling as fuel in the reactors.

Ribicoff, noting that India has refused to ratify the Nuclear Non-Proliferation Treaty, said: "The best way for the United States to ensure that India does not use Tarapur plutonium, which now totals about 1,000 pounds or enough for 100 bombs, for more nuclear tests is for us to exercise the option we have to buy back that plutonium from India. Secretary Kissinger's statement that the United States is prepared to consult with India on a buy-back arrangement is insufficient. It should be made clear to the Indian government that continued shipment of enriched uranium for the Tarapur reactors will be conditioned upon India's agreement to ship the plutonium back to the United States for a reasonable price. In any event, the United States should not agree to permit India to reprocess plutonium from the spent fuel of the Tarapur reactors."

Under the United States agreement with India, the United States must consent before India can reprocess the Tarapur spent fuel.

As to the plutonium produced in India in other reactors utilizing heavy water supplied by the United States, Senator Ribicoff urged that the United States use whatever leverage it has to prevent the use of that plutonium for nuclear explosions. "Unfortunately, our heavy water was shipped to India, some of it through Canada, without first negotiating agreements with India that would have given us the same control over reprocessing of plutonium derived from the heavy water that we now have with respect to plutonium derived from our enriched uranium. India however is still heavily dependent upon the United States for its heavy water, and we should use this leverage to seek to obtain a no-explosion pledge—even at this late date." Ribicoff noted that the only present alternative supplier of heavy water to India would be the Soviet Union, which has been generally cooperative with the United States in non-proliferation efforts.

"Our loose nuclear dealings with India sets a very dangerous precedent and may, in fact, encourage other developing nations, particularly Pakistan, to misuse peaceful nuclear assistance for nuclear weapons purposes," Ribicoff said. "Unless the United States, as the world's leading nuclear supplier and technology nation, makes clear that we will not tolerate such abuses, the world may soon be put at peril by the rapid spread of nuclear weapons and capability. The prospect of regional nuclear wars triggering a Third World War, and even of terrorist groups using stolen nuclear material for purposes of blackmail and mass destruction, will become very real."

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EXHIBIT B

THE SECRETARY OF STATE,
*Washington, D.C., August 2, 1976.*

Hon. ABRAHAM RIBICOFF,
*Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.*

DEAR SENATOR RIBICOFF: Thank you for your letter of June 16, raising a number of questions concerning the U.S. supply of heavy water to India. I am in full agreement with you that this represents a matter of great importance to our non-proliferation policy, both with respect to India and other nations.

Your letter raised several questions concerning Ambassador McCloskey's response to your earlier letter on this matter, and in particular, the information which was supplied concerning the possible loss and replacement of U.S.-supplied heavy water. As a result of your inquiry, I directed that there be a thorough review of earlier staff estimates. This review establishes that in earlier efforts the previously indicated heavy water loss rate and certain related calculations were incorrect. Consequently, there is high probability—because of India's practice of co-mingling heavy water—that some U.S. heavy water remained in the CIRUS reactor during the period in question. We nevertheless do not have enough information to conclusively establish that such heavy water was present at all times after 1965. A full statement of our current best understanding of the situation is contained in the attached Staff Analysis. The Nuclear Regulatory Commission has been provided with this information.

The key factors in this matter, in our view, are that by 1965 India had produced unsafeguarded heavy water in its own Nangal heavy water plant in excess of that needed to replace the heavy water supplied by the U.S. for the CIRUS reactor. Thereafter, Indian supplies of Nangal-produced heavy water continued to increase so that by 1974 it had produced several-fold the CIRUS requirements. Thus, U.S. heavy water was not essential to the production of plutonium for India's 1974 nuclear test, and our response to the Indian nuclear test took this important consideration into account.

Nonetheless, our displeasure with the test was made known to the Indian Government, and subsequently, export licenses for nuclear fuel shipments to the Tarapur Atomic Power Station were withheld until satisfactory reassurance was obtained that the continued supply of nuclear fuel from the U.S. would not contribute to India's nuclear explosive program.

During my visit to India in October, 1974, I publicly cited our strong opposition to proliferation and warned of its inhibiting effects on cooperation in peaceful uses of nuclear energy. In March of this year, I reiterated my opposition to the Indian development of nuclear explosive devices in my testimony before the Senate Government Operations Committee, when I said in part ". . . we deplore it strongly, and we have made clear to India that we saw no need for it. . . ." I also stated that ". . . a continuation of nuclear explosions by India would be a reckless policy that would undermine regional stability. . . ."

During recent months, in connection with the Nuclear Regulatory Commission's consideration of two Indian export license applications for slightly enriched uranium, questions were raised anew concerning our continued supply of nuclear fuel for the Tarapur reactors, which supply had been resumed following satisfactory reassurance from the Government of India that this material would not contribute to its nuclear explosive program, as is explained in the attached Staff Analysis. As a result, the issuance of these licenses was delayed and the continued efficient operation of the Tarapur Atomic Power Station was jeopardized. It was our belief that further delay in licensing these fuel shipments, for materials which we are legally obligated to supply, would raise extremely serious problems for our overall relations with India, including the furtherance of our non-proliferation objectives there.

It was for this reason that I asked Ambassador Saxbe to return to inform me and interested members of the Congress personally of the possible impact of this delay. Ambassador Saxbe has told me of his useful and constructive conversations with you and other concerned members of the Congress, and we both appreciate your understanding of the need to continue an on-going relationship as we reexamine the fundamental issues involved. Moreover, I am gratified that the Nuclear Regulatory Commission now has approved the first of the two above-mentioned export license applications, which should allow additional fuel for the Tarapur Station to be frabricated in sufficient time to prevent disruption of the Indian electric power supply.

As we have informed your staff, we are prepared—now that the public hearings before the Nuclear Regulatory Commission on the second of these Indian export license applications have been completed—to consult with the Government of India on various aspects of our peaceful nuclear cooperation. In the meantime, I am attaching for your information a Staff Analysis prepared in response to the questions included in your letter of June 16.

We appreciate your interest in this important matter, which I can assure you is receiving my personal attention.

Best regards,

HENRY A. KISSINGER.

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STAFF ANALYSIS IN RESPONSE TO QUESTIONS RAISED IN SENATOR RIBICOFF'S LETTER OF JUNE 16, 1976

Before attempting to respond to the individual questions, it is desirable to give some background information on the supply of heavy water available to India, the facilities in which it is utilized, and the manner in which India actually handled and accounted for heavy water. Since this subject is central to a number of questions, this approach will simplify our overall response.

The 21 tons of heavy water delivered by the US to India was the first export of such material approved under the Atoms for Peace Program, as indicated in the AEC's Major Activity Report for the period January–June 1956. This material was provided with the understanding that it would be used "in connection with research into and the use of atomic energy for peaceful purposes." It was not restricted to use in a specific facility, even though it was known that the planned initial use was in a research reactor (subsequently designated as "CIRUS") which Canada was providing under the Colombo Plan. There was no requirement in the contract for records to be kept of either the loss rate or use of the heavy water supplied. Although the heavy water was delivered during 1956, CIRUS did not come into operation until 1960, at which time about 19.7 tons of the US-supplied heavy water were used in the reactor and 1.3 tons reserved for inventory.

In 1959, India entered into a lease agreement with the US for 15 tons of heavy water to be used in a zero-energy research reactor known as "Zerlina." At Indian request, this agreement recognized that, as a result of normal operation, the heavy water would be commingled with other heavy water available to India (including that being used in CIRUS). It did not require that India actually account for the heavy water fur-

nished under the agreement but rather that it be able to demonstrate the use of an equivalent quantity of material of like specifications for the purpose and in the manner specified in the end-use statement.

In 1962, the Nangal heavy water plant came into operation with a production capacity of some 12–15 tons of heavy water per-year. This Indian plant was built with equipment and technology from a variety of sources, and was not provided under any governmental agreements or understandings. Thus, there were no restrictions on this plant nor on the use of any heavy water produced in it. Heavy water produced in Nangal also was commingled with that supplied by the U.S. for both CIRUS and Zerlina.

It is estimated that by 1965 the quantity of heavy water produced by Nangal had exceeded the 21 tons supplied by the U.S. under our 1956 contract, and by 1966, when the CIRUS reactor achieved reliable operation, cumulative production from Nangal had reached some 38 tons. The growth of the Indian inventory of heavy water is evidenced by the fact that in 1964 it returned 5 tons of the material supplied for Zerlina in the original drums and in apparently unused condition and, in 1965, loaned 12 tons of heavy water to Belgium.

Except in those instances where it was required to do so by explicit agreement with the supplier, India has kept no separate records relating to use or losses of heavy water by source. As indicated previously, the heavy water supplied under the 1956 agreement did not require the maintenance of any special records. The lease contract for Zerlina did require such records (although recognizing the concept of substitution, explained below), and an equivalent quantity of material to that supplied under that contract was returned to the United States, the aforementioned five tons in 1964 and the balance in 1974.

In safeguards practice, including that of IAEA, unsafeguarded special nuclear material may be substituted for safeguarded material of the same quality and quantity for the purpose of demonstrating compliance with safeguards and peaceful restrictions. Applying this principle to heavy water, India could have demonstrated its compliance with safeguards—by having available for inspection, and subject to safeguards, a quantity of Indian-produced heavy water of like quality equivalent to that supplied by the U.S.

For the reasons cited above, it is technically impossible to determine the amount of heavy water initially supplied by the U.S. in 1956 for use in CIRUS which physically remains in India today. Neither is there any conclusive basis for establishing the origin of the heavy water present in the CIRUS reactor at the indeterminate time that the plutonium used in the 1974 nuclear explosive test was produced. As explained in greater detail in the response to Question 3, the 10 percent loss previously reported was based on the total amount of heavy water leaving the reactor, including material which can be recovered and subsequently reconcentrated, as well as irrecoverable losses. Although the latter are—except for isolated instances of large irrecoverable losses that are not uncommon in early years of reactor operation—significantly the smaller of the two, the 10 percent annual loss rate was inadvertently interpreted as applying over the entire period in question and to irrecoverable losses. Thus, the previously stated conclusion that U.S.-supplied heavy water in CIRUS would have been totally replaced by about 1970 was a misinterpretation of the loss rate estimates, and a miscalculation of the results of such a loss rate on any U.S. heavy water in the reactor.

With this general background, the following responses can be made to the specific questions in Senator Ribicoff's letter of June 16, 1976:

Question 1: Information provided this Committee by the Atomic Energy Control Board of Canada, and the calculations done for the Committee by the Congressional Research Service, indicate that a substantial amount of U.S.-supplied heavy water, possibly as much as 90 percent of the original shipment, remains in India. How is this heavy water now being used? Has the United States asked to see records pertaining to its use?

Answer: As indicated above, there is no firm basis for determining the amount of heavy water supplied by the U.S. in 1956 which still remains in India, and such heavy water as remains cannot be separately identified from other heavy water available to India. At the present time, heavy water is in use in India in:

(a) The RAPP–1 power reactor, built in cooperation with Canada, which has a heavy water inventory of 220–230 tons.

(b) The CIRUS reactor, furnished by Canada, which has a heavy water inventory of approximately 20 tons.

(c) The Indian-built Zerlina zero-energy research reactor, which has a heavy water inventory of about 15 tons, although this can vary over a rather wide range.

In addition to the 21 tons of heavy water supplied by the US under the 1956 contract, the known sources of India's heavy water inventory include:

(a) An additional 130 tons of heavy water of US origin, supplied by Canada in 1971 with US consent, for use in RAPP–1, which is currently under IAEA safeguards.

(b) The accumulative production of the Nangal plant, which is estimated to be of the order of 165 tons at the present time, and

(c) Probably some 50 to 60 tons being used in RAPP–1, obtained from sources other than the US, Canada or indigenous Indian production.

Detailed Indian heavy water production and use records are not available to the US and there are no agreements which require that such records be made available. However, other data appears to indicate that until such time as it is necessary to fill the RAPP–2 reactor, the Indians have a surplus of about 100 tons of heavy water. Further, several additional Indian heavy water production plants are under construction.

Question 2: If the US supplied heavy water is still being used in the CIRUS reactor, or in any other unsafeguarded Indian reactor for explosive applications, does the United States regard this as a violation of the original peaceful-use agreement?

Answer: Although the Department of State maintains the position set forth in the November 16, 1970, aide memoire that nuclear explosives intended for any purpose do not constitute "research into and use of atomic energy for peaceful purposes," the Government of India has not accepted the US interpretation. We have no indication that India is currently using US-supplied heavy water in a manner inconsistent with its assurances to us, and since we have made our strong views known to the Indians, we do not expect the situation posed in the hypothetical question to arise.

Question 3: How was the misleading calculation showing no US-supplied heavy water remaining in India arrived at? What is the Department's corrected calculation?

Answer: The estimate of 10 percent loss per year was based upon the total rate of removal, or losses, of heavy water from the reactor, including withdrawals for reconcentration, rather than upon that for irrecoverable losses, but was inadvertently interpreted to apply only to the latter. Upon further review of the matter, it is now believed that the 10 percent figure for total losses per year probably was appropriate for the early years of CIRUS reactor operation, but not as a sustained rate over the full operating period in question. For example, we are aware of an Indian loss from CIRUS reactor of about 2.5 tons which resulted from a single operating incident. However, based upon comparable Canadian experience that shows decreasing losses over time, current total heavy water withdrawals should be closer to 3 percent per year. After reconstitution of part of these losses, the irrecoverable losses, again based on Canadian experience, could presently be well under one percent per year.

With regard to our present estimate it is not technically feasible to calculate the amount of U.S. heavy water not in the CIRUS reactor due to uncertainties regarding the actual total loss rates and irrecoverable loss rates over the history of the reactor operation, as well as the practice of commingling heavy water from various sources. Moreover, we do not know if reconstituted heavy water was returned directly to the reactor or replaced with other heavy water in stock.

The fundamental point, however, is that the availability to India of heavy water from its Nangal plant, on which use there are no restrictions, gave India the capability to substitute its own material for that supplied by the U.S. throughout most of the operating life of the CIRUS reactor.

Question 4: In view of revised calculations as to the depletion rate of heavy water in the CIRUS reactor, does the United States still accept the assertion of the Indian Government that no U.S. material was used in India's nuclear explosion program? On what basis did the United States accept the Indian assertion at the time of the explosion?

Answer: The letter of July 6, 1974 from Ambassador Kaul to Secretary Kissinger states "We did not use or divert Canadian material; in fact, we used 100 percent Indian material, Indian technology and Indian personnel." This statement makes no specific representation regarding the heavy water used in the CIRUS reactor that produced the plutonium. A reasonable reading of the letter and consideration of its context, does not indicate that any such representation was intended.

Later, in 1974, conversations took place between representatives of the USAEC and the India Atomic Energy Commission in Vienna. These conversations were directed primarily to the need for further Indian assurances that enriched uranium supplied by the U.S. for the Tarapur nuclear power plant would not be used in India's nuclear explosive program, and led to the exchange of letters on this subject with which you are familiar.

In a subsequent memorandum concerning these conversations, the USAEC official involved indicated that the Indian official had confirmed Ambassador Kaul's earlier advice that the Indian Government had used only "100 percent Indian material." It was then concluded that no further correspondence with Indian authorities was necessary on the question of whether any U.S. heavy water had been used in the production of that plutonium. However, it is our conclusion that these Indian statements were not intended to provide the U.S. with any assurance relating to the non-utilization of U.S. heavy water in the production of plutonium for the 1974 nuclear explosion, and that subsequent conclusions to this effect represent a U.S. misinterpretation of Indian statements in 1974.

Question 5: How much plutonium has been produced by India utilizing this heavy water? What was the status of this plutonium at the time of India's nuclear explosion and what is the status subsequent to the explosion? Has the United States asked to see Indian records pertaining to this plutonium?

Answer: We have no knowledge of the status of the plutonium produced during any specific time period, either before or after the Indian explosion of 1974, and we have no basis on which to require the exam-

ination of Indian records. In any case, however, since India had available to it the quantity of heavy water necessary for operation of the CIRUS reactor without reliance on the initial U.S. supply from about 1965 onward, only the quantity of plutonium produced prior to the mid-1960's was presumably dependent upon the U.S. heavy water. Although plutonium production in CIRUS currently may be on the order of 10 kgs/yr under optimum operating conditions, operational problems prior to 1965 indicate that this cumulative amount probably was less than ten kilograms.

Question 6: Why did the United States make no statement and take no action rebuking India at the time of the explosion in view of every indication that U.S.-supplied heavy water was used at some point to produce plutonium in the CIRUS reactor, and that it was plutonium from this reactor that was used in India's nuclear explosion? What distinction can be made between plutonium produced at different times in an unsafeguarded reactor?

Answer: In connection with the Indian test, the Department of State issued a statement on May 18, 1974, that: "The United States has always been against nuclear proliferation for the adverse impact it will have on world stability. That remains our position."

Since that time, the Department and Secretary Kissinger personally have indicated their strong opposition to the Indian nuclear explosion program on several occasions.

The action taken by the United States at the time of the explosion in July 1974 was to hold up further export licensing of slightly enriched fuel for the Tarapur reactors pending satisfactory reassurance that the plutonium produced in these reactors would not contribute to the Indian nuclear explosive program. Such reassurance was obtained through an exchange of letters beween the AEC Chairman of India and the US in September 1974. In this exchange, the Indian AEC agreed that plutonium derived from Tarapur would be used only to fuel Tarapur, unless otherwise agreed by the two governments.

With regard to the second part of this question, no distinction can be made between plutonium produced at different times in an unsafeguarded reactor, unless the irradiation history varies significantly from time to time and records subject to independent verification are available making it possible to relate the resultant differences in plutonium characteristics to different time periods. Because of this fact, it would be impractical to establish that plutonium employed in the Indian nuclear explosion was produced during any particular period of CIRUS operations.

Question 7: What action is the United States now prepared to take to ensure the peaceful use (i.e., no applications for explosions) of the heavy water and of all plutonium now in India as a result of United States nuclear assistance, including the plutonium in the spent fuel of the U.S.-supplied Tarapur reactors? For example, are we prepared to buy back the heavy water and all US-derived plutonium?

Answer: The question of whether the United States can and should seek to repurchase heavy water supplied under the 1956 supply contract and plutonium produced through its use involves both legal and policy issues which the Department of State is prepared to address in discussions with Indian authorities.

It should be noted that for plutonium produced in the Tarapur reactors, the situation is substantially different from that for US-supplied heavy water for CIRUS. Insofar as Tarapur is concerned, our Agreement for Cooperation with India accords the US a first option to purchase special nuclear material in excess of India's needs for such material in its program for peaceful uses of atomic energy, and we are now planning to explore with the Government of India possible arrangements under which this option might be exercised. For its part, the Indian Government has also expressed an interest in the transfer of irradiated material from Tarapur to the US. We are hopeful that our discussions on this matter will lead to agreed arrangements for the return to the US of this material. No such US right exists for the heavy water supplied under the 1956 contract, or for plutonium produced through its use.

Question 8: How are the United States' national interests being advanced by India's continued possession of this heavy water and plutonium, and by continued US nuclear assistance to India, if India continues to refuse to pledge not to use the materials and the assistance for nuclear explosions? In this regard, please explain the significance of India's agreement to recycle the Tarapur plutonium as fuel for the reactors, but its refusal to agree not to use the plutonium for nuclear explosions?

Answer: The question raises two separate issues relating to the US national interest and continued nuclear cooperation with India. The discussion above relating to heavy water supplied in 1956 under a one-time arrangement should provide full background with regard to this aspect of the question. Our only other substantial on-going cooperative arrangement relates to the fuel supply contract for Tarapur. As we have indicated to the Nuclear Regulatory Commission, the US believes that the national interest is served by continued fulfillment of this obligation, for reasons which have been presented in some depth during the recent NRC public hearings on this matter. Specifically, we believe that our failure to do so would call into question our credibility generally as a reliable supplier of nuclear materials, thereby greatly decreasing our capability to use such exports as a means of ensuring that the recipients impose adequate international safeguards over nuclear facilities and materials. In addition, a perceived US failure to fulfill its obligation could conceivably provide a rationale for the Government of India to regard itself as relieved of all obligations under the 1963 agreement, including those relating to safeguards arrangements. Finally, as a practical matter, interruption of the fuel supply would not impair India's nuclear explosive programs, since it is in no way dependent on plutonium produced in the Tarapur Atomic Power Station. In this connection, as noted previously, the US resumed fuel shipments to Tarapur in September 1974 only after we were satisfied that US material supplied for Tarapur would not be used in the India nuclear explosive program.

The September 1974 letter exchange between the US and Indian AEC Chairman referred to in the answer to question number 6, above, in which the Indian AEC agreed that plutonium derived from Tarapur would be used only to fuel Tarapur, unless otherwise agreed by the parties, effectively accords us a veto over any alternative use of such plutonium and we have advised India that use for nuclear explosives would be unacceptable to the US. We regard this as a clear functional equivalent of an Indian pledge not to use plutonium produced in the Tarapur Station for nuclear explosives.

EXHIBIT C

[From the New York Times, Aug. 9, 1976]

UNITED STATES SEES A ROLE IN INDIA'S A-BLAST

(By David Burnham)

WASHINGTON, August 8.—Secretary of State Henry A. Kissinger has acknowledged that it is highly probable that material supplied by the United States was used by India to become the sixth nation in the world to explode a nuclear device.

The acknowledgement by Mr. Kissinger appeared to contradict State Department assertions in June that the material in question had not played a role in the Indian nuclear explosion in 1974.

Mr. Kissinger, in a letter to Senator Abraham A. Ribicoff, Democrat of Connecticut, said a "misinterpretation" of assurances by the Indian Government and of technical data had led the State Department to the incorrect conclusion that no United States materials were involved in the Indian test.

Consequently, Mr. Kissinger said, there is "a high probability" that heavy water supplied by the United States was used by India in the reactor that produced the plutonium for what India calls its "peaceful nuclear explosion."

The admission by Mr. Kissinger could affect the nuclear export policy of the United States, an area of growing diplomatic and economic importance as the number of nations using nuclear power to generate electricity increases.

The Senate Government Operations Committee, headed by Mr. Ribicoff, has already approved legislation reorganizing the procedures under which nuclear equipment and fuels are exported.

This legislation is pending before the Joint Committee on Atomic Energy and the Foreign Relations Committee. This suggestion of confusion on policy in the past has increased pressure on these committees to act.

The dispute over Indian use of American materials also is expected to play a key role with the Nuclear Regulatory Commission, which on July 20 held a hearing on a request for an export license for new shipments of uranium to India. The licensing has been challenged by a number of organizations, including the Natural Resources Defense Council and the Sierra Club.

In disclosing Mr. Kissinger's letter, Senator Ribicoff said in a statement that he was deeply disturbed "because it indicated that India has misused our peaceful nuclear assistance to develop its version of an atomic bomb."

The Senator further noted that India had proceeded "with its nuclear explosion program, using plutonium derived from United States-supplied material, over the formal objections of the United States."

Mr. Ribicoff charged that "our loose nuclear dealings with India set a very dangerous precedent and may, in fact, encourage other developing nations, particularly Pakistan, to misuse peaceful nuclear assistance for nuclear weapons purposes."

He said the United States should make it clear "we will not tolerate such abuses."

The other nuclear powers at present are the United States, Britain, the Soviet Union, France and China.

HEAVY WATER INVOLVED

The United States-supplied material in question was 21 tons of heavy water, an essential ingredient for transforming natural uranium into plutonium. Natural uranium cannot be used as an explosive, but small amounts of plutonium can easily be fashioned into a nuclear weapon.

EXHIBIT D

[From the Washington Post, Aug. 9, 1976]

UNITED STATES CONCEDES PROBABLE ROLE IN INDIA A-BLAST

(By Don Oberdorfer)

In a reversal of its previous position, the United States now believes there is "a high probability" that American heavy water was used in producing India's 1974 atomic explosion, according to a letter from Secretary of State Henry A. Kissinger released yesterday.

Kissinger's letter and an accompanying State Department analysis blamed "incorrect" calculations and "a U.S. misconception" of Indian government statements for the previous American position that it was not involved in the explosion. The blast, India's first, created political shock waves in neighboring states and heightened fears throughout the world about the spread of nuclear weapons.

Canada permanently terminated its nuclear cooperation with India because a Canadian-supplied research reactor was used to make the material for the Indian explosive device, and because India refused to give satisfactory assurances it would not do the same thing again. The U.S. heavy water—supplied under an agreement that it was to be used only for "peaceful purposes"—was, and may still be, in use in the Canadian-supplied reactor.

"Heavy water" is an expensive man-made chemical containing more than the natural proportion of heavy hydrogen atoms found in ordinary water. It is essential to the operation of some types of atomic reactors.

The letter from Kissinger, dated last Monday, was released yesterday by Chairman Abraham A. Ribicoff (D-Conn.) of the Senate Government Operations Committee, to whom it was sent.

In an accompanying statement, Ribicoff said he is "deeply disturbed" by Kissinger's disclosures "because they indicate that India has misused our peaceful nuclear assistance to develop its version of an atomic bomb . . . over the formal objections of the United States."

The U.S. objection he referred to was a 1970 diplomatic note declaring that U.S. nuclear material supplied for "peaceful" purposes should not be used for "peaceful nuclear explosions," which is what India called its 1974 underground blast.

Until now the American position has been that U.S. material was not used in the Indian explosion and therefore there was no violation of U.S.-Indian agreements. The United States has continued shipping essential nuclear fuel to American-supplied power reactors at Tarapur, India, under agreements that are tighter than those applied to the U.S. heavy water.

The State Department recently asked the Nuclear Regulatory Commission to approve another shipment of uranium fuel for the Tarapur reactors, despite objections from several groups and some members of Congress.

While conceding that U.S. heavy water probably was used, Kissinger said in his letter that the United States does not have enough information to "conclusively establish" the fact. He said a "key factor" in the U.S. attitude is Indian production of its own heavy water in sufficient quantity to have replaced the American chemical in the reactor that made the explosive device. Kissinger did not claim that this actually was done.

As his letter to Ribicoff was made public, Kissinger was arriving yesterday in Pakistan for an overnight visit that deals in part with repercussions of the 1974 Indian atomic blast. One of the principal repercussions is a nuclear reprocessing plant that Pakistan plans to purchase from France over U.S. objections, including a letter from President Ford to Pakistani Prime Minister Zulfikar Ali Bhutto. Such a "reprocessing plant" would be capable of making bomb material from the irradiated "spent fuel" of civilian nuclear reactors.

There is little doubt that the Pakistani drive was spurred by the atomic blast of its neighbor-rival, India. Bhutto has vowed that Pakistan will match India's nuclear capacity even if Pakistanis have "to eat grass" to mobilize the resources.

A provision of the recent foreign military aid act would cut off U.S. economic and military aid if Pakistan goes ahead with the importation of the French reprocessing plant.

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EXHIBIT E

[From the New York Times, Aug. 10, 1976]

BRING BACK THE BOMBS

Three decades after Hiroshima, only the five countries that are permanent members of the U.N. Security Council have become atomic weapons powers; but a great divide was crossed in May 1974.

A sixth nation, India, became the first developing country to explode a nuclear device, spurring the interest of other third-world nations in acquiring plants to extract plutonium explosive from spent reactor fuel rods. Pakistan and Brazil have now contracted to buy such reprocessing plants from France and West Germany. Iran and other developing countries have evidenced interest in doing the same. An adequate response to this proliferation danger has to be found.

India was known to have made its atomic explosive with spent fuel diverted from a Canadian research reactor. Now, after earlier denials, Secretary Kissinger has finally confirmed the "high probability"—diplomatese for "certainty"—that India also misused American heavy water provided on Indian assurances that only peaceful purposes were intended.

Canada has halted nuclear cooperation with New Delhi. The Ford Administration, incredibly enough, continued to ship nuclear fuel to India after failing to obtain an explicit commitment against extraction of plutonium for explosives from the spent fuel. Much vaguer assurances were accepted instead.

FIRST PUBLIC HEARINGS

But recently, the Nuclear Regulatory Commission—over the objections of the State Department—has delayed shipments of enriched uranium to India and staged the first public hearings on a nuclear export license ever held. The results have been salutary, in the case of Iran and Pakistan, as well as India.

On India, the N.R.C. now is awaiting the outcome of a new State Department proposal: to seek Indian resale to the United States of its spent fuel, including that already stored, which contains 400 kilograms of unseparated plutonium, enough for 40 to 80 Hiroshima-size bombs. The Indians evidently have indicated willingness now to pay a price of this kind for new fuel.

Until the 1960's, return of spent fuel rods to the United States for reprocessing or storage was mandatory in virtually all "atoms for peace" arrangements. But this vital nonproliferation policy was mindlessly abandoned by the old Atomic Energy Commission.

Revival of this policy is urgent now, and a beginning appears to have been made in the recent American agreement to sell power reactors to Egypt and Israel. Both countries, initially reluctant, have now agreed that their spent fuel rods will be stored abroad and reprocessed there, if that becomes necessary, in facilities acceptable to the United States.

HOPE FOR A FORMULA

Mr. Kissinger, on his current tour, has pressed Iran and Pakistan to accept similar arrangements. He appears to have had some success with Iran and—after threats to cut off economic and military aid—a formula may also be in sight to resolve the Pakistan issue. A general American "buy back" policy would be the most effective way to counter proliferation, particularly if France and West Germany are prevailed upon to follow suit.

What is most to be avoided is the accumulation around the world of stockpiles of separated plutonium, which could be diverted into bombs in a matter of days or weeks. But it is equally important to avoid any semblance of American approval for Indian plutonium reprocessing, which has no commercial purpose at present. The Indians may prefer to sell pure plutonium back to the United States rather than the spent fuel. That would help cover up reprocessing of any non-American fuel India may be able to obtain.

The United States will not be able forever to buy back and store the spent fuel of the entire world, as nuclear power production expands. Cooperation by other supplier nations and construction of multinational regional centers could ease the load. So could current research into possible ways to re-use spent fuel rods without extracting the plutonium first in explosive form. But, for the moment, many immediate dangers can be averted by a return to the old American policy of buying back dangerous spent fuel from nations the United States has supplied, especially when diversion to weapons production is suspected.

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EXHIBIT F

[From the Hartford Courant, Aug. 16, 1976]

MR. RIBICOFF ADDS TO NUCLEAR RECORD

Thanks to the persistence of Senator Abraham A. Ribicoff, we now know much more about India's first nuclear explosion in 1974. The emerging facts cast little credit on this country, however.

In June, the Connecticut congressman charged that India's atomic blast may have been accomplished, in part, with the help of American-supplied heavy water—an essential component for plutonium production. The charge was greeted with silence from the State Department.

Now that silence has been broken by Secretary of State Henry A. Kissinger who has admitted in a letter to Mr. Ribicoff that there is a "high probability" India's explosion was set off with the use of some United States materials. He said the error was caused by a "misinterpretation" of assurances the State Department received two years ago that the blast had used "100 per cent Indian material."

In effect, the letter lends strong support to Mr. Ribicoff's claim that 21 tons of American heavy water given Indian in 1960 "for peaceful nuclear technology" could have been involved in the 1974 explosion.

That conclusion is disturbing for a couple of reasons. After the Indian blast, Canada took most of the blame since it supplied India with nuclear knowledge—with the strict limitation it not lead to an explosion. As Mr. Ribicoff has noted acidly: "Canada immediately cut off India from further nuclear assistance . . . Our reaction was to look the other way."

A second concern is the inconsistency of American atomic policy. Mr. Kissinger currently is trying to persuade Pakistan, India's hostile neighbor, to drop plans to develop its own nuclear reprocessing plant. Such a facility would produce, as a byproduct, plutonium that could be used for making atomic weapons. Understandably, Pakistan isn't likely to heed such pressure when it learns Washington has been a help to India, however unintentionally, in its nuclear venture.

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EXHIBIT G

[From the Washington Post, Aug. 27, 1976]

HILL MOVES TO TOUGHEN CURBS ON EXPORTS OF ATOMIC MATERIAL

(By Don Oberdorfer)

Three committees of Congress took different actions yesterday on three different bills on the same topic—U.S. nuclear exports which may contribute to the spread of atomic weapons throughout the world.

There was no immediate recommendations of the Senate Foreign Relations Committee and the Joint Committee on Atomic Energy. But veteran legislators took the events as a sign of rising dissatisfaction and concern that is likely to lead in time to new laws or administrative policies.

"The emotions are growing. The peril is growing," said Sen. John O. Pastore (D-R.I.), chairman of the Joint Atomic Energy Committee. He made the remark after a fruitless attempt by the joint committee to agree on a compromise measure on export limitations worked out between Pastore and leading members of the Senate Foreign Relations and Senate Government Operations Committees. The joint committee—which traditionally has taken the lead in nuclear affairs—voted only to disapprove the draft of an earlier version of an export control bill.

The Senate Foreign Relations Committee, taking up the matter in closed session, approved the three-committee compromise 8 to 1 despite Ford administration objections. Secretary of State Henry A. Kissinger made telephone calls to Capitol Hill opposing the plan.

Several hours after the vote, he told a closed session of the Foreign Relations Committee he believes current nuclear safeguards are adequate and expressed fear that the United States may lose nuclear sales to European countries if stricter export controls are adopted, sources said.

The House International Relations Committee, in a separate action, approved narrower nuclear export limitations unanimously.

Rep. Paul Findley (R-Ill.), one of the bill's sponsors, said the action would provide "tight guidance for standards on nuclear reprocessing—the most dangerous part of the nuclear fuel cycle."

The House committee action, an amendment to the Export Administration Act, also would close the loophole by which India claimed the right to use U.S. nuclear material in an atomic explosion because it described that blast as "peaceful."

The 1974 Indian blast, which was aided by U.S. nuclear cooperation intended for civilian uses, set off a new wave of apprehension about the spread of atomic weapons to many nations. In speeches and hearings, legislators have been demanding stronger U.S. government efforts to halt the drift toward an atom-armed world.

The Ford administration has responded with claims that secret diplomatic efforts are being made among nations that supply nuclear materials and among some of those that seem to be seeking atomic weapon capabilities. President Ford also has ordered a high-level study of U.S. nuclear export policies. A report has been drafted, sources said, and is awaiting comment by a variety of departments and agencies involved.

Pastore charged that President Ford and the executive branch would like to have Congress "do nothing" to enact new export policies, preferring to handle the problem through diplomacy and administrative regulations. Pastore added that "in recent years we've become a lot more alert to the dangers" and implied that Congress is likely to take action.

The plan adopted yesterday by the Foreign Relations Committee would set extensive new guidelines for licensing exports of U.S. nuclear equipment, technology, or fuel. In effect, the United States would seek to require other nations to adhere to nonproliferation policies as a condition of continued American cooperation.

The most controversial sections of the proposal, to take effect 18 months after enactment, would require non-nuclear weapon states to place all their nuclear activities under international inspection and to forego national reprocessing of spent fuel (a process which can produce weapons grade material). However, the President would be permitted to waive such licensing requirements if they would have "a serious impact on vital U.S. interests."

EXHIBIT H

SECTION 15, S. 3770, NUCEAR EXPLOSIVE PROLIFERATION CONTROL ACT OF 1976

SEC. 15(a). Effective 18 months after the date of enactment of this Act, except as provided in subsection (b), paragraphs (1) through 6 of Section 112(a) of the Atomic Energy Act of 1954, as amended, are amended to read as follows:

"(1) Assurances shall be received from non-nuclear-weapon states that Agency safeguards shall be applied with respect to all nuclear activities in, under the jurisdiction of, or carried out under the control of that state;

"(2) Assurances shall be received from non-nuclear-weapon states that no imported or indigenously developed material, facility, technology, component or substance, and no special nuclear material produced through the use of any imported or indigenously developed material, facility, technology, component or substance will be used for nuclear explosive devices for any purpose or for research or development of nuclear explosive devices for any purpose;

"(3) Assurances shall be received that the recipient country will impose and maintain physical security measures for all of its nuclear activities which are sufficient to prevent theft or sabotage;

"(4) Assurances shall be received that no imported or indigenously developed material, facility, technology, component or substance, and no special nuclear material produced through the use of any imported or indigenously developed material, facility, technology, component or substance shall be transferred to the jurisdiction of any other nation or group of nations unless such nation or group of nations agree to apply the controls set forth in this subsection;

"(5) Assurances shall be received from non-nuclear-weapon states that—

"(A) they will forego development and acquisition of nuclear fuel reprocessing and uranium enrichment facilities and the stockpiling of weapons-grade material on a national basis, and will place any existing facilities and stockpiles under effective international auspices, management, and inspection;

"(B) no imported material and no special nuclear material used in or produced through the use of any imported material, facility, technology, component or substance will be reprocessed by the recipient country, and no irradiated fuel elements containing such material which are to be removed from a reactor will be altered in form or content by the recipient country, and such material will be returned to the exporting country or to a facility under effective international auspices, management, and inspection located outside the jurisdiction of the recipient country; and

"(C) no indigenously developed material or special nuclear material used in or produced through the use of any indigenously developed material, facility, technology, component or substance will be reprocessed by the recipient country, and no irradiated fuel elements containing such material which are to be removed from a reactor will be altered in form or content by the recipient country, except in a facility under effective international auspices, management, and inspection.

"(6) Assurances shall be received from non-nuclear-weapon states that the controls set forth in this subsection will be applied to any material or facilities which are produced or constructed by or through the use of any imported or indigenously developed material, facility, technology, component or substance."

(b)(1) If the President determines that implementation of one or more of the six revised criteria set forth in subsection (a) at the expiration of 18 months from the date of enactment of this Act would have a serious adverse impact on vital United States interests, and that a delay in the effective date of such criteria would not promote the acquisitioin by non-nuclear-weapon states of the capability or the material to develop nuclear devices of any kind, he may by Executive Order delay the effective date of some or all of the revised criteria for not more than 12 months. Any such Executive Order shall be pomulgated not earlier than 14 months and not later than 16 months after the date of enactment of this Act, shall be effective not less than 60 days following its date of promulgation, and shall specify a new effective date for each of the criteria which are to be delayed. A delay in the effective date of some but not all of the six revised criteria shall not affect the implementation of the remaining six criteria.

(2) Upon promulgating any such Executive Order, the President shall submit a report to Congress including—

(A) a detailed statement of the reasons underlying the President's determination that implementation of the revised criteria on the existing effective date would have a serious adverse impact on vital United States interests;

(B) a detailed statement of the reasons underlying the President's determination that a delay in the effective date of the criteria to be delayed would not promote the acquisition by non-nuclear-weapon states of the capability or the material to develop nuclear devices of any kind;

(C) a report on his progress in obtaining adherence to each of the six revised criteria by the other nuclear supplier nations and by countries with which the United States has negotiated agreements for cooperation;

(D) an assessment of the impact of the proposed delay on the non-proliferation goals of the United States; and

(E) a statement of what legislative modifications in the revised criteria, if any, would in his judgment make it feasible to implement the revised criteria at an earlier date.

(3) If the President subsequently determines that implementation of one or more of any criteria which have been delayed pursuant to this subsection on the existing effective date would have a serious adverse impact on vital United States interests, and that a further delay in their effective date would not promote the acquisition by non-nuclear-weapon states of the capability or the material to develop nuclear devices of any kind, he may, by Executive Order effective not less than 60 days after its date of promulgation, further delay the effective date of such criteria for not more than 12 months each time he makes such a determination. Each time the President promulgates such an Executive Order he shall submit a report to Congress in accordance with the procedures set forth in paragraph (2).

(c) Subsection 112(c) of the Atomic Energy Act of 1954, as amended, shall not apply to paragraphs (3) through (6) of the revised criteria set forth in subsection (a) of this section.

EXHIBIT I

[From the Washington Post, Aug. 28, 1976]

NUCLEAR REACTOR SALES OVERSEAS TARGET OF STUDY

A dozen senators were appointed yesterday to make an overseas study of the effect of nuclear reactor sales on U.S. security and foreign policy.

Majority Leader Mike Mansfield (D-Mont.) said one of the most important issues in the next Congress "will be the development of a policy to cope with the worldwide proliferation of atomic reactors."

Mansfield and others are concerned because plutonium, a byproduct of nuclear reactors, can be used to build atomic weapons.

"It is imperative that appropriate safeguards and security procedures are designed to prohibit the misuse of plutonium and other byproducts." Mansfield said.

The 12-member delegation, appointed under a resolution sponsored by Mansfield and Minority Leader Hugh Scott (R-Pa.), was drawn from three committees wrestling with legislation to establish controls on the export of nuclear materials and technology.

These are the Government Operations Committee, the Foreign Relations Committe and the Joint Committee on Atomic Energy.

Sen. Abraham A. Ribicoff (D-Conn.) was named chairman of the special study group; Sen. Howard H. Baker Jr. (R-Tenn.), vice chairman.

Others appointed were Sens. Howard W. Cannon (D-Nev.), Thomas F. Eagleton (D-Mo.), John Glenn (D-Ohio), Wendell H. Ford (D-Ky.). John C. Culver (D-Iowa), Dale Bumpers (D-Ark.), James B. Pearson (R-Kan.), Charles McC. Mathias (R-Md.), Henry L. Bellman (R-Okla.) and Paul D. Laxalt (R-Nev.).

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EXHIBIT J

[Business Week, Aug. 23, 1976]

WHY THE NUCLEAR POWER RACE WORRIES THE U.S.

"The world may be headed toward a new Dark Age in which plutonium replaces gunpowder as the explosive of choice, and warfare and terrorism take on a nuclear dimension."—SENATOR ABRAHAM A. RIBICOFF.

Senator Ribicoff's dire warning reflects the fear in Congress that the long-standing U.S. effort to promote nuclear energy for peaceful purposes is having quite the opposite effect. The export of atomic reactors is accelerating the spread of nuclear weapons, Ribicoff contends, because some nations refuse to limit their use solely to generating electricity. Instead, they want to extract plutonium, created during the nuclear reaction, from the plant's spent fuel and use it to build atomic bombs.

Paul Leventhal, a staff member of Ribicoff's Senate Government Operations Committee, which has been studying nuclear proliferation, estimates that the reactor capacity outside the U.S. and Russia today would supply enough plutonium to make 1,500 small atomic bombs per year. More than 290,000 additional megawatts of capacity are operating or are planned outside the borders of the two superpowers, he says, and by 1990 reactors in the less-developed countries alone would be able to produce enough fissionable material for an estimated 3,000 bombs per year.

To try to curtail this arms race, Congress is working on a variety of bills that are designed in one way or another to slap stringent controls on the commercial sale of U.S. reactors, and to restrict government sales of enriched uranium—the fuel for today's reactors—to other nations. But U.S. reactor manufacturers, notably General Electric Co. and Westinghouse Electric Corp., are worried that these proposals will mean the sacrifice of lucrative export markets.

PERSUADING PAKISTAN

The Administration also insists that Congressional meddling could undo its own efforts to solve the problem through negotiation. An example of those efforts is Secretary of State Henry A. Kissinger's attempt this week to persuade Pakistan not to buy from France a fuel reprocessing plant—the kind of plant that can extract plutonium from spent fuel. Kissinger threatened to cut off nearly $200 million in foreign aid and to ban the sale to Pakistan of U.S. fighter-bombers if it did not agree. At mid-week, the Pakistani decision was still unknown.

The pressure from Congress probably stiffened Kissinger's posture. And it undoubtedly helped prompt President Ford late last month when he gave a special assignment to Robert W. Fri, deputy administrator of the Energy Research & Development Administration. Fri was ordered to review "our nuclear policy objectives and options, particularly on exports, reprocessing, and waste control."

Although Fri must complete the study by mid-September, his recommendations may come too late. "There's been no executive action," says Dwight Porter, a former U.S. ambassador to the United Nations International Atomic Energy Agency (IAEA) and now in charge of Westinghouse's international government affairs in Washington. "Congress wants to do something right now."

Porter and other industry representatives fear that restrictions on nuclear exports will cripple U.S. efforts to compete abroad at a critical time for the American industry. France, West Germany, Canada, and Sweden are mounting aggressive campaigns to win a larger share of the world reactor market—a market that may be worth $7 billion annually by 1985. So far this year, in fact, foreign suppliers have walked off with 9 of the 10 export orders for reactors.

GROUNDS FOR CONCERN

On the other hand, there are ample grounds for Congressional concern. Ribicoff and others point to a number of alarming events:

Detonation of an atomic bomb by India two years ago, Indian scientists painstakingly withdrew enough plutonium from a 202-megawatt research reactor, supplied by Canada, to build a bomb.

Purchase by Brazil of a complete nuclear package from West Germany last year. The sale included two 1,325-Mw. reactors, the technology for enriching uranium to provide the fuel, and the reprocessing technology for extracting plutonium from the spent fuel.

The growing certainty thal Israel has the bomb. The Central Intelligence Agency recently reported that Israel has a small stockpile of nuclear weapons based on material extracted from an Israeli reactor located at Dimona that has been in operation since the early 1960s.

Attempts by South Korea to purchase a reprocessing plant from France. The U.S. successfully pressured South Korea to abandon these plans just as it is now trying to dissuade Pakistan.

The ability to reprocess spent fuel is the key to making the bomb. But reprocessing is of interest not only to bomb makers. The economics of nuclear power become much more attractive if the spent fuel is processed to recover "unburned" uranium so it can be used again. And plutonium, the guts of the bomb, is also the element that will fuel what many expect to be a new generation of atomic reactors—the "breeders" that produce more fuel than they consume.

A LOOPHOLE

Still, Congress wants much tighter controls on reprocessing technology. It recently added an amendment to the foreign-aid authorization bill, passed in June, that would bar aid to any nation that reprocesses nuclear fuel unless it agrees to United Nations safeguards, administered by the IAEA, that are part of the nuclear non-proliferation treaty. However, that amendment would allow the President to ignore the ban if he felt that giving aid was in the best interest of the U.S., and some in Congress believe that this is too big a loophole.

Other Congressional proposals to limit the spread of the bomb are still in the talking stage. One bill, for example, would insist that the U.S. control the reprocessing of spent fuel from U.S. reactors sold abroad. The most controversial approach is advocated my Ribicoff, who calls it "carrot and stick." The carrot: The U.S. would help organize a cartel that would divide up the world nuclear market among today's major suppliers. The stick: Unless foreign suppliers agreed to do this, the U.S. would cut off shipments of reactor fuel to them and their customers. The U.S. still has a virtual monopoly on atomic fuel with its three massive uranium enrichment plants, built during and right after World War II.

All of these proposals tend to make government and industry officials shudder. In one way or another, they argue, such anti-proliferation ideas are naive, impractical, unworkable—and likely to backfire. For example, ERDA officials point out that the idea of cutting off nuclear fuel sales is naive because France, West Germany, the Netherlands, and Britain are currently expanding their small enrichment plants to commercial size and already are willing to take on contracts to supply enriched fuel.

A TURNING POINT

Ironically, the U.S. government is indirectly helping them. In 1974 it announced that its enrichment plants were fully booked for the immediate future. "It was a turning point, since we could no longer claim to be a reliable supplier of fuel," says an ERDA official.

That, in turn, affected a lot more than fuel contracts. Bitter executives at both GE and Westinghouse claim that the U.S. announcement helped push the Brazilians two days later into signing the package deal with Germany rather than choosing a U.S. supplier. "If countries can't rely on the U.S.," says James R. Birle, marketing manager at GE's Nuclear Energy Div., "they will proceed in their own best interests."

The difficulties of inhibiting nuclear buyers has led the U.S. State Dept. to see what it can do to with the sellers. Earlier this year the U.S. signed a "code of conduct" with Russia, Britain, France, Canada, West Germany, and Japan that would govern nuclear exports of equipment, material, and technology (BW–Feb. 16). Since then, the Netherlands, East Germany, Sweden, Italy, and Belgium also have signed the informal pact. At the heart of the agreement is a clause demanding that a nation purchasing a reactor abide by IAEA regulations and allow the agency's inspectors into its nuclear facilities.

But the agreement did not include exports of enrichment and reprocessing plants. So today the U.S. is pressuring France and Germany to drop plans its salesmen may have to offer such technology, and is having some small success. A German official reports that the order covering the sale of two 1,300-Mw. reactors to Iran by Kraftwerk Union contains stiff safeguard clauses, and that there is no provision in the contract for the future sale to Iran of reprocessing plants such as those sold to Brazil.

THE SUSPICIOUS FRENCH

The French, however, are skeptical about U.S. motives. They suspect one U.S. aim is to control the plutonium supply when the breeder era arrives. The French suspicions extend to one of the latest U.S. proposals—that reprocessing plants capable of producing plutonium be multinational entities. The U.S. is lagging in its program to develop a breeder reactor, while France is about to start on a full-scale commercial breeder (BW—Aug. 16). They suspect that the U.S. hopes to introduce uncertainty as to the supply of plutonium and thus discourage export sales of the French breeder, known as Super-Phenix.

Even in the U.S., though, the concept of the multinational reprocessing center meets with skepticism. It is "kind of an unnatural thing," says Carl Walske, president of the Atomic Industrial Forum, the nuclear industry's lobbying group.

Walske and others in the industry think that the whole issue of proliferation through reprocessing has been overblown—at least for the types of reactors the U.S. sells abroad. Small nations, they contend, can-

not afford to operate a commercial reactor to provide electricity and also use it to produce enough material for a weapons program. Moreover, scientists claim that plutonium drawn from today's commercial reactors is so highly radioactive that it could produce a fizzle instead of a blast.

This does not convince Fred C. Ikle, director of the U.S. Arms Control & Disarmament Agency. Ikle is dubious about most of the control schemes that others are advocating, and he has his own simple—if drastic—idea of what to do instead. Drop the whole idea of reprocessing plutonium for the breeder, he says, and thus the need for dangerous reprocessing technology.

But men like Walske and Westingthouse's Porter just as firmly believe that the breeder era is near and that reprocessing will be forced on the world. Rather than banning exports, they say, the U.S. must work harder to strengthen the U.N.'s inspection force, which today has only 600 professionals and an annual budget of only $39 million. Beefing up the IAEA is a more realistic solution, the industry argues, than the unilateral actions that many in Congress want the U.S. to take.

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EXHIBIT K

[From the New York Times, Aug. 24, 1976]

ISSUE AND DEBATE—CONFICT CONTINUES OVER U.S. EFFORT TO HALT SPREAD OF NUCLEAR WEAPONS

(By Leslie H. Gelb)

WASHINGTON, August 22.—The Ford Administration is engaged in protracted and intricate negotiations with more than a dozen nations to prevent the spread of nuclear weapons. At the same time, critics of these efforts have become more vocal, charging that the Administration's nonproliferation diplomacy is too little and * * *

At stake is whether the present nuclear weapons club, consisting of the United States, the Soviet Union, Britain, France and China, and perhaps India and Israel, is going to be enlarged.

Secretary of State Henry A. Kissinger recently traveled to Iran and Pakistan to try to persuade the leaders of these countries not to buy certain nuclear power facilities that could be used to make a nuclear bomb. He has been having similar talks with other potential buyers, such as Brazil, South Korea and Argentina, and with the suppliers—West Germany, France, Britain, the Soviet Union, Canada and Japan.

Administration officials working on the problem do not evince great optimism about the ultimate outcome, but they do point to progress in heading off the nuclear trend in South Korea and Iran.

As a backdrop, the arms control community, joined by a number of members of Congress, has kept up a drum beat of criticism. Most notably, Senator Abraham A. Ribicoff, Democrat of Connecticut, who is chairman of the Senate's Government Operations Committee, has been seeking to use the committee's powers under the Export Reorganization Act to prod the Administration.

It is Mr. Ribicoff's belief, shared by a number of his colleagues, that there is a good chance of preventing enlargement of the nuclear weapons club if only the Administration will attach stiffer terms to American nuclear exports.

THE BACKGROUND

The treaty to prevent the spread of nuclear weapons, known popularly as the nonproliferation treaty, entered into force in 1970, and there are now more than 100 participating nations. In the treaty, states possessing nuclear weapons pledged not to help others to gain a nuclear capability, and states without nuclear weapons promised to acquire them. The International Atomic Energy Agency, which is based in Vienna, was designated to monitor all nuclear activities in the states that had no nuclear weapons.

The treaty has some significant loopholes, including the right of a signer to renounce participation upon giving 90 days' notice and the right to carry on any nuclear activity short of actual manufacture of a nuclear weapon.

In May 1974, India, one of the many key nations that did not sign the treaty, exploded a nuclear device fashioned from resources and made in facilities provided in part by Canada and the United States. The explosion brought home to official Washington—as previous protests from arms control advocates had not—the link between the export of nuclear technology and facilities for peaceful purposes and the possible spread of nuclear weapons.

Three facts were responsible for this link. First, the United States no longer had a monopoly on the export of nuclear facilities and technology; other countries also could sell.

Secondly, the high price of oil and other fossil fuels, made nuclear energy an attractive alternative, and many countries now wanted to buy nuclear power plants.

Third, because of the increased demand for uranium to fuel these power plants and because the United States and the Soviet Union, now the sole exporters of enriched uranium, had not increased output to meet this demand, there was a shortage of nuclear fuel. Thus many countries wanted to buy reprocessing and uranium-enrichment facilities to produce their own fuel.

The United States does not export these facilities, but other countries do, and that is the problem. Weapon-grade nuclear material can be produced in them.

Almost all of the more than 400 nuclear power plants either operating, under construction or planned in almost 40 countries, are light water reactors. These reactors can be fueled by uranium enriched to less than 1 percent, far below the requirements for a nuclear bomb. They can also be fueled by weapons-grade plutonium chemically reprocessed from the spent fuel of a nuclear power plant.

As sweeteners for sales of nuclear power plants at about $1 billion each, France has agreed to provide Pakistan with a reprocessing plant and West Germany has promised to sell Brazil an uranium enrichment facility. The United States also continues to sell India fuel for its nuclear reactor, despite the Administration's acknowledgment that India diverted materials from previous sales to carry out its nuclear explosion.

Administration officials and critics agree that the goal is to prevent the sale of reprocessing and enrichment facilities: the issue is how. More specifically, the issue is whether and how to use the sale of nuclear fuel—the one area of exports where the United States still is dominant—to stop the sale of these facilities or to get strong safeguards against the diversion of weapons-grade fuel from these facilities to the production of nuclear bombs.

ADMINISTRATION VIEW

The Administration's position is based on the assumption that the nuclear cat is already out of the bag, that with the passing of the American monopoly and the widespread availability of nuclear technology and materials, many countries can now produce nuclear weapons if they are determined to do so. Thus the Administration has emphasized safeguards, not prevention.

The Administration has specifically rejected any idea of a unilateral embargo, or a bilateral embargo with the Soviet Union, on the sale of nuclear fuel for power plants as a means of preventing the sale of reprocessing and enrichment plants. Two reasons were given for this: a reluctance to work with Moscow against allies of the United States and a desire to avoid raising questions about the reliability of the United States as a long-term supplier of nuclear fuel.

The idea is to use the advantage the United States possesses as a fuel supplier to promote the sales of American nuclear power plants. This would provide a commercial advantage as well as the opportunity to impose stringent safeguards on all nuclear facilities in the buyer's country.

At the same time, the Administration has had some success in persuading suppliers to impose tougher safeguards against the diversion of fuel from peaceful power facilities to bombs. All suppliers now reportedly insist on inspection of facilities by the International Atomic Energy Agency.

In at least one instance where the Administration felt it had leverage to prevent a sale, it used the leverage. Thus, South Korea was dissuaded from buying a reprocessing plant from France when it was pointed out that completion of the sale would by law lead to a cutoff of American military sales to Seoul.

In all cases, the Administration has pressed home to the purchaser the point that reprocessing plants are highly uneconomical.

OPPOSITION VIEW

Mr. Ribicoff and others have argued that once a country has a reprocessing or enrichment facility in its territory, no safeguards are adequate. Mr. Ribicoff would favor an embargo on fuel sales to all suppliers and buyers of reprocessing and enrichment plants.

Specifically, Mr. Ribicoff wants the Administration to take a tougher stand on the proliferation issue before the United States' virtual monopoly as a fuel supplier comes to an end. By the mid-1980's a number of other countries will be able to provide low-grade uranium for power plants and enriched uranium and plutonium that could be used for bombs.

In the meantime, and in order to make his plea more acceptable to other supplier countries, he has proposed a market-sharing plan for the sale of nuclear power plants. The details of this plan are sketchy, but the idea is to work out ways for each supplier to gain some of the huge profits available from the sale of power plants without trying to gain a competitive advantage by offering to sell reprocessing and enrichment facilities as well.

THE OUTLOOK

The Administration and its critics seem to be moving toward a compromise approach that might also be acceptable to buyers.

The idea is to foster multinational reprocessing and enrichment plants as a substitute for nationally owned and operated plants. In return for not building their own plants, nations would be assured a reliable supply of uranium from the mutlinational plants Iran has reportedly agreed to this kind of approach, and efforts are under way to persuade Pakistan.

In the last analysis, it may be that the United States will have little influence over a nation's decision to build a nuclear bomb. The list of nonsigners of the nonproliferation treaty shows that local and regional conflicts and rivalries remain a dominant consideration. The nonsigners include India, Pakistan, Israel, Saudi Arabia, China and Taiwan, Brazil and Argentina.

Interested parties in the United States are doing what they feel they can to postpone the day of reckoning, hoping but not expecting that such a day will never come.

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EXHIBIT L

[From the Washington Post, Aug. 9, 1976]

U.S. WARNING PAKISTAN ON NUCLEAR PLANT

(By Thomas W. Lippman)

LAHORE, PAKISTAN, Aug. 8.—U.S. Secretary of State Henry A. Kissinger flew here today to warn Pakistan that it risks losing all American economic and military aid if it

goes ahead with the purchase of a nuclear fuel reprocessing plant from France.

American officials also hinted that the United States might block the possible sale to Pakistan of U.S. A-7 light attack bombers unless Kissinger receives assurances that Pakistan would give up the potential to make nuclear weapons.

Kissinger, who arrived tonight from Afghanistan, is to confer Monday with Prime Minister Zulfiqar Ali Bhutto.

Reporters on Kissinger's plane were told that the Ford administration, concerned about the spread of nuclear weapons, is "strongly against" the recently announced arrangement between Pakistan and France, that would enable the Pakistanis to use reprocessed fuel from their nuclear power plant near Karachi for nuclear weapons.

A senior official on the plane said it would be explained to Bhutto that Pakistan could lose its U.S. aid, which last year amounted to more than $162 million, under legislation passed last year requiring that aid be suspended to any country building reprocessing facilities without adequate safeguards to insure that the fuel will not be put to military use.

The official noted that Pakistan has not signed the nuclear nonproliferation agreement, and said the United States does not consider the safeguards in the agreement with France to be adequate.

In addition, he said, Pakistan's position on the nuclear fuel issue would be taken into consideration when it seeks to buy arms from the United States. An embargo on sales to Pakistan, imposed after the Indo-Pakistani war of 1971, was lifted last year, and Pakistan is reported to be interested in the A-7 jet attack plane, which can carry 15,000 pounds of bombs and two Sidewinder missiles.

A Pakistani air force team visited the United States in April to look at fighters and fighter-bombers, including the A-7.

The senior U.S. official noted that India, Pakistan's traditional enemy, has exploded a nuclear weapon, and said the United States is sympathetic to Pakistan's desire to defend itself.

Kissinger is visiting only friendly nations on this trip, which has taken him to Britain, Iran and Afghanistan and is to also include France and the Netherlands. Pakistan fits into the category of nations whose ties with the United States have been close, and Kissinger was welcomed as a friend. But he and Bhutto, in toasts at a dinner tonight, indicated that they expect difficult negotiations.

Bhutto made it clear that he is unhappy about American objections to the accord with France, and referred to a prospective agreement with Iran on nuclear reactors.

"What's good for the goose is good for the gander," he said.

He also referred to Lahore as "the place where we come to reprocess ourselves."

Kissinger responded that definitions of security are open to interpretation and the current talks will examine the issue. He said the United States was obliged to consider global as well as regional security issues.

The issue of reprocessing was also prominent in Kissinger's talks with the Iranian officials. Iran is seeking to buy six to eight plants, at a cost of several billion dollars, but the reprocessing issue has held up completion of the deal.

The press briefer on the Kissinger plane said today that Iran has accepted in principle the idea that it will not be allowed to reprocess the fuel on its own territory without American consent. The question that remains to be settled, he said, is who will pay the cost of moving the fuel out of Iran and back again if the United States decides not to allow it to be reprocessed in Iran, as it probably will, or to reclaim the fuel itself.

Kissinger flew to Lahore after a four-hour stop in Kabul, the Afghan capital, for talks with President Mohammed Daoud. Sources in Kabul said the Afghans requested the visit because they are slowly seeking to assert some independence from their influential neighbor, the Soviet Union.

Kissinger's talks with Bhutto were to have been held in Islamabad, the Pakistani capital, but much of the northern part of the country has been hit by disastrous floods after 10 days of rain and the capital is cut off.

Kissinger issued a statement tonight expressing "deep sympathy" for the flood victims.

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EXHIBIT M

[From the New York Times, Aug. 9, 1976]

KISSINGER MEETS PAKISTANI LEADER ON NUCLEAR ISSUE

(By Bernard Gwertzman)

LAHORE, PAKISTAN, Aug. 8.— Secretary of State Henry A. Kissinger arrived here tonight for talks with Prime Minister Zulfikar Ali Bhutto aimed at averting a crisis caused by Pakistan's refusal to drop plans to develop its own nuclear reprocessing plant despite intense American pressure.

Reporters abroad Mr. Kissinger's Air Force jet plane were told that the United States strongly opposed construction of the French-designed plant on the ground that it had no economic justification and that, despite certain international safeguards, it seemed likely to raise concern that Pakistan was planning to match India by exploding a nuclear device of its own.

PLANE SALE MAY BE BLOCKED

Because of this, Mr. Kissinger was reportedly ready to tell Mr. Bhutto not only that the United States Government would not permit the sale of A-7 Corsair jet fighter-bombers to Pakistan, but Pakistan also ran a risk of having all its economic aid from the United States cut off under a new law.

[In Washington, Senator Abraham A. Ribicoff received a letter from Mr. Kissinger acknowledging for the first time that it was highly probable that India used material supplied by the United States in exploding its nuclear device in 1974.]

At a dinner given by Prime Minister Bhutto tonight for Mr. Kissinger, the two men exchanged pointed, but humorous, barbs about the nuclear issue, which has become a major point of contention between the two nations in recent months. A reprocessing plant would produce, as a byproduct, plutonium that could be used for making nuclear weapons.

REFUSAL APPARENTLY REAFFIRMED

Mr. Bhutto, referring to Lahore, the capital of Punjab, as the cultural center of Pakistan, said in his toast: "This is our reprocessing center, and we cannot in any way curb the reprocessing center in Pakistan."

The dinner guests, high-ranking Pakistanis and Americans, laughed at Mr. Bhutto's play on words in which he appeared publicly to reaffirm his refusal to change the plans for a nuclear reprocessing plant.

Mr. Kissinger, in his reply, said that governments must constantly review their policies—"to reprocess themselves"—and decide "what is worth reprocessing."

The guests also applauded Mr. Kissinger's turn of phrase, which diplomatically called on Mr. Bhutto to alter his nuclear plans.

But although the dinner, in a state guest house, was elegant and served by colorfully dressed Punjabis in a relaxed atmosphere, the main topic of conversation was concern over the severe floods that have destroyed about 3,000 villages in this area and left about half of Lahore—mostly the old part—flooded.

TWO WEEKS OF RAIN

Pakistani officials said that the floods, caused by heavy downpours over the last two weeks, were worse than those of 1973, when severe damage was inflicted.

Mr. Kissinger flew from Teheran, Iran, where he had spent the last three days, to Kabul, the capital of Afghanistan, where he spent several hours talking with President Mohammad Daud before flying here. General Daud, who has been gradually seeking to widen ties with the United States and balance the strong Soviet influence in Afghanistan, had asked for a high-ranking American to make a symbolic visit, reporters on Mr. Kissinger's plane were told.

The discussions with Mr. Bhutto that will take place tomorrow—in addition to the informal talks they had at dinner tonight—underscore the growing concern in Washington about the spread of nuclear weapons.

Pakistan has one small nuclear power reactor in Karachi, built with Canadian assistance. It plans to build 24 more medium-size nuclear power plants and has contracted with France to build a reprocessing plant.

DISAVOWAL BY BHUTTO

This plant would process spent uranium rods from nuclear reactors to prepare them for reuse as fuel, thus making the country less dependent on fuel from foreign suppliers. In the process, plutonium, which can be used for nuclear weapons, is also produced.

Mr. Bhutto has repeatedly said that Pakistan would not make a nuclear weapon, but since India used its reprocessing plant to do just that, the United States wants Pakistan—and other nations interested in reprocessing—to agree to the use of multinational reprocessing centers as an additional hedge against the spread of weapons.

According to Mr. Kissinger, Shah Mohammed Riza Pahlevi agreed in the last few days that Iran would accept multinational reprocessing so long as the United States guaranteed a source of enriched uranium for the reactors Iran will buy from the United States.

In addition, the United States agreed that if Iran had to spend extra money for reprocessing abroad because of the American concern, a way should be found to recompense Iran, either by American assumption of the full cost or by its being shared by the two countries.

KISSINGER OFFERS ASSURANCE

Mr. Kissinger would like the Pakistanis to accept the Iranian formula. Since Iran and Pakistan are close allies, it is thought possible that this will happen. In his toast, President Bhutto said that if the United States regarded Iran's security as important, it had to view Pakistan's in the same way. Mr. Kissinger said in response that Pakistan could count on the United States.

The Pakistanis are worried about an amendment attached to the latest foreign aid authorization bill approved by Congress that bars any aid to a country that builds a reprocessing plant.

The law has many escape clauses, however, and at the moment the $160 million a year that Pakistan receives—more than half of it in food shipments—is not in danger. But Mr. Kissinger planned to tell Mr. Bhutto that the mood in Congress was for cutting off such aid if a reprocessing plant was built.

Since March of last year Pakistan has been eligible to buy American military equipment, but so far it has limited its purchases to antitank missiles. The Pakistanis want sophisticated aircraft, but the quantities the Government seeks are viewed as too large by Washington, which also wants to use the plane purchases as leverage on the nuclear question.

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EXHIBIT N

FRANCE PURSUING DEAL U.S. FOUGHT

PARIS, Aug. 25.—One of the last acts of the outgoing Cabinet of Prime Minister Jacques Chirac, who resigned today, was the announcement that despite American objections France would go ahead with the sales to Pakistan of a nuclear-reprocessing plant.

The deal, worth $150 million was completed in March after an agreement between the two parties with the International Atomic Energy Agency that reprocessed plutonium from the plant would be used for peaceful purposes only.

Initially the United States, which is represented in the Vienna agency, voiced no objection, but at a news conference at Lahore, Pakistan, on Aug. 10 Secretary of State Henry A. Kissinger said that if the deal was completed, the United States would cut off economic and military aid to Pakistan.

Mr. Kissinger's statement was in line with a law requiring the United States to cut off aid to third world countries acquiring reprocessing plants without adequate safeguards against military use. Apparently the United States Government had second thoughts about the adequacy of the Vienna agency's capability of inspection and control in Pakistan.

Mr. Kissinger, at a news conference two days later at Deauville, France, toned his declaration down somewhat, calling for friendly talks to find a solution.

The Pakistani Prime Minister, Zulfikar Ali Bhutto, while not ruling out "continuing talks with our American friends," said the deal was binding. He recalled that Pakistan, whose Indian neighbor has nuclear weapons, had formally pledged not to use the product of the reprocessing plant for such a purpose.

France, not a signer of the treaty against nuclear proliferation, considers that approval of the deal by the Vienna agency constitutes sufficient safeguard.

The Government has come under attack, notably from the leftist opposition, for contributing to the spread of nuclear potential for purely commercial considerations.

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EXHIBIT O

[From the Washington Post, Aug. 30, 1976]

TAIWAN SEEN REPROCESSING NUCLEAR FUEL

(By Edward Schumacher)

U.S. intelligence reports over the past six months indicate that Taiwan has been secretly reprocessing spent uranium fuel, an operation that can produce atomic weapons material, according to officials of two U.S. government agencies.

Officials of the Arms Control and Disarmament Agency (ACDA) and the Energy Research and Development Administration (ERDA) who have had access to the closely held reports said it is unclear how long Taiwan has been engaged in the secret operation or how much bomb material may have been produced. However, they expressed doubt that Taiwan has amassed enough material to make an atomic bomb.

The United States, Taiwan's major supplier of nuclear power reactors and enriched uranium fuel, has not yet formally confronted Taiwanese officials with the reports of secret reprocessing according to knowledgeable officials.

The United States is said to be fearful of revealing the source of its intelligence particularly while still seeking to learn the full extent of the secret work.

Confirmation that Taiwan is producing nuclear weapons material would place the Ford administration in an agonizing position, especially during the pre-election period.

Strong U.S. sanctions, including termination of export licenses for Taiwan's ambitious nuclear power program, could cause serious repercussions in Taiwan and among Republican conservative in the United States.

Failure to take action could cause major difficulties with mainland China, multiply the nuclear worries of Japan and of less-developed Asian states, and accelerate a worldwide drift toward nuclear proliferation.

A Taiwan embassy spokesman denied that Taiwan is doing clandestine work.

Several usually knowledgeable U.S. officials disclaimed any knowledge of the reports of secret reprocessing, pointing out that Taiwan has openly acknowledged construction of a small scale "hot cell" reprocessing plant under international safeguards.

But another senior official confirmed the existence of the reports of secret work, and suggested that there is disagreement within the government about their significance.

ACDA officials said they have been stalling on an application to export two additional nuclear power plants to Taiwan, a move they hope will be taken by Taiwan as a signal to stop secret reprocessing. The export application was submitted in January.

Four other large U.S. nuclear power plants were approved for export in 1972 and 1974 as part of a Taiwan program designed to provide half of the island's electricity needs from nuclear sources in 1985.

The select group of U.S. officials aware of the secret intelligence reports is concerned not only that Taiwan can now produce plutonium, the nuclear bomb material, but also that it apparently is willing to jeopardize its civil nuclear program and to break international safeguard agreements designed to prevent the proliferation of nuclear weapons.

All of Taiwan's known nuclear reactors are subject to international inspection by the Vienna-based International Atomic Energy Administration (IAEA). Secret reprocessing of the spent fuel from these reactors would violate Taiwan's agreements with the IAEA. The status of these agreements is politically tenuous because Taiwan was ousted in 1971 as a member state of the IAEA.

There is a theoretical possibility that Taiwan could have purchased spent fuel from another nation as the basis for its reprocessing, a U.S. official pointed out. But there is no evidence that such a transaction has taken place.

A reprocessing plant can manufacture plutonium for nuclear weapons—or for use in recycled civilian fuel—from the irradiated refuse of an atomic reactor. Though generous with technical information and training about reprocessing in past decades, the United States has come increasingly to believe that reprocessing plants pose a grave danger of nuclear weapon proliferation.

India manufactured the plutonium for its 1974 nuclear explosion in its own reprocessing plant. In the past year the United States has dissuaded South Korea from purchasing a reprocessing plant from France, and is attempting to stop purchases of such facilities by Brazil and Pakistan. A provision of the recently enacted U.S. foreign military aid law cuts off U.S. economic and military assistance to any country importing a reprocessing facility.

In 1969 the Nixon administration turned down a request from Taiwan to purchase a reprocessing plant from the United States. This precluded Taiwan from importing major U.S. components that are on export control lists. However, ERDA officials said Taiwan did purchase widely available parts, such as special laboratory glass, which are not so controlled.

An ERDA spokesman said 713 Taiwanese have studied nuclear technology in U.S. government laboratories and universities under official U.S. sponsorship as a result of "atoms for peace" and successor programs.

Despite the U.S. change in policy about reprocessing, a Taiwanese nuclear scientist, Chung Woo, was trained in reprocessing for a full year ending this past June at ERDA's Argonne Laboratory outside Chicago, the agency said.

Since the early 1970s, Taiwan has been constructing a small-scale "hot cell" reprocessing facility at its Institute for Nuclear Energy Reaction with parts obtained from around the world.

This plant, which is reportedly undergoing "cold" test runs with water, has been visited by IAEA inspectors on the understanding that it will be placed under international safeguards.

Last October Taiwan informed the United States of its intention to reprocess spent fuel from a U.S.-supplied Thor research reactor in the "hot cell" plant, which is located at a campus-like research center near Lung Tan about 75 miles from Taipei.

Under bilateral nuclear cooperation agreements, the United Staes must give permission before American-supplied material can be involved in reprocessing.

A senior State Department official said Taiwan's request is still under consideration. "There's no final turndown, but they know we don't favor reprocessing," he said.

American, European and Canadian experts said that one-half pound to a pound of plutonium per year could be produced in the hot cell plant from the spent fuel of a large Canadian-supplied research reactor on the island. This amount is far short of the 18 pounds of plutonium estimated to be needed for a sophisticated nuclear device, though enough to provide knowledge of plutonium handling and explosive fabrication.

Taiwan has built an independent nuclear system around the Canadian reactor and its hot cell reprocessing plant which would make possible the creation of a small plutonium stockpile available for bomb uses without violation of present international safeguard standards.

The supply system begins with natural uranium imported from South Africa which does not list its imports with the IAEA.

In 1973 Taiwan constructed its own plant to fabricate the imported natural uranium into fuel rods suitable for use in the Canadian reactor.

This plant is listed with ERDA as having the capacity of fabricating 25 to 30 tons of uranium per year—twice the normal fuel rate for the Canadian reactor.

Canadian experts said that plutonium production could be maximized by running fuel rods through the reactor at a higher than normal rate.

The Canadian reactor is a large 40-megawatt "NRX" research reactor similar to the one used by India to produce the material for its 1974 atomic explosion.

Taiwan purchased the reactor in 1969 for $35 million. Taiwan also purchased 19.5 tons of Canadian "heavy water" for operation of the reactor, but its supply of this necessary chemical is running low, U.S. officials said.

Taiwan does not need outside approval to reprocess the spent fuel from the Canadian reactor to obtain plutonium. Canada has no agreement requiring its permission.

Canada broke diplomatic relations with Taiwan in 1970, further diminishing its authority over and interest in the uses of its reactor.

The fuel rod fabrication plant, Canadian reactor and hot cell reprocessing facility are listed with the IAEA under safeguard arrangements designed to account for all nuclear activity to prevent the clandestine development of nuclear weapons by nations which do not have them.

The safeguards in Taiwan include tamper-proof cameras, sealed fuel stockpiles, mechanical accounting devices and IAEA inspections about four times a year.

The safeguards, however, do not prohibit reprocessing or the building of a plutonium stockpile. With a supply of plutonium, Taiwan would be only a few steps away from a usable weapon, U.S. officials said.

Sources familiar with the U.S. intelligence reports of secret reprocessing on Taiwan said these did not emanate from the known hot cell pilot plant, which is not yet in operation. One souce said different stages of the secret reprocessing work apparently are being done in different places.

Taiwan is believed to be doing research on development of offensive missiles capable of delivering a nuclear weapon. Taiwan already possesses U.S. jet aircraft capable of making a bombing run across the Taiwan straits to mainland China.

China has exploded at least 18 nuclear devices, including thermonuclear (H-bomb) weapons since breaking into the ranks of atomic-armed states in 1964.

Chinese officials have recently said that Taiwan will have to be liberated by force. But it is considered unlikely that China would use atomic weapons against an island it considers its own and expects to control some day.

Taiwan has signed and ratified the Nuclear Non-Proliferation Treaty foreswearing the development of atomic weapons.

Premier Chiang Ching-quo's Nationalist Chinese government is believed to be divided between a large faction favoring concentrations on economic development and a small but powerful hawkish element which insists that Taiwan develop a nuclear deterrent as a last resort against an attack by China. The hawks argue that the U.S. commitment to defend Taiwan is weakening.

EXHIBIT P

[From the New York Times Aug. 26, 1976]

EUROPE'S NUCLEAR TURN

West Europe's lack of fossil fuel sources and its heavy dependence on Mideast oil led most countries there to step up plans for nuclear energy expansion even more than the United States in the wake of the 1973–74 embargo and five-fold oil price increase. But economic factors and public concern over safety, the environment and weapons proliferation now have led to a slowdown similar to that in the United States.

The Paris-based Organization for Economic Cooperation and Development has revised downward by about 20 percent its estimates for 1985 nuclear energy output in its 23 member nations, a level lower than that predicted before the oil embargo.

Mass demonstrations, scientific debate, reduced energy demand, lack of capital and difficulty in securing sites are even bringing a re-evaluation of the much-touted French lead in fast-breeder technology, the plutonium-fueled reactor once seen as Europe's chosen instrument to capture American-dominated export markets, starting in the 1990's. A new French-West German joint development pact for the plutonium breeder with an eye on third-country markets is being described by some Common Market experts as "another Concorde"—the British-French supersonic passenger plane that, after vast subsidies and delays still faces a highly uncertain commercial future.

MASSIVE PROTESTS

Thousands of demonstrators from France and neighboring countries clashed with police near Lyons last month while protesting the construction site chosen for France's Super-Phoenix, planned as the world's first large commercial fast breeder. Britain has ordered a five-month restudy of its breeder plans and the staggering problems that would be posed by the worldwide spread of plutonium, one of the most poisonous—and explosive—substances known to man.

What concerns scientists and other nuclear experts most is the double nature of plutonium, a nuclear reactor waste that does not exist in nature. It can be re-used not only as a civilian reactor fuel, but as little as 10 to 20 lbs. can be made relatively easily into a Hiroshima-sized atom bomb. In contrast, the 2 to 4 percent enriched uranium used in the American-designed light water reactor cannot be exploded.

UNACCEPTABLE RISK

Sir Brian Flowers, chairman of Britain's Royal Commission on Environmental Pollution and one of Europe's leading scientists, recently warned his countrymen that the fast breeder was "a billion-pound step down a technological path which may later prove unacceptable or even catastrophic."

The West German and French governments are still officially committed to the plutonium route. But, during the past year, their approval of sales to Brazil and Pakistan of reprocessing plants that separate plutonium explosive from spent reactor fuel rods has aroused growing concern about nuclear proliferation in the United States Congress and, belatedly, in the Ford Administration.

With public concern now growing in West Europe, chances are improved for American efforts to win supplier agreement on embargo of plutonium reprocessing plants. That would help pin down the agreement of third world countries, such as Iran and Pakistan, to ship their spent fuel rods back to supplier countries in exchange for safe uranium fuel, rather than to engage in dangerous plutonium extraction at home.

## CONCLUSION OF MORNING BUSINESS

Mr. MANSFIELD. Mr. President, is there further morning business?

The PRESIDING OFFICER. The time for morning business has now expired. Morning business is closed.

## WILD AND SCENIC RIVERS ACT AMENDMENT

Mr. MANSFIELD. Now, Mr. President, before I ask the Chair to honor the agreement made by the Senate to lay down Calendar No. 1100, H.R. 13372, I want to repeat what I said before, and add a little to it.

The leadership will endeavor to get an agreement to vote at 4 o'clock or no later than 4 o'clock on the New River bill—if the debate is not too extended—with the proviso that prior to the vote, some time prior to the vote, one-half hour be accorded to the distinguished senior Senator from Virginia (Mr. HARRY F. BYRD, JR.).

If the debate does not take too long it would then be the intention of the leadership to proceed even before 4 o'clock to the message from the House relative to the antitrust bill.

Mr. ALLEN. I thank the distinguished majority leader.

Mr. MANSFIELD. I think that should be made clear.

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

Mr. MANSFIELD. I yield.

Mr. HELMS. The Senator is proposing to attempt to set the vote at no later than 4 o'clock to accommodate Senators who are unavoidably detained; is that correct?

Mr. MANSFIELD. Yes.

Mr. HELMS. May I say to the Senator again, as I have said earlier, the proponents of the bill are perfectly prepared to enter into whatever time limitation is available, and the shorter the better.

Mr. MANSFIELD. The Senator has made that plain to the leadership time and time and time again. The leadership is appreciative. But there are other Senators who have to be convenienced, but we will try.

Mr. HELMS. I thank the distinguished majority leader.

Mr. FANNIN. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. Yes.

Mr. FANNIN. The Senator from Arizona does not want to delay, but it is the understanding of the Senator from Arizona that we will await the arrival of the Senator from Virginia (Mr. WILLIAM L. SCOTT) before entering into a time agreement?

Mr. MANSFIELD. That is the reason why it has not been made before.

Mr. FANNIN. I thank the distinguished Senator.

(Later the following proceeding occurred:)

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the hour of 2 p.m. the Senator from Virginia (Mr. HARRY F. BYRD, JR.) be recognized for not to exceed one-half hour; that at the conclusion of that period of time the Senator from Virginia (Mr. WILLIAM L. SCOTT) be recognized for the purpose of offering an amendment to the bill, and that the time allotted to the Senator from Virginia (Mr. WILLIAM L. SCOTT) be not to exceed 1 hour.

The PRESIDING OFFICER. Is there objection?

Mr. WILLIAM L. SCOTT. Mr. President, reserving the right to object, and I shall not object, 1 hour equally divided between the proponents of the amendment and the opponents.

Mr. MANSFIELD. Yes, under the usual procedure. And then at the conclusion of that hour, or that part of it which is used, that there be a rollcall vote on the Scott amendment.

Mr. WILLIAM L. SCOTT. Yes.

Mr. MANSFIELD. To be followed then by a vote on passage.

Mr. WILLIAM L. SCOTT. If the Senator will present it somewhat differently, with the final vote not later than 4 p.m. It might be that we would want to go back for a few minutes on the general bill in the event my amendment is rejected.

Mr. MANSFIELD. Fair enough. I make the request on that basis.

The PRESIDING OFFICER. And rule XII was waived?

Mr. MANSFIELD. That is correct.

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

ORDER FOR RECOGNITION OF SENATOR ALLEN TODAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that upon the disposition of the pending business, the distinguished Senator from Alabama (Mr. ALLEN) be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. At what time?

Mr. MANSFIELD. As soon as the vote is over.

Mr. ALLEN. Upon the disposition of the New River bill?

Mr. MANSFIELD. That is correct.

Mr. ALLEN. I thank the Senator.

Mr. MANSFIELD. Now, Mr. President, I ask unanimous consent that, in accordance with the previous order, the Senate turn to the consideration of Calendar No. 1100, H.R. 13372.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 13372) to amend the Wild and Scenic Rivers Act (82 Stat. 906; 16 U.S.C. 1271), and for other purposes.

The Senate proceeded to consider the bill.

Mr. HASKELL. Mr. President, so that I may consult with one of my colleagues, 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. HASKELL. 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. HASKELL. Mr. President, I rise in support of the enactment of H.R. 13372. The purpose of this legislation is to insure protection of a 26.5-mile segment of the New River located in North Carolina. The New River which flows through North Carolina, Virginia, and West Virginia is a unique and valuable resource. It is considered by geologists to be 100 million years old and, as such, the oldest river in North America and perhaps the second oldest in the world.

The North Carolina Legislature and Secretary of the Interior have already decided that this segment merits inclusion in the National Wild and Scenic Rivers System. Favorable action on this measure would statutorily affirm the action taken by the Secretary in April when he designated this segment of river as a State-administered component of the National Wild and Scenic River System.

Protection of the New River was a hotly contested issue during the last session of Congress. At that time, the Senate overwhelmingly passed legislation which would have designated a 70-mile segment of the New River in North Carolina and Virginia for study to determine its potential as a component of the Wild and Scenic Rivers System. Companion legislation was reported favorably from the House Interior Committee but the bill was denied a rule by the House Rules Committee. The bill then had to be taken to the House floor under a procedure which required a two-thirds vote. The vote was 196 to 181 in favor, but it fell short of the necessary two-thirds.

Our situation today is somewhat different and I think considerably stronger. The North Carolina State Legislature has unanimously approved legislation designating this 26.5-mile segment as a wild and scenic river under State law to be administered by the State. On April 13, 1976, the Secretary of the Interior designated this river segment as a component of the National Wild and Scenic Rivers System, still to be administered by the State pursuant to the 1968 Wild and Scenic Rivers Act. On August 10, 1976, the House passed this identical legislation to that which we are considering today by a vote of 311 to 73. The Senate can now act with confidence that if we approve this legislation, we will in fact be enacting a law—a law that will protect this river segment from impoundment and inundation.

But if the State of North Carolina and the Secretary of the Interior have already acted to preserve this portion of the New River, why is it necessary for Congress to act? In June, 1974, the FPC issued a license to become effective on January 2, 1975, to Appalachian Power Co. to proceed with the Blue Ridge project, a proposal to build a hydroelectric pump storage project on the New River in Virginia. The legality of the license has been upheld by the Court of Appeals of the District of Columbia and the case is now being appealed to the Supreme Court.

On April 13, 1976, when Secretary Kleppe designated this 26.5-mile segment of the New River as a State-administered component of the Wild and Scenic Rivers System he stated that such designation would not take precedence over the conflicting license for the Blue Ridge project. Therefore, action on the part of Congress is necessary to protect this river segment and prevent many years of litigation which no one wants. While the legislation does not revoke the FPC license for the Blue Ridge project, it insures that no impoundment will inundate or otherwise destroy this particular portion of the river.

There was considerable controversy last Congress as to whether or not this river qualified for inclusion in the Wild and Scenic Rivers System. I feel that this issue has now been more than adequately resolved. The New River, and particularly this 26.5-mile segment, has been thoroughly studied by the State of North Carolina and Department of the Interior in an effort to assess its natural, historic, and recreational qualities. On the basis of this careful study and in accordance with procedures established by the Wild and Scenic Rivers Act of 1968, the Secretary found that this portion of the New River meets all the qualifications of a wild and scenic river and agreed to include it in the Wild and Scenic River System.

This 26.5 mile-segment of river is an excellent biological resource. A number of botanists have declared it to be a truly unique area in terms of the variety of flora. The same glaciers that changed the course of the prehistoric Teays River but stopped short of the New River are given credit for producing the unique combination of northern and southern vegetation in the area—the theory being that the area was close enough to the glaciers to maintain the northern evergreens and pines and yet far enough away to retain the flowering bushes and trees of the South.

The topography of the 26.5-mile segment, ranging from a broad floor plain to narrow valleys with a subsequent change in sites from wet to dry, insures a truly diversified vegetation. Approximately 60 percent of the segment's banks is in forest cover; the rest is primarily cleared lands devoted to pasture or crops.

The New River supports a significant fishery, with some 68 species of fish having been identified. Eleven of these species are thought to be rare and endangered. The North Carolina Department of Natural and Economic Resources has stated that the reach of the New River in Ashe and Alleghany Counties, N.C., to be designated by S. 158, as amended, is the largest and highest quality smallmouth and rock bass riverine habitat in the State.

In prehistoric and historic times, the New River served as a major migration route; today this segment of the river is rich in archeological and historical resources. There have been four preliminary reconnaissance archeological surveys made of the New River since 1964. Eighteen sites in Ashe and Alleghany Counties have already been identified, although the surveys were not extensive and were accomplished within a limited time frame. A variety of cultures and time periods are represented at these sites. They indicate that several different types of habitats were used by prehistoric Indians. In addition, this drainage was an important center in early historic times and the remains of several structures and farmsteads have been identified.

A variety of recreation uses currently take place along the river. The relatively light amount of development on the river banks has meant that the water quality of the stream has been little affected by man, and is well suited for recreation use. Assistant Secretary of the Interior, Nathaniel Reed, in testimony before the committee, identified the unique recreational opportunities which would be permitted by designation of the river as a wild and scenic river:

> The State of North Carolina has adopted a management plan which contemplates the development of four recreation activity areas in this 26.5 mile segment. These centers would total approximately 400 acres and would offer hiking and horseback riding trails, campsites, picnic tables, shelter areas and sanitary facilities. Annual public use is projected to include 50,000 visitors.

Mr. President, some construction union spokesmen have expressed opposition to the bill and support for the Blue Ridge project because of the potential construction jobs involved. Proponents of the power project claim that it would create as many as 1,500 jobs. However, these new jobs would be available only during the 5 to 9 years of construction and many of them would be temporary and seasonal. Once the project is completed few permanent jobs would be available because of the automated nature of the project.

On the other hand, some 3,000 local people would be displaced by the project and an estimated 600 permanent farm and farm related jobs lost. Additionally, some 40,000 acres of land—appropriately 29,000 of which are under cultivation or in pasture—would be lost forever. This will mean a permanent loss of agriculture production and of permanent farm jobs. We should realize that these lands cannot be replaced. In these mountainous counties, very little land is well suited for agriculture, and the valley bottom lands to be flooded here are in short supply. The real job impact is on these farming people.

I think it is also important to note that if AEP does not construct the Blue Ridge project as presently contemplated, they have the alternative of building other generating facilities. Other pumped storage projects—and even the FPC recognizes that there are several alternative sites in the general vicinity—will create construction jobs, too. A coal-fired base load which has also been mentioned as an alternative to the Blue Ridge would

create not only temporary construction jobs but also many permanent jobs in the coal industry.

Mr. President, this bill is not an anti-jobs proposal. If anything it preserves the jobs of some 600 farming people—many of whom have lived in this river valley all their lives. I urge my colleagues to join with me in supporting this legislation.

It gives me a very considerable pleasure to support H.R. 13372 which, incidentally, is the same as S. 158.

This particular piece of legislation passed the Senate 2 years ago, if my memory serves me correctly, with an overwhelming vote. Very recently, the House of Representatives passed the bill that is before us by a vote of in excess of 3 to 1. The legislature and Governor of North Carolina has decided that this 26.5-mile segment of the New River that we are discussing merits inclusion in the National Wild and Scenic Rivers System and has petitioned the Secretary of the Interior to that effect. The Secretary of the Interior of the United States, Mr. Kleppe, has decided the same thing and has officially designated the river segment as a wild and scenic river.

Certain elements of organized labor apparently have opposed this piece of legislation. However, I should point out that the AFL–CIO in North Carolina is in favor of the legislation. I should point out that the United Mine Workers of America and the Amalgamated Meat Cutters and Butcher Workmen of North American are in favor of this legislation, and I am very pleased, indeed, to announce that on August 19, 1976, Mr. George Meany sent a letter to the National Committee for the New River in which he personally withdrew the AFL–CIO opposition to the bill.

I ask unanimous consent that this 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:

AFL–CIO,
*Washington, D.C., August 19, 1976.*

Mr. JOE C. MATTHEWS,
*National Committee for the New River,*
*Winston Salem, N.C.*

DEAR MR. MATTHEWS: I have your telegram of July 30th with reference to the New River Project and very much appreciate your taking the time to express your views on this matter and an deeply appreciate of the motives which inspired it.

As you undoubtedly know by now, the House passed the legislation to save the New River and there are indications that it will pass in the Senate.

The special nature of the New River and the questionable need for, and utility of, the proposed dam make our past support for construction of this dam open to the serious questions which you and many others have raised. I think our support for it has to be seen against the background of the Nation's need for new energy sources and the broad scale efforts of some environmental groups to thwart every power project of whatever type. The combination of those two factors has led the AFL–CIO and a number of other organizations to support the development of new energy sources and to defend the established procedures for dealing with challenges to this type of project.

In this particular instance, it was our feeling that the 14 years which has passed since the first application to the Federal Power Commission for the permit or license to build the Blue Ridge project should have provided ample opportunity for the most thorough analysis of all of these questions and that, at some point, it is necessary to call a halt to the considerations of these issues, to make the decision, and to get on with these projects. Surely you know the history of the efforts to develop the Alaska Pipe Line and the more than seven-year delay in the development of that project brought about largely by the efforts of environmentalists to block construction, with the resultant doubling or tripling of the cost to the Nation of that project. For that reason, we have supported, and continue to strongly support the concept of having one all-inclusive examination of all the issues raised by the planned construction of dams and power plants, etc., with a sufficient period for adequate court review, but an end-point to the process so that these matters will not be unnecessarily dragged out through a variety of forums by any special interest groups, whether they are for or against the construction of the particular project.

In the case of the New River Project, we have followed a line of conduct which logically follows from these considerations. It was not a capricious decision and it was not dictated solely by the construction jobs involved, as some critics have alleged. The self-evident power needs of the nation and the long-term benefits to the economy that would result were our prime consideration.

It is now obvious to me that there were other factors and developments that we did not fully explore before testifying this year. The real impact of the dam on the people who live in the valley and the destruction of the natural beauty of the area, were really only brought home to me very forcefully during the past few weeks by strong representations made by some of our trade unionists in North Carolina, by letters such as yours, and by representations made by a group of residents and others who visited in our office in Washington.

I am sure you will understand that in saying that, I am not trying to avoid responsibility for the positions which we took, but rather only to explain them.

Sincerely,

GEORGE MEANY,
*President.*

Mr. HASKELL. I have personally visited the New River, Mr. President, and have actually walked along segments of it. Geologically it is unique. It thoroughly deserves the overwhelming support that has been given it—support from the House of Representatives this Congress, the Senate last Congress, from the Legislature of the State of North Carolina, from the Secretary of the Interior, and from the elements of organized labor I have mentioned.

So, Mr. President, it is my hope that this bill will become law and that this river will be preserved for the grandchildren and great grandchildren of the people now living.

With that, Mr. President, I yield the floor to anybody who desires it.

Mr. FANNIN. Mr. President, it has not been 3 full years since this country was under the specter of the Arab oil embargo. This embargo has shown us how dependent we are on foreign sources for most of our energy, indeed, since the embargo was lifted we have become even more dependent on these foreign sources.

Much of our domestic energy production has been curtailed by our own limitations, whether environmental or otherwise, placed on those companies engaged in producing this vital commodity. We have locked up our resources, preventing ourselves from using them, while our dependence upon foreign sources of energy grows from day to day. To a disinterested observer from another planet we would look much like the lemming rushing headlong to the sea.

The bill we have before us, Mr. President, is calculated to stop a power project that would help us move toward energy self-sufficiency. The only real achievement of this bill would be to block one of the best remaining hydroelectric damsites in the Eastern United States. Our Nation is in need of this source of energy.

Enactment of this legislation will cause the loss of 1,800 megawatts of electrical generation capacity. This energy would be inexpensive, nonpolluting, hydroelectric power. This power would be used to meet the peak power demands of the entire East-Central United States through the 97 interconnections of the American Electric Power Co.'s system.

The Federal Power Commission found that—

> The need for Blue Ridge power has been abundantly displayed in the record. . . . A review of the evidence in the record makes clear that all of the power that Blue Ridge can produce will fall short of meeting the peaking demands of the AEP system in the early 1980's. . . . This power is essential to insure the reliability of the system.

Peaking power has been criticized as being a net consumer of electricity. Opponents point to the fact that it takes kilowatts of electricity to pump uphill the water to generate 3 kilowatts of peak power. But engineering projections show that the American Electric Power system will consume less coal with the Blue Ridge project in line than it otherwise would, and the 1,800 megawatts of peaking power will be available to meet peak daytime needs. Part of the seeming anomaly is due to the efficiency of the Appalachian Power generating plants and part to the energy costs of startup and shutdown of these large generators to meet the peak demands.

The capacity of any system is dictated by the maximum load expected at the time of greatest demand. In addition, Reserves are needed so that emergencies and normal maintenance do not interfere with the needs of the system. The use of peak generation facilities will insure that the most efficient use is made of current generation facilities. The agencies charged with considering Americans' power demands have chosen peaking power as one of the desired systems for meeting our power needs.

There are few viable alternatives to the Blue Ridge project. The escalating costs and potential shortages militate against the use of oil as the primary fuel. The use of atomic power is increasingly under attack. The only alternative would seem to be a huge coal-fired generation facility that would be among the largest such facilities in the Nation. The cost of this plant would exceed the cost of the Blue Ridge facility by more than one-half billion dollars, to be ultimately borne by the consumer. Additionally, environmental constraints might preclude the construction of such a plant.

The Blue Ridge project, which this bill would prevent, in an environmentally beneficial project. Hydroelectric power consumes none of our Nation's nonrenewable resources. It produces no pollution. It is extremely efficient, the mountain lake recreation that would be provided by this project is of a scenic nature that is projected to be one of the most popular recreational facilities in the Eastern United States.

We cannot stand idly by and contribute to our energy dilemma. The need for this facility is readily apparent. The license for this facility has already been issued, and the company stands ready to meet the public need. It is time that we stop the shortsighted actions we take to keep us from meeting our energy needs. The Blue Ridge project is a beneficial project. I urge you to support energy independence and defeat this bill.

Mr. METCALF. Mr. President, will the Senator yield, with the permission of the Senator from North Carolina, because I know he has something to say about it?

Mr. HASKELL. I certainly would yield, and I do yield.

Mr. METCALF. I want to say I have long advocated the development of our streams for the generation of hydroelectric power. Such power is absolutely pure and unpolluting, and it is the highest standard of power we can have. There are still a few areas in the West that should be developed insofar as the generation of such hydroelectric power is concerned.

The New River is not such an area. The New River is, as has been pointed out, a unique stream. Senator Ervin used to be delighted to tell us that the New River was the second oldest river in the world. This particular segment is so rich in historical and archeological and recreation value that, in my view, it should be preserved.

I participated in the hearings, Mr. President, and certain statements were made about the fact that if Congress passed this law we would subject the United States to a series of lawsuits that might cost several millions of dollars.

I have done some research in the law and I just cannot concur in the opinion that was expressed at that time.

Mr. President, I am pleased to speak in favor of the bill, H.R. 13372, and to urge its passage.

The New River is reported to be the oldest river in the Western Hemisphere. This particular segment of the river is rich in historical, archeological, and recreational values and, in my view should be preserved.

Mr. President, there are several elements in the current controversy surrounding the New River and the proposed Blue Ridge project which I feel deserve careful attention. The FPC has said that there are several potential sites along the New River which could provide peaking power at significantly lower cost than the Blue Ridge project. Of 25 alternative pumped storage sites that were investigated, 22 had a lower installed cost per capacity than did Blue Ridge. Construction of this facility at its present location is justified, in large part, by the recreation benefits to be provided by the project. Mr. President, I believe that these potential benefits have been seriously exaggerated.

The FPC states that the lower reservoir with planned fluctuations up to 43 feet would not make a major contribution to recreation. However, the upper 26,000-arce reservior with fluctuations up to 10 feet is expected to be a major flat water recreation resource. Additionally, American Electric Power is to purchase lands for both a North Carolina and Virginia State park on the upper reservoir. The FPC projects an annual $6.1 million recreation benefit from the project based on a projected annual visitation of 6.23 million people. This is a larger annual visitation than Yellowstone and Yosemite Parks combined.

Look at the way in which the recreation benefits of this project were determined. First, the existing average per acre use of several nearby lakes was computed, and then applied to the entire acreage of the upper development, plus adding an additional 10 percent for use of the lower reservoir. So the beginning level of use assumes that additional people will materialize out of nowhere to immediately use this reservoir to the existing level of surrounding lakes. This assumes no satisfaction of demand whatsoever, which is obviously unrealistic. Over the 50-year project life, the use is then computed to rise at a constant level, again never considering that the demand may be something less than constantly increasing. All the economic benefits are based on these assumptions.

Mr. President, I have a letter dated August 3, 1976, from Mr. Ron Johnson, director of parks and recreation, North Carolina Department of Natural and Economic Resources to the chairman of the House Rules Committee. Mr. Johnson's office has conducted in depth reservoir and State park studies in North Carolina for over 5 years and his letter reflects his finding that there is already an existing surplus of the very type of recreation which the Blue Ridge might provide. A comprehensive study of proposed reservoirs as they relate to unmet recreation needs in North Carolina shows the Blue Ridge project reservoir ranks No. 32 in a priority listing of 83 projects in the State. Similarly, State park lands in the region in which the Blue Ridge Reservoir would be located already exceed current needs by over 2,500 acres as of July 29, 1976. Mr. President, I believe it is clear that the recreation benefits claimed by the proponents of this project are dubious indeed.

The Department of the Interior which knows more about recreation than the FPC points out that flatwater reservoirs suitable for recreation are becoming more and more numerous in this section of the country. In fact, there are nearly half-a-million acres of such reservoirs currently available within a 150-mile radius of the proposed development. But high quality, free-flowing streams of the caliber of the New River are an increasingly scarce and highly valued resource.

The Appalachian Power Co. has argued before the committee that enactment of this legislation would amount to a taking under the fifth amendment and thus obligate the Federal Government for millions of dollars in compensation.

H.R. 13372, as amended, provides that any license issued by the Federal Power Commission before or after enactment of S. 158 affecting the New River in North Carolina would remain in effect only for that portion of the river which is not included in the National Wild and Scenic Rivers System, and that no licensed project would be permitted to invade, inundate or otherwise adversely affect the designated 26.5-mile segment. Thus, it would leave unimpaired the authority of the FPC to license a hydroelectric project which does not adversely affect the designated river segment. It would, however, effectively nullify the FPC license insofar as it authorizes the construction of dams which would cause irreparable damage to the designated 26.5-mile segment of the river.

During the hearings on this legislation, the American Electric Power Co. argued that the United States would incur a $500 million liability—the difference between the cost of the Blue Ridge project and an alternate coal-fired generating plant—to the Appalachian Power Co. if the license is revoked. The utility submitted a memorandum by its attorneys which contains the argument that the FPC license is a contractual right and thus legally protected property within the meaning of the fifth amendment and its just-compensation requirement.

On the other hand the committee has received legal memorandums from the Department of the Interior and the American Law Division, Library of Congress, which argue that no taking would occur in this instance. These arguments are based on the well-settled rule of law that a license is a privilege not a contract or property right and that no contract implied or in fact can be found. In particular, these memorandums cite a string of cases which have established that the Congress may grant, deny, or revoke a license to obstruct or use navigable waters and that such action does not incur liability on the part of the U.S. Government.

Mr. President, it is important to note that no one has challenged the Congress constitutional authority to revoke an FPC license. Congressional revocation of the license is a valid exercise by Congress of its power under the commerce clause to regulate the navigable waters of the United States. As a memorandum of law submitted by the American Law Division, Congressional Research Service, Library of Congress, points out, the FPC has made an express finding that the portion of the New River which would be affected by the Blue Ridge project is navigable water of the United States (29 F.P.C. 445 (1963), cited in F.P.C. Opinion No. 698, June 14, 1973, at 3).

Mr. President, I have reviewed the several legal memorandums on this issue submitted by the Department of the Interior, the Library of Congress, and the power company. I feel that congressional revocation or limiting of the Blue Ridge project license is probably not a taking cognizable under the fifth amendment. I should hasten to add that I certainly recognize the right of the utility to press a claim for compensation by the Federal Government. Under the Tucker Act (28 U.S.C. 1491 (1970)), the Court of

Claims has jurisdiction to award compensation for claims based on a governmental taking of private property for public use. As H.R. 13372, as amended, does not repeal the Tucker Act or exempt the bill from the act's application, relief from the Court of Claims is available to the utility. However, it is my view that this legislation does not constitute a compensable taking and that the United States will not be liable to the Appalachian Power Co. should this legislation be enacted.

Mr. President, the New River is a beautiful river passing through mountain passes and wide valleys. Some areas are heavily forested while others are dedicated to agriculture. I am convinced that this section of this beautiful river should be preserved.

The New River is a beautiful river. It passes through mountain passes and wide valleys, a delightful recreational area.

It is a delightful recreational area, so we need to do nothing about the present river except to improve a little bit about its recreational facilities.

It is one of those that should be preserved and dedicated to the use of the people of the area.

I heartily concur and endorse the bill.

Mr. HELMS. Mr. President, I am immensely grateful to the able Senator from Colorado (Mr. HASKELL) and the able Senator from Montana (Mr. METCALF) for their patience with me and for their unyielding cooperation in connection with S. 158 and the companion bill, H.R. 13372.

Mr. President, I ask unanimous consent that Mr. Henry Poole, a member of the staff of the distinguished Presiding Officer, Mr. MORGAN, be granted privilege of the floor during the discussion of this measure and any votes thereon.

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

Mr. HELMS. Mr. President, once more we have before us a bill to save the New River from being permanently lost to future generations. I need not repeat the history of the New River, its remarkable geology, its beauty, or its uniqueness. The Senate has already heard all of these arguments on other occasions and they have been put forward by speakers far more eloquent than I.

Nor is there any need to rebut the arguments of those on the other side, arguments which offer the generality that we must balance environmental questions with the need for energy, and that we must develop all sources of energy. There is no debate about those general principles. My colleagues have heard the Senator from North Carolina expound them himself on many occasions.

Indeed, there is a need for balance. The identical bill, H.R. 13372 and S. 158, are an attempt to supply that need. These identical pieces of legislation are saying to the people of the United States: We must find a way to listen to all the needs of our people, and not accept a decision in which two or three special interest groups attempt to overrule the rights and powers of the many.

Now, I do not deny that it is up to each group to look out for its own special interests. It is only natural, in fact, normal, that in a free country, each group should try to influence events to its own private advantage. I do not fault any group for doing that.

But the congressional system was established on our Constitution as a means of harmonizing all the competing interests so that the general interest of the Nation would emerge in the end. I am not one who believes that the public interest is something independent of and antagonistic to private interest. I just happen to think that the public interest is the sum total of all the interest sectors. What we are trying to do here today is to find that dominant expression of the public good.

So let us look at some of the various interests.

First, we have the American Electric Power Co. of New York, and its subsidiary, the Appalachian Power Co., a privately owned power company, that is seeking to destroy the New River for the benefit of its customers and owners, I believe it will be acknowledged that I am an advocate of private enterprise, and I strongly support the private sector as the most efficient producer of electrical power. I respect the duty of the managers of Appalachian Power to promote efficiency within their company to exploit our national resources in order to provide a service to the American people. It is reasonable to expect Appalachian Power to seek ways to meet the electric power needs of its customers, and to do it at the lowest price possible, and to earn a profit sufficient to attract the investment necessary to increase production.

However, all men make mistakes. There is no way to predict the future with certainty. Fifteen years ago, American Electric Power made some assumptions about the future, about the availability of fuels, and about energy needs. They proposed the Blue Ridge project.

Unfortunately, those assumptions turned out wrong. The whole energy situation has changed dramatically. The cost of fuels has changed, the cost of environmental protection has been increased by Federal regulation, the cost of electricity to the consumer has naturally gone up, and all the assumptions about the need for expansion have been undermined.

Indeed, American Electric Power's chairman of the board, Mr. Donald C. Cook, admitted in an interview—in Forbes magazine last year—that AEP was no longer enjoying its historic annual growth rate of 7 percent. Power demand for AEP grew only 1.3 percent in 1974, and demand actually fell by 4 percent in the first half of 1975. Mr. Cook, chairman of the board of AEP said:

> For the first time, we clearly overestimated the demand of the economy in our (service) area. We are grinding down our construction program. While there is going to be a power shortage in the United States, there will not be a power shortage on the American Electric Power system.

But for some reason, unknown to the public, AEP has not ground down its efforts to build the Blue Ridge project.

Indeed, AEP, although a private sector company, has not hesitated to use the authority of the Federal Government to force through a project that does not even seem to be in its own interest.

What reasons can we assign for this? I would hestitate to say. But could it be the momentum of a wrong-headed decision, in which there is a considerable investment of executive prestige, lawyers' expertise, and engineers' fees? No one likes to admit he is wrong, and the only way to recoup the comparatively modest investment—compared to the whole cost of the project—is to muddle on ahead, apparently.

Another factor is the attitude of the Federal Power Commission. Like every other agency of Government, the FPC has its own interest in self-perpetuation, and in the aggrandizement of its privileges and perogatives. It has recorded hours and hours of hearings, and published reams of documents. And finally, even though Congress continued to work on the matter, the FPC has issued a license to AEP, the EPC's attitude—being one of arrogance, to me, indicative of the arrogant attitude of all bureaucrats—has been enormously stiffened by this needless action. Now it appears that the FPC feels it cannot afford to lose face: It has issued the license, and it wants no new precedents set which suggest that it is not infallible.

Mr. President, the FPC is demonstrably fallible.

I think this Senate today should join the House of Representatives in setting a very worthwhile precedent.

I am not at all interested or concerned about the loss of face of the Federal Power Commission.

We must remember, Mr. President, that the FPC is the creature of Congress. Congress has the right and the duty to intervene when a mistake has been made. After all, it would be madness to assume that the FPC is the court of last resort. It would diminish the power of Congress, and derogate from Congress' own constitutional authority to set the precedent that the FPC is not answerable to Congress. By it very nature, the FPC is a rather narrow agency. It is not structured to be sensitive to the political aspects of its decisions; indeed, just the opposite is the case, but not all decisions which may involve electrical power issues can be decided on those issues alone. Congress is the representative of the people, not the FPC, and it must act to protect the interests of the people.

Congress must face up to the fact that the FPC decision is based on data that is 8 or 10 years old, and that has been outdated by intervening events. Congress must face the fact that our attitude toward conservation has changed, that the whole energy picture has changed, that our awareness of citizens' rights has been sharpened.

I am sure the Senate is aware that the FPC never held a hearing in the North Carolina counties most affected by this proposed project. Such a hearing would have given ordinary citizens in my State an opportunity to express their views. The closest hearing was 100 miles away, and was restricted to technical matters.

I wonder if the Senate is aware that the FPC failed to do detailed consideration of other alternatives. I wonder if the Senate is aware that there were 31

proposed, and that only 5 of them cost more per kilowatt than the Blue Ridge. And that nine of them had adequate capacity and still cost less per kilowatt than the Blue Ridge; and that these nine would require less flooding than the Blue Ridge? These are just some of the questions that are important in the consideration of this legislation.

But the justification the FPC gave for picking the Blue Ridge was that the Blue Ridge would also provide recreation benefits to justify its cost. In other words, the consumers of American electric power would be paying more in electricity costs to provide recreation for a potential service area of about 50 miles around the reservoirs. But that area is not exactly the most densely populated section of North Carolina, and it happens that there are already 20,000 acres of lakes and parks and gameland serving this area.

Also, I wonder if the Senate is aware that the efficient life of this project is only 20 years, there is a sharply decreasing scale of efficiency, due to the buildup of silt behind the dams. After 20 years, the Blue Ridge project will be able to operate only about 3 hours a day.

The FPC license is for 50 years, but nature's license is only for 20. Thus the project will be 8 years abuilding, 20 years in efficient use, and a river that flowed free for thousands of years will be destroyed forever.

Now what other interest groups are there behind this project? Needless to say, the construction firms and some of the construction unions have favored it. That has been self-evident. There will be some temporary jobs for a few years, until the engineers and the workers move on to some other site in some other State.

This is important to bear in mind, Mr. President:

No one is pretending that the jobs will go to the local people. The local people are farmers, and small businessmen, not engineers or trade union workers. The rate of unemployment is substantially below the national average, but among the local people it will rise drastically if they are forced from their homes, farms, and places of business.

It is not surprising that some of the firms and unions that directly gain have favored the project. But many other unions which have examined the situation dispassionately are strongly opposed, including the North Carolina AFL–CIO.

I am delighted with the announcement by Mr. Meany over the weekend that he, too, had withdrawn his objection to the pending legislation.

Finally, what other interests are involved? I would be less than candid if I did not admit that the citizens of Ashe and Alleghany Counties are bitterly opposed. It is their special interest not to want to have their lands destroyed. But there is more to it than that.

Mr. President, I submit that the interests of the people of Ashe and Alleghany Counties are identical with the interests of the vast majority of our citizens everywhere. Yes, they have a personal interest; but they also are protecting the rights of all citizens to the self-determination of their lives and futures. These are citizens whose way of life is inextricably bound up with the land of their forefathers, and with the customs and attitudes which they have inherited.

They have a right to be protected against the arbitrary—and in this case, misdirected—seizure of their property by a private company using the police power of the Federal Government. There may be monetary compensation, but there can be no true compensation for the senseless destruction of a life-style which has endured for generations. This project brings no benefits to them, nor indeed to any of the people of North Carolina. They are being asked to give up everything they have built for generations so that the gross mistakes of company managers and far-away bureaucrats who have no interest in the region can be prepared over and salvaged.

That is why the people of North Carolina have acted in this matter. All the citizens of North Carolina have rallied to the cause. Acting through the constitutional and democratic processes of our State, our citizens have unanimously sought to prevent this destruction. The commissioners of the counties involved have been unanimously opposed. The General Assembly of North Carolina has unanimously asked that the section of the New River which lies in North Carolina be included in the Federal wild and scenic rivers system. North Carolina's legislature has voted to assume all costs, for acquisition and operation, so that the Federal taxpayers at large will not be charged one penny. Our Governor has strongly supported this measure. The whole North Carolina delegation in Congress has unanimously supported this measure.

Mr. President, what is at stake here is not merely the preservation of the river. What is at stake is the preservation of the integrity of the constitutional and democratic process. The unanimous action of the people of North Carolina, taken through the proper processes of the State government, is about to be swept away by the arbitrary action of a handful of Federal bureaucrats—the Federal Power Commission—in league with a few special interest groups.

This Senator, Mr. President, contends that if we allow the FPC to veto the will of the people, constitutionally expressed, then the liberties of all the American people are endangered. Mr. President, that is the issue which we must decide here today, and it is an issue which touches the lives of us all.

Mr. President, I fervently hope that the Senate will approve H.R. 13372.

Mr. BUMPERS. Mr. President, first, I wish to compliment the Senator from North Carolina on his statement, much of which I am about to repeat; but, before doing that, Mr. President, I ask unanimous consent that Tom Williams, Steve Quarles, Dan Dreyfus, Fred Craft, Mike Harvey, and Ted Orf of the staff of the Committee on Interior and Insular Affairs have the privilege of the floor during the consideration of and voting on H.R. 13372.

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

Mr. BUMPERS. Mr. President, I wish to speak for just a few moments about some of the issues concerning the legality of what we are doing—issues which have been raised by some of the opponents of this legislation.

Opponents of this legislation have argued that the Wild and Scenic Rivers Act is being used capriciously in this instance to block a duly authorized power project; the Blue Ridge hydroelectric facility.

I make this statement so that the record will set forth the very persuasive arguments against that argument.

Section 1(b) of the National Wild and Scenic Rivers Act of 1968 states—

> The Congress declares that the established national policy of dam and other construction at appropriate sections of rivers of the U.S. needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition....

The House Interior Committee report on the 1968 Wild and Scenic Rivers Act states that it was the intention of the committee that the States ought to be encouraged to undertake the protection of free-flowing rivers and that "such Federal agencies as the FPC * * * will not upset (the States) plans by taking adverse action without the full knowledge and *consent* (emphasis supplied) of the Congress."

Clearly, the policy of the Wild and Scenic Rivers Act is to balance dam building and other construction programs affecting rivers with a program to preserve selected rivers in their free-flowing state. To accomplish this purpose, the act creates a system either by congressional designation or by State designation and approval by the Secretary of the Interior. Once a river is included in the system, or once it has been designated as a study river, it is protected by section 7 of the act from actions such as dam building that would impound the river or otherwise directly affect it. The act does not block projects, but rather preserves the free-flowing character of qualifying rivers.

Mr. President, by way of digression, I would like to say that the Buffalo River in my State is a river that has been so designated, and in the process we have preserved one of the finest free-flowing rivers in the Nation, which would obviously and without question have been dammed today had it not been for this legislation.

Mr. President, there has been considerable discussion about whether this legislation is unprecedented or not. Some have argued that by effectively cancelling an FPC license, the Congress would be moving into totally unchartered waters. Earlier in this Congress, we passed and the President signed into law, legislation creating the Hells Canyon National Recreation Area. In that legislation, it seems to me that we established a rather clear precedent for what we are doing here today.

I might say that the Hells Canyon area was certainly as controversial if not more controversial than the New River.

In 1964 the Federal Power Commission had licensed the High Mountain sheep project on the Snake River which is Hells Canyon. The license was contested by

the Department of the Interior and although the Federal Power Commission was upheld in the court of appeals, the Department of the Interior won a reversal in the Supreme Court—Udall against Federal Power Commission—1967.

In 1973 the Commission reopened the proceedings to license the High Mountain sheep project. Subsequently the Hells Canyon National Recreation Area bill was introduced and passed to preserve the Snake River and to terminate further considerations by the Federal Power Commission of High Mountain sheep. In addition it specifically deauthorized the Asotin project downstream and withdrew the authority of the FPC to license the construction of any new dam, reservoir or project within the recreation area.

In the Colorado River Basin Project Act we specifically provided that the Federal Power Act "shall not be applicable to the reaches of the main stream of the Colorado River between Hoover Dam and Glen Canyon Dam until and unless otherwise provided by Congress."

In fact, Mr. President, the Wild and Scenic Rivers Act provides that the FPC:

> Shall not license the construction of any dam, reservoir, or other project works on or directly affecting any river which is designated as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system. . . .

These assertions of power by the Congress in these several instances underscore the controlling relationship which it may exercise over its agent—the Federal Power Commission. The Congress has the power to determine how our great river resources are to be used. In my view, this is the controlling and most important precedent; the well established rule of law that it is the Congress, under the commerce clause of the Constitution of the United States that determines the manner in which our Nation's navigable streams are to be utilized.

Mr. President, in my view, the Blue Ridge is not a model development. Let us be clear on this—the project site does not represent great hydroelectric potential. Appalachian Power Co. wants the site for pumped storage, not for the generation of new power. I have no particular problems with the need for peaking power facilities; the Federal Power Commission says that such peak loads must be met. But, I am amazed to find that the FPC and the power companies agree that there are other sites which could provide the needed peaked storage capacity at less cost.

The record shows that in the region to be served by the proposed project, there are potential pumped storage sites which have significantly higher heads and, as would be expected, lower capacity costs that the multipurpose Blue Ridge combination pumped storage project. In fact the FPC listed 22 other potential pumped storage sites which would have lower consumption costs than the Blue Ridge project. The Blue Ridge project was chosen because of the supposed recreation benefits—benefits which have been greatly exaggerated by the FPC and the proponents of the Blue Ridge.

Although the dams would be built by the Appalachian Power Co., the peak-load power they produced is to be transmitted to the Midwest for use by Appalachian's parent company, American Electric Power, which incidentally is the Nation's largest utility. Although AEP claims the project is needed to avert projected shortages in the 1980's, the company badly overestimated energy demand in the 1970's. In fact, last year, the AEP system sold 27 percent of its net generated power to other utilities, and from 1972 through 1974, it sold 23 percent of its net generated power outside its system. In view of these large sales of power to other companies and in view of the fact that it possessed a reserve margin of 18.3 percent last year, it is difficult to agree with the company's judgment that there is a pressing need for the peak-load power that would be provided by damming this segment of the New River. Moreover, the American Electric Power Co., itself does not expect the project to provide a significant amount of peaking power over a long period of time. The company predicts that during the first 20 years of operation, the amount of power generated by the project will fall by more than one-half.

In attempting to plan for future peak load demands, a system of peak load pricing would be a much better alternative, but the Federal Power Commission did not seriously consider this approach when it decided to grant the license to Appalachian. On the other hand, the Federal Power Commission contended that the project should be licensed because it would save an estimated 6 million tons of coal during its 50-year lifespan. But in view of the fact that AEP already burns 33 million tons of coal each year—and that the Nation is estimated to have enough coal to last several hundred years—it is difficult to reason that conserving less than four-tenths of 1 percent of AEP's coal consumption would be a major accomplishment.

Certainly all of us are concerned about how we are going to develop our power resources. However, it is my view that preservation of this stretch of the New River must take precedence over a pumped storage project. In the final analysis, the Blue Ridge project is replaceable; other alternatives for meeting national and regional energy needs exist. The upper New River, in its unique, free-flowing, and natural state cannot be replaced.

So I urge our colleagues to vote with me and with the Committee on Interior and Insular Affairs in favor of this measure to preserve this great and historic national asset.

Mr. President, the distinguished Senator from Virginia (Mr. WILLIAM L. SCOTT) was to follow me. I see he is not in the Chamber.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WILLIAM L. SCOTT. 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. WILLIAM L. SCOTT. Mr. President, it is seldom that my good friend the senior Senator from North Carolina (Mr. HELMS) and I are on different sides when issues come before the Senate. We are friends and seatmates in the Senate. I hate to oppose the bill in this instance. However, in my opinion, not only is the measure before us against the interests of the people of Virginia, but also, I believe it is against the interests of the general public.

There seems to be a general pattern among avid environmentalists to oppose all dams, all bridges, all highways, and industrial development. Of course, as the Nation becomes more heavily populated and industrial development increases, additional care should be exercised and a reasonable examination made of both public and private projects before they are constructed. But there are many environmentalists organized in the various States and nationwide who exert every effort against major improvements, and oftentimes they delay deserved projects and add appreciably to their cost. We are familiar with the tactics of organized lobbyists, whether they be paid professionals or dedicated volunteers. Most of us, especially those who have served on the Committee on Public Works, could point to one or more projects that have been lobbied to death.

I recall that during my campaign for election to my first term in the House of Representatives, my opponent appeared at the site of a proposed dam with the then Secretary of the Interior; and the Secretary, a member of the other party, told the assembled guests, "If you want this project, you had better elect a Democrat to Congress." Flood control had been a problem in the Fredericksburg, Va., area for many years; and the Corps of Engineers had made its first in-depth investigation around the turn of the century. Soon after I was elected to Congress, a recommendation was made by the Corps of Engineers that a high-level dam be constructed.

I am referring to the Salem Church Dam on the Rappahannock River, in Spotsylvania County, Va. Congress authorized the project. Preconstruction funds were appropriated for a period of years. Yet, organized lobbyists fought this project each year, and finally they were able to prevent its construction. They characterized the river as the last free-flowing river in the East, and the project was to include the highest dam to be built east of the Mississippi. Undoubtedly, these tactics have been followed in most areas of the country, and activists exert far more influence than their numbers justify.

The purpose of the measure before us today is purportedly to make the portion of New River in North Carolina a part of the National Wild and Scenic River System. Yet the Appalachian Power Co. proposes to build a major hydroelectric power project in Virginia, and the real purpose of this legislation is to prevent the construction of the dams. One difference in this measure and most that have been before Congress is that the project is to be constructed with private funds. No funds of the taxpayer are involved. It would provide much needed energy without damage to the environment.

I believe that electricity generated by

water does less damage to the environment than any other form of energy. It is to be constructed without any cost to the Government.

Bob Wiedrich, of the Chicago Tribune, wrote a column for the paper each day, Monday through Friday, of last week with regard to this bill. I ask unanimous consent that the first and last of these columns be printed in the RECORD following comments I shall make with regard to them.

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

(See exhibit 1.)

Mr. WILLIAM L. SCOTT. His Monday column was written from Independence, Va., which is a small community in the area where the power company has obtained a license to construct the power project. The first portion of his column reads like this:

Some of the Appalachian Mountain folk around here don't cotton to environmental crusaders.

They'd rather have the millions of dollars generated in taxes and jobs by a proposed power company hydroelectric plant in this area than what they consider the doubtful benefits of saving 26.5 miles of rock riffled waters along the New River.

I notice that we have a rock on each Senator's desk, with a picture on it. I think this would be a nice souvenir, but it only emphasizes, in my opinion, that there are a lot of rocks in the river. I do not know that this goes to the merit of the project one way or the other.

The columnist continues, referring to the people in the area of the project:

Besides, they view many of the nature lovers who have migrated here from big Northern cities in recent years as phonies "who have to prove to you they can carry water from the creek and use an outhouse."

That is the somewhat harsh judgment of W. G. Roberts, a 60-year-old retired businessman who was among a group of local residents interviewed in Charles Cassell's real estate and insurance office on the town square.

"Hell, I tell them we grew up that way 'cause we had to. But we don't want to keep living that way today. They're squatters for the most part.

"Some of them are living in abandoned houses and on unemployment compensation checks from back home. Some of them won't use electricity even when it's available."

Many of the mountain people share similar naked contempt for the hippy culture of outlanders who have become the center of environmentalist attempts to preserve the so called rural Appalachian lifestyle along the New River.

Let me add that Mr. Wiedrich concludes in this manner:

"We're just a small, normal farming community. In the 14 years this project has been on the books, those who sold their land to the power company bettered themselves.

"And now the homes they sold have been either rented or taken over by those hippies who make musical instruments but aren't mountain people at all."

"We support the Blue Ridge project strongly," said Cassell, who belongs to the 3,000-member Grayson County Business Development Association. "The press has blown this thing out of proportion by saying the river and 40,000 acres of farmland will be destroyed.

"Any national TV coverage has centered on Mouth of Wilson, a company-owned town of less than a hundred people on the mouth of Wilson Creek. They say the village will be lost to the water and imply that's what will happen to the rest of the region.

"That isn't so. It could be the salvation of this county."

Then, Mr. President, Mr. Wiedrich had this to say in his column of last Friday—and I might add that this time, it was written from West Jefferson, N.C. West Jefferson—and I verified this by reference to a map last night—is on the North Carolina side in the same general area where the proposed dam would be built. He commences his column this way:

The 19,500 residents of Ashe County here are far more in need of jobs than they are of 26.5 miles of river with which to indulge bird watchers and canoe enthusiasts.

That is the basic issue some unemployed folks in this poverty riddled region believe lies at the heart of the dispute between environmentalists and the power interests that want to build an $845 million hydroelectric project on the nearby New River.

Every morning, 27 per cent of this county's work force goes elsewhere to earn a living because there are so few jobs on this otherwise verdant Appalachian Mountain landscape.

"For the past 30 years, people have been migrating from the area, leaving behind only the very poor and the very old," said Dr. James E. Rhodes, an optometrist and an Ashe County commissioner.

"The only way to reverse that trend is to provide jobs and opportunities for economic development. If not, this could be a wasteland in a few years."

Then, further on in the article, the Chicago Tribune columnist writes:

"In 1975," Dr. Rhodes continued, "we averaged 25 to 30 per cent unemployment in Ashe County. In one week, the figure hit 48 per cent. That's damned rough on people.

"This project will generate a construction payroll of more than $200 million during the five to six years it takes to build it. It will produce between 1,500 and 2,000 jobs.

"And the 40,000 acre mountain lake the Blue Ridge power project would create could furnish one of the finest recreational havens in the Eastern United States."

Then we have the comments of J. C. Jenkins. He is a retail automobile dealer who, the columnist says, "really gets hot about the environmentalist position."

This scenic river designation is one of the biggest land grabs in history and it's all being done in the name of saving the environment," he declared between bites of baked beans while eyeing the succulent strawberry cobbler at his elbow.

It is the same kind of controversy that could occur many times more in the United States as the environmentalists and power companies go head-to-head. Somebody is going to have to make a stand against this sort of thing now.

"This county needs the economic benefits and employment to be derived from the project.

"All we've got to sell here is good climate, good air, and good water. And that project should give us the finest mountain lake in the world.

"The last thing we need is a scenic river designation because that places restrictions on the use property owners along the river can put to their land. It's restricting what they can do without compensation."

Jenkins said 90 per cent of the canoeing along the 258 miles of New River doesn't take place within the 26.5-mile disputed stretch because it is too shallow and rocky.

Mr. President, I will not comment further on these columns. The Senators can read them in full in the RECORD if they care to.

[From the Chicago Tribune, Aug. 23, 1976]

PEOPLE HERE GET QUILTS FROM SEARS

(By Bob Wiedrich)

INDEPENDENCE, VA.—Some of the Appalachian Mountain folk around here don't cotton to environmental crusaders.

They'd rather have the millions of dollars generated in taxes and jobs by a proposed power company hydroelectric plant in this area than what they consider the doubtful benefits of saving 26.5 miles of rock riffled waters along the New River.

Besides, they view many of the nature lovers who have migrated here from big Northern cities in recent years as phonies "who have to prove to you they can carry water from the creek and use an outhouse."

That is the somewhat harsh judgment of W. G. Roberts, a 60-year-old retired businessman who was among a group of local residents interviewed in Charles Cassell's real estate and insurance office on the town square.

"Hell, I tell them we grew up that way 'cause we had to. But we don't want to keep living that way today. They're squatters for the most part.

"Some of them are living in abandoned houses and on unemployment compensation checks from back home. Some of them won't use electricity even when it's available."

Many of the mountain people share similar naked contempt for the hippy culture of outlanders who have become the center of environmentalist attempts to preserve the so called rural Appalachian lifestyle along the New River.

In seeking to save the 26.5 miles of river across the Virginia state line in North Carolina from flooding for a 40,000 acre hydroelectric plant lake, opponents have cited the sound of dulcimers and the sewing of quilts as evidence of the quaintness that prevails along the river banks.

"These hippies came down here from Detroit and Boston and as far as California and started making dulcimers and selling them in a store here in town," the indignant Roberts spat as his neighbors nodded in agreement.

"Down here, people get their quilts from Sears, they don't sew them. And they haven't got time to canoe on the river. They have to work too hard for a living."

Grayson County, Va., of which Independence has been the county seat since 1850, is one of three counties in this region that would be affected by the $845 million Blue Ridge Project of the Appalachian Power Co.

The others are Allegheny and Ashe Counties in Northwestern North Carolina. All three are beset by poverty nad unemployment.

Grayson County has a population just shy of 17,000 and an unemployment rate of 5 to 13 per cent, depending on where you stand on the mountain.

According to Cassell, there hasn't been a hard surface road built here that amounts to anything since 1933. There isn't even a four lane highway in the county.

But the Appalachian Power Co. would spend more than $43 million in relocating 85 miles of road on the Virginia side of the Blue Ridge project and more than $24 million to replace 31 miles of outmoded roads in North Carolina.

The dearth of modern roads last year prompted a prominent rubber manufacturer to abandon plans for a new factory in Grayson County after first deciding a former textile plant in Independence would do just fine.

Cassell said the rubber plant would have created several hundred jobs to replace 325 jobs lost two years ago when the textile mill's antiquated equipment couldn't convert to meet the pantyhose craze and closed.

It would also have contributed to the county's meager personal and real estate property tax base of $650,000 to run the schools and county government.

"The Blue Ridge project would pay in excess of $1 million in taxes to the county annually," Cassell said. "That would be a windfall and we could build some new schools and a new courthouse.

"We'd get new roads and recreation areas. And a beautiful mountain lake created by the dams would make our area even lovelier. There'd be no mud flats along the New River as the opposition claims.

"It's unproductive land near the river," Roberts offered. "It's rocky and hilly. The land is poor. The rich land is above where the waters of the project will come.

"The timber has never amounted to anything in my lifetime. The river banks are full of little tobacco farmers who work in the furniture factories and farm part time after supper five-tenths of an acre of tobacco as a cash crop.

"We're just a small, normal farming community. In the 14 years this project has been on the books, those who sold their land to the power company bettered themselves.

"And now the homes they sold have been either rented or taken over by those hippies who make musical instruments but aren't mountain people at all."

"We support the Blue Ridge project strongly," said Cassell, who belongs to the 3,000-member Grayson County Business Development Association. "The press has blown this thing out of proportion by saying the river and 40,000 acres of farmland will be destroyed.

"Any national TV coverage has centered on Mouth of Wilson, a company-owned town of less than a hundred people on the mouth of Wilson Creek. They say the village will be lost to the water and imply that's what will happen to the rest of the region.

"That isn't so. It could be the salvation of this county."

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[From the Chicago Tribune, Aug. 27, 1976]

NEW RIVER BOILS DOWN TO OLD ISSUE

(By Bob Wiedrich)

WEST JEFFERSON, N.C.—The 19,500 residents of Ashe County here are far more in need of jobs than they are of 26.5 miles of river with which to indulge bird watchers and canoe enthusiasts.

That is the basic issues some unemployed folks in this poverty riddled region believe lies at the heart of the dispute between environmentalists and the power interests that want to build an $845 million hydroelectric project on the nearby New River.

Every morning, 27 per cent of this county's work force goes elsewhere to earn a living because there are so few jobs in this otherwise verdant Appalachian Mountain landscape.

"For the past 30 years, people have been migrating from the area, leaving behind only the very poor and the very old," said Dr. James E. Rhodes, an optometrist and an Ashe County commissioner.

"The only way to reverse that trend is to provide jobs and opportunities for economic development. If not, this could be a wasteland in a few years."

Dr. Rhodes was among a band of local business leaders sharing a luncheon table at the Shatley Springs Inn, where a fellow can wolf heaping platters of country fried ham and chicken while downing copious quantities of mineral water guaranteed to drive off boils.

The men were discussing the efforts of environmentalists from across the nation to scuttle a hydroelectric plant the Appalachian Power Co. wants to build so that the 26.5 miles of New River can be saved as a part of the National Wild and Scenic Rivers system.

And they were expressing dismay at the success the nature lovers have thus far enjoyed on Capitol Hill.

"In 1975," Dr. Rhodes continued, "we averaged 25 to 30 percent unemployment in Ashe County. In one week, the figure hit 48 per cent. That's damned rough on people.

"This project will generate a construction payroll of more than $200 million during the five to six years it takes to build it. It will produce between 1,500 and 2,000 jobs.

"And the 40,000-acre mountain lake the Blue Ridge power project would create could furnish one of the finest recreational havens in the Eastern United States."

J. C. Jenkins, a retail automobile tire dealer in town, really gets hot about the environmentalist position.

"This scenic river designation is one of the biggest land grabs in history and it's all being done in the name of saving the environment," he declared between bites of baked beans while eyeing a succulent strawberry cobbler at his elbow.

"It is the same kind of controversy that could occur many times more in the United States as the environmentalists and power companies go head-to-head. Somebody is going to have to make a stand against this sort of thing now.

"This county needs the economic benefits and employment to be derived from the project.

"All we've got to sell here is good climate, good air, and good water. And that project should give us the finest mountain lake in the world.

"The last thing we need is a scenic river designation because that places restrictions on the use property owners along the river can put to their land. It's restricting what they can do without compensation."

Jenkins said 90 per cent of the canoeing along the 258 mile of New River doesn't take place within the 26.5 mile disputed stretch because it is too shallow and rocky.

And Robert J. Troutman, a wood products manufacturer here, reported that in 1974, when the Appalachian Power Co. won its federal license to build the Blue Ridge project, 74.6 per cent of the property owners on the south fork of the river in this state opposed the Wild and Scenic River designation.

They represented 15,000 acres or 132 miles of river frontage when they signed the affidavits, Troutman said.

The Ashe County Citizens Committee, a pro-hydroelectric project group, obtained the signatures and dispatched them to Congress and the North Carolina state legislature and governor's office.

But they had about as much impact on drowning out the influential cries of the environmentalists from states as far off as California as a hunk of cold cornbread.

Were the Blue Ridge project to be constructed, only 3.8 percent of the land in Ashe County would be involved. And only about 3,000 people would be forced to relocate in the entire three-county sparsely populated area in North Carolina and Virginia.

An average of 1 person resides on every 13.7 acres in the total project area. That compares with an average of 1 resident per 5.8 acres throughout the rest of the two states.

"We live here," Dr. Rhodes concluded. "The people of this region should have been permitted to resolve the issue by a referendum. Our futures should not have been left to be decided by the state legislature and Congress. It is our livelihoods that are at stake."

Mr. WILLLIAM L. SCOTT. I believe, Mr. President, we should place great emphasis on the fact that the two dam hydroelectric and pump storage projects the Appalachian Power Co. proposes to construct on New River in Virginia has a long history before the Federal Power Commission. The power company applied to the Commission for a preliminary permit in 1962 and the permit was issued the following year. Then in 1965 the Appalachian Power Co. filed an application to construct the Blue Ridge project. Various individual States and governmental agencies intervened over the years and the administrative law judge on three occasions recommended the granting of a license. Efforts have previously been made to have the Congress prevent the Power Commission from issuing a license for this private power project.

In January of 1974, an amendment was offered to a public works bill to prevent the Federal Power Commission from granting a license until 2 years after the Corps of Engineers had completed a study. It had previously been defeated in committee for while a study would be authorized, no funds for the study were to be included and it was an obvious device to prevent this Federal regulatory agency from fulfilling its function after many years of consideration. The Senate in this instance overwhelmingly defeated this first attempt by opponents of the project to have Congress substitute its judgment for that of the Federal regulatory agency.

However, a few months later, a new bill was reported by the Committee on Interior and Insular Affairs which would make that portion of the New River in North Carolina a potential part of the Wild and Scenic River System. It was amended on the floor to limit the study to 2 years and passed by the Senate but was not adopted in the House, and did not become law.

On June 14, 1974, the Federal Power Commission issued a construction license to the power company for the Blue Ridge project, making it effective as of January 2, 1975, to allow Congress to act on pending legislation.

It is my understanding the State of North Carolina appealed the decision of the Federal Power Commission, which I might add was unanimous, but the U.S. Circuit Court of Appeals for the District of Columbia upheld the license of the Blue Ridge project by a similar unanimous vote of the three-judge panel.

I believe it would be well, Mr. President, for us to look at this court decision of March 24, 1976 which the present bill seeks to override. It points out that the New-Kanawha River rises in the Appalachian Mountains in North Carolina and Tennessee and flows north through Virginia into West Virginia where it becomes part of the main channel of the Kanawha River. I would add, Mr. President, that the Kanawha River is formed by the Junction of the Gauley and the New River at Gauley Bridge, W. Va. and that just prior to the joining of these two rivers we have the beautiful and scenic New River Canyon in West Virginia but this is more than 200 miles from the place the dam would be constructed in the southern part of Virginia. Let me add that there are both Government and privately owned dams between the Blue Ridge project and the New River Canyon in West Virginia. It should be noted that only 5 miles of the main

stem of New River is in North Carolina although there are north and south forks extending for an additional 20–21 miles below the main stem. It is my understanding that only the southern branch would be included in the Scenic River System under this proposal as there is some industry on the north branch, whereas the combined length of the New River in Virginia and West Virginia, before it joins the Gauley to form the Kanawha is more than 250 miles.

Mr. President, I might add parenthetically that I am thoroughly familiar with this area. I used to go swimming in the Kanawha River as a boy, and lived near the place where the New River Canyon is located perhaps 60 miles away. We have passed the area many times, and I would not want in any way to speak against preserving the New River Canyon in West Virginia. But again the proposed project is 200 miles away. There are several existing dams, four of which I recall, including two major dams, one built by the Corps of Engineers, the Bluestone Dam, and another built, I believe, by the power company, and two smaller dams.

Page 5 of the circuit court of appeals decision indicates that in its petition for review, North Carolina raised the following issues:

(1) Whether the FPC failed to consider the alternative of energy conservation;

(2) Whether the FPC had authorized inclusion in the project of water storage capacity for pollution dilution;

(3) Whether the FPC failed to analyze adequately certain costs of the project;

(4) Whether the FPC failed to consider as an alternative to the project the possibility that the river should be made a component of the National Wild and Scenic Rivers System.

Mr. President, the court ruled against North Carolina in each instance.

It also pointed out on page 13 of the decision that the New River is not one of those designated by the Congress in title 16, United States Code, 1274, as a component of the wild and scenic river system.

I understand, Mr. President, that 16 rivers have been so designated under a provision of the Wild and Scenic Rivers Act, that they have a combined length of 1,206 miles; but that in addition to the 16 rivers there were some 650 listed for possible inclusion, or further study to determine whether they should be included in the wild and scenic river system.

The New River was not one of these 650 to be studied for possible inclusion in the system.

I believe we should give serious consideration to the precedent Congress would be setting by the enactment of this bill.

First, it is a private project, a project before the Federal Power Commission for 12 years before the license was issued in 1974, a license that has been affirmed by unanimous decision of the court of appeals; and I understnad the issue is now pending before the Supreme Court.

Mr. President, I received a letter today from the Governor of Virginia, Mills E. Godwin, Jr. He asked that the senior Senator from Virginia (Mr. HARRY F. BYRD, JR.) and myself make every effort to persuade our colleagues in the Senate to defer action upon this bill until such time as the validity of the license issued by the Federal Power Commission is determined by the U.S. Supreme Court.

I realize that we are now considering the measure and that there will be a vote on final passage not later than 4 o'clock by unanimous consent of the Senate. But I ask unanimous consent that a copy of the letter from the Governor of Virginia with its attachments be printed at this point in the RECORD.

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

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE GOVERNOR,
*Richmond, Va., August 26, 1976.*

Hon. WILLIAM L. SCOTT,
*U.S. Senate,*
*Washington, D.C.*

DEAR BILL: I am writing to urge your continued cooperation in efforts by the Commonwealth to block the passage of S. 158. The stated purpose of this bill is (a) to amend the Wild and Scenic Rivers Act of 1968 by designating a segment of the New River as a component of the National Wild and Scenic Rivers System; and, (b) to revoke the license issued by the Federal Power Commission to the Appalachian Power Company to construct and operate the Blue Ridge Project on the New River in Virginia. The Commonwealth has supported the construction and operation of this Project since it was first proposed. Accordingly, the Commonwealth is opposed to enacting this legislation.

I would greatly appreciate every effort you can make to persuade your colleagues in the Senate to defer action upon this bill until such time as the validity of the license issued by the Federal Power Commission is determined by the United States Supreme Court.

I have enclosed herewith a copy of the testimony presented by me before the Senate Interior and Insular Affairs Committee on May 20, 1976. The thrust of this testimony is that the decision of the Supreme Court may obviate the need for enactment of the pending legislation. If, on the other hand, the Supreme Court upholds the validity of the license, the Congress could, if it deemed it desirable, act thereafter to remove the license.

In sum, consideration of S. 158 may be deferred until such time as the Supreme Court has rendered its opinion without prejudicing in any way the rights of any persons interested in the New River and the Project.

Thanking you for your consideration and efforts in this matter which is of critical importance to the Commonwealth of Virginia, I remain

Sincerely,

MILLS E. GODWIN, Jr.

Enclosure.

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REMARKS BY GOV. MILLS E. GODWIN, JR.

My name is Mills E. Godwin, Jr., and I am Governor of Virginia. I am appearing on behalf of the Blue Ridge Pumped Storage and Hydro-electric project proposed by Appalachian Power Company.

I want first to thank the members of the committee for giving me this opportunity to appear and present Virginia's position on the legislation before you, which has such far-reaching implications.

On its face, the issue would seem to be the familiar one of the economy versus the environment. I have followed this project from its beginnings, and I am convinced that on the contrary, its construction will be both an economic and an environmental plus.

As you know, the company plans to build two dams on the New River, which already includes four dams, and build a combined pumped storage and hydro-electric project.

The initial economic impact will include the expenditure of an estimated $845 million in private funds and the creation of 1,500 to 2,000 construction jobs in a relatively depressed area over a period of 6 to 8 years.

The New River runs through the fringes of Appalachia in Virginia and North Carolina into which the Federal Government and the respective states have poured millions of dollars over a period of years in order to stimulate the economy where geography is a severe handicap to economic development and where political subdivisions have been losing population.

The permanent economic benefit will be the creation of two lakes, totalling 40,000 acres. The upper lake of 26,000 acres, which includes most of the affected area in North Carolina, will be comparable in recreation attractions to the company's similar pumped storage facility at Smith Mountain Lake on the Roanoke River in Virginia.

Smith Mountain Lake, which is about the same size and has the same allowable drawdown as the upper Blue Ridge Reservoir, has proved a major economic boom, with a state park attracting between 200,000 and 300,000 people a year, boat ramps and camping areas, and waterfront lots selling in the neighborhood of $10,000 an acre, where the going price was perhaps $80 to $100 an acre before the lake was constructed. The impact on the economy in the entire area has been tremendous.

What we have now is a beautiful river which few people outside the area ever see except canoeists and those who maintain mountain retreats along its banks.

So far as adjacent land owners are concerned, it has been the universal experience of this and other power companies that as soon as the word goes out, the price goes up, and the land becomes worth far more than its value for farming purposes.

Those who are fortunate enough to retain land above the water line find that they have suddenly come into possession of very valuable property indeed.

But beyond these local considerations, the project has energy implications for most of the eastern seaboard and far inland.

Appalachian has interconnections directly with the Virginia Electric and Power Company, which serves the eastern half of Virginia and portions of eastern North Carolina, with Duke Power Company and North Carolina Power and Light, which serves customers in North Carolina, with TVA, and with the Ohio Valley Electric Corporation.

These companies share power among themselves as the need arises.

Beyond that, virtually all power companies are interconnected. For instance, both Appalachian and Vepco sent power through connecting companies to Con Edison in New York when that company was facing extended brownouts.

Brownouts occur during peak power demand periods, and the Blue Ridge Project is essentially a source of peaking power, which is the most valuable power there is.

A pumped storage project is operated by pumping water from a lower reservoir to an upper reservoir at night, during off-peak hours, using the most efficient equipment the company has, and then running it back again through generating turbines during periods of peak demand.

Appalachian generates power exclusively with coal and running water. We therefore have in the Blue Ridge Project an additional 1,800,000 kilowatts of peaking power available wherever it is needed over a good portion of the Eastern United States.

And this peaking power is not dependent on the Organization of Petroleum Exporting Companies.

Thus the question before you is not limited to economic versus environmental considerations in Virginia and North Carolina, but has national energy implications.

It is Virginia's position that the Blue Ridge project on balance will prove to be an economic plus, an environmental plus and an energy plus.

Gentlemen, I have tried to summarize for you as I see it a question which has been debated and explored for fourteen years.

In extended hearings over those years, the Federal Power Commission has compiled many volumes of testimony from every conceivable interested party on every conceivable point, and has granted the company a license to build.

The validity of that license is now before the United States Supreme Court.

The legislation before you would cancel the entire project. I urge you as strongly as I can not to take such precipitous action at this stage of the proceedings.

Mr. WILLIAM L. SCOTT. Mr. President, I do not have any doubt that the Congress has the right to reverse a Government regulatory agency, and at a later point in my remarks I want to discuss this point in greater detail.

There is a question, when a license has been granted, whether the licensee has a property right for which just compensation must be paid under the fifth amendment of the Constitution, because even though all countries, all sovereign states, have the right to take private property, our Constitution provides that private property shall not be taken for public use without just compensation.

This is a matter that the power company indicates it would litigate in the event that the license is revoked by the Congress.

The Federal Power Commission is of course a creature of the Government. The Government has created this quasi-judicial agency to hold hearings, to examine into all factors, to employ experts in the power development field, and to determine whether a private power company should be authorized to construct a hydroelectric project based on a given set of facts.

Since we have created the Federal Power Commission, since it has held extensive hearings, since there has been no suggestion of any impropriety in these hearings, it would appear to be irresponsible for us to reverse a unanimous decision of the Federal Power Commission on the matter before us, that was before the Power Commission for 12 years and affirmed by a unanimous decision of the Federal circuit court.

I believe we have held hearings in the committee for parts of 2 days. So there is quite a bit of difference in the attention given this matter by the committee and the attention given it by the Federal Power Commission over the past several years.

Both of the Senators representing the Commonwealth of Virginia, where the dams would be constructed, favor the FPC license, support the construction of the project, and oppose this bill.

It is my understanding that 2 o'clock has been set as the time that my colleague from Virginia (Mr. HARRY F. BYRD, Jr.) may present his comments with regard to the measure.

The Governor of Virginia has sent a mailgram to other Members of this body. Let me read the one that was sent to me by Governor Godwin, as follows:

Since 1966 Virginia has vigorously supported the Blue Ridge Pumped Storage and Hydro-electric project proposed by Appalachian Power Company. We believe it is an economic, environmental and energy plus.

The Federal Power Commission has granted the company a license to build and its action has been upheld by the United States Court of Appeals. This matter is now pending before the United States Supreme Court.

It is my understanding that S. 158, as amended in the committee, is identical with H.R. 13372, the House version of the bill, now before us.

S. 158 before you would cancel the entire project. I urge you as strongly as I can not to take such precipitous and unprecedented action at this time. I urge your support of the position of Virginia's Senators in this regard.

MILLS E. GODWIN, Jr.,
*Governor of Virginia.*

Mr. President, the power company has issued a pamphlet explaining what it calls, "Blue Ridge, the people's project; an energy project developed by industry, government, labor, and environmentalists in concert to bring great benefits to a greater number of Americans."

I would like to share portions of this pamphlet with my colleagues in the Senate.

It begins:

BLUE RIDGE—ITS CONCEPT AND GENESIS

Blue Ridge is a proposed two-dam pumped storage and hydro-electric project on the upper reaches of the New River in Grayson County, Va., and Ashe and Alleghany Counties in North Carolina. The project will have a generating capacity of 1,800,000 kilowatts.

Both dams will be located in Virginia. The upper lake will cover about 26,000 acres extending upstream 42.5 miles. Fourteen thousand acres will be in Virginia, 12,000 acres in North Carolina. The upper lake shoreline will be 425 miles. The lower lake will have a surface of 11,000 acres; 9,800 in Virginia, 1,200 in North Carolina. The lake shore line will be 260 miles.

Blue Ridge is today a licensed project. The license was granted by the Federal Power Commission on the basis of a nine-year proceeding, during which every significant aspect and potential alternative were exhaustively explored. Scores of expert witnesses in numerous disciplines testified under oath and were subject to rigorous cross examination. All parties wishing to intervene, testify or participate in cross examination, including the State of North Carolina, were permitted to do so.

During this nine year period, the project was modified, positive improvements were made and compromises were reached to satisfy government, industry and environmental concerns and to assure the best possible project with the most benefits for the most people.

When, in June of '74, the Federal Power Commission granted the license it did so by a unanimous 5–0 vote. This action has most recently been unanimously upheld by the United States Court of Appeals for the District of Columbia.

The company brochure, Mr. President, continues:

EXPERIENCE PROMISES MAGNIFICENT BENEFITS

The construction and the consequences of such a two-dam pumped storage and hydro-electric project is no fuzzy dream to the people at Appalachian Power Co. Their Smith Mountain Project on the Roanoke River in Virginia, developed in the early 1960's, fortifies them with experience and offers persuasive examples of the benefits and beauty that can and will result from the development of the Blue Ridge Project.

The first section of the pamphlet relates to recreational benefits.

Present use of the Blue Ridge Project site for recreational purposes is limited and in many ways specialized. According to the FPC, "The recreational potential of the area is enormous. Even now there are great attractions for visitors, but when water is added it is destined to become one of the principal recreation areas for the eastern portion of the United States."

Appalachian Power will purchase and give land for state parks—2400 acres for Virginia—3900 acres for North Carolina. In addition, Appalachian will provide an overlook picnic area at each dam, two bank fishing areas below the lower dam, nine major boat launching sites, at least 21 additional access points, and canoe portages around the dams.

The total annual recreational benefits resulting from the project have been estimated at $6.1 million by FPC's staff, $2.8 million by the Department of Interior and greatly in excess of $4 million by Appalachian's expert recreation witness, a former director of the National Park Service.

Fishery values alone are estimated at $276,400 annually.

Then there is a section called "Economic Benefits":

The counties affected by the Blue Ridge Project today produce an annual per capita income well below the national average. Blue Ridge will offer much needed economic benefits for these areas.

Perhaps that might be a response to the argument of the distinguished Senator from Arkansas a few minutes ago, that the electricity at this time was not needed.

During the 5 to 6 year construction period the construction payroll is expected to exceed $200 million.

Once in existence, the upper Blue Ridge Lake will offer great potential for economic growth. Year 'round and seasonal homes, motels, marinas and all types of commercial and service facilities will be built around the lake. These facilities will add to the tax base of the counties as well as provide employment and increased sales.

Mr. President, we hear oftentimes of people being against a project of this nature. Yet when the project is completed and we visit it, we see the beauty of the lake which has been created. We see both year round homes and summer homes that have been constructed. We see the many thousands of people enjoying the facilities, many more than could enjoy the rivers in their natural state.

Continuing, the brochure states:

Experience at Appalachian's Smith Mountain Lake is proof of the validity of these claims of economic benefits.

Finally, Appalachian Power, itself, will pay millions of dollars of property taxes over the life of its facilities. Taxes that will apply to the dams and all other associated facilities, as well as the land, including even that which is inundated.

Then there is a section called Road Benefits:

Appalachian Power will contribute an estimated $67.6 million, based upon current estimates, for the relocation of bridges and

about 62 miles of primary and 54 miles of secondary roads in the project area. All roads will be built by the respective State Highway Departments to present day standards. Since many of the roads were built many years ago, the net result will be an improved road system in the vicinity of the project.

Mr. President, I do recall receiving correspondence about the need for road improvement in this general area, and believe the project would help provide an improved road system there.

The FPC, in issuing the license, said:

A major public benefit of the project, and one beyond dispute, would be the 160,000 acre feet of flood control storage capacity that it would provide for the upper New River area—an amount endorsed by the Army Corps of Engineers. No flood control now exists between the lower reservoir site and the Federal Bluestone Dam at Hinton, West Virginia, and if the 1940 flood of record were to recur today, the Corps estimates that nonagricultural damages along the 146-mile route would total $2.4 million; Blue Ridge's flood control storage of 160,000 acre feet would reduce that damage by 72 percent.

I notice there is a map of the lake that would be created by this project, and a concise reference to the recreational benefits:

6,300 acres State park areas.
685 miles of shoreline.
9 boat-launching sites.
19 access points.
2 dam overlooks and picnic areas.
2 canoe portages.
2 bank fishing areas.
62 miles primary roads.
54 miles secondary roads.

Then it refers to the low-flow supplementation benefits:

The West Virginia Department of Natural Resources finds inadequate the present flow of water during the peak recreational months of July to September. They therefore suggested, and Appalachian Power agreed, that it would be beneficial that the lower lake, (starting on March 1) would gradually accumulate 130,000 acre feet of water to be released gradually from July 1 to September 30—thus assuring, for thousands of Americans, the optimum flow for improved fishing and general recreational enjoyment.

Under the heading "Power Benefits":

The need for electric energy from Blue Ridge has been definitively and resoundingly determined by the expert agency to which Congress delegated the task. The Federal Power Commission has stated: "We are wholly convinced that the electric power to be generated by this project is needed, and that the potential beneficiaries of that power will be a sizable part of the population of the Nation."

Appalachian Power Company is part of the American Electric Power System. Blue Ridge will enhance the reliability of electric service, not only from Appalachian Power and the full AEP network, but also to the entire eastern seaboard, east central, and near south areas of the United States. For example, the AEP system is already interconnected with four electric utilities which serve the public in North Carolina: Duke Power Company, Carolina Power and Electric Company, Virginia Electric and Power Company, and the Tennessee Valley Authority. In recent years, Appalachian has delivered millions upon millions of kilowatt hours of electricity to these companies for use by their customers. Such deliveries and such benefits would continue after the Blue Ridge is completed . . . with even greater reliability.

The New River, what is its future? The Federal Power Commission rightly points out that the New River will not be eliminated with the construction of the Blue Ridge Project. Some 70 miles of the river will be replaced with lakes, but over 200 miles of the river will remain in its present state. If there is to be any change in this vast stretch of river, it will more than likely be an improvement resulting from the low flow supplementation and flood control features of the project. The magnificent New River gorge in West Virginia, with its rugged terrain and precipitous cliffs that have earned it the title of "Grand Canyon of the East," will flow on uninterrupted by Blue Ridge. Its waters will be as turbulent, white and inviting to the adventurous float-trippers as ever; the major difference will be the greater use of this product of nature, and thus greater benefits for more people.

Mr. President, perhaps the best way to continue my arguments against this bill is to refer to the committee report. The statement beginning on page 17 represents the views of all of the minority members of the Committee on Interior and Insular Affairs. I might add that when a similar bill was reported by the committee in 1974, and was favorably acted upon by the Senate, although it failed to be enacted because the House of Representatives did not bring it to the floor, in that instance the committee's recommendation was unanimous. Now it is split along party lines. All of the minority members dissented from the committee bringing this measure before the Senate for consideration. They were the Senator from Arizona (Mr. FANNIN), the Senator from Wyoming (Mr. HANSEN), the Senator from Oregon (Mr. HATFIELD), the Senator from Idaho (Mr. McCLURE), and the Senator from Oklahoma (Mr. BARTLETT).

After reciting that the concept of a wild and scenic river is a noble one which they had supported innumerable times in the past, they said that the inclusion of the particular segment of the river referred to in this bill would have the effect of blocking the needed Blue Ridge hydroelectric project that has already received a Federal license.

Mr. President, they number the reasons why they are opposed to the enactment of this bill, and I would follow along in the way that is presented in the committee report. Let me add, Mr. President, that this committee report relates to S. 158 rather than the House bill. The House bill number is H.R. 13372, but, as amended by the Interior Committee, the House bill and the Senate bill are identical. The leadership has seen fit to bring up the House bill rather than to bring up the Senate bill, but since they are identical in wording and intent, the arguments made by the minority of the committee, the Republicans on the committee, in their unanimous views, apply to the bill now before us.

In their analysis they first refer to energy.

Enactment of this measure will cause the loss of 1,800 megawatts, or 1.8 million kilowatts, of needed electrical generating capacity.

This energy capacity would be inexpensive, nonpolluting hydroelectric power. This power is needed to meet the peak power demands of the entire Central United States through the ninety-seven interconnectors of the American Electric Power Companies System.

The Federal Power Commission found that: "The need for Blue Ridge Power has been abundantly displayed in the record . . . A review of the evidence of the record makes clear that all of the power Blue Ridge can produce will fall far short of meeting the peaking needs of the AEP System in the early 1980's . . .".

Since it will take 5 to 6 years to construct this project that has been licensed, it is not a question of the need today but a question of the need when the project is completed.

This power is essential to insure the reliability of the system.

Three full years have not passed since the spectre of the domestic crude shortage and the Arab Oil Embargo was upon the United States.

We know, Mr. President, from the meetings that we are importing more oil today than we have in prior years.

Utilities, particularly in the eastern United States were dependent on oil for the generation of electrical power. Americans pondered the panorama of an America without power for productivity or play. Projections for the future portend even greater difficulties, yet by their actions, proponents of this measure are hiding their heads in the sand, refusing to face the realities of the energy crisis.

Mr. President, these are not my words, but they are the words of the five Senators on the Interior and Insular Affairs Committee who joined in filing the report of the minority.

Peaking power has been criticized as being a net consumer of electrical power. However, the capacity of any system is dictated by the maximum load expected at the time of greatest demand.

We had a demand some years ago when New York City and parts of the State were blacked out.

In addition, reserve is needed so that emergencies can be met. The use of peak generation facilities will insure that the most efficient use is made of current generation facilities.

It is my understanding, Mr. President, that if this project is permitted by Congress to be constructed, upon its completion it can reach its peak in the matter of 5 to 10 minutes; whereas, it would take a far greater time for any coal-generated electricity to peak.

The agencies charged with considering American's power demands have chosen peaking power as one of the desired systems for meeting our power needs.

There are few viable alternatives to Blue Ridge Project power. The escalating costs and potential shortage of petroleum militate against oil as the primary fuel. The use of atomic power is increasingly under attack. The only viable alternative is a huge coal-fired generating plant that would be one of the largest in the country. Air and water environmental constraints have made this alternative tenuous at best in the eastern United States.

Let me add parenthetically, Mr. President, that in the event one of these alternatives was given serious consideration and was about to be put into effect, I believe the same people who are opposed to this project would make a great deal more noise about any alternative method because water-created electric power is the cleanest power we can get

and it does the least damage to our environment.

In addition, the cost of a coal-powered plant would exceed the cost of the Blue Ridge Project by approximately one-half billion dollars. Those costs would ultimately be borne by the consumer.

Then the second reason given in the report why this project should proceed and the measure before us be defeated is:

This is the first time that Congress to our knowledge has taken upon itself the burden of overruling a Federal Power Commission Permit. The usurpation of this regulatory function by Congress can have widespread ramifications.

The Federal Power Commission was created by Congress to oversee the production and generation of electric power utilized in interstate commerce. The agency was made independent so that it would be insulated from the political arena. Experts in electrical power are on the commission payroll to insure that decisions are knowledgeably made. The rights of appeal from agency decisions was strictly limited in order that finality be assured. The decision-making process intentionally has been kept at the agency level instead of elsewhere.

The question of the Blue Ridge Project was before the Federal Power Commission for twelve years. During this period, volumes of testimony was taken, and all parties were given the opportunity to be heard. The proper environmental impact statement was prepared. The final agency decision was unanimous—to build the Blue Ridge Project.

The decision has been fully challenged in the courts. The court decisions have, to this date, upheld the decision of the Federal Power Commission. Opponents of the project have had their day in court and have not convinced anyone of the justice of their claim.

It is inconceivable that the Congress would, on the basis of a few hours of legislative testimony, overrule the carefully considered decision of agency experts based on evidence produced over several years of intensive investigaton.

Congressional revocation of a license granted by an independent regulatory agency could have serious repercussions. Under the precedent established here, any contestant in a case, unsatisfied with the decision of a regulatory agency or the court, will be tempted to carry his appeal to the Congress.

I understand, Mr. President, that there are a number of similar matters before the Federal Power Commission, involving projects in a number of the States of the Union; and Senators may want to check to see whether their own home States are involved in pending or licensed hydroelective projects that may be affected by such an unprecedented congressional action of this kind.

The report continues:

The finality of agency decision will be doubtful. Who will make substantial investments based on license that may be revoked at any time by the Congress? Second guessing of independent regulatory agencies will create tremendous problems with the regulated industries.

We cannot support this undermining of the administrative process. We must be able to have confidence in the decisions made through the established regulatory process.

Mr. President, in the event that there is any question as to the purpose of this bill, I have an amendment, amendment No. 2229, to be offered at a later time. I believe 2:30 is the hour that has been agreed upon for the offering of this amendment. The amendment would strike section 2 of the bill and then add the words "Nothing contained in the amendment made by the first section of this act shall be construed to affect the validity of any license issued by the Federal Power Commission."

Should my amendment be adopted, the portion of the New River specified in the bill still would be in the Wild and Scenic Rivers System but subject to the right granted by the Federal Power Commission under the license to construct the dam.

So the question before us by this amendment is whether we want to kill a project that has been studied, that has been before the Federal Power Commission for 12 years. I think we can remove the veneer of the wild and scenic river designation, because the total reason for this bill is to kill a project by a private power company.

Continuing, the views of the minority Senators state:

The passage of this bill could result in governmental liability for "taking" an amount that may possibly be as high as $500 million.

Mr. President, rather than rely upon the views of the committee in this respect, let me just rely on my own background and experience in this field. Every sovereign nation has a right to take the property of its citizens. Many have the power to take, and in ancient days did take, private property for public use. The king took what he wanted, without paying any compensation. But in the fifth amendment to our Constitution, it is provided:

. . . nor shall private property be taken for public use, without just compensation.

The question is, Is there property that is being taken? It is a license that has been issued by the Federal Power Commission. Is a license to construct a dam property?

The Appalachian Power Co. indicates that in the event that this bill is passed, they are going to bring this matter before the court, to determine whether or not this is a taking of property.

I think that the next question to be resolved is whether or not a valid license issued by the Federal Power Commission, upheld by the U.S. Circuit Court of Appeals by unanimous vote, is a taking of private property. Certainly if the license is property, the power company is being denied the right to utilize the license for the purpose that it was granted by the Federal Power Commission. So I submit that it is worthy of consideration by the Senate as to whether the license issued by the Federal Power Commission is a taking of property.

In the event that a license is property under the fifth amendment to the Constitution, and I am inclined to believe that it is, I do not doubt for a moment the power of Congress to pass this bill. There is no question in my mind that it would be a valid exercise of congressional authority, but in the event that Congress does see fit to pass this bill, is this property for which just compensation must be paid under the Constitution?

As my colleagues know, just compensation is the fair market value of the property taken. In other words, from a pecuniary point of view, the person whose property has been taken must be put in as good a position as he would have been in had his property not been taken. I submit that one reasonable method of determining the loss to the company, if this is property that was taken, would be to determine the cost of providing this power by the most reasonable alternative method and to subtract from that amount the cost of providing the power by the method specified in the license granted by the Federal Power Commission.

The committee report addresses itself to this question; and it says that if a taking has occurred, the damages may be as much as the cost of an alternative facility—that is, a coal-powered generation plant. That cost is estimated at $500 million. I believe that the report somewhat misstated its intention, because it is not the cost of an alternate facility; it is the difference between the cost of the project as licensed and the cost of an alternative project, which is estimated to be around $500 million.

This would be what the taxpayers would have to pay without getting the additional energy which we need. Again, Mr. President, it would appear irresponsible to subject the American taxpayer to a liability of $500 million and not provide something that the American people need—clean energy, with the cost of upwards of one billion dollars to build the facilities provided by private industry.

I know, of course, that ultimately the consumers bear the cost, because when a public utility provides electricity, it obtains the necessary funds at one stage or another from those who utilize the service, and the cost would be reflected in the electric bill. But with our supply of energy being short, with the continued increase in the importation of oil from foreign countries, it just seems to me that we should permit a private company to meet the needs of the American people through construction of this project.

The fourth reason given by the Senators in their minority report in opposition to this bill is:

The Blue Ridge Project would create one of the great recreational attractions in the eastern United States. Two lakes will have almost seven hundred miles of shorelines with thirty-four wooded islands. The fisheries supported by the lakes would be many times greater than what is the "natural" river. Millions of Americans can use this recreation resource.

As I mentioned previously, Mr. President, when such projects are constructed, and all of us have seen them upon completion, homes appear nearby. People like waterfront property, both for their seasonal use, primarily during the summer months, and also for year-round homes. The value of property fronting on water is generally greater than that that is not fronting on water.

The committee report continues:

It is worthy of note that in the testimony supporting the Wild and Scenic River, designation before the Committee, the proponents

of the bill offered no pictures of the river segment in question. All the pictures offered in support of the designation of the New River as a component river were taken over one hundred miles away.

Mr. President, I believe it may well be over 200 miles away, because we are talking about a distance from the North Carolina-Virginia border, through the State of Virginia and then into West Virginia to the New River Canyon.

The area of this river that is worthy of preservation is being saved—that is the portion of the river in the canyon in West Virginia. The only effect that the Blue Ridge Project will have on this superb section of river will be beneficial: the flows of the river will be augmented in summer for recreational use.

In addition to the statement in the committee report with regard to the misrepresentation of the river that is affected by this project, I am advised that names of many of the citizens who live in this general area were used in writing to the members of the committee and Members of Congress, although they, themselves, did not write the letters. It has been suggested that the opponents of this project looked in the telephone book and found names and then utilized these names in contacting Members of Congress, without the knowledge or consent of the individuals.

The report continues:

Almost half of the river segment proposed to be preserved is agricultural in nature.

I might mention that this is in the Appalachian region. The report says that it is not unique.

Creation of mountain lakes would provide at least an equally valuable resource.

I submit, Mr. President, that it would be a much more valuable asset to the locality.

Then, under point 5, the report says:

Construction of the Blue Ridge project would provide significant employment opportunities for a depressed area.

I would like at this time, Mr President, to have printed in the RECORD a copy of a letter to the editor of the Washington Star by Jack Curran, legislative director, Laborers International Union of North America. He is in favor of the project and makes this statement regarding labor support:

Although the New River bill passed by the House the other day and awaiting action by the Senate later this summer purports to set aside 26.5 miles of the New River as a part of the Wild and Scenic Rivers Systems, its admitted objective is to revoke the Federal Power Commission license to the Appalachian Power Co. to construct a hydroelectric power facility on the New River in Grayson County, Va.

I shall skip a part of it, but I do ask unanimous consent, Mr. President, that the entire letter to the editor, as well as an editorial from the Roanoke Times, be printed in the RECORD following my comments with regard to both the letter and the editorial.

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

(See exhibit 2.)

Mr. WILLIAM L. SCOTT. The letter from the labor organization states:

The benefits to be derived from the Blue Ridge project, not the New River bill, are many:

Jobs in the Appalachian region where billions of dollars of federal monies have been expended to help cure the misery of unemployment.

2,000 construction jobs and an additional 8,000 jobs in ancillary work (materials manufacture, transportation services, etc.).

There will be additional roads, Mr. President, as well as adequate water supply.

Then it says that the Virginia Governor and the Senators support this project, as did the Governors of North Carolina prior to the present Chief Executive.

They support the Blue Ridge Project as did three previous North Carolina governors before the power project became a political football. Their support merits—

Now it is referring to the Virginia Governor and Senators—

a greater deal of consideration since the two dams and two-thirds of the watershed will be on the Virginia side of the river, while only one-third of the watershed will be on the North Carolina side.

Further delay in implementing the FPC and U.S. Court of Appeals decision can only further the cost of the hydro-power project which has already escalated and in the long run comes out of the pockets of the consumer. The Senate should not act in favor of the New River bill.

Mr. President, there is an editorial that I referred to earlier, which appeared in the Thursday, August 12, 1976, issue of the Roanoke Times. It is called "The Dam and the Damned." It refers to the action of the House of Representatives in passing the bill and makes this point:

As our readers know, *The Roanoke Times* for a long while was troubled and neutral on the project; we believe it is no small thing to rearrange nature. We have been convinced by the fact that the one agency which has studied all the facts and spent the most time on the complex project—the Federal Power Commission—has come down unanimously in favor of it. We know of no reason why another opinion should be substituted for that of the FPC when the FPC has access to more facts and experience, and is unanimous in its opinion.

It refers to the fact then that the courts have approved it, and this was done unanimously, Mr. President, by the Circuit Court of Appeals. The matter is now pending before the Supreme Court on certiorari.

But what has really convinced us—an outnumbered newspaper which happens to know more about the project than many of the majestic and distant experts who know it all—is the arrogance and insensitivity of the opposition.

Let me add, Mr. President, it is my understanding that the Appalachian Power Co. is headquartered in Roanoke, so that may be the reason for the editor's indicating that they are more familiar with the project. Of course, the project is not many miles from Roanoke.

They have circulated false pictures, proclaimed the existence of cheaper alternatives not yet practical, have utterly failed to note that the New River project promises recreational benefits similar to those known to exist, and experienced, at Smith Mountain Lake, Buggs Island reservoir and other places.

Buggs Island, Mr. President, is located on the Virginia-North Carolina line also; and it is a Federal project paid for out of public funds, contrary to this project which would be paid for out of private funds.

They fail to note that North Carolina customers are hooked onto the Apco system. The self-anointed experts will not accept any decision by competent authority which is contrary to their notions.

Then the editorial makes an interesting observation:

In contemporary mythology the power company is supposed to be run by demons and a power company's critics are thought to be automatically angelic. In our experience, the Apco people have been more forthright, honest and earnest than many of their holier-than-thou opponents. We wish them well, and do spy just one ray of hope:

The State of North Carolina's appeal to the Supreme Court is a weak thing legally; only a lawyer on salary, and able to keep a straight face, would make the state's legal argument. The purpose only is delay. If the high court refuses to hear the case and thereby confirms the judgment of the federal court system before the U.S. Senate acts, the Senate itself might be jolted by the implications of the decision made by the House. The chance is small but not completely hopeless.

Mr. President, unless the Senate acts today before the hour of 4 o'clock, to keep the proposed project alive, it will of course be a hopeless situation.

The heading with regard to employment in the committee report continues:

5. Construction of the Blue Ridge Project will provide significant employment opportunities for a depressed area. Construction of the Blue Ridge Project will provide jobs for twelve to fifteen hundred construction workers for a period of at least five years. In addition, there will be permanent jobs associated with the facility and with the increased recreational activities adjacent to the lakes.

That coincides with the union leader's letter to the editor that was just read in part and inserted in the RECORD.

These would be permanent jobs, providing a boost by their economic impact to other areas of the local economy.

Unemployment in the counties affected by the Blue Ridge Project has run to a high of twenty-two percent, and currently is in the area of nineteen percent. Construction workers are unemployed at a rate approaching forty percent. Construction of this project would help reverse this trend, without a use of governmental monies.

Then, Mr. President, on page 20 of the report, which is entitled "Conclusion," it does ask that this measure be defeated and that the Blue Ridge project, as licensed and approved by the courts, be permitted to proceed. But it adds:

Preservation of the New River segment in question seems almost to be an afterthought by those who presented positions against the Blue Ridge project and lost. Passage of this legislation would give them another chance to defeat this needed project.

I have no doubt at all, Mr. President, that the sole purpose of this bill is to defeat this project rather than to include

the area under the wild and scenic river concept.

Eighteen hundred megawatts of clean hydropower is so vital to our economic and social well-being that we cannot afford to ignore the tradeoff involved.

Mr. President, those are the views I have just been referring to of the distinguished senior Senator from Arizona (Mr. FANNIN), the Senator from Wyoming (Mr. HANSEN), the Senator from Oregon (Mr. HATFIELD), the Senator from Idaho (Mr. MCCLURE), and the Senator from Oklahoma (Mr. BARTLETT).

The PRESIDING OFFICER (Mr. BUMPERS). The Chair will inquire of the Senator was that a unanimous-consent request?

Mr. WILLIAM L. SCOTT. No, it was not. I just finished quoting from the report.

The statement by the Senators represents the views of all of the minority members of the Interior Committee and, I might add, when a similar bill was reported from the same committee in 1974 and favorably acted upon by the Senate, although it failed to be enacted by the House of Representatives, the committee recommendation in the first instance was unanimous. Now all minority members dissent.

After reciting that the concept of the wild and scenic river is a noble one that they have supported innumerable times in the past, the inclusion of the particular segment of the river referred to in this bill would have the effect of blocking the needed Blue Ridge hydroelectric project that has already received a Federal license. Now, their opposition is expressed, as I have stated it, Mr. President.

Let me suggest that it would be unwise for Congress to discouarge private industry in its efforts to help resolve our energy shortage through its own initiative and with its own funds by taking such an unprecedented action and having Congress overturn unanimous licensing decision of the Federal Power Commission.

Of course 1.8 million kilowatts of electricity is not going to eliminate our dependency upon other countries for energy but it is a step in the right direction. The addition of 1,500 to 2,000 construction jobs by the private sector in an area of high unemployment will not solve our unemployment problem but, once again, it is a step in the right direction. Clean energy at private expense is worthy of consideration. The Federal Power Commission has had this matter under consideration since 1962.

This is the Federal Power Commission, a creature of the Goverment. We created this in order to hold hearings, to employ experts, to consider in a proper manner whether or not a license to construct a powerplant should be granted.

It has reported 7,500 pages of sworn testimony, examined 300 exhibits and unanimously agreed to issue a license for the Blue Ridge project. The decision was upheld by a Federal circuit court also by a unanimous decision. The sole purpose of the bill before us is to block the licensed project through a political decision of the Congress. In order to bring that clearly into focus, I propose to offer an amendment at 2:30 this afternoon that provides for the striking of the portion of the bill that would revoke the license and insert in lieu thereof:

SEC. 2. Nothing contained in the amendment made by the first section of this Act shall be construed to affect the validity of any license issued by the Federal Power Commission.

Mr. President, the purpose of my amendment is to focus on the true intention of the bill, to prevent the construction of the dams and related facilities.

I am advised that the Federal Power Commission has before it a number of applications for licenses of private power projects in various States and undoubtedly Senators will want to consider what effect the passage of this bill overruling a decision of the Federal Power Commission and a Federal circuit court would have upon other projects. Would private companies be as inclined to file applications for licenses if they were led to believe that any decision made by the Federal Power Commission might be brought before the Congress and a political decision made regardless of the basic merits of the project? It certainly seems to me that this is worthy of consideration by all Senators.

Mr. President, I do want to speak further on this bill at a later time, but this concludes my comments at this time.

EXHIBIT 2

[From the Washington Star, Aug. 19, 1976]

LABORERS DEPLORE NEW RIVER BILL

Although the New River bill passed by the House the other day and awaiting action by the Senate later this summer purports to set aside 26.5 miles of the New River as a part of the Wild and Scenic Rivers System, its admitted objective is to revoke the Federal Power Commission license to the Appalachian Power Co. to construct a hydroelectric power facility on the New River in Grayson County, Va.

The decision to issue the license was not arrived at hastily. Indeed, the FPC conducted nine years of study and hearings with testimony coming from all sides on the issue. The 5–0 unanimous decision of the FPC, the proper government agency established by Act of Congress to rule on these matters, was upheld by a unanimous three-judge panel of the U.S. District Court of Appeals in March of this year. The next proper appeal is to the U.S. Supreme Court, not to the Congress of the United States.

The benefits to be derived from the Blue Ridge project, not the New River bill, are many:

Jobs in the Appalachia region where billions of dollars of federal moneys have been expended to help cure the misery of unemployment.

2,000 construction jobs and an additional 8,000 jobs in ancillary work (materials manufacture, transportation services, etc.)

Opportunity for new industry to locate in the area.

Improved recreational facilities, beautiful parks and lakes with picnic facilities, boating and fishing areas for use by the many, not just a few.

Flood control benefits.

1.8 million kilowatts of electrical energy needed now and in the future, produced by United States know-how without having to rely on foreign fuel oil imports.

The North Carolina delegation may be behind the New River bill, but most of the Virginia delegation and the governors of Virginia and West Virginia are opposed to it. They support the Blue Ridge Project as did three previous North Carolina governors before the power project became a political football. Their support merits a greater deal of consideration since the two dams and two-thirds of the watershed will be on the Virginia side of the river, while only one-third of the watershed will be on the North Carolina side.

Further delay in implementing the FPC and U.S. Court of Appeals decision can only further the cost of the hydro-power project which has already escalated and in the long run comes out of the pockets of the consumer. The Senate should not act in favor of the New River bill.

JACK CURRAN,
*Legislative Director, Laborers' International Union of North America.*

[From the Roanoke Times]

THE DAM AND THE DAMNED

The House of Representatives' overwhelming vote, 311 to 73, to make a small piece of the New River "scenic"—just enough to block a dam construction proposal—may spell the end of a 14-year drama. The victory has been correctly attributed to the national media and the environmentalist movement: including those who have never seen, nor will see—not even on a canoe—the river, nor will ever even study the proposal by the Appalachian Power Company to keep the price of electricity as low as it can.

As our readers know, The Roanoke Times for a long while was troubled and neutral on the project; we believe it is no small thing to rearrange nature. We have been convinced by the fact that the one agency which has studied all the facts and spent the most time on the complex project—the Federal Power Commission—has come down unanimously in favor of it. We know of no reason why another opinion should be substituted for that of the FPC when the FPC has access to more facts and experience, and is unanimous in its opinion.

We have been further convinced by the fact that a federal district court and a circuit court of appeals have ruled that the FPC did indeed, take into account all the facts and the logic and rendered a reasonable decision within its power. The appeal to the U.S. Supreme Court strikes us as simply a delaying technique for the end-run maneuver now under way.

But what has really convinced us—an outnumbered newspaper which happens to know more about the project than many of the majestic and distant experts who know it all—is the arrogance and insensitivity of the opposition. They have circulated false pictures, proclaimed the existence of cheaper alternatives not yet practical, have utterly failed to note that the New River project promises recreational benefits similar to those known to exist, and experienced, at Smith Mountain Lake, Buggs Island reservoir and other places. They fail to note that North Carolina customers are hooked onto the Apco system. The self-anointed experts will not accept any decision by competent authority which is contrary to their notions.

In contemporary mythology the power company is supposed to be run by demons and a power company's critics are thought to be automatically angelic. In our experience, the Apco people have been more forthright, honest and earnest than many of their holier-than-thou opponents. We wish them well, and do spy just one ray of hope:

The State of North Carolina's appeal to the Supreme Court is a weak thing legally; only a lawyer on salary, and able to keep a straight face, would make the state's legal argument. The purpose only is delay. If the high court refuses to hear the case and thereby confirms the judgment of the federal court system before the U.S. Senate acts, the Senate itself might be jolted by the im-

plications of the decision made by the House. The chance is small but not completely hopeless.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HELMS). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MORGAN. 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 Senator from North Carolina is recognized.

Mr. MORGAN. Mr. President, we in the Senate are today going to decide the fate of the upper New River Valley in northwestern North Carolina. The choice before us is basically a simple one: we can destroy the homes and lives of 3,000 North Carolinians or we can preserve intact an unspoiled free flowing river which has provided a home to generations of Americans from the Revolutionary War to the present date.

The question before the Senate is whether it will approve a bill (S. 158) which would first, designate the New River as a part of the National Wild and Scenic Rivers System or acknowledge such a designation by the Secretary of the Interior and, second, prohibit the damming of any part of the New River included in the designation as a proponent of the scenic river system.

My support for S. 158 is today unequivocal. This has not always been the case. As attorney general of North Carolina I did in fact oppose the construction of the proposed New River hydroelectric power project by the Appalachian Power Co. I took the legal position that the dam was not wanted by the State of North Carolina. The State to this date continues to be opposed to the project and my successor as attorney general presently has a case on the project in the U.S. Supreme Court.

However, when Senate bill 158 came before the Senate Interior Committee this past spring for consideration, I discovered that there was a part of North Carolina's State management plan which bothered me. A State management plan is required under the Wild and Scenic Rivers Act (28 U.S.C. 1261 et seq.) This plan sets forth in detail the measures which will be taken by the administering authority, in the case of the New River, the State of North Carolina, in insuring the designated river maintains its scenic status.

Therefore, in accordance with the National Wild and Scenic Rivers Act the State of North Carolina submitted to the Department of Interior a State management plan for the New River. My concern with the plan was that it provided for the use of floodway zoning as a first or primary method for land control along the New River.

Mr. President, floodway zoning is allowed under the National Flood Insurance program which was established by Congress in the National Flood Insurance Act of 1968 and expanded in the Flood Insurance Protection Act of 1973. Without question this is a good program. But also without question the program is intended solely for the protection of life and property and not for protection of the scenic beauty of a river.

My concern with the use of floodway regulations in this instance was that such use constituted a taking or dimunition of property rights without compensation. This I considered to be, at the least, a perversion of floodway regulations and quite probably unconstitutional. Certainly if this scenic river designation was desired by the State it should use established forms of property acquisition such as scenic easement to obtain the required property control.

After extensive discussion between my office and the State of North Carolina I received assurance in the form of a letter from Dr. Ernest A. Carl, Director Office of Marine Affairs, North Carolina Department of Administration, that the State would not rely on floodway regulations concerning control of land along the river. Due to the personal or written assurances which I, and my offices have received, I am relying on the good faith of the State that it will not use floodway zoning as a form of land control along the New River. Also due to this assurance S. 158 now has my complete and unequivocal support.

In order to acquaint all of the Members of this body with my position I ask unanimous consent to have printed in the RECORD a portion of the statement, together with the attachments referred to therein, that I made before the Committee on Interior and Insular Affairs on May 20, 1976.

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

PORTION OF THE STATEMENT OF SENATOR ROBERT MORGAN BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Mr. Chairman, it is indeed a privilege for me to have the opportunity to present my views to your Committee on this very important matter concerning the designation of the New River as a component of the National Wild and Scenic Rivers System. There are few issues directly affecting North Carolina which have consistently drawn as much attention in the past few months as this one.

The question before this Committee is whether to approve a bill which would (1) designate the New as a part of the national wild and scenic river system or acknowledge such a designation by the Secretary of the Interior and (2) prohibit the damming of any part of the New River included in the designation as a component of the scenic river system.

As Attorney General of North Carolina I opposed the construction of the proposed Blue Ridge Hydroelectric Power Project by the Appalachian Power Company. I took the legal position that the dam was not wanted by the state of North Carolina. The State had, early in the discussion of the dam, sought a compromise favoring the project, but total agreement was never reached. The state continues to be opposed to the project and my successor as Attorney General presently has a case on the project in the United States Supreme Court.

The people from the mountains of North Carolina, including Ashe and Alleghany Counties, are extremely hard working, diligent, and independent thinking Americans. I am confident that if they had their way, not only would the dam not be built but also the New River would not be designated as a part of the national wild and scenic river system. Basically, those folks simply want to be left alone with the least government intervention possible in their lives. This trait and these fine people I greatly admire and respect. I regret that this approach is not accepted by more of my colleagues in the Congress.

My particular interest with the designation of the New as a scenic river, and therefore my appearance before you today, concerns a small group of individuals who have been neglected in all of the proceedings concerning this designation. These are the people who own land along the 26½ mile stretch of the New river which is to be included as a component of the national wild and scenic river system. In my opinion these individuals have been neglected by the Congress. In fact, the foundation for such neglect was laid by the North Carolina Department of Natural and Economic Resources of the U.S. Department of Interior by their placing impediments on the full use and enjoyment of the land affected without provisions for adequate compensation.

Under the Wild and Scenic Rivers Act, 28 USC 1271 et. seq., a river may be made a part of the wild and scenic river system in one of two ways. This may be accomplished by an act of Congress or, under section 1273 (a)(ii) by designation "pursuant to an Act of the legislature of the state or states through which they flow, that are to be permanently administered as wild, scenic or recreational rivers by an agency or political subdivision of the state or states concerned without expense to the United States, that are found by the Secretary of Interior, upon application of the governor of the state or the governors of the states concerned . . . to meet the criteria . . . and that are approved by him for inclusion in the system . . ." This last method is the one which has been followed to include the New river as a scenic river under the Act.

As part of this 2(a)(ii) designation the state must submit a plan for management of the river proposed as a component of the system. General guidelines in the Act for management plans in Section 1281(a) read as follows:

"Each component of the national wild and scenic river system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration, primary emphasis shall be given to protecting its aesthetic, scenic, historic, archeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and the development based on the specific attributes of the area."

Therefore, the burden is upon the state to insure the continuation of the particular trait or traits which caused the river's inclusion in the system.

The Department of Interior in February 1970 published its "Guidelines for evaluating wild, scenic and recreational river areas proposed for inclusion in the national wild and scenic river system under Section 2, Public Law 90-542." The twelve page pamphlet containing these Guidelines has a section specifically dealing with scenic river designations. Basically the scenic river is one which must be "free of impairments", "accessible in places by road", and have "shore lines or watersheds still largely primitive and shore lines largely undeveloped."

This last requirement means, according to the Guidelines, that "raw crops would be considered as meeting the test of 'largely primitive', as would timber harvest and other resource use, providing such activities were accomplished without a substantially adverse effect on the natural-like appearance

in its immediate environment." In other words the Department's Guidelines also recognize the requirement that the status quo of the river must be maintained in order for it to qualify as a scenic river, and this maintenance can even go so far as restricting the harvesting of timber by property owners along the river.

In hearings before the House Interior Subcommittee on National Parks and Recreation in March of 1973, the Interior Department answered questions concerning the wild and scenic river system. One of the questions found on page 210 of the Hearing Record dealt with the type of constraints placed on property owners in the vicinity of a wild and scenic river system. The Department spokesman answered:

"There are constraints of scenic easements, access to the river (right of way), and the right for the public to divert the length of river along the bank and fish from the bank. All of these constraints are negotiated, where possible, but they can be acquired without the owners' consent, since the Act stipulates condemnation to require interest in land." Therefore it is obvious that landowners along a river designated as a part of the wild and scenic river system substantially lose the complete use and enjoyment of their land. Furthermore the Department indicates that scenic easements are the primary constraints envisioned and, by implication, are the primary method of protecting scenic rivers.

In 1971 the North Carolina General Assembly adopted the North Carolina Natural and Scenic Rivers Act. It provided for instituting a "North Carolina Natural and Scenic River System." In 1973 a part of the New River was included in that system and in 1975 the General Assembly included a larger segment of the river in the system. To date the New river is the only river in the State to be included in the State's system. Although the Act of the General Assembly provided for land acquisition by the State, to date no land has been acquired either through fee or scenic easements for protection of the New as a part of the North Carolina system.

In accordance with the National Wild and Scenic Rivers Act, the State of North Carolina submitted to the Department of Interior a State Management Plan for the New river. As required by the Act and the Guidelines, the management plan set for the State's proposals for land control measures to assure the continuation of the scenic beauty of the New river.

In two sections of the State's management plan it indicated its intention to rely on floodway zoning as the first or primary method for land control along the New river. On page 28 of the plan in the section entitled "Land Control Measures," under the subsection on "zoning" the plan provides that:

"One technique for the indirect control is zoning and land use ordinances. In North Carolina, the most immediate effective means for such control, and the most readily available, is implementation of the state's floodway regulation statutes. This law specifies means for regulation for artificial obstructions in floodways, indicates permissible uses in floodways and states that no damageable portion of a structure located outside the floodway will be below the elevation that will be obtained by the 100-year flood if the stream were contained with the floodway. This effectively limits the uses allowed within the 100-year flood plain and when combined with permit procedures for allowing specific uses within these boundaries, provides a very useful means of regulation. Ashe County is now in the process of implementing such legislation. . . . Local registrations on uses of flood plains will be examined first to determine the degree of protection that they confer on the river segment under consideration. Other protective strategies will be employed after the potential usefulness of flood plain restrictions is ascertained."

Furthermore, on page 32 of the State's Management Plan under the section entitled "Administrative Implementation," the subsection entitled "Application of Land Control Measures to Management Plan" provides:

"The characteristics of the land forming the river basin have been classified as flood plain, valley walls and bluffs, outcrops or ridge tops. Each of these land forms will support certain activities or facilities, and therefore, different combinations of land control methods will be needed in order to afford optimum or maximum protection for the land, the activity and the natural experience. In the flood plains along the river . . . major methods will be utilized to accomplish the control objectives. First control will be sought by use of floodway regulations as authorized in the General Statutes. Such regulation limits development in the flood plain and prohibits development in the designated floodway. Development allowed within the flood plain area must be limited to the specific types listed in local ordinances that implement the Act. The second method of management to be used in the flood plain is conservation easement . . ."

It is obvious that the State, as outlined in its management plan, fully intended to use floodway regulations as a means for land control along the New river. Of course, such regulations are through zoning ordinances by the counties involved or by the State and are non-compensible to the landowners.

Floodway regulations are allowed by both the United States Congress and the North Carolina General Assembly. They are a part of the National Flood Insurance Program which was established by Congress in the National Flood Insurance Act of 1968 and expanded in the Flood Disaster Protection Act of 1973. Basically, these acts are designed to provide flood insurance at rates made affordable through a federal subidy. In order to secure these rates, communities must adopt and administer local measures (floodway regulations) which protect lives and new construction from future flooding. The minimum flood plain management standards allowed by the federal government require (1) building permits for all new construction and substantial improvements and (2) a review of the permit to assure that sites are reasonably free from flooding.

Additional regulations are required which must stipulate that all new construction in identified areas of special flood hazard be elevated or flood-proofed. Flood plain regulations do not apply retroactively once adopted by a community and only affect existing structures when a substantial improvement is made in a structure.

What all this means is that once a community has adopted flood plain regulations the status quo in the area so designated will generally be maintained. That is to say that the use of the land is restricted, but for the specific purpose of protecting the lives and property of those individuals along the floodway.

As required under the federal legislation, the State of North Carolina adopted Floodway Regulations in 1973 (N.C.G.S. 143-215.51 et seq.). In the preamble to the State's Floodway Regulations, it states:

The purpose of designating these areas as a floodway is to help control and minimize the extent of floods by preventing obstructions which inhibit water flow and increase flood height and damage, and thereby to prevent and minimize loss of life, injuries, property damage and other losses (both public and private) in flood hazard areas and to promote the public health, safety and welfare of citizens from North Carolina in flood hazard areas.

It is perfectly clear that the intent, not only of the U.S. Congress, but also the North Carolina General Assembly, is that floodway regulations have been adopted solely for the protection of life and property and not for the protection of the scenic beauty of a river.

Once a community has adopted floodway regulations, landowners whose lands are affected by the regulations are restricted in the use of their property. According to N.C.G.S. 143-215.54(b):

"The following uses may be made of floodways as a matter of right without a permit issued under this part:

(1) General farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agriculture, wildlife and related uses.

(2) Loading areas, parking areas, rotary airlift ports, and other similar industrial-commercial uses.

(3) Lawns, gardens, parking, play areas, and other similar uses.

(4) Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, swimming pools, hiking or horseback-riding trails, open space and others similar private and public recreational uses.

(5) Streets, bridges, overhead utility lines, railway lines and rights-of-way, creek and storm drainage facilities, sewerage or waste treatment plant outlets, water supply intake structures, and other similar public, private or utility uses.

(6) Temporary facilities (for a specified number of days), such as displays, circuses, carnivals, or similar transient amusement enterprises.

(7) Boat docks, ramps, piers, or similar structures.

(8) Dams."

All other uses of land located within the floodway require the securing of a permit from the governing body responsible for insuring compliance with the flooding regulations. In other words, if your land is within the area covered by the floodway regulations and you decide to build an addition to your house or build a new barn or cut timber from a forest, you must get prior permission.

It is easy to see that under both floodway regulations and scenic easements for scenic rivers these are some striking similarities in losses which landowners suffer. It is this similarity which undoubtedly intrigued the State to the extent that it decided to use floodway regulations for land control along the New river.

The National Flood Insurance Program is a good program and coupled with North Carolina's Floodway Regulations, it provides needed assistance to land owners in a flood plain. I favor the proper use of floodway zoning. It helps to protect our communities and in addition it provides subsidized insurance rates for land owners in those flood plain areas. I was pleased the Congress adopted the program in 1968 and expanded it in 1973.

My concern is not with floodway zoning or, for that matter, zoning of any type. The constitutionality of floodway zoning specifically and zoning in general has been upheld on numerous occasions. My concern in this particular instance is the use which the State is making of floodway regulations. Regulations (zoning) allowed under the flood insurance program were never intended for protection of scenic beauty along a river. The sole intent of both the federal and state legislation allowing floodway regulations was the protection of life and property—no more and no less.

I have been told that zoning is mentioned and sanctioned by the National Wild and Scenic Rivers Act. Zoning is mentioned in that Act in one section, section 1277(c). That section deals solely with federally administered plan where valid zoning ordinances are in effect in any incorporated city, village, or borough which conform to the purposes of

the Act, i.e., river protection for wild, scenic or recreational purposes. The section does not allow floodway zoning for the protection of life and property but only zoning conforming with the overall purposes of the Wild and Scenic Rivers Act.

The North Carolina Natural and Scenic Rivers Act does not mention zoning in any way as a means of controlling land along a scenic river corridor. Rather in N.C.G.S. 113A-38(a) the General Assembly provided that the State may acquire "lands in fee title or a lesser interest in land, preferably 'scenic easements'." Furthermore, in Subsection (b) of the same section, the General Assembly specifically gave the State the right to exercise eminent domain in acquiring real property or an interest in property as set forth in G.S. 1132-38. By allowing condemnation the General Assembly recognized the fact that the only proper way to secure land control, other than by gift or cooperative agreement, is through fee simple purchase or scenic easement.

Although floodway zoning is not mentioned as a permissible tool for land control in the corridor of a scenic river in either the Act or the Guidelines established by the Department of Interior, the Department not only approved the State's management plan calling for the use of such regulations, but in fact encouraged that use.

In a letter from the Acting Secretary of the Interior, Kent Frizzell, of September 9, 1975, the Department inquired as to the current status of the activity by Ashe and Allegheny Counties in implementing floodway regulations. In responding to that request, the Secretary of the North Carolina Department of Natural and Economic Resources, James E. Harrington, on October 6, 1975, answered Secretary Frizzell stating that it was his opinion that "the Commissioners of Ashe and Alleghany Counties had every intention of controlling uses of the flood plain along the segment of the South Fork of the New River in question."

The Secretary went on to state:

"I wish to note that, if for any reason, either or both of the counties involved fail to act to adopt floodway regulations for the purpose of protecting the river, the state floodway regulation statute empowers the Environmental Management Council (of our Department of Natural and Economic Resources) to delineate a floodway and regulate uses therein when 'the reach of a stream in which a floodway is determined by the Environmental Council to be needed exceeds the jurisdiction of a single local government.' I have appraised the Commission, on an informal basis, of the need for floodway regulations in Ashe and Alleghany Counties pursuant to the State's efforts to preserve and protect the South Fork of the New River. I am prepared to request the Commission to act in the event of failure of the involved counties to act, and I am confident the Commission will respond."

The Secretary is acknowledging here in the clearest sort of language that floodway regulations are being used to protect the river rather than for their intended purpose of protecting life and property.

The Secretary in this letter is also making the point that the State has the power under N.C.G.S. 143-215.56(d) to establish floodway regulations if individual counties fail to do so. Therefore, if either of the two counties involved choose not to implement floodway regulations, the State has the power to do so without the counties' approval. In fact, while Ashe County has taken steps leading to final establishment of floodway regulations in that county, Alleghany County chose to ignore the deadline for submitting the proper request to the Department of Housing and Urban Development and in Alleghany County at this time there are no floodway regulations.

It is interesting to note, however, that on September 18, 1975, nine days after receipt of Secretary Frizzell's letter, the Board of County Commissioners of Alleghany County issued a statement of intention to comply with the North Carolina Floodway Regulations. This compliance obviously came about in order to conform with the State's management plan concerning the use of floodway regulations. In fact the county has no real choice in that if it fails to act Secretary Harrington acknowledged the intention of the State to establish the floodway regulations itself, even though the regulations would be implemented "for the purpose of protecting the river" rather than for their constitutionally intended purpose of protection of life and property.

In the entire national system of scenic rivers, there are only three which are administered by States with one other application pending for State control. Of the three presently designated scenic rivers one employed no zoning at all and a second employed no flood-plain zoning at all. In the third case, the Little Miami River in Ohio, floodway zoning was used to a limited extent. However, this zoning was done by the local governments involved and in conjunction with other zoning, all of which worked in conjunction with purchases of scenic easements and land in fee simple to assure river protection. Floodway regulations were established without coercion by the Ohio State government and as a part of regular zoning. The regulations were never used for any but their intended purpose and therefore were not a perversion of zoning. A fourth river which has applied for designation as a State managed plan does not intend to use floodway regulations whatsoever.

Therefore, the State management plan submitted by North Carolina for maintenance of the New River is in fact breaking new ground in the area of floodway regulations. No other State-managed scenic river relies on floodway regulations as North Carolina proposes to do in its plan. In addition, there is no floodway zoning relied upon by the Federal Government in any of the wild and scenic rivers which it manages throughout the country.

In the 93rd Congress, Senate Bill 2439 passed the Senate but failed in the House. This bill dealt with the New River and, while it was somewhat different in substance than the present legislation under consideration, the overall effect was the same. During the hearings in this Committee on that bill and during a very lengthy Senate floor debate, no mention was ever made of the property owners along the river. The fact that through the use of floodway regulations the property owners were going to be deprived of their property without payment and the fact that the use of floodway regulations for such a purpose is obviously a perversion of permissible zoning was never once mentioned.

Mr. Norman Smith, a Greensboro attorney representing the State of North Carolina in its legal action against the Federal Power Commission wherein it is trying to have the license granted by the FPC declared invalid, agrees with my position concerning the rights of the landowners. In fact, it was Mr. Smith who coined the phrase "perversion of zoning" which I find expresses my conception of what the State is doing very well.

In an effort to make my position clear, I issued a statement on April 30, 1976 explaining how I felt about these issues. I would like at this point to have that inserted in the record of the hearings.

(See Attachment 1.)

This statement points to the fact that my staff was trying to secure proper assurances from the State that while the State management plan indicates a reliance on floodway regulations when it came time to implement the plan the State would not in fact place such reliance on the regulations. I would like to insert a copy of my letter to the State at this point (see attachment 2).

Mr. Chairman, I believe the use of floodway regulations in controlling land along a scenic river is at the very least unethical and quite probably unconstitutional as a denial of due process: If the State of North Carolina wants the New river to be in the national wild and scenic river system, then the State should be willing to pay for such a designation. It should not use floodway regulations for a purpose (protection of the scenic beauty of the river) other than the purpose (protection of life and property) for which they were intended and constitutionally are allowed. I could not sit idly by and watch such a perversion of zoning, knowing it would take many years and thousands of dollars in legal fees for some affected land owner to prove the illegality of the State's action.

It has never been my intention to impede the action on this or any other legislation affecting the New river. However, I have consistently felt that I must have proper assurance, either by an amendment to the bill pending in your Committee or a statement from the State, that floodway regulations would not be relied upon as a means of controlling land along the New river once it is designated a scenic river. I believe the correspondence I inserted in the Record between my office and Dr. Ernest A. Carl, Director, Office of Marine Affairs, North Carolina Department of Administration provides such an assurance.

In the letter from Henry Poole, my Legislative Counsel, to Dr. Carl, Mr. Poole stated, "If Senator Morgan could be assured . . . that the State will not use zoning as a substitute for other forms of acquisition . . . then the objection which the Senator has . . . will have been removed."

In his response Dr. Carl stated, ". . . Senator Morgan can be fully assured that: (1) the State will not, through any pressure or action, attempt to cause flood plain zoning to be applied any differently in the area of the scenic river than such zoning would be applied anywhere else in the State . . . (2) the State will not use flood plain zoning in any way which would lessen its liability in acquiring (property) rights . . . (3) the right to public access . . . will be by gift or compensation."

I regret that this concern on my part, which has consistently been interpreted as a deliberate stalling tactic, has ever been necessary. I regret that the Department of Interior not only sanctioned but also encouraged the unconstitutional use of floodway regulation and I sincerely hope in the future that they will not do so. I regret that the State of North Carolina felt it could deprive an individual of the use and enjoyment of his property without compensating him for it. I now feel, however, that through my actions the landowners along that part of the New river to be designated a part of the national wild and scenic rivers system will be treated fairly and will be paid for any loss of their property due to such a scenic river designation.

The people of Ashe and Alleghany Counties have a long history of independence and a deep love of their hills and mountains. They never asked for the damming of the New River and they do not want the river designated as a scenic river, except as that now appears to be the only alternative to the building of the dam. No better people can be found in any corner of this country. These people are indeed the very backbone of our democracy and a living example of what makes this country great. Their only wish is to be left alone, but since that is no longer a viable alternative, I am convinced that my actions will at least ensure that the landowners along the New will be treated equitably and fairly.

I do not believe that we in the Congress

can not only sanction but also be a part of any governmental entity violating an individual's constitutionally guaranteed rights. The use of floodway regulations for land use control along a scenic river corridor is wrong and in my opinion, illegal. The issue is that simple.

That is why I am indeed pleased that the State has agreed with me and acknowledged that it will not rely on floodway regulations concerning the control of land along the New River. Due to the personal and written assurances which I and my office have received, I am relying on the good faith of the State that it will not use floodway zoning as a form of land control along the New River and therefore now support the bill pending before your committee. I trust that it will receive a fair hearing and early passage.

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ATTACHMENT 1

STATEMENT OF SENATOR ROBERT MORGAN ON THE NEW RIVER, APRIL 30, 1976

I have been opposed to the building of the dam on the New River for a number of years. As Attorney General of North Carolina I actively sought to protect the State from the unwelcome consequences which damming the New would bring.

I have, however, also been a consistent proponent of protecting the rights and liberties of each and every one of our citizens. This protection is one of the very foundations of our democracy and cannot be overlooked in any instance—even the desire to prohibit the dam on the New River. This is the reason I have been concerned that the rights of the property owners along the river not be overlooked in the rush to save this valuable natural resource.

However, I do believe that the individuals owning land along the New River can be protected and at the same time have Senate Bill 158 passed, which would prohibit the building of the dam.

In discussions of my position on the rights of property owners along the segment of the New River to be designated as a part of the national wild and scenic river system, the State and some individuals have stated that neither the Constitution of the United States nor the Constitution of North Carolina would allow that a citizen be deprived of the full use of his property without just compensation.

I agree with that position. In fact this point is made perfectly clear in both the Fifth and Fourteenth amendments to the United States Constitution. What is proposed here, however, is to avoid a full taking of the property by substantially restricting the property owners' use of their land through flood plain zoning and thus avoid compensating the owners.

The management plan for the New River submitted by the State in June 1975 specifically indicates in two different sections on pages 28 and 32 that it is the intent of the State to rely on floodway zoning as the first or primary method for controlling property along the banks of that part of the New River designated a scenic river. Under this zoning, which would be carried out by Ashe and Alleghany counties, the land owners would not be compensated for the restrictions placed on the use of their property. The State in its management plan indicated that it would use other protective strategies only "after the potential use of the flood plain restrictions is ascertained."

The reliance by the State on floodway regulations certainly constitutes a possible perversion of zoning, as has been pointed out by Norman Smith who is representing the State in its legal battle with the Federal Power Commission. Floodway legislation was passed by the United States Congress and the North Carolina General Assembly for the purpose of protecting life and property in a flood plain. This legislation was never intended to be used by the State as a means of acquiring rights in property along a river declared to be part of the wild and scenic river system.

Furthermore, it should be pointed out that the zoning of the lands along the New River under flood plain regulations is not the way to assure the preservation and protection of the river. Such zoning cannot completely restrict development or incompatible uses; and, the zoning would be subject to change by subsequently elected officials. Zoning, therefore, will not provide a guarantee to future generations that the New will remain a scenic river. The only way in which to guarantee such preservation is through the acquisition of property rights in these lands either by fee simple purchase, cooperative agreement, scenic easement or gift.

My staff is now attempting to get an assurance from the State that, in the new management plan required under Senate Bill 158, any reliance on floodway regulations will not be used as a substitute for other forms of acquisition such as fee simple purchase, gift, cooperative agreement or scenic easement. I am hopeful, and fully expect, that the State will make such an assurance, in which case I intend to fully support Senate Bill 158.

The position I have taken concerning the New River legislation is certainly not a politically popular one. Rather than the political expediency of unequivocally favoring the designation of the New River as a scenic river, I felt it was far preferable to insure that the rights of the property owners along the river were not being trampled upon. During the hearings on the bill which Senator Ervin introduced in the 93rd Congress on this matter, the interests of the property owners were never mentioned. Furthermore, when he so eloquently argued in favor of his bill on the Senate floor, a lengthy debate covering twenty-two pages in the CONGRESSIONAL RECORD, again no mention was made by Senator Ervin of the property owners.

My position has been declared to be unnecessary. To the contrary, my position is one which supports the individual rights of every citizen. A strong public desire to prevent the building of the dam is not enough to warrant achieving that desire by a shorter cut than the constitutional way of paying for the change—in this case, the paying of property rights by the State rather than the State relying on zoning by the counties.

My concern has consistently been the protection of the property owners. I have never sought to delay or impede the designation of the New as a scenic river. It has been stated that my appearance before the Senate Interior Committee was primarily for the purpose of delaying the New River legislation. However, the fact is that the morning I appeared before the Committee to present the issue of property owner compensation the meeting was attended by only 3 of the 14 members. It was this lack of a quorum which prevented the Committee from taking action on Senate Bill 158.

Subsequently the acting chairman, Senator Metcalf, decided to hold a day of hearings on Senate Bill 158. These hearings are to cover two primary areas: (1) what compensation, if any, will be due the Appalachian Power Company once the Congress revokes the FPC license and (2) a general review of the June 1975 State management plan which has not previously been presented to the Committee. I understand the Committee also intends to hear testimony concerning compensation for landowners unless assurances from the State no longer make this necessary.

Lastly, let me reiterate my profound disappointment in the widespread misinformation and misunderstanding which has surrounded my position. Unfortunately this is the penalty a politician must pay when he feels it necessary to take an unpopular position, particularly where emotions run so high on the other side of the issue. The goal of stopping the building of the dam is an altogether worthy one, but I simply cannot expeditiously dismiss the constitutional rights of the property owners affected.

I am most hopeful that the Congress will designate the New River as part of the national wild and scenic river system and that its natural beauty will be assured for generations to come.

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U.S. SENATE,
*Washington, D.C., April 28, 1976.*

Dr. ERNIE CARL,
*Director, Office of Marine Affairs, Department of Administration, 116 West Jones Street, Raleigh, N.C.*

DEAR DR. CARL: I am writing to confirm our conversation of April 23, 1976 concerning the State's proposed management plan for the New River.

Under the provisions of the pending Senate Bill 158 presented by Senator Helms to the Senate Interior Committee, a management plan is required to be submitted by the State to the Secretary of the Interior incident to the designation of the New River as part of the national wild and scenic river system. I understand that it is the intention of the State not to resubmit the management plan of June 1975 used for the Section 2(a)ii designation, but rather to write a new plan.

In the new plan which the State will submit it is my understanding that the plan will not rely on zoning as a method of acquiring property rights of the land owners whose land is located within the boundaries of the New River segment to be designated under S. 158 as a component of the national wild and scenic river system.

As I have pointed out to you, the State's present management plan of June 1975 (specifically on pages 28 and 32) states that "floodway regulation statutes" and "floodway regulations" would be used as the first or primary protection and control method along the New River.

This floodway zoning which would be made by Ashe and Allegheny Counties but relied on by the State as the first or primary method of protection and control, would, of course, be accomplished without compensation to the affected property owners whose property rights would be restricted. This is certainly a perversion of the intent and integrity of the legislation establishing floodway zoning.

The use of floodway zoning amounts to a taking of rights in the property, which taking by zoning has been declared constitutional on a number of occasions. As you know, Mr. Norman Smith, the Greensboro Attorney who is representing the State in its legal actions against the Appalachian Power Company, has stated publicly that he agrees wholeheartedly with Senator Morgan's position concerning the rights for property owners along the New River.

If Senator Morgan could be assured that the new plan to be submitted to the Secretary of the Interior in accordance with Senate Bill 158 will provide that the State will not use zoning as a substitute for other forms of acquisition, but rather that all property rights would be acquired by the State by acquisition in fee simple, by easement, by cooperative agreement, or by gift, then the objection which the Senator has to the passage of the bill in its present form as submitted by Senator Helms will have been removed.

The State has claimed that (1) it never intended to use zoning as a method of acquisition and (2) under the Constitution of the United States and the State of North Carolina, a property owner could not be deprived of his property without just compensation. I

believe the first point will be clarified and corrected by the States' rewriting of its management plan clarifying the zoning issue.

As for the second point, the Senator is fully aware that the taking of someone's *full* rights in their property, without compensation, is indeed unconstitutional. However, in this instance the zoning of the land under floodway regulations would constitute a non-compensable taking of property rights, with the State relying heavily on such taking as outlined in the State management plan of June 1975. This is indeed allowed under both Constitutions but certainly is not a just and fair way for the State to conduct its affairs. Floodway regulations were enacted at the federal and state level for the purpose of protecting floodways, not for the purpose of property control once a river is declared to be part of the national wild and scenic river system.

I hope you will be able to provide the assurance which the Senator needs. He has been, and continues to be, opposed to the building of the dam on the New River but cannot sit idly by and let the State take advantage of the affected property owners.

Very truly yours,

HENRY E. POOLE,
*Legislative Counsel.*

Mr. MORGAN. I might add, parenthetically, Mr. President, that those records indicate that it was the clear intent of the State of North Carolina to use floodway zoning as evidenced by a letter of the Department of Natural Economic Resources to the effect that if the counties refused to zone it that the State would exercise its prerogative and do so. So there is no question but what that was the intent.

But today, Mr. President, my purpose is to persuade my fellow Senators that the bill now merits their approval and I think with the assurances of the State of North Carolina that it does merit the approval of the Members of the Senate.

My purpose today is a persuade my fellow Senators that this bill merits their approval.

The New River and the New River Valley are unique in this country. By building the Blue Ridge hydroelectric project we would be destroying this unique valley and its history. In discussing the history of the New River we can go back to the beginnings of recorded time. Geologists believe that the New is probably the oldest river in the Nation and the second oldest in the world. Recent surveys carried out by the State of North Carolina have shown that lands along the river contain stratified archaeological deposits which should provide exciting new chronological records of both the settlements and migrations of prehistoric man on our continent.

As far as we now know the history of modern man in the upper New River Valley begins in the 1700's. One of America's most famous pathfinders Daniel Boone, hunted bear in the valley's forests. Peter Jefferson, the father of Thomas Jefferson, surveyed the valley in the 1700's, discovered a river which had not yet been mapped, and called it the New River.

Settlement of the valley began in the 1750's, and increased considerably after the Revolutionary War, when much of the land along the New River was given by the Congress to veterans of the Revolutionary War. The early patriot settlers of the New River Valley were not rich men; they built simple homes on the land which had been given them; they farmed it carefully to produce a living for themselves and their children and as they prospered, they often made modest additions to their original log homes: planking would be added to cover the logs; new rooms and porches provided more space. These structures still stand and are inhabited for the most part by the descendants of the men and women who built them. There are no Mount Vernons or Monticellos in the New River Valley. What there are are homes which have been cared for and lived in since the birth of our Nation.

The New River is still clean and flows free; the land is still intact and fertile. The buildings and roads do not push nature aside, but are only as large as is necessary for shelter and movement. However, the valley has not stood still. We are not talking about a people or an area left behind by time. There are certainly factories, businesses and new roads, but all these things blend with nature and do not destroy it. The people of the New River Valley have shown more reverence and respect for their land than many other Americans have shown for other parts of our country.

Mr. President, we can vote today for H.R. 13372, thus saving the New River and reaffirming the spirit of the American Revolution in this great Bicentennial Year which we now celebrate or we can let the river perish. To this end I am reminded of a quote from Thomas Jefferson. He once said:

> The care of human life and happiness and not their destruction, is the first and only legitimate object of good government.

I urge all my colleagues to join me in casting a vote for H.R. 13372 and for the future of the New River.

Mr. HELMS. 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. ALLEN. 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. ALLEN. Mr. President, it is not often that I disagree with the distinguished Senators from Virginia, Mr. HARRY F. BYRD, JR., and Mr. WILLIAM L. SCOTT, but I do disagree with their position with respect to preserving the New River.

Mr. President, John F. Kennedy once remaked:

> Poetry reminds man of his limitation . . . of the richness and diversity of his existence.

As we consider legislation which would protect and preserve the New River in its current natural life,We might paraphrase the late President to say, "Uature reminds man of his limitation . . . of the richness and diversity of his existence," transposing nature for poetry.

The New River is, unquestionably, one of the wondrous works of nature. Because of the New River's uniqueness because of its historical significance and its environmental and geological value, I am supporting legislation introduced by the distinguished Senator from North Carolina (Mr. HELMS) and the distinguished Senator from North Carolina (Mr. MORGAN) to give statutory protection to the New River.

H.R. 13372, as amended, would designate a component of the National Wild and Scenic Rivers System a 26.5-mile stretch of the New River which the State of North Carolina placed in its State natural and scenic rivers system. The measure also specifically invalidates the Federal Power Commission license to construct the Blue Ridge power project, a hydroelectric facility which would consist of two impoundments in Virginia and two reservoirs.

The Committee on Interior and Insular Affairs, in favorably reporting an identical bill, S. 158, concludes:

> The number of such rivers is dwindling and the opportunities to preserve them are few and far between.

I agree 100 percent with the committee's statement and I believe the Senate should approve H.R. 13372.

Mr. President, I made my decision to support H.R. 13372 after considerable thought and reflection and with full awareness of the need to reach a reasonable balance between meeting our Nation's energy needs and protecting the environment. The road that leads to this reasonable balance is difficult to traverse and often demands difficult decisions, such as the decision before us today.

Practically all of America's rivers have been changed; they have been dammed for flood control, navigation, hydroelectric power, water supply, and irrigation. These changes were necessary for the development and settlement of our great country. We still depend on our water resources and will continue to do so in the future, despite the application, in all areas of endeavors, of incredible technical advances.

However, the New River is special. It is one of the oldest rivers in the entire world and the designated segment is one of a very few rivers in the Eastern United States which remains basically in its natural state, relatively undisturbed by the works of man. Its preservation has been urged by citizens in every section of the country as well as the administration, the North Carolina congressional delegation, the Governor of North Carolina. Governor Holshauser was in the Senate Chamber earlier, as he is authorized to be under the Senate rules, because any sitting Governor does have privileges of the Senate floor. So it is quite evident that the people of North Carolina support this legislation. Also urging preservation of the New River are the North Carolina and West Virginia Legislatures, the commissioners of the affected North Carolina counties, the supervisors of the Virginia county in which the impoundments would be built, and the National Committee for the New River.

Construction of the Blue Ridge power project would mean the inundation of approximately 40,000 acres of farmland

in Grayson County, Va., Ashe and Alleghany counties, North Carolina, and would displace, I am informed, 3,000 citizens. Many of these people are small farmers with less than 100 acres of land. Some 600 farms would be lost.

I therefore strongly suggest that efforts be directed toward developing an alternative generating facility—if in fact development of the energy source is crucial to the best interests of the Nation—or, at the very least, relocating the impoundments and reservoirs in an area where destruction of the natural values would be less damaging.

Many geologists believe the New River is the sole surviving remnant of the once mighty Teays River, which long ago drained the Eastern and Central United States and had as a mere tributary the now-mighty Mississippi River.

Since the canyon walls of the New River would be rendered inaccessible even by a lesser degree of inundation than that proposed by the Blue Ridge project, there is no way to measure the degree of importance of this kind of loss to the increasing knowledge we gain, or need to gain, in order to understand the evolution of the earth.

It is the overwhelming view of the people of North Carolina, as I understand it, particularly those who live in the affected region and are most intimately familiar with the New River, that it should be designated as a component of the Wild and Scenic Rivers System. I am in complete agreement.

As I understand it, if this is so designated, it would reverse, in effect, the decision of the Federal Power Commission; but not relying on that, it is my understanding that the bill itself does accomplish that purpose.

In this, our Bicentennial Year, it seems altogether appropriate to me, Mr. President, for Congress to act favorably on this measure in order to preserve one of our rarest gifts of nature, one of our most treasured resources—the New River.

I yield the floor, Mr. President.

Mr. HELMS. Mr. President, needless to say, I appreciate very much the comments of my able friend from Alabama.

The route to this vote this afternoon has been quite long and arduous. I introduced a bill similar to this one in 1973, and it was approved by the Senate in 1974; but, unfortunately, that measure died in the House for lack of action.

In the previous Congress, we had the distinguished Senator from North Carolina, Sam Ervin, who spoke eloquently in defense of the New River. We were able to achieve a satisfactory majority of Senators who supported the preservation of this river, which is believed to be the second oldest in the world, second only to the Nile.

So I do thank the Senator from Alabama for his comments. I trust that the vote this afternoon will put an end to this long, arduous journey that we have traveled and will save the New River.

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.

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## DISTRICT OF COLUMBIA APPROPRIATIONS 1977

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1101, H.R. 15193.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 15193) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1977, and for other purposes.

The PRESIDING OFFICER. 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 Appropriations with amendments.

Mr. MANSFIELD. Mr. President, if we complete action on this bill between now and 2 o'clock, I ask unanimous consent that the rollcall vote following the debate occur immediately after the final vote on the New River bill.

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

Who yields time?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

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. CHILES. 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. CHILES. Mr. President, I am pleased to have the opportunity to bring to the Senate the District of Columbia Appropriations Act for 1977.

As I reported to the Senate when we considered the fiscal year 1976 budget, there has been an inordinate delay in the submission of the 1976 and 1977 budgets. While the final fiscal year 1977 budget was not received until June 2, the subcommittee began its hearings on the fiscal year 1977 budget on April 7. I felt it was necessary to start the subcommittee's hearings on the budget before receiving the final budget to expedite the process and to help insure that the subcommittee meets the September 13 deadline for completion of the bill, as required by the Budget Reform Act of 1974.

The District of Columbia budget request for fiscal year 1977 is $1,128,075,600, of which $1,092,280,900 is for operating expenses and the remaining $35,794,700 is for capital improvements. The city's total request is $31,773,600 less than the amount approved by the Congress in the fiscal year 1976 Appropriations Act. The reason for the decrease is that the $35,794,700 requested for capital improvements in fiscal year 1977 is the lowest city request for capital improvements since 1959. The city's fiscal year 1977 request for operating expenses represents a $50,138,200 increase, or a 4.81 percent increase over the amount approved in the fiscal year 1976 Appropriations Act.

The subcommittee analyzed these requests in great detail. In addition to the regular hearings, the subcommittee held a special zero base review hearing on the city's health care delivery system.

I recommend a total fiscal year 1977 budget for the city of $1,119,983,300. This recommendation is $39,865,900 less than the fiscal year 1976 appropriation and is $1,123,500 more than the amount recommended by the House for fiscal year 1977.

While the recommendation is $1,123,500 more than the House, our recommendation for the Federal payment is $10,026,700 less than the House allowance. The reductions in the Federal payment are offset by various revenue-raising actions recommended by the committee requiring the District to raise more revenue through collecting delinquent taxes and billing individuals at the city's health care facilities. It should be noted that, while the House has reduced the Federal payment from the city-requested figure and I recommend a further reduction in the Federal payment, the net result is that the Federal payment will still be increased more than $11,000,000 over the level approved by the Congress in fiscal year 1976.

The financial plan for 1977 is balanced on a cash basis and there will be approximately $193,100 left in the city's treasury on September 30, 1977. The budget total, as recommended by the committee, is $32,921,700 less than the ceiling provided in the second concurrent resolution for the District of Columbia appropriations bill.

The bill provides funding for 140 new positions to help collect delinquent taxes and to establish a billing and collection system for the city's hospitals and clinics. The city estimates that delinquent taxes will total over $18,000,000 by the end of fiscal year 1977. This pool of money represents a source of funds to the city that will permit the city to raise needed revenue without further increases in the tax rates. I was alarmed to learn during hearings on the fiscal year 1977 budget that the number of delinquent tax cases that were prosecuted by the city dropped from 158, 2 years ago, to 3 last year, with a corresponding reduction in revenues of from $1,000,000 to $80,000. Providing the city with 49 additional positions for collecting delinquent taxes and 5 additional positions in the corporation counsel to prosecute delinquent tax cases will permit the city to raise $8,000,000 in fiscal year 1977 and $10,000,000 in each subsequent year and, thereby, provide a source of District funds permitting a reduction in the Federal payment required to finance city programs.

I chaired a special zero base review hearing on the city's health care delivery system. One fact that emerged from those hearings is that the city does not bill for services provided in the neighborhood health centers even to those individuals that have the ability to pay and the billing system at the three city operated hospitals is so chaotic that a great deal of potential revenue is lost to the city each year. This bill provides 86 new positions to implement and operate a billing system that will generate at least $3,000,000 in additional revenues each year. The billing system will still permit the indigent to receive free medical care but will require those with an ability to pay to do so and it will also, in a more systematic fashion, help the city to collect medicaid, medicare, and third-party insurance payments that they are entitled to. One additional financing change that is included in this bill is a reduction of $1,000,000 in the Federal payment and at the same time an increase of $1,000,000 in District funds which will require long overdue increases in numerous miscellaneous fees charged by the city.

Included in the bill is a budget action to require the city to increase the peak period bus fares in the District of Columbia by 10 cents. There has been no increase in the District's bus fare for the last 7 years. During this period of time Maryland and Virginia have both increased their bus fares and additional hearings are scheduled for the end of next month to consider additional fare increases in both Maryland and Virginia. Also during this period of time the operating deficit of the Metro system has increased from approximately $1,000,000 to over $50,000,000. The committee considered very carefully the socioeconomic arguments relating to a fare increase. The fare increase however, as recommended by the committee, is for peak periods only when the ridership is primarily made up of working people. The committee concluded therefore that the fare increase will not work an economic hardship on citizens of the District of Columbia and is long overdue and greatly needed as a fiscal measure.

I believe that the District must make every effort to collect the taxes and fees that are due to it and to periodically adjust its many fees for the effects of inflation. This bill is designed to encourage the District to do that.

Our major increase above the House allowance that is permitted in these totals is 188 positions and $2,738,600 for Forest Haven, the District of Columbia home for the mentally retarded. I am sure that the Members have heard reports of the beatings, sexual abuse, and generally primitive conditions that exist at this institution. The money provided in this bill will permit Forest Haven to meet all Federal standards and to remedy all significant deficiencies at the institution. The committee also recommends $1,500,000 to implement the financial management improvement program initiated by Senator EAGLETON which will improve the city's bookkeeping system to permit annual financial audits. The bill also provides funding for 50 positions to serve as caseworkers to help reduce the overpayment and ineligibility rates of the city's welfare programs which cost the city in excess of $8,000,000 of unnecessary expenditures and overpayments each year.

Total employment as provided for in this bill will be 39,317 which is 954 fewer positions than allowed in fiscal year 1976.

This bill takes a step toward restructuring the city's budget on a mission basis by putting all the transportation activities in one appropriation account. As the city's budget document was presented to us more than 50 percent of the dollar total associated with transportation activities were not in the transportation account. Restructuring the budget on a mission basis will make the budget request more understandable both to the Congress and to the public.

Title II of this bill will provide $36,450,000 for the Pennsylvania Avenue Development Corporation and is a one-time inclusion in the D.C. bill made at the request of Senator BYRD, chairman of the Interior Subcommittee on Appropriations. This item would have been included in the Interior bill except for the fact that the authorization for the Pennsylvania Avenue Development Corporation had not passed when the Interior bill was being considered. These funds will not count against District revenues.

Mr. President, this concludes my overall statement on the bill, and before I yield to the distinguished ranking minority member, I make the usual unanimous consent request that the committee amendments be agreed to en bloc, and that the bill as thus amended be regarded for the purpose of amendment as original text, provided that no point of order shall be considered to have been waived by reason of agreement to this order.

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

The amendments agreed to en bloc are as follows:

On page 1, in line 5, insert "and for the Pennsylvania Avenue Development Corporation".

On page 2, in line 4, strike out "$270,000,000" and insert "$259,973,000".

On page 2, in line 16, strike out "$100,000,000" and insert "$101,292,000".

On page 3, in line 7, strike out "$112,870,000" and insert "$84,550,800".

On page 3, in line 8, strike out "$4,561,600" and insert "$799,300".

On page 4, beginning in line 7, after "Mayor" insert a colon and the following: "*Provided further*, That not to exceed $15,000 of the appropriation for the period July 1, 1976, through September 30, 1976, shall remain available in fiscal year 1977 for expenses of the Advisory Neighborhood Commissions during fiscal year 1976".

On page 4, in line 17, strike out "$247,160,400" and insert "$246,258,800".

On page 5, in line 25, strike out "$267,955,800" and insert "$268,475,000".

On page 6, in line 18, strike out "$10,994,400" and insert "$13,733,000".

On page 6, in line 23, strike out "$25,810,900" and insert "$55,162,600".

On page 6, in line 24, strike out "$2,500,000" and insert "$6,262,300".

On page 7, in line 4, strike out "$69,078,000" and insert "$69,036,000".

On page 7, in line 24, strike out "$143,100" and insert "$166,600".

On page 9, in line 6, strike out "$35,794,700" and insert "$36,286,700".

On page 9, in line 7, strike out "$1,938,000" and insert "$1,554,600".

On page 10, in line 15, after "PROVISIONS" insert "—DISTRICT OF COLUMBIA".

On page 10, in line 17, strike out "1" and insert "102".

On page 10, in line 17, strike out "herein" and insert "in this title".

On page 10, in line 23, strike out "2" and insert "103".

On page 10, in line 23, strike out "Act" and insert "title".

On page 11, in line 4, strike out "3" and insert "104".

On page 11, in line 4, strike out "Act" and insert "title".

On page 11, in line 15, strike out "4" and insert "105".

On page 11, in line 15, strike out "Act" and insert "title".

On page 11, in line 19, strike out "5" and insert "106".

On page 11, in line 19, strike out "Act" and insert "title".

On page 12, strike out lines 3, 4, and 5.

On page 12, in line 6, strike out "7" and insert "107".

On page 12, in line 15, strike out "8" and insert "108".

On page 12, in line 15, strike out "Act" and insert "title".

On page 12, in line 21, strike out "9" and insert "109".

On page 12, in line 22, strike out "Act" and insert "title".

On page 12, in line 24, strike out "10" and insert "110".

On page 12, in line 25, strike out "Act" and insert "title".

On page 13, in line 18, strike out "11" and insert "111".

On page 13, in line 19, strike out "Act" and insert "title".

On page 13, strike out "12" and insert "112".

On page 13, in line 23, strike out "Act" and insert "title".

On page 14, in line 1, strike out "13" and insert "113".

On page 14, in line 1, strike out "Act" and insert "title".

On page 14, in line 7, strike out "35,250" and insert "35,145, exclusive of positions initially authorized or funded by this title".

On page 14, in line 14, strike out "14" and insert "114".

On page 14, in line 14, strike out "herein" and insert "in this title".

On page 14, in line 22, strike out "15" and insert "115".

On page 14, in line 22, strike out "Act" and insert "title".

On page 14, in line 25, strike out "16" and insert "116".

On page 15, in line 8, strike out "Act" and insert "title".

On page 15, beginning with line 10, insert:

TITLE II—PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

LAND ACQUISITION AND DEVELOPMENT

For Land Acquisition and Development, pursuant to the terms and conditions specified in section 6(10) of the Pennsylvania Avenue Development Corporation Act of 1972, as amended, the Pennsylvania Avenue Development Corporation is authorized to borrow from the Treasury of the United States the sum of $25,000,000, such sum to remain available until expended.

PUBLIC DEVELOPMENT

For public development activities and projects in accordance with the development plan approved under section 5 of the Pennsylvania Avenue Development Corporation Act of 1972,

as amended, $11,450,000, to remain available through September 30, 1990.

This title may be cited as the "Pennsylvania Avenue Development Corporation Appropriation Act, 1977".

This Act may be cited as the "District of Columbia Appropriation Act, 1977 and the Pennsylvania Avenue Development Corporation Act, 1977".

Mr. CHILES. I yield to the distinguished minority member.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, I commend the distinguished chairman of the subcommittee (Mr. CHILES) for the very hard work he has done to produce a responsible appropriations bill working within some very difficult limitations.

The Nation's Capital, like cities throughout the country, faces serious financial pressure. In maintaining the financial health of the District it often requires some painful decisions by Congress as well as by the city's locally elected officials. The chairman has already presented the details of the bill so I would simply like to touch on some points of special importance.

I believe as a result of our hearings and our action on this bill, as well as in the legislative committees in the House and Senate, we have finally gotten the message across to the District of Columbia that they must move forward forthwith in dynamically improving the city's facility for the handicapped at Forest Haven. The money will be there; the personnel positions will be there; and we have had assurances from the District government that very best efforts will now be made to assure no less than a tremendous upgrading at this facility during the coming months. This committee, and I am sure many others in the Congress and outside the Congress, will be watching very closely to make certain that the prescribed improvements take place.

The committee bill supports the District of Columbia Police Department at their present operating level. In fact, the committee has recommended the full amount requested by the District of Columbia government. Although the House has provided more funds, the fact is that in the past few years the Police Department has not filled all of its existing approved positions and it is obvious that they would not be filling them even if we continued to approve additional funding.

It should be clear from reading the report that this committee does not recommend a cutback in police services; in fact, we have stated that this budget should not result in reductions in the police force beyond normal attrition, and the District government is to reprogram funds to insure that the present force will be maintained.

We have held the courts in the District of Columbia on a very tight fiscal rein. Perhaps too tight. In the fiscal year 1976 District of Columbia appropriations bill just passed in June, we managed to add additional clerk positions to the Court of Appeals. Unfortunately we have discovered that the courts have not had very much support from the District government for their budget requests and, in fact, what they consider to be their basic budget requirements have been cut back.

Funds in this bill represent a slight increase over the District budget request and it is hoped that the courts can operate efficiently and effectively within the amounts appropriated. We have taken special note of the financial constraints that have been imposed on the District of Columbia Court of Appeals and indicated that funds should be reprogramed to insure that the appellate court can meet essential obligations without cutting personnel. In the future, I hope that the city's budget requests will recognize that we cannot sustain reductions in the courts without serious repercussions on the entire criminal justice system. It may prove necessary to reconsider this matter in supplemental action.

Mr. President, the experience with the District of Columbia Board of Elections and Ethics is a matter of great concern to all of us who have worked to make self-government a reality in the Nation's Capital. Although the committee has recommended the city's full request for the Board of Elections, there is a clear need for additional resources to insure that the upcoming elections can be conducted without the difficulties that have plagued the city in the past. The committee has accordingly directed the city to take whatever steps are necessary to provide adequate resources—in terms of temporary personnel and management expertise as well as money—to allow the Board of Elections and Ethics to carry out its mission.

Finally, Mr. President, I am very pleased that the committee has recommended approval of $200,000 as the city's contribution to the Washington Area Convention and Visitors Bureau. The activities of this bureau actually result in making money for the District of Columbia in that they generate substantial revenues through sales and room taxes, far in excess of the city's contribution. while this bureau is primarily privately supported by local business, cities throughout the country contribute local tax dollars to support convention and tourist trade development. I believe it is money well spent, and that the District should be encouraged to devote locally raised revenues to activities that support the city's economic base.

UP AMENDMENT NO. 406

Mr. MATHIAS. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS) proposes an unprinted amendment numbered 406:

On page 6, line 24, strike "$55,162,000" and insert $57,562,600".

Mr. MATHIAS. Mr. President, I offer this amendment because I am concerned with the committee action in reducing by $2.4 million, which is the amount contemplated in the amendment, the funds appropriated for the city's contribution to Metro bus operations.

Fares have gone up in the suburbs, and in view of the financial pressures on the District of Columbia, a fare increase may be inevitable. Nevertheless, when the Washington metropolitan area is just recovering from another air pollution alert, it seems that we should be taking steps to encourage transit use through lower fares, not raising them. When bus ridership declines we all suffer with more traffic congestion and dirtier air.

In addition, the impacts of a fare increase on the low-income residents of the District are a matter for serious concern. For the poor who must depend on public transit, a fare increase can be a tremendous burden that limits their ability to travel around the city in search of employment and in carrying out their jobs. Public transit cannot be supported through the fare box alone and fares must be set with a view toward social and environmental as well as economic impacts.

I had agreed with the committee that in view of the fact that bus fares have not been raised in many years, we should encourage the city to conduct required public hearings to review the current fare structure. Changes in the Metrobus fares can only be implemented with the approval of local officials following full hearings that will take at least 4 months. I believe that the desired review of D.C. bus fares could have been achieved without denying the city's share of current bus operating costs. Of course, I think we should anticipate that if bus fare increases are not promulgated, then the District of Columbia will reappear before our committee with a supplemental budget request to assure that the city will meet its obligations to the Washington Metropolitan Transit Authority. And I think this amendment is necessary to relieve the confusion that such a procedure would cause.

Under these circumstances, Mr. President, I feel moved to offer the amendment to preclude the kind of confusion that would result if we have to resort to this supplemental procedure.

Mr. CHILES. Will the Senator yield on that point?

Mr. MATHIAS. I am happy to yield to the distinguished chairman of the subcommittee.

Mr. CHILES. The subcommittee, I think, considered the fact that there has been no fare increase in the last 7 years for the District of Columbia; at the same time, there have been fare increases both in Maryland and in Virginia; that the Metro Transit Authority has recommended an increase of 10 cents, and the city had not taken any action on it.

Certainly, it is nice to have cheaper bus fares, but someone is going to have to pay.

We set forth that the deficit has gone from $1 million to $50 million in the last 7 years, and that is continuing to increase. So it is not as if the city taxpayers are not paying for the operation of the Metrobus system. They are paying and they are going to have to pay more. It was our feeling that this fare increase was warranted and that it should be put into effect to help relieve the heavy burden already placed on the taxpayers of the District of Columbia.

It seems that the only way we are going to get a fare increase put in force

is to go ahead and reduce the District's share of the Metrobus operating subsidy that is paid out of general tax revenue so that a fare increase would be required to cover the District's full amount of its share of the subsidy.

I mention and point out to the distinguished Senator from Maryland that this is an item that will go to conference because the House has not made a provision for this item. So the question will be up for further consideration at the conference.

We do know that there will have to be a supplemental later in the fiscal year because the provisions for pay raises are not in this bill. So if there is some failure on the part of the city to act, we will get a chance to look at it again. We also get a chance to look at this question again in the conference committee itself.

I hope the distinguished Senator from Maryland will take this into account and that he will not press his amendment to a vote at this time.

Mr. MATHIAS. I hear what the Senator from Florida is saying. I know that he is both fair and reasonable and will lead the Senate conferees. As he points out, this will be a subject for conference with the House. I hope that the strong arguments against the cut at this particular time will get his careful consideration.

I know that the District government is very much concerned. I have received communications from both Mayor Washington and from the chairman of the city council, Sterling Tucker, who have expressed their alarm as well as their concern at this particular cut.

Having in mind that there is another forum in which this can be resolved, Mr. President, I will rely on the consideration which the Senator from Florida has told us he will give as he leads the Senate conferees.

I withdraw the amendment.

Mr. CHILES. I thank the distinguished Senator from Maryland for his comments about the Senator from Florida being fair and reasonable. Maybe one more characteristic should be added, and that would be persistent. I am delighted he has made those comments.

Mr. MATHIAS. Mr. President, I glory in the fact that he is persistent. I hope he is persistent in pursuing the facts in this particular matter because I am sure they will bring about great enlightenment.

Mr. CHILES. I just wanted to add that one other trait because it is one that I see so strongly in the distinguished Senator from Maryland. It is an admirable trait. I only try to emulate the trait that the Senator from Maryland has, and thank him for his work on this bill. As he always provides great and able service to the Congress, he also certainly provides excellent service to us in this bill.

UP AMENDMENT NO. 407

Mr. BAYH. Mr. President, I have an amendment at the desk. I would like to call it up at this time.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Indiana (By BAYH) proposes on behalf of himself and Mr. BUCKLEY, an unprinted amendment No. 407:

On page 16, after line 5, add the following:

Title III—Department of Transportation Funds provided for the Coast Guard's Pollution Fund in P.L. 94-387 shall become available immediately upon enactment of this legislation into law.

Mr. BAYH. Mr. President, I purposely did not follow normal procedure, asking that the clerk not proceed with the reading of the amendment, because I think reading of the amendment explains it much better than can the Senator from Indiana.

Before proceeding, I compliment the Senator from Florida, as well as his counterpart, the Senator from Maryland, for the expeditious way in which he is handling this bill. Having had that responsibility earlier, I realize it is not an easy responsibility. I salute him in that regard.

I ask him tolerance to permit me, in a very nonlegislative description of what I am about to do, to piggyback onto the D.C. appropriation bill this amendment which, frankly, more properly belongs in the transportation bill. That bill has already been signed into law by the President.

What we are doing is making it possible for the funds which are now in the Coast Guard's pollution funds for expenditure in the next fiscal year to become available immediately upon enactment of this bill.

At the time we were considering the transportation bill, it was thought there was sufficient funding in the bill that we would not have to add to the money, some $9 million that were made available throughout fiscal 1976, in the pollution fund. However, a rather tragic and expensive oil spill has resulted in the Great Lakes region that is costing about $80,000 a day to clean up right now. By reasonable estimates, the fund will be dissipated as of the 15th of September.

We are not asking for additional money to be appropriated now so that we will not increase the cost of the D.C. appropriation bill. We will deal with that later when an appropriate vehicle comes along, probably the first of next year. But in the event, God forbid, but we have to be prepared for an eventuality, that there be another oil spill after we recess, sometime before this money that is in the fiscal year 1977 bill is available, we want to make sure there is enough funding so that the Coast Guard can go ahead and do the job that they do very well. Then we will come along next year and replenish the fund.

Mr. CHILES. I think the Senator from Indiana makes a compelling case to add another title to this bill. We would certainly have no objection to the amendment being included as title III.

Mr. BAYH. I appreciate the tolerance of my friend from Florida. Under normal circumstances I would not prevail on him, even with all of his generosity, because I know how hard he has worked on this. But it is an emergency and I appreciate his helping.

Mr. BUCKLEY. If the Senator will yield, Mr. President, I would like to join our colleague from Indiana in thanking the chairman of the subcommittee for the accommodation. It is an important matter. The possibility of an oil spill can strike any coastal State in the country or any State along the Great Lakes. Though the sum of money involved is modest, the damage that would have to be cleared up, if there is an oil spill, can have a terrible impact on the economy of the afflicted area.

We know that the Coast Guard is willing to work effectively, as it has on the St. Lawrence and along the Long Island beaches this past year. It is only prudent that we have money appropriated in case another emergency arises. I thank my colleague from Indiana.

Mr. MATHIAS. Mr. President, I believe this is a very necessary piece of legislation. We had a dramatic example when a barge filled with highly poisonous chemicals overturned in Chesapeake Bay a week or 10 days ago. These are the kinds of marine industrial accidents that can occur at any moment. They have an enormous impact.

In that particular incident, so far as we know there was relative watertight integrity of the barge. But had the barge ruptured, had its tanks been breached, it would have been a disaster of major proportions. The Coast Guard has to be ready at any minute to deal with problems of pollution, oil spills, and other industrial pollution problems which are of vital importance to every one of us.

The Senator from Indiana deserves a great deal of credit. I know he was supported by the distinguished Senator from New York in bringing this amendment before the Senate. I will say I not only support it, but I applaud it. I am very happy that he has brought it to the Senate in this form.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The amendment was agreed to.

Mr. MUSKIE. Mr. President, the Senate is now considering H.R. 15193, the District of Columbia appropriation bill. I would like to comment on the relationship between this bill and the first budget resolution.

There are two parts to this bill. The first includes payments and loans to the District of Columbia. For these purposes, this bill provides $365 million in budget authority and $436 million in outlays, including $10 million in outlays from prior year authority, these amounts are respectively $35 million and $64 million under the Appropriations Committee's allocation to the Subcommittee on the District of Columbia.

I commend Senator CHILES, chairman of the District of Columbia Subcommittee and Senator MCCLELLAN, chairman of the Appropriations Committee, for bringing in a bill which is well within the first budget resolution assumptions.

I understand a supplemental request for the District of Columbia may be made. I encourage the subcommittee to continue the work which they have begun so well and to maintain a budget which is consistent with the targets Congress has set.

The second part of this bill provides

$36.5 million in budget authority and $30.7 million in outlays for the new Pennsylvania Avenue Development Corporation action plan. These amounts are charged against the Interior Subcommittee's first budget resolution allocation.

The latest Senate budget scorekeeping report shows that if several possible later requirements are funded, the Interior Subcommittee could substantially exceed its allocation. Enactment of this part of this bill will place even more pressure on these allocations. This is a problem that the Appropriations Committee will have to consider carefully as the fiscal year proceeds, since we must stay within the budget.

The Budget Committee is now beginning its markup of the second budget resolution. I believe I speak for all members of the Budget Committee when I say we will try our best to keep the second budget resolution ceilings from exceeding the first budget resolution targets. That will be a tough job that will require the cooperation of the entire Senate.

Mr. CHILES. Mr. President, I move the bill be read the third time.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

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

The bill was read the third time.

The PRESIDING OFFICER. By unanimous consent the vote on this bill has been scheduled to follow immediately upon the vote on the New River bill.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum briefly.

The PRESIDING OFFICER. The clerk will call the roll.

The 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 following proceedings occurred during the consideration of the foregoing matter and are printed at this point in the RECORD by unanimous consent:)

## UNANIMOUS-CONSENT REQUEST—ANTITRUST LEGISLATION (H.R. 8532)

Mr. ALLEN. Will the Senator yield?

Mr. CHILES. I yield.

Mr. ALLEN. Will the Senator be kind enough to yield to me for a unanimous-consent request, with the understanding that it not show as an interruption in his remarks?

Mr. CHILES. I yield.

Mr. ALLEN. I thank the distinguished Senator.

Mr. President, the majority leader obtained unanimous consent that, at the end of the vote on the New River bill, I might be recognized to bring up the House message on H.R. 8532. It was agreed that after that time, there would be a vote on the D.C. appropriation bill. I would like to ask unanimous consent that I be recognized at the end of the vote on the D.C. appropriation bill—which would be some 10 minutes later—and that if the distinguished Senator from Nebraska (Mr. HRUSKA) is present in the Chamber, he be recognized in lieu of the Senator from Alabama.

Mr. ABOUREZK. Reserving the right to object, Mr. President, I did not hear the first part of the request. I wonder if the Senator would restate it.

Mr. ALLEN. I stated that at the request of the distinguished majority leader, I was to be recognized following the vote on the New River bill to bring up the House message on H.R. 8532.

Subsequent to that time I acceded to his request that there be a vote on the D.C. appropriation bill immediately following that vote. No provision was made that I be recognized at the end of that vote, some 10 or 15 minutes later. I merely request at this time that I be recognized at the end of the D.C. appropriation vote, and that if the distinguished Senator from Nebraska (Mr. HRUSKA) is present in the Chamber that he and not I be recognized.

Mr. ABOUREZK. I wonder, Mr. President, if the Senator from Alabama would be willing to agree at this time to a time to vote on his amendment to H.R. 8532, perhaps tomorrow or right after the cloture vote or even——

Mr. ALLEN. I would hope we would have a vote much earlier than that, have a vote today.

Mr. ABOUREZK. We can do that. Would the Senator be interested in setting a time for the vote?

Mr. ALLEN. No, I am not willing to do that. I made a simple request. If the Senator does not want to accede to that request all he has to do is object to it. I am sure the majority leader will make the same request when he comes in. I am merely asking that this might come up——

Mr. ABOUREZK. I did not say I was going to object to it.

Mr. ALLEN. I am not ready to set a time. I think I would be ready to vote some time today on my amendment because it is a compromise amendment that the distinguished Senator from South Dakota, has spoken of and, I assume, since it expresses the will of the Senate as expressed on June 10, I assume the Senator would be glad to support it. But I renew my request. If the Senator wants to object I have no objection.

The PRESIDING OFFICER. Is there objection?

Mr. ABOUREZK. Reserving the right to object——

Mr. ALLEN. I withdraw my request.

Mr. ABOUREZK. Then I withdraw my reservation.

(This concludes the proceedings that occurred earlier.)

## ORDER FOR YEAS AND NAYS AND 10-MINUTE ROLLCALL VOTE—D.C. APPROPRIATIONS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that it be in order at the appropriate time to ask for the yeas and nays on the pending business.

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

Mr. MANSFIELD. And that the time allocated to that rollcall vote be limited to 10 minutes.

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

(Later the following occurred:)

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on final passage for the D.C. appropriation bill.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

## ORDER FOR RECOGNITION OF SENATORS—H.R. 8532

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of the vote on the pending business which will follow on that on the New River, the distinguished Senator from Alabama be recognized, as previously agreed to, and if he is not in the Chamber that the Senator from Nebraska (Mr. HRUSKA)——

Mr. ALLEN. I will be in the Chamber, but if Senator HRUSKA is here he be recognized in lieu of me.

Mr. MANSFIELD. That Senator HRUSKA be recognized in lieu of the Senator from Alabama at that time.

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

## RECESS UNTIL 2 P.M

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate stand in recess until the hour of 2 p.m.

There being no objection, the Senate, at 1:29 p.m., recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. GOLDWATER).

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.

Mr. NUNN. Will the Senator from Virginia yield for 1 minute?

Mr. HARRY F. BYRD, JR. I yield.

## RELEASE OF CERTAIN DOCUMENTS

Mr. NUNN. Mr. President, I submit today a resolution regarding the release of relevant portions of interviews by staff of the Permanent Subcommittee on Investigations of Helen Goldfarb.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 530) to permit withdrawal and release of certain documents, papers, or other information in the files of the Permanent Subcommittee on Investigations.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. NUNN. Mr. Goldfarb, who is a Government witness in *United States* v. *Anthony Provenzano et al.*, Second District of New York, and *United States* v. *Hyman Schwartz*, Second District of New York, was interviewed, at his request, by staff of the subcommittee. During portions of these interviews, Anthony Provenzano and Hyman Schwartz were mentioned.

The Justice Department has made a formal request in writing for any documents, papers, and information provided the subcommittee by Mr. Goldfarb.

Pursuant to rule XXX of the Standing Rules of the Senate, and the privileges of the Senate, information secured by staff members pursuant to their official duties as employees of the Senate may not be revealed without a resolution of the Senate.

Accordingly, Mr. President, I have offered this resolution, approved by the Committee on Government Operations, and ask unanimous consent that the resolution be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 530) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 530

To permit withdrawal and release of certain documents, papers, or other information in the files of the Permanent Subcommittee on Investigations

Whereas, Herman Goldfarb is a government witness in *United States* v. *Anthony Provenzano, et al.*, S.D.N.Y. and *United States* v. *Hyman Schwartz*, S.D.N.Y.; and

Whereas, Mr. Goldfarb presented himself voluntarily to the Subcommittee and was interviewed by staff investigators during the course of which interview Anthony Provenzano and Hyman Schwartz were mentioned; and

Whereas, the Department of Justice has made a formal request in writing for any and all documents, papers and other information furnished the Permanent Subcommittee by Mr. Goldfarb; and

Whereas, by the privileges of the Senate of the United States and by Rule XXX of the Standing Rules of the Senate, documents, papers or other information secured by staff employees of the Senate pursuant to their official duties may not be revealed without the consent of the Senate, therefore, be it

*Resolved*, That the Permanent Subcommittee on Investigations is authorized, at the discretion of and at the direction of its Chairman, or Acting Chairman, to provide the Department of Justice or the respective trial judges with those relevant portions of the interviews by Subcommittee staff of Herman Goldfarb.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the Attorney General of the United States.

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## WILD AND SCENIC RIVERS ACT AMENDMENTS

The Senate continued with the consideration of the bill (H.R. 13372) to amend the Wild and Scenic Rivers Act (82 Stat. 906; 16 U.S.C. 1271), and for other purposes.

Mr. HARRY F. BYRD, JR. Mr. President, the pending legislation, H.R. 13372, would effectively block construction of the Blue Ridge hydroelectric project on the New River in Southwest Virginia, although that project has been approved by the Federal regulatory agency established by the Congress to examine these matters.

The Federal Power Commission has studied this project extensively and has determined the need exists for this additional electrical energy generation capacity.

The Federal Power Commission rendered its unanimous approval of the project after 9 years of deliberations, compilation and consideration of 7,500 pages of sworn testimony and the submission of a complete Environmental Impact Statement in conformity with the landmark National Environmental Policy Act of 1969.

The sufficiency of that environmental review and the validity of the license granted by the Federal Power Commission have been challenged in the courts and have been upheld by a unanimous decision of the U.S. Court of Appeals for the District of Columbia.

The Congress has never before revoked a validly issued license of the Federal Power Commission.

The impact of such legislative action will certainly have a chilling effect upon the long-range planning of the electric utilities of this Nation as they review the lengthy, tortuous and expensive FPC licensing procedure if, at the end of that protracted process, the Congress has evidenced a willingness to overturn, with no technical review and little debate, the decisions of the independent regulatory body it created to consider such matters.

Consider that the FPC deliberated over this matter for over 9 years, considering every conceivable facet of the proposal with the constant scrutiny of the Government and the public and within the comprehensive requirements of Federal law. And yet, the House Interior Committee took but 1 day of hearings to recommend that this license be overturned and the Senate Committee took even less time than that.

Mr. President, it is important that the policies of our Nation strike a balance between economic growth and conservation.

When this project was first proposed, we had not yet awakened from our slumber of ignorance about our precarious dependence upon unreliable foreign sources of petroleum.

We know now the economic and social hardship which result from failure to meet those fundamental challenges and achieve that balance.

Indeed, the extreme price dislocations which resulted from the Arab oil embargo of almost 3 years ago are a daily reminder that there is still an energy crisis—that it is very real and is far from being satisfactorily resolved.

Total energy independence now seems unlikely in the foreseeable future, but independence remains a legitimate target: We must come as close to it as we can.

This means ending wasteful use of oil and gas, as well as development of our coal resources, with proper environmental controls. And it means wise development of our water resources and hydroelectric capabilities.

Taken by itself, the Blue Ridge project, of course, does not constitute the key to energy independence. But this project is an important step toward that end.

The New River legislation, taken in the context of congressional action to energy matters, in general, shows a disregard for the perilous situation which exists today in this country.

At a time when foreign sources of petroleum were plotting to plunge this Nation and the free world into economic chaos, the Trans-Alaska Pipeline legislation passed its crucial test in the Senate by a single vote.

In the face of the Arab oil embargo and the urgent necessity to utilize our vast coal reserves in a responsible manner, the Congress has voted twice to ban the surface mining of coal in many parts of the country, including southwest Virginia, despite the fact that Virginia has sound and strong surface mining and reclamation laws and despite the fact that Virginia's coal is low in sulfur, the most serious pollutant factor in the burning of coal.

In the field of nuclear power, the Congress has not raised roadblocks, but understandably concerned citizens have succeeded in holding up many projects. And more exotic forms of power generation—solar, wind, geothermal, tidal, nuclear fusion—are all many years away from commercial-scale utilization.

The Blue Ridge project means additional energy: One million, eight hundred thousand kilowatts of electrical capacity, not only for ordinary uses but for peak load demands. That is the type of capacity the Federal Power Commission has determined must be developed if we are to avoid future "brownouts" and "blackouts."

The Department of the Interior makes a compelling case for hydropower and pumped-storage projects in its 1974 Conservation Yearbook Series No. 10, appropriately entitled "Our Natural Resources—the Choices Ahead":

> Pumped storage and other hydropower are the only economically feasible means of storing commercial quantities of energy for use when needed.

In addition, the Blue Ridge project employs hydropower. As the U.S. Department of Interior has stated:

> Hydroelectric energy is clean and is one of the few forms of clean energy available in quantity.

The Senate Committee on Appropriations has addressed this subject with even greater eloquence and emphasis. In the committee report accompanying the public works appropriations bill for fiscal year 1977, H.R. 14236, Senate Report No. 94-960, the committee unanimously stated:

> The value of hydroelectric power production goes far beyond the relatively simple considerations associated with financial returns and even beyond the obvious savings in consumption of non-renewable resources. Among the not-so-obvious values of hydroelectric generation are: its ability to absorb with minimal operating difficulties the short-term variations in peak demands for

power in a large power supply system; its role as an attractive component of multiple-purpose water resource projects due to the fact it does not reduce the quantity or degrade the quality of the water resource; its contribution, as the cleanest source of electrical energy, to the national objective of improving environmental quality; and its potential to augment other types of generation, thereby improving the efficiency of existing and proposed thermal facilities and displacing the use of inefficient or obsolescent thermal generation sources for meeting peak demands. All of these factors are important considerations in national and regional power supply planning.

Although about 40 percent of the nation's conventional hydroelectric potential has been developed, substantial additions to our hydroelectric capacity are possible if an aggressive program of developing conventional and pumped-storage hydroelectric projects is pursued over the next 20 years. Such a program could add more than 25 million kilowatts of new conventional hydroelectric capacity and from 30 to 60 million kilowatts of pumped storage hydroelectric capacity. Increases of this magnitude are substantial and they could provide some relief to the nation's energy and environmental problems. For example, this magnitude of hydroelectric development would make it possible to realize an additional savings of more than 85 million barrels of oil or 22 million tons of coal annually. While these figures are relatively small, they accumulate to substantial quantities over a 50-year project life. At a price of $12 per barrel for imported oil the savings over the life of these projects would amount to more than $50 billion.

The Blue Ridge project will create jobs where none have existed.

During its 5- to 6-year construction term, the construction payroll alone is expected to exceed $200 million. That will generate 1,500 to 2,000 new jobs. The increase in supporting services and related employment, such as transportation, construction and consumer services will be several times that amount.

The legacy of the Blue Ridge project for southwest Virginia will be one of increased economic prosperity, social, and economic growth and a dramatic increase in local tax revenues to benefit schools and municipal services. And creation of these jobs and benefits will cost the taxpayers nothing.

When the Senate Committee on Interior and Insular Affairs gave its cursory consideration to this legislation, both the Governor of Virginia and the attorney general appeared to testify. Their remarks underscore the longstanding commitment of the Commonwealth of Virginia to this project, with its attendant benefits of energy capacity, recreation, and flood protection. I ask unanimous consent that the testimony of the Honorable Mills E. Godwin, Jr., Governor of Virginia, and the Honorable Andrew P. Miller, Attorney General of Virginia, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HARRY F. BYRD, JR. Mr. President, nor has the project gone unstudied by the press. While there has been much which has emphasized the emotional aspects of impounding a portion of the New River, a most thoughtful series was recently run in the Chicago Tribune. Written by Bob Wiedrich, that five-part series explores in an objective manner the local and national debate which has focused on the New River and the Blue Ridge project. This pro and con—objective appraisal—concludes the pending legislation and the precedent it would establish is most unwise.

Closer to the matter, but no less objective, in my view, is a recent editorial by the Roanoke Times.

The Times stated with candor its initial reluctance over the Blue Ridge project and its approval of it only after a most thorough study of the entire matter.

Its conclusion, I believe, is a most responsible one: the Congress should not act while the matter of the FPC license is still pending before the Supreme Court. I ask unanimous consent that the Roanoke Times editorial, "The Dam and the Damned," be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. HARRY F. BYRD, JR. Finally, Mr. President, let there be no mistake about the view of this legislation which has been taken by the Senate Interior Committee. While the bill was raced through the Senate in 1974 with little rational review, the bill before us has generated minority, dissenting views from every minority member of that committee.

In the face of a divergence of views with their own administration, the five Republican members have had the courage to conclude:

> Consideration of the problems in this legislation will lead one to the same conclusion that we have reached—that this legislation is not in the best interests of the citizens of this country. We urge the defeat of this legislation.

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

Under the previous order, the junior Senator from Virginia (Mr. WILLIAM L. SCOTT) is recognized to offer an amendment.

Mr. WILLIAM L. SCOTT. Mr. President, I ask unanimous consent that the previous order be vitiated and that I be permitted the same time at such time as the distinguished Senator from Virginia finishes his remarks and a colloquy between the Senator from Colorado and the Senator from Utah is completed, but not later than 3 p.m.

The PRESIDING OFFICER. The Chair will call the attention of the Senator from Virginia to the fact that 4 o'clock is a factor in time.

Mr. WILLIAM L. SCOTT. I am quite aware of that, Mr. President. That will not interfere, as long as it is not later than 3 p.m. I would still have the 30 minutes for my side and the 30 minutes for the other side.

The PRESIDING OFFICER. Is there objection?

Mr. ABOUREZK. Reserving the right to object, Mr. President, my question is this: That does not vitiate the part of the order that is set to vote at 4 p.m., does it?

The PRESIDING OFFICER. No; it does not.

The senior Senator from Virginia continues to be recognized. Is that the desire?

Mr. WILLIAM L. SCOTT. That is the desire of the junior Senator from Virginia. That was the unanimous consent request, Mr. President.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the minority views of Senators FANNIN, HANSEN, HATFIELD, MCCLURE, and BARTLETT be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 3.)

Mr. HARRY F. BYRD, JR. In conclusion, Mr. President, I would reemphasize the official position of the Commonwealth of Virginia by reading to the Senate a communication I have just received from Gov. Mills E. Godwin, Jr.

> COMMONWEALTH OF VIRGINIA,
> *Richmond, Va., August 26, 1976.*
>
> Hon. HARRY F. BYRD, Jr.,
> *U.S. Senate,*
> *Washington, D.C.*
>
> DEAR HARRY: I am writing to urge your continued cooperation in efforts by the Commonwealth to block the passage of S. 158. The stated purpose of this bill is (a) to amend the Wild and Scenic Rivers Act of 1968 by designating a segment of the New River as a component of the National Wild and Scenic Rivers System; and, (b) to revoke the license issued by the Federal Power Commission to the Appalachian Power Company to construct and operate the Blue Ridge Project on the New River in Virginia. The Commonwealth has supported the construction and operation of this Project since it was first proposed. Accordingly, the Commonwealth is opposed to enacting this legislation.
>
> I would greatly appreciate every effort you can make to persuade your colleagues in the Senate to defer action upon this bill until such time as the validity of the license issued by the Federal Power Commission is determined by the United States Supreme Court.
>
> I have enclosed herewith a copy of the testimony presented by me before the Senate Interior and Insular Affairs Committee on May 20, 1976. The thrust of this testimony is that the decision of the Supreme Court may obviate the need for enactment of the pending legislation. If, on the other hand, the Supreme Court upholds the validity of the license, the Congress could, if it deemed it desirable, act thereafter to revoke the license.
>
> In sum, consideration of S. 158 may be deferred until such time as the Supreme Court has rendered its opinion without prejudicing in any way the rights of any persons interested in the New River and the Project.
>
> Thanking you for your consideration and efforts in this matter which is of critical importance to the Commonwealth of Virginia, I remain
>
> Sincerely,
>
> MILLS E. GODWIN, Jr.

In the face of this clear and continuing support by Virginia for what is, in truth, a Virginia project; in the face of the unprecedented action which passage of this legislation will represent, overturning a validly issued license by the Federal Power Commission; and in the face of our present and continuing need to wisely develop our cleanest forms of

energy production, I feel that passage of this bill to kill the Blue Ridge project would be most unwise.

I urge my colleagues to vote against it.

I thank my colleague from Virginia for yielding me additional time.

EXHIBIT I

REMARKS BY GOV. MILLS E. GODWIN, JR.

My name is Mills E. Godwin, Jr., and I am Governor of Virginia. I am appearing on behalf of the Blue Ridge Pumped Storage and Hydro-electric project proposed by Appalachian Power Company.

I want first to thank the members of the committee for giving me this opportunity to appear and present Virginia's position on the legislation before you, which has such far-reaching implications.

On its face, the issue would seem to be the familiar one of the economy versus the environment. I have followed this project from its beginnings, and I am convinced that on the contrary, its construction will be both an economic and an environmental plus.

As you know, the company plans to build two dams on the New River, which already includes four dams, and build a combined pumped storage and hydroelectric project.

The initial economic impact will include the expenditure of an estimated $845 million in private funds and the creation of 1,500 to 2,000 construction jobs in a relatively depressed area over a period of 6 to 8 years.

The New River runs through the fringes of Appalachia in Virginia and North Carolina into which the Federal Government and the respective states have poured millions of dollars over a period of years in order to stimulate the economy where geography is a severe handicap to economic development and where political subdivisions have been losing population.

The permanent economic benefit will be the creation of two lakes, totalling 40,000 acres. The upper lake of 26,000 acres, which includes most of the affected area in North Carolina, will be comparable in recreation attractions to the company's similar pumped storage facility at Smith Mountain Lake on the Roanoke River in Virginia.

Smith Mountain Lake, which is about the same size and has the same allowable drawdown as the upper Blue Ridge Reservoir, has proved a major economic boom, with a state park attracting between 200,000 and 300,000 people a year, boat ramps and camping areas, and waterfront lots selling in the neighborhood of $10,000 an acre, where the going price was perhaps $80 to $100 an acre before the lake was constructed. The impact on the economy in the entire area has been tremendous.

What we have now is a beautiful river which few people outside the area ever see except canoeists and those who maintain mountain retreats along its banks.

So far as adjacent land owners are concerned, it has been the universal experience of this and other power companies that as soon as the word goes out, the price goes up, and the land becomes worth so far more than its value for farming purposes.

Those who are fortunate enough to retain land above the water line find that they have suddenly come into possession of very valuable property indeed.

But beyond these local considerations, the project has energy implications for most of the eastern seaboard and far inland.

Appalachian has interconnections directly with the Virginia Electric and Power Company, which serves the eastern half of Virginia and portions of eastern North Carolina, with Duke Power Company and North Carolina Power and Light, which serves customers in North Carolina, with TVA, and with the Ohio Valley Electric Corporation.

These companies share power among themselves as the need arises.

Beyond that, virtually all power companies are interconnected. For instance, both Appalachian and Vepco sent power through connecting companies to Con Edison in New York when that company was facing extended brownouts.

Brownouts occur during peak power demand periods, and the Blue Ridge Project is essentially a source of peaking power, which is the most valuable power there is.

A pumped storage project is operated by pumping water from a lower reservoir to an upper reservoir at night, during off-peak hours, using the most efficient equipment the company has, and then running it back again through generating turbines during periods of peak demand.

Appalachian generates power exclusively with coal and running water. We therefore have in the Blue Ridge Project an additional 1,800,000 kilowatts of peaking power available wherever it is needed over a good portion of the Eastern United States.

And this peaking power is not dependent on the Organization of Petroleum Exporting Companies.

Thus the question before you is not limited to economic versus environmental considerations in Virginia and North Carolina, but has national energy implications.

It is Virginia's position that the Blue Ridge project on balance will prove to be an economic plus, an environmental plus and an energy plus.

Gentlemen, I have tried to summarize for you as I see it a question which has been debated and explored for fourteen years.

In extended hearings over those years, the Federal Power Commission has compiled many volumes of testimony from every conceivable interested party on every conceivable point, and has granted the company a license to build.

The validity of that license is now before the United States Supreme Court.

The legislation before you would cancel the entire project. I urge you as strongly as I can not to take such precipitous action at this stage of the proceedings.

STATEMENT OF THE HONORABLE ANDREW P. MILLER, ATTORNEY GENERAL OF VIRGINIA, CONCERNING S. 158, BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Mr. Chairman, members of this distinguished Committee, I appreciate the opportunity to join Governor Godwin in presenting the testimony of the Commonwealth of Virginia in opposition to the passage by the Congress of S. 158. In my remarks, I will focus upon the legal ramifications of favorable action at this time by the Congress on that bill.

The explicit purpose of S. 158 is to designate a segment of the New River as a component of the National Wild and Scenic Rivers System and to divest the rights of the Appalachian Power Company under the license issued by the Federal Power Commission to construct the Blue Ridge Project. That Project, as it is licensed to be constructed, is a two-dam, 1,800,000 kilowatt hydroelectric and pumped storage project to be located on the New River in Virginia with reservoirs extending into North Carolina. This Project will be primarily a Virginia project in that both dams, both powerhouses, all transmission facilities, and two-thirds of each reservoir are to be located within the Commonwealth. This Project is designed and licensed to provide needed electric generating capacity for the Appalachian Power Company System which serves the western half of Virginia.

The application for a license to construct the Blue Ridge Project was pending before the Federal Power Commission from 1965 to 1974. During the course of this extended and exhaustive licensing procedure, the Project was intensively studied and was modified several times. The Commonwealth intervened in that proceeding in 1967 to express to the Commission its views on the proposed Project, and continued to participate in that proceeding until 1974, when the Project was licensed by the Commission.

During the administrative proceeding, the Commission received a great deal of expert testimony concerning the need for the power from the Project, alternatives to the Project, and the costs and benefits of the Project. This testimony was presented by, among others, the Commonwealth, the State of North Carolina, and the United States Department of the Interior. It is difficult to imagine that any proposed project could receive more intense scrutiny than that to which the Blue Ridge Project was subjected by the Commission. After weighing all of the testimony, the Commission determined that the proponents of the Project had more than adequately demonstrated that the Project satisfied the statutory test for receiving a license. Accordingly, the Commission granted, on June 14, 1974, by unanimous vote, a license for the construction and operation of the Project.

Subsequently, the State of North Carolina appealed the decision of the Commission to the Court of Appeals for the District of Columbia. After full consideration of the issues presented to it, the Court of Appeals on March 24, 1976, unanimously affirmed the decision of the Commission below.

While these legal proceedings were going forward, the State of North Carolina applied to the Secretary of the Interior for designation by him, pursuant to the Wild and Scenic Rivers Act, of a portion of the New River in North Carolina as a component of the Wild and Scenic Rivers System. Subsequently, on April 14, 1976, the Secretary designated that portion of the New River as a component of the System.

The State of North Carolina has recently petitioned the United States Supreme Court for a writ of certiorari to the Court of Appeals, and has raised, among others, the issue as to whether or not the Commission gave adequate consideration in its licensing proceeding to the scenic river alternative to the Project. It is expected that the Supreme Court will hear argument on this matter, if it grants the writ requested, in its October term.

With this background, I will turn to the question as to whether the Congress should act now to block the Project. I submit, as a starting point, that the merits of the Blue Ridge Project far outweigh the merits of the scenic river designation. This conclusion, standing alone, should be sufficient reason for this Committee to reject S. 158. There are further reasons, however, which compel the same result. Favorable action on S. 158 would doubtless moot the matter pending before the Supreme Court. Such action would also precipitate a judicial controversy concerning the liability of the United States to the Appalachian Power Company for compensation for loss of the Company's property rights under the license. I have reviewed this matter and I have concluded that persuasive arguments can be made in support of the position that compensation would be required. This matter will, I am sure, be a substantial consideration in action by this Committee on the pending bill. Such a collision course, however, can be avoided. This Committee may reject, or defer action on, the pending bill until such time as the Supreme Court has acted. If the Supreme Court invalidates the license for the Project, the present scenic river designation by the Secretary, if not successfully challenged, may bar the issuance of a valid license for the Project. In view of this, I would respectfully suggest that the Committee reject, or defer favorable

action upon, the pending bill until the legal proceedings have run their course.

With these considerations in mind, I would now like to call to your attention the respective merits of the Scenic River Proposal and the Blue Ridge Project.

I submit that the segment of the New River in question does not satisfy the requirements for eligibility for inclusion in the Wild and Scenic Rivers System. The segment certainly does not satisfy the definition of a "wild river," which speaks of rivers that are free of impoundments and generally inaccessible except by trail. Nor does the segment qualify as a "scenic river," which also requires that such segments be free of impoundments, have primitive watersheds, and undeveloped shorelines. The segment in question is impounded and is paralleled in many places by roads. Further, the segment does not satisfy the test for a "recreational river" because its recreational potential as a free-flowing stream is substantially less than the recreational potential of the Blue Ridge Project.

These conclusions are supported by the administrative and legislative history of the Wild and Scenic Rivers Act. When the Act was proposed, the Department of the Interior canvassed the entire United States to determine which river segments would be arguably eligible for inclusion in the System. This canvass resulted in a list of 650 likely river segments. The New River segment in question was not included on that list. Accordingly, it can be concluded that the Department of the Interior made a determination that the segment would not be eligible for inclusion.

Before leaving the Scenic River Proposal, I would like to suggest that this Committee examine that proposal with a view toward determining if it has a proper role in the most comprehensive and beneficial use of the entire New River. The segment in question is ideally suited, as the Federal Power Commission has decided, as a site for hydroelectric generation. Other segments of the New River are substantially better qualified for inclusion in the Wild and Scenic Rivers System. For example, the New River Gorge in West Virginia is uniquely qualified for such inclusion, and the Department of the Interior has recognized this fact by recommending that that segment of the New River be included in the System. My point is that the United States has an obligation to facilitate the optimum use of our Nation's water resources, including designation of those segments which are uniquely qualified to be scenic rivers, and licensing hydroelectric projects on those segments, like the one in question, that are uniquely qualified for that purpose.

The Blue Ridge Project will produce numerous and significant benefits. The Project will provide flood-control benefits to residences, commercial establishments, and lands adjacent to the entire stretch of the New River within the Commonwealth and in West Virginia. The Project will augment flows in the New River, thereby providing an enhanced and more reliable water supply for a large portion of the Commonwealth. The reservoirs of the Project will provide significant recreational benefits that will complement nearby upland recreational facilities. The construction of the Project will generate between 1,500 and 2,000 jobs directly, which will improve the economy of the Project area and result in considerable tax benefits to political subdivisions within that area. Moreover, the Project will produce 1,800,000 kilowatts of absolutely essential electrical energy, and it will generate that energy in an environmentally acceptable manner. The Blue Ridge Project will help to ensure that a reliable and continuous supply of electrical energy will be available to the citizens of the Commonwealth.

All of the foregoing benefits have been abundantly demonstrated upon the record made before the Commission. The benefits of the Blue Ridge Project far outweigh its costs, as the Commission found, and it is the least cost alternative to satisfying demonstrated power requirements.

For the foregoing reasons, the Commonwealth submits that the merits of the Blue Ridge Project far outweigh the merits of the Scenic River Proposal.

I would like to turn at this point to the question of the requirement for compensation if the pending bill is enacted. I have reviewed this question and have concluded that there is a substantial argument that revocation by the United States of a final and effective license issued under the Federal Power Act would entitle the licensee to payment of just compensation. A valid and final license is sufficient to create vested property or contractual rights in the licensee. This conclusion is supported by the fact that the Federal Power Commission did not reserve the right to revoke the license issued for the Project. Further, Section 28 of the Federal Power Act provides as follows:

"The right to alter, amend, or repeal this chapter is expressely reserved; but no such alteration, amendment, or repeal shall affect any license theretofore issued under the provisions of this chapter, or the rights of any licensee thereunder." 16 U.S.C. § 822. This section cannot be construed to prohibit the United States from revoking a license. It does, however, support the conclusion that rights granted under a license are vested property or contractual rights which cannot be divested without the payment of just compensation.

There is no compelling reason that this Committee should act favorably at this time on the pending bill. The record made before the Commission clearly demonstrates that the merits of the Project far outweigh the merits of the Scenic River Proposal. If this Committee acts otherwise, it must do so based upon conflicting facts produced before it by unsworn, unexamined testimony. Further, if the bill is enacted now, there is substantial risk that the United States will, under the license, be held liable for the payment of compensation for property or contractual rights. In view of these considerations, this Committee should reject, or defer action upon, the pending bill until such time as the judicial proceedings are completed. Such action by this Committee will not prejudice the right of the Congress to act at a later time to divest the rights under the license. In the meantime, judicial action may moot the need for any future Congressional action. In conclusion, the Commonwealth urges that S. 158 be rejected. Thank you.

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EXHIBIT 2

[From the Roanoke Times, Aug. 12, 1976]

THE DAM AND THE DAMNED

The House of Representatives' overwhelming vote, 311 to 73, to make a small piece of the New River "scenic"—just enough to block a dam construction proposal—may spell the end of a 14-year drama. The victory has been correctly attributed to the national media and the environmentalist movement: including those who have never seen, nor will see—not even on a canoe—the river, nor will ever even study the proposal by the Appalachian Power Company to keep the price of electricity as low as it can.

As our readers know, *The Roanoke Times* for a long while was troubled and neutral on the project; we believe it is no small thing to rearrange nature. We have been convinced by the fact that the one agency which has studied all the facts and spent the most time on the complex project—the Federal Power Commission—has come down unanimously in favor of it. We know of no reason why another opinion should be substituted for that of the FPC when the FPC has access to more facts and experience, and is unanimous in its opinion.

We have been further convinced by the fact that a federal district court and a circuit court of appeals have ruled that the FPC did, indeed, take into account all the facts and the logic and rendered a reasonable decision within its power. The appeal to the U.S. Supreme Court strikes us as simply a delaying technique for the endrun maneuver now under way.

But what has really convinced us—an outnumbered newspaper which happens to know more about the project than many of the majestic and distant experts who know it all—is the arrogance and insensitivity of the opposition. They have circulated false pictures, proclaimed the existence of cheaper alternatives not yet practical, have utterly failed to note that the New River project promises recreational benefits similar to those known to exist, and experienced, at Smith Mountain Lake, Buggs Island reservoir and other places. They fail to note that North Carolina customers are hooked onto the Apco system. The self-annointed experts will not accept any decision by competent authority which is contrary to their notions.

In contemporary mythology the power company is supposed to be run by demons and a power company's critics are thought to be automatically angelic. In our experience, the Apco people have been more forthright, honest and earnest than many of their holier-than-thou opponents. We with them well, and do spy just one ray of hope:

The State of North Carolina's appeal to the Supreme Court is a weak thing legally; only a lawyer on salary and able to keep a straight face, would make the state's legal argument. The purpose only is delay. If the high court refuses to hear the case and thereby confirms the judgment of the federal court system before the U.S. Senate acts, the Senate itself might be jolted by the implications of the decision made by the House. The chance is small but not completely hopeless.

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EXHIBIT 3

VII. MINORITY VIEWS ON NEW RIVER OF SENATORS FANNIN, HANSEN, HATFIELD, MCCLURE, AND BARTLETT

S. 158, designating portions of the New River and the South Fork of the New River in North Carolina as a component of the National Wild and Scenic Rivers System is not in the best interest of the people of the United States. The concept of wild and scenic rivers is a noble one that we have supported innumerable times in the past. However, the inclusion of this particular segment of river will have the effect of blocking the needed Blue Ridge hydroelectric project that has already acquired a Federal license.

The passage of this legislation would raise significant questions of legislative policy that have been brushed aside during committee consideration of this measure. These questions are of significant import with far-reaching ramifications. A rational weighing of these issues forces us to oppose this legislation.

These issues are as follows:

1. The enactment will cause the loss of 1,800 megawatts of electrical generation capacity. This energy capacity would be inexpensive, non-polluting hydroelectric power. This power is needed to meet the peak power demands of the entire Central United States through the ninety-seven interconnectors of the American Electric Power Companies System.

The Federal Power Commission found that: "The need for Blue Ridge Power has been abundantly displayed in the record . . . A review of the evidence of the record makes clear that all of the power Blue Ridge can produce will fall far short of meeting the

peaking needs of the AEP System in the early 1980's . . ." This power is essential to insure the reliability of the system.

Three full years have not passed since the spectre of the domestic crude shortage and the Arab Oil Embargo was upon the United States. Utilities, particularly in the eastern United States were dependent on oil for the generation of electrical power. Americans pondered the panorama of an America without power for productivity or play. Projections for the future portend even greater difficulties, yet by their actions, proponents of this measure are hiding their heads in the sand, refusing to face the realities of the energy crisis.

Peaking power has been criticized as being a net consumer of electrical power. However, the capacity of any system is dictated by the maximum load expected at the time of greatest demand. In addition, reserve is needed so that emergencies can be met. The use of peak generation facilities will insure that the most efficient use is made of current generation facilities. The agencies charged with considering American's power demands have chosen peaking power as one of the desired systems for meeting our power needs.

There are few viable alternatives to Blue Ridge Project power. The escalating costs and potential shortage of petroleum militate against oil as a primary fuel. The use of atomic power is increasingly under attack. The only viable alternative is a huge coal-fired generating plant that would be one of the largest in the country. Air and water environmental constraints have made this alternative tenuous at best in the eastern United States. In addition, the cost of a coal-powered plant would exceed the cost of the Blue Ridge Project by approximately one-half billion dollars. Those costs would ultimately be borne by the consumer.

We cannot stand by idly and contribute to our energy dilemmas. The need for this facility is readily apparent. The license for this facility has already been issued, and the company stands ready to meet the public need.

2. This is the first time that Congress to our knowledge has taken upon itself the burden of overruling a Federal Power Commission Permit. The usurpation of this regulatory function by Congress can have widespread ramifications.

The Federal Power Commission was created by Congress to oversee the production and generation of electric power utilized in interstate commerce. The agency was made independent so that it would be insulated from the political arena. Experts in electrical power are on the commission payroll to insure that decisions are knowledgeably made. The rights of appeal from agency decisions was strictly limited in order that finality be assured. The decision-making process intentionally has been kept at the agency level instead of elsewhere.

The question of the Blue Ridge Project was before the Federal Power Commission for twelve years. During this period, volumes of testimony was taken, and all parties were given the opportunity to be heard. The proper environmental impact statement was prepared. The final agency decision was unanimous—to build the Blue Ridge Project.

The decision has been fully challenged in the courts. The court decisions have, to this date, upheld the decision of the Federal Power Commission. Opponents of the project have had their day in court and have not convinced anyone of the justice in their claim.

It is inconceivable that the Congress would, on the basis of a few hours of legislative testimony, overrule the carefully considered decision of agency experts based on evidence produced over several years of intensive investigation.

Congressional revocation of a license granted by an independent regulatory agency could have serious repercussions. Under the precedent established here, any contestant in a case, unsatisfied with the decision of a regulatory agency or the court, will be tempted to carry his appeal to the Congress. The finality of agency decision will be doubtful. Who will make substantial investments based on license that may be revoked at any time by the Congress? Second guessing of independent regulatory agencies will create tremendous problems with the regulated industries.

We cannot support this undermining of the administrative process. We must be able to have confidence in the decisions made through the established regulatory process.

3. The passage of this bill could result in governmental liability for "taking" an amount that may possibly be as high as five hundred million dollars. S. 158 limits the license granted by the FPC by forbidding it to flood the portion of the river designated for Wild and Scenic River classification. The limitation will preclude the project's being built. There is a significant legal question as to whether this is a "taking" under the Fifth Amendment of the Constitution that requires just compensation.

Legal counsel has advised the Power company that there is a significant argument for the position that the action herein contemplated will require compensation. Counsel notes that the license granted by the FPC has many of the earmarks of a franchise or a vested property right.

The question is not one of easy resolution, and if this act is passed, is one that will ultimately be resolved by the courts. This Committee cannot predict with any certainty the ultimate decision.

If a taking has occurred, the damages may be as much as the cost of an alternate facility, i.e., a coal-fired generation plant. That cost is estimated at $500,000,000.

The payment of this compensation, although a contingent liability, is a question that must be carefully weighed.

4. The Blue Ridge Project would create one of the great recreational attractions in the eastern United States. Two lakes will have almost seven hundred miles of shoreline, with thirty-four wooded islands. The fisheries supported by the lakes would be many times greater than what is the "natural" river. Millions of Americans can use this recreation resource.

It is worthy of note that in the testimony suporting the Wild and Scenic River designation before the Committee, the proponents of the bill offered no pictures of the river segment in question. All the pictures offered in support of the designation of the New River as a component river were taken over one hundred miles away. The area of this river that is worthy of preservation is being saved—that is the portion of the river in the canyon in West Virginia. The only effect that the Blue Ridge Project will have on this superb section of river will be beneficial: the flows of the river will be augmented in summer for recreational use.

Almost half of the river segment proposed to be preserved is agricultural in nature and thus not unique or remarkable. The creation of mountain lakes would provide at least an equally valuable resource.

5. Construction of the Blue Ridge Project will provide significant employment opportunities for a depressed area. Construction of the Blue Ridge Project will provide jobs for twelve to fifteen hundred construction workers for a period of at least five years. In addition, there will be permanent jobs associated with the facility and with the increased recreational activities adjacent to the lakes. These would be permanent jobs, providing a boost by their economic impact to other areas of the local economy.

Unemployment in the counties affected by the Blue Ridge Project has run to a high of twenty-two percent, and currently is in the area of nineteen percent. Construction workers are unemployed at a rate approaching forty percent. Construction of this project would help reverse this trend, without a use of governmental monies.

CONCLUSION

The designation of this segment of the New River as a portion of the National Wild and Scenic Rivers System has had careful scrutiny over the past twelve years. This was not one of the segments chosen for study in the original act. Its recreational potential was fully considered in the Federal Power Commission deliberations.

The highly scenic portions of the New River located over one hundred miles downstream, in West Virginia, are being preserved. The Blue Ridge project will have no effect on the New River Canyon.

Preservation of the New River segment in question seems almost to be an afterthought by those who presented positions against the Blue Ridge project and lost. Passage of this legislation would give them another chance to defeat this needed project.

This project has been carefully considered in a number of forums over a period of years. Congressional action at this date would cast in doubt decisions by regulatory agencies made in the past and in the future. Passage of this bill might render the federal government liable for damages for the revocation of a power license.

Eighteen hundred megawatts of clean hydropower is so vital to our economic and social well-being that we cannot afford to ignore the tradeoff involved.

Consideration of the problems in this legislation will lead one to the same conclusion that we have reached—that this legislation is not in the best interests of the citizens of this country. We urge the defeat of this legislation.

PAUL FANNIN.
CLIFFORD P. HANSEN.
MARK O. HATFIELD.
JAMES A. MCCLURE.
DEWEY F. BARTLETT.

ORDER FOR YEAS AND NAYS

Mr. MANSFIELD. Mr. President, at this time I ask unanimous consent that there be a yea-and-nay vote on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

ORDER FOR YEAS AND NAYS ON THE SCOTT AMENDMENT

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the Scott amendment, which deletes title II.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

UP AMENDMENT NO. 408

The PRESIDING OFFICER (Mr. HELMS). The Senator from Utah.

Mr. MOSS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah (Mr. Moss) proposes an unprinted amendment numbered 408.

The amendment is as follows:

At the appropriate place add the following new section:

Section 1274(a) of title 16, United States Code, is amended by adding at the end thereof the following:

"(11) COLORADO RIVER, UTAH.—The thirty-six-mile segment which flows from mile point 1063 to mile point 1027 (such segment being the segment which begins at the boundary between the States of Utah and Colorado and runs westward to the junction of the Dolores River with the Colorado River in the State of Utah); to be administered by the Secretary of the Interior: *Provided*, That the Secretary of the Interior shall take such action as is provided for under subsection (b) of this section within one year from September 1, 1976."

Mr. MOSS. Mr. President, my amendment is very simple. It would designate 36 miles of the Colorado River in Grand County, Utah, as a component of the National Wild and Scenic Rivers System.

The wild rivers designation, as the Senate well knows, is applied to certain selected rivers of the Nation which have remarkable scenic, recreational, geologic, or other values which should be preserved by keeping the river in its free-flowing state and its shoreline in its natural condition, so that generations to come may enjoy them unimpaired by man-made encroachments.

This stretch of the Colorado River in Utah qualifies on all counts. Its scenic value is unparalleled. There is one 13½ mile section through Granite Canyon that I consider the most exciting river in Utah. It has a series of rapids—Sock-It-To-Me, Wildhorse, Marble Canyon, Funnel Falls, Skull, and Last Chance—which tumble in quick succession through a narrow rugged canyon. Massive red sandstone cliffs rise high in the sky, broken by black granite and red and purple shales.

Numerous side canyons are home to deer, cougar, snowy egrets, Canadian geese, beaver, blue herons, and golden eagles.

The Interior Department is studying this river for "possible" inclusion in the wild rivers system but I see absolutely no reason to delay any longer. We have a habit of studying these things to the point where the original purpose can no longer be achieved. The New River will not wait, and neither will the Colorado. The region is remote, so there is still time, but not 2 or 3 years. Jeep roads are steadily pushing toward it, and development is sure to follow.

I urge the Senate to extend the protection of the Wild and Scenic Rivers Act to this portion of the Colorado River.

Mr. President, I believe we now know enough about it and its value is such that we should proceed forthwith with an amendment on the New River bill to designate this as a wild and scenic river.

The President, the day before yesterday in Yellowstone Park, talked about the need for preserving many of our scenic and outdoor wonders. I agree with him very much. This would fit right in with the general proposal the President has made.

Therefore, I am offering this amendment at this time.

The PRESIDING OFFICER. If the Senator will pause for a moment, the Chair would point out that the bill now under consideration is H.R. 13372, which is an identical companion bill passed by the House of Representatives. Does the Senator from Utah wish to modify his amendment to conform with that?

Mr. MOSS. I thank the Chair, and I ask that my amendment be modified to apply to that measure.

The PRESIDING OFFICER. Without objection, the amendment will be so modified.

Mr. HASKELL. Mr. President, I would, of course, have to oppose the amendment of our distinguished colleague from Utah, not because the stretch of the Colorado River that he speaks of is not a beautiful stretch and well worth preserving. As a matter of fact, this stretch could only be improved if it lay within the State of Colorado. It does not; it is situated within Utah.

Barring that, however, it is a glorious stretch of river.

I would like to point out, Mr. President, that there are really two reasons for opposing this amendment. First, I believe it is essential that the bill under consideration go through as it was passed by the House of Representatives, to avoid a conference, a possible deadlock, and possible loss of a valuable piece of legislation.

I would also point out that in a bill passed by the last Congress (Public Law 93-621), 19.5 miles of the 26-odd miles—I guess the Senator's amendment provided for 26 miles——

Mr. MOSS. Thirty-six.

Mr. HASKELL. Of the 36-odd miles is already designated for study. I sympathize with my distinguished friend from Utah in his desire, first, to speed up that study dealing with the 19 miles, and second to add to it the additional mileage, which I am sure merits consideration or my distinguished friend would not have included it in his amendment.

I would ask the distinguished Senator from Utah if he would consider withdrawing his amendment upon two promises that I make: First, I would hold hearings in January; and, second, I would immediately write the Department telling them that I expected at least a preliminary report by the time of that hearing in January on the 19.5 miles they are already directed to study, and I would consider in that hearing a bill, if the Senator so chose to introduce it, which would add, for the purposes of expedited study, the additional mileage on that river.

The Colorado River is well known in our part of the country and indeed nationwide. This is a very fine stretch of river, and unique in many ways, and I do agree with my distinguished friend that it would be a terrible shame if anything should happen to make it impossible to designate it a component of the National Wild and Scenic Rivers System.

But I would ask if my friend, based upon this conversation and these representations and promises that I make, would consider withdrawing his amendment.

Mr. MOSS. I thank the Senator from Colorado for his observations. I know that he is acquainted with this stretch of the river, which is very unique in the series of rapids it tumbles through. It is totally wild now and unimpeded, and it would be a tragedy indeed if it were impinged upon in any way, because it ought to remain in that condition. This is one of the favorite short runs on the river that can be made in 1 day, and still have the excitement of a lifetime going through there.

I appreciate what the Senator says about the fact that the bill before us is a sort of emergency type situation, and I recognize that waiting another 4 months or 5 months is probably not going to cause the river to be damaged in any way. So I am happy to accept the offer of the chairman to first indicate that in January of next year hearings will begin on the wild and scenic river designation of the Colorado River, of an area that would include at least what I have been talking about; and second, that he will so advise the Department of the Interior. A part of my frustration is that I have introduced this measure in previous Congresses, and all I have ever been able to get out of it is a promise to study it. Characteristically, it has been studied and studied over a long period of time. It seems to me so obvious that this particular section of the river should be protected that I do not see how the study could take all that time.

But based on the Senator's assurance, and knowing that my friend from Colorado is as anxious as I to protect this particular river and all wild and scenic rivers in our part of the country, I accept this offer and withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. HASKELL. I thank my distinguished friend from Utah.

Just to repeat, I will forthwith get a letter off to the Secretary of the Interior concerning the projected hearings in January, at which time I would expect the Department to make a preliminary report on the 19.5-mile stretch, and also at which time we would entertain a bill to be submitted on the remainder of the mileage by the distinguished Senator from Utah.

Mr. MOSS. I thank the Senator from Colorado.

The PRESIDING OFFICER (Mr. BROOKE). The 10 minutes of the Senator from Utah has expired. Under the previous order, the Senator from Virginia (Mr. WILLIAM L. SCOTT) is recognized to call up an amendment.

AMENDMENT NO. 2229

Mr. WILLIAM L. SCOTT. Mr. President, I call up my amendment No. 2229, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Virginia (Mr. WILLIAM L. SCOTT) proposes an amendment numbered 2229.

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

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

The amendment is as follows:

On page 2, strike out lines 3 through 11 and insert the following:

SEC. 2. Nothing contained in the amendment made by the first section of this Act shall be construed to affect the validity of any license issued by the Federal Power Commission.

Mr. WILLIAM L. SCOTT. Mr. President, in the measure before us, the first section would add to the wild and scenic rivers system that segment of the New River in North Carolina extending from its confluence with Dog Creek downstream approximately 26.5 miles to the Virginia State line. The second section of the bill provides that any license issued by the Federal Power Commission affecting the New River of North Carolina shall continue to be effective only for that portion of the river not included in the National Wild and Scenice Rivers System.

My amendment would strike section 2 of the bill, and would substitute therefor the following language:

Nothing contained in the amendment made by the first section of this Act shall be construed to affect the validity of any license issued by the Federal Power Commission.

Mr. President, the purpose of this amendment is to put into proper focus the true intention of the bill, which is to kill the Blue Ridge project. I would call the Senate's attention to the fact that the Appalachian Power Co. applied to the Federal Power Commission for a preliminary permit to study the feasibility of the Blue Ridge project in June of 1962; to the fact that after considerable testimony—7,500 pages, as I recall, with some 300 exhibits—and the passage of many years, the Federal Power Commission, on June 14, 1974, issued a construction license to the Appalachian Power Co. for the Blue Ridge, making it effective January 2, 1975, to allow Congress time to act on pending scenic river legislation which has not to date been enacted; and that the action of the Federal Power Commission in granting the license, on review by the U.S. Circuit Court of Appeals for the District of Columbia, was unanimously upheld by an order of that court dated March 14, 1976.

My amendment, in effect, says, "Have your scenic river, but do not stop the construction of the dam." That is exactly the intention of the bill; so I would say, for practical purposes, it renders the bill ineffective. That is certainly my intention. I am sure the author of the bill would be in agreement that this is the purpose and practical effect of the amendment.

But basically I do this just to focus attention on this approach. We are not talking about wild and scenic rivers.

In my opinion, New River does not come within the definitions that in the United States Code. I just reviewed those, and yet Congress of course, can put any river it wants to under this act by direct action of Congress.

Mr. President, I referred earlier, as did my distinguished colleague from Virginia (Mr. HARRY F. BYRD, JR.), to a series of articles written by Bob Wiedrich of the Chicago Tribune with regard to this project. Evidently this gentleman from Chicago traveled into both North Carolina and Virginia and talked with the people who would be affected by this project, and in his article of Thursday, August 26, he was in Roanoke, where I understand the headquarters of the Appalachian Power Co. is located. I shall just quote the beginning and the conclusion of his column for that day. He says this:

The nation's environmentalists don't like strip mining the low sulphur coal that generates electricity with a minimum of air pollution.

Conversely, they don't approve of burning high sulphur coal in steam-powered generating plants because that stuff pollutes the air.

Finally, the environmentalists are vigorously opposing the construction of hydroelectric generating plants because they tend to obscure the natural beauty of some of America's lovliest streams.

So, one can only surmise that dedicated environmentalists prefer candlelight and wine to 150-watt bulbs and beef roasts broiled to perfection in an electric oven.

In concluding the column, Mr. Wiedrich wrote:

Plans call for the Blue Ridge project to operate about 14 hours a day, using its electric muscle to ease the diversified peak demands of Appalachian Power's own 655,000 customers as well as those in the six other states served by AEPC subsidiaries.

With the rushing waters of the New River controlled by twin-dammed reservoirs, the hydroelectric plant would be capable of achieving its full 1.3 million kilowatt capacity in 5 to 10 minutes from a dead start. A steam-powered generating facility usually requires 18 to 24 hours to achieve the same results.

Such performance, utility experts point out, would be especially useful in the unlikely event of another power blackout like the one that threw New York City into near panic in 1965.

In such a crisis, Blue Ridge power could be relayed directly to New York through power lines up the Atlantic coast. The TVA, for example, already sells excess power to New York utilities via Appalachian Power Co. lines.

This discussion may well prove academic. The House has already chopped off one leg of the Blue Ridge project by its vote. The Senate could send the rest of the project tumbling into the chill waters of the New River.

Then the environmentalists can light their candles in victory

Mr. President, that is exactly what I do not want to see happen. In my opinion, the people in the affected areas do not want to see this happen.

I have before me a copy of a letter dated August 23, 1976, from Charles S. Cassell, secretary, Grayson Business Development Association. Among other things, and I shall quote two pertinent paragraphs, Mr. Cassell states:

We feel the Blue Ridge Project would enhance our area by creating a beautiful mountain lake, greatly contribute to our economic development, provide flood control and—

Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

The Senator may proceed.

Mr. WILLIAM L. SCOTT. Let me repeat, Mr. President:

We feel the Blue Ridge Project would enhance our area by creating a beautiful mountain lake, greatly contribute to our economic development, provide flood control and supply our Nation with an economic and environmentally accepted means of generating electric energy. Our tax base would more than double, providing local government money to build needed schools, recreation, medical, and court facilities.

In February, 1976, we conducted a survey in the local paper asking our citizens to express their view regarding a Wild and Scenic River. The results were 969 opposing the Wild and Scenic River and 272 favoring it.

Mr. President, this letter comes from Independence, Va., in Grayson County, where the dam would be constructed:

More than 40,000 acres in our County is now owned by Federal and State Governments; namely the Mt. Rogers National Recreation and Grayson Highlands State Park. Our citizens strongly oppose further government control of our land.

I believe, Mr. President, that there are many benefits of this project that must be taken into consideration. It is a project that would create 1,800,000 kilowatts of electric generating capacity for the east central United States and this at a time when we do have a scarcity of energy and when we are importing even greater amounts of oil from abroad.

There would be no drain on oil or natural gas supply. There would be recreation-related benefits totaling $2 million to $4 million per year. There would be construction jobs for 1,500 to 2,000 people, with a construction payroll in excess of $200 million. Many nonproject-related jobs would be available due to the development of the affected area. There would be flood control. Some 160,000 acre-feet of flood control storage would be provided to protect an area downstream which today has no flood protection. The $845 million privately financed project would help to expand the local tax base. It would greatly improve an economically depressed area that we understand is losing population annually.

Mr. President, I am advised that this same situation relates to other hydroelectric projects licensed by the Federal Power Commission but not yet constructed, and if this bill is enacted, it could well be a precedent for further congressional consideration of projects that are licensed but not yet constructed, and I have a list of them. They include projects proposed for South Carolina, Georgia, Alabama, Arizona, North Carolina, Virginia, New York, Washington, California, Montana, two in Wisconsin, a second one in Alabama, and a second one in Virginia.

My colleague from Virginia and I put together a letter to our colleagues in the Senate with regard to this bill, and I shall simply review it for the benefit of those Senators who may not have seen the letter.

It says this:

The sole purpose of this bill is to revoke a license granted by the Federal Power Commission to construct a 1.8 million kilowatt hydroelectric project within the State of Virginia, and we oppose the bill for a number of reasons:

1. The project would provide much needed energy without any damage to the environment.

2. There would be no cost to the taxpayer

as the $845 million project is privately financed by the Appalachian Power Company.

3. 1500–2000 jobs would be provided.

4. Several dams are already in existence on the New River within Virginia and West Virginia.

5. There are only five miles of the main stem of New River in the State of North Carolina compared with 250 miles within Virginia and West Virginia.

6. A license to construct the Virginia dam was granted by a unanimous vote of the Federal Power Commission after an exhaustive adversary proceeding lasting more than nine years.

7. The Circuit Court of Appeals for the District of Columbia unanimously approved the granting of the license.

The pending measure is precedent-setting legislation. We believe it is unwise for the Congress to override a quasi-judicial decision of a Federal regulatory agency arrived at unanimously after many years of hearings and to further handicap the private sector in its efforts to increase our domestic energy supplies.

Mr. President, all the Republican members of the Committee on Interior and Insular Affairs oppose the enactment of this legislation. They are Senators FANNIN, HANSEN, HATFIELD, MCCLURE, and BARTLETT.

In earlier comments, I have referred in some detail to the minority views in the committee report. I say they have opposed it; whereas, when the measure was before the Interior Committee earlier in a slightly different form, it was reported by that committee unanimously.

In summary, the thrust of my amendment is to provide that the license granted by the Federal Power Commission shall remain in effect and be valid even if this bill is passed.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, the amendment of the distinguished junior Senator from Virginia (Mr. WILLIAM L. SCOTT) has one purpose, and one purpose only: It is intended to leave the situation in the same condition of doubt and uncertainty that now exists. The Senator would simply eliminate the language in the bill which invalidates the FPC license and replace it with language which leaves the FPC license intact. The Senator does this because he has said that the only purpose of the bill is to prevent the construction of the Blue Ridge project.

Mr. President, I have tried to point out in my earlier remarks that the issue is far larger than the issue of preventing the construction of the dams on the New River. The issue is one of conflicting jurisdictions, and whether the will of the people of our State, properly expressed through our constitutional processes, shall prevail against a combine of Federal bureaucrats and outside interests.

This is not a simple case of the FPC issuing a license and the people changing their minds after the fact. Let us look at the whole situation. The FPC put the license in effect knowing full well that the people of North Carolina, acting through their Governor and their State legislature, had approved the necessary legislation and had asked the Secretary of the Interior to include the North Carolina section of the New River into the Federal Wild and Scenic Rivers System.

The Secretary of the Interior had the State of North Carolina's request under consideration at the time the license went into effect. Thus we not only had the will of the State in opposition to the proposed FPC action; we also had another agency of the executive branch in action whose jurisdiction is opposed to that of the FPC.

The fact is, Mr. President, that the action of the Secretary of the Interior, Mr. Kleppe, in designating the New River as part of the Federal Wild and Scenic Rivers System, has already taken place. The only issue remaining is whether Secretary Kleppe's action automatically cancels the FPC license. The statutes very clearly say that no FPC license can be issued for a river already included in the system; but they never anticipated that the FPC would be so arrogant as to take such an action after a State legislature had asked that a river be included in the federal system and while the request was under active consideration by the Secretary. In my judgment, the action of the FPC was clearly in opposition to the intent of Congress in passing the law, and its action is illegal.

If Congress does not settle this matter today once and for all, there will be long and expensive litigation. We have the opportunity to settle it now. The House has already acted decisively. It is not just a question of canceling the FPC license. It is a question of Congress making clear its earlier intention in passing the Wild and Scenic Rivers Act.

When the FPC acts in defiance of a State legislature and its Governor, when it acts in defiance of the intent of Congress, when it acts while the Secretary of the Interior is considering inclusion of the New River in the system pursuant to the authority granted to him by Congress, then it is up to Congress to settle the question of whose jurisdiction has precedence.

Mr. President, in the judgment of this Senator, we will be shrinking from our duty if we do not settle this question of the FPC's heedless action right now. I urge my colleagues to reject the amendment of my friend from Virginia.

The PRESIDING OFFICER. Who yields time?

Mr. STONE. Mr. President, will the Senator from North Carolina yield briefly?

Mr. HELMS. I yield.

Mr. STONE. Mr. President, the Senator from Florida has watched the Senator from North Carolina's efforts in this attempt to save a vital and valuable river for all in this country, and he approves of it.

Mr. President, I have devoted a large part of my time since coming to the Senate to the energy problems which continue to plague our country. I think I understand as well as anyone the importance of developing additional energy sources, to sustain our economy and standard of living.

It is not without an appreciation for the need for more energy that I support the enactment of legislation to save the beautiful New River from destruction. Although we need to do much more in developing domestic energy sources, we cannot afford to ruin the Nation's precious natural heritage in doing so.

There can be no doubt at all that the New River is a very special part of this country's natural heritage. Geologists tell us that it is the second oldest river in the world—second oldest to the Nile River. It has been a source of great enjoyment to hundreds of thousands of Americans since the early days of our Republic. Generations of farm families have made a livelihood and a life along its scenic borders. The plant and animal life sustained by the New River is an irreplaceable part of our Nation's national treasure.

I have weighed the arguments justifying construction of a pumped-storage hydroelectric project on this river against the scenic and recreational value of the New River to our people. In my judgment, the need for constructing this hydroelectric project does not begin to justify the loss of such a precious natural resource as the New River.

Congressional hearings on this matter more than adequately support this view. Indeed, the Senate itself during the 93d Congress voted by an overwhelming margin to preserve the New River in its present state. Now, the House of Representatives has done the same thing and I urge the Senate to affirm its previous action by adopting S. 158.

Mr. President, no more compelling argument has been made in favor of preserving the New River than a speech delivered to the Senate on May 28, 1974, by former Senator Sam Ervin, of North Carolina. Although I was not in this body at that time, I am confident that anyone who heard his remarks found it difficult to disagree with Senator Ervin's views on the subject. I ask unanimous consent that a portion of Senator Ervin's speech on the New River be printed at this point in the RECORD so that we will all be reminded of the importance of this beautiful river.

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

Mr. ERVIN. Mr. President, today the Senate of the United States has an opportunity to preserve for future generations an important part of our country's natural heritage. I refer to the vote scheduled for today on S. 2439, a bill which designates a portion of the New River in North Carolina and Virginia as a potential component of the National Wild and Scenic Rivers System.

This legislation was reported favorably by the Committee on Interior and Insular Affairs on May 2, 1974. It was the subject of a legislative hearing on February 7, 1974, by the Subcommittee on Public Lands at which time many North Carolinians and Virginians came to Washington to plead for congressional action to save this beautiful river. This bill, sponsored by Senator HELMS and myself—and introduced by Congressman MIZELL in the other body—has the support of the U.S. Department of Interior, the Governor of North Carolina, the North Caroline Department of Natural and Economic Resources, the North Carolina General Assembly, the boards of commissioners in the two North Carolina counties directly affected, and many conservation and environmental organizations.

One of these organizations is the Conservation Council of Virginia, Inc. I ask unanimous consent to have printed in the RECORD a letter written to the dstinguished junior Senator from Virginia (Mr. WILLIAM L. SCOTT) dated May 25, 1974.

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

MAY 25, 1974.

Hon. WILLIAM L. SCOTT,
*Senate Office Building, Washington, D.C.*

DEAR SIR: The Conservation Council of Virginia, one of Virginia's major statewide conservation organizations consisting of 47 affiliating groups, unanimously approved the enclosed resolution supporting S. 2439, a bill authorizing and directing study of a section of the New River for potential inclusion in the Wild and Scenic Rivers System, at its May 19 meeting in Williamsburg.

The Council believes that adequate study to determine Wild and Scenic Rivers potential must be done prior to making any final decision on the Blue Ridge Project.

We urge that you give support to Senators Helms' and Ervin's bill, S. 2439.

Thank you.

Yours truly,

JOAN C. SKEPPSTROM,
*Secretary.*

Mr. ERVIN. Mr. President, I also ask unanimous consent to have printed in the RECORD a copy of the resolution adopted by the Conservation Council of Virginia, Inc.

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

CONSERVATION COUNCIL OF VIRGINIA RESOLUTION ON BLUE RIDGE PROJECT, NEW RIVER, VA.

"Whereas, the New River in Virginia and North Carolina is the oldest river in the United States of America and second oldest in the world, and

"Whereas, the New River is one of the very few naturally free-flowing, unpolluted rivers in the East, and

"Whereas, the proposed Appalachian Power Company's Modified Blue Ridge Project would flood over 40,000 acres of fertile farmland and forested hillsides in rural Virginia and would flood over 40 miles of natural free-flowing streams, and

"Whereas, S. 2439, introduced by Senators Helms and Ervin would authorize and direct a study of this New River section for potential inclusion in the Wild and Scenic Rivers System, and

"Whereas, S. 2439 would halt the Blue Ridge Project while the Wild and Scenic Rivers study is underway, and

"Whereas, the Interior and Insular Affairs Committee of the Senate has reported S. 2439 favorably for action by the full Senate, Therefore,

"Be it Resolved, that the Conservation Council of Virginia does transmit this resolution to and urge the support of Virginia Senators Byrd and Scott for S. 2439."

Mr. ERVIN. Mr. President, in addition to these governmental bodies and conservation and environmental groups which ask for the passage of the bill, and the preservation of the New River, I would like to add that the preservation of the New River in its natural, free-flowing state has the determined support of thousands and thousands of Americans who have come to cherish this historic and beautiful river.

The New River, Mr. President, is truly one of the precious treasures of our natural heritage. Geologists tell us that it is the oldest river in the United States and the second oldest river in the world—second only to the Nile. It has been flowing for over a million years. It was named the New River by Peter Jefferson, the father of Thomas Jefferson, who discovered the river while surveying southwestern Virginia and northwestern North Carolina in the 1700's.

Botanists have confirmed what generations of New River valley residents have always known—that the vegetation along the banks of the New is great in variety and unspeakable in beauty. Northern evergreens and pines grow magnificently amidst flowering shrubs and trees of the South. Some 68 species of fish have been identified in the New River and 11 of these species are thought to be rare and endangered. I can assure Members of the Senate that the river and its valleys compose one of the most perfect and beautiful pieces of Almighty God's handiwork on Earth.

The river and its valleys have been home for generations of American families deeply rooted in this land. They have nurtured its soil, enjoyed its bounty, and respected its beauty. One observer has noted:

"It is one of those rare places where the names on the mailboxes can be matched with those on the decaying gravestones. It is a living, breathing history of everyday life, a continuous, unbroken thread of culture and heritage that stretches through more than 200 years of American history."

Those families who have lived on the New River for generation after generation know its treasures best and are therefore the most determined of all at this time to secure it from destruction.

Mr. President, my office has been flooded with letters, petitions, pictures, and photographs over the past year with the same message—save the New River. Schoolchildren have composed poems about the New River and newspaper columnists have taken to print, again, with the same message—save the New River. Young people who have just begun to enjoy fishing and canoeing on the New are just as concerned about its preservation as are their parents who have known its pleasures throughout their lives.

S. 2439 is necessary for the preservation of the New River because of a pending license application before the Federal Power Commission to construct a hydroelectric project on the New River. An FPC administrative law judge recommended licensing of the project on January 23, 1974. Almost certain to receive Commission approval in the very near future, this project would absolutely destroy the New River as we know it today. There is much controversy as to the necessity and efficiency of the type of power project proposed to be built on the New. The application is for a pumped storage hydroelectric facility which is criticized by some scientists and energy experts as an inefficient method of producing electricity. Some of these experts maintain that the Blue Ridge project as presently conceived will be obsolete before it can be built and begin operation. I am not an expert in the technology of producing electric power and, therefore, must leave the resolution of this particular controversy to others. But one thing is certain, Mr. President. Whether this project be technologically sound or not, its completion will destroy the New River. And, Mr. President, with respect to the New River and the joy it brings to those who know it, I do qualify as an expert. I am an expert as to its beauty because, like most other fellow travelers on this Earth, I have learned to appreciate the handiwork of Almighty God. We can rebuild buildings and cities and power plants if they become obsolete, but we can never rebuild nor match the perfect beauty of nature which God has given us. There may be confusion of facts and controversy over technology as to the Blue Ridge project itself, but as to the fate of the New River there can be no argument. Unless S. 2439 is enacted to protect the New from this project it will be lost forever.

Although many knowledgeable persons have expressed strong criticism of the Commission's consideration of this application—in which criticism I have frequently joined—the justification of enacting S. 2439 does not depend upon finding fault with the Federal Power Commission's actions. Designation of the New River as a potential component of the National Wild and Scenic Rivers System is justified because it is a river with characteristics which the Congress in 1968 decided to protect for future generations of Americans by enacting the Wild and Scenic Rivers Act (82 Stat. 906, 16 U.S.C. 1271) quite apart from the authority given to the Federal Power Commission by Congress.

In enacting the Wild and Scenic Rivers Act of 1968, Congress declared:

". . . the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes. (16 U.S.C. 1271). The Congress decided that rivers with . . . outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values, shall be preserved . . . for the benefit and enjoyment of present and future generations." (16 U.S.C. 1271).

Mr. President, no American with eyes to see the glorious beauty of the New River, with ears to hear the precious sounds of nature which echo along its banks, and with a heart to love the wonders of our good Earth could fail to conclude that the New River is exactly what the Congress intended to preserve by enactment of the Wild and Scenic Rivers Act.

After studying the testimony taken by the Subcommittee on Public Lands, pictures and maps and other evidence concerning the New River, the Committee on Interior and Insular Affairs concluded that the New River is—

". . . worthy of study for possible inclusion in the national wild and scenic river system." (Report No. 93-831, page 4.)

It is particularly important, Mr. President, that the committee's report makes detailed reference to the proceedings pending before the Federal Power Commission involving the New River. While the committee of course did not attempt to substitute its judgment for that of the FPC, the committee report correctly points out that:

". . . the Commission lacks competence to judge the potential of a river for wild and scenic river status. For example, virtually no attention was given in the FPC (environmental) impact statement for the Blue Ridge Project to the recreational or historic benefits of a free-flowing river." (Report No. 93-831, page 5.)

Mr. President, I want to emphasize that S. 2439 does not attempt to make the New River a component of the Wild and Scenic Rivers System without appropriate study by the Department of the Interior.

This bill merely designates a portion of this river as a "potential addition" to the system. Under the 1968 act, a river so designated is studied by either the Bureau of Outdoor Recreation of the Department of the Interior or the Forest Service of the Department of Agriculture to determine its suitability for inclusion in the system. When completed, the study is submitted to Congress which must enact further legislation should it wish to designate the river as a component of the wild and scenic rivers system. In its report on S. 2439, the Committee on Interior and Insular Affairs recommends that the study be completed no later than 2 years from the enactment of S. 2439.

The Senate has just adopted an amendment providing for a study within 2 years after enactment of the bill as one of the provisions of this act.

Assuming that this period of time permits the study to be properly concluded, I fully support the committee's recommendations.

During this period of study, the 1968 act wisely provides certain protections for the river aimed at maintaining the river in its existing state. Among these protections set forth very explicitly in the statute is a prohibition against the licensing of any dam or other water project under the Federal Power Act on or directly affecting the designated river.

The Wild and Scenic Rivers Act classifies rivers in the system as "wild river areas," "scenic river areas," and "recreational river areas." These categories of rivers are described in the 1968 statute. If a river is ultimately included in the wild and scenic rivers system it is classified, designated, and administered according to these categories. The administration of rivers in the system by the Interior Department varies according to a river's classification. The regulations and restrictions which are developed to preserve a wild river area are not the same as those which apply to a scenic river area or to a recreational river area.

Those persons who have studied this matter believe that the New would most probably be classified as a scenic or recreational river. According to the Interior Committee's report, in the case of recreational and scenic river categories—

". . . most traditional uses—roads, bridges, residences, farming, grazing, timber harvesting, hunting and fishing, and various commercial activities—may be allowed. Even the most restrictive management category—that of "wild" river—limits development activities less than is done in areas under the Wilderness Act."

This is important in understanding the impact of inclusion of a river in the wild and scenic rivers system.

In summary, Mr. President, I urge the Senate to implement the policy Congress established in 1968 to protect America's wild and scenic rivers by adopting S. 2439 to save the New River—a river which certainly qualifies for inclusion in the wild and scenic rivers system. In so doing, the Senate will be preserving for future generations of Americans the enjoyment of a very special part of this good earth. I share with other Americans anxiety about our energy problems and do not dispute the necessity of balancing the Nation's energy needs with conservation concerns. In the case of the New River, however, I must confess dismay as to how there could be doubt about the choice which should be made. I do not believe it is a close question. If America sacrifices the majesty and beauty of a river such as the New, it will be denying its own birthright to the handiwork of Almighty God.

The people who know and love New River sometimes write poetry about the New River. I received one from a little boy who lives in Sparta, N.C., dated May 16. He wrote:

"The matter of a dam has come up. We, the students of Sparta Elementary School, wouldn't want to see a big dam put on our beautiful river in the heart of the Blue Ridge Mountains. We would be ever so grateful if you could stop it. The dam would run people out of their homes. For generations people have enjoyed the natural beauty of this river. I hope that S. 2439 will be passed for the sake of all fishermen."

And I certainly hope for that also because when I announced that I would not be a candidate for reelection this fall, and I was asked what I was going to do, I said "I am going fishing." Since that time I have received three good rods, and I want to go over to the New River and try my luck at fishing. I am looking forward to that.

I got interested in the New River as a result of the efforts of one of the closest friends I ever had, a schoolmate of mine, Lloyd Crouse, who was born and lived on the New River and who did so much during his lifetime for the stocking of the streams in North Carolina with fish and who did so much for wildlife.

To continue with this letter:

"Great fishing is found at New River. I hope my plea is heard. I would hate to see a dam put on the New River. The people truly love this river, I am a boy, 12 years old, who lives within 5 miles of this river. The people of North Carolina have enjoyed picnics at the river for decades. Other students are writing to other senators. I wanted to write to you because I know that you get things done."

I hope that provides to be true, I venture to say.

"I know you are the finest Democrat I ever heard of."

I am inclined to think that this boy was brought up in the right political climate.

"This is what I want."

"Senator Sam—stop the dam."

And I appeal to the Senate to help Senator Sam stop the dam.

This is not the only child from this area that I have heard from. Here is a petition to the Senate from the students of Sparta Elementary School, who live in the county seat of a county which would be virtually inundated as far as the river and the river bottomland and the fertile land are concerned if this hydroelectric plant should be built.

This petition reads:

"Most people say children should be seen but not heard. We want to be heard. We think the dam on New River should not be built. Sure it will help the energy crisis, but it will ruin the homes of people and animals.

"We love our river!

"We love our country!"

Mr. HELMS. I thank the Senator from Florida for his generous comments. He is always most kind and gracious, and it is a pleasure to be associated with him in the Senate.

Mr. HASKELL. Mr. President, I join the distinguished Senator from North Carolina in opposing this amendment.

The distinguished Senator from Virginia mentioned a "Dear Colleague" letter which he and his colleague had sent. I should like to read the last paragraph of a "Dear Colleague" letter which was sent to all Members of the Senate, signed by Senator JACKSON, Senator METCALF, Senator STONE, Senator CHURCH, Senator BUMPERS, and myself.

I believe the last paragraph sums it up in a nutshell:

While we are certainly aware of our nation's energy needs, it is our view that preservation of this stretch of the New River must take precedence over a pumped storage project. In the final analysis, the Blue Ridge Project is replaceable; other alternatives for meeting national and regional energy needs exist. The upper New River, in its unique, free-flowing and natural state cannot be replaced. We urge you to vote with us in favor of S. 158 to preserve this historic national asset.

I ask unanimous consent that this "Dear Colleague" letter be printed in the RECORD.

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

AUGUST 25, 1976.

DEAR COLLEAGUE: On August 10, 1976, by a vote of 311 to 73, the House of Representatives passed H.R. 13372—a bill to designate a 26.5 mile segment of the New River, North Carolina, as a component of the National Wild and Scenic Rivers System. The identical Senate bill, S. 158, is now scheduled for a vote next Monday, August 30. In the last Congress, the Senate passed a bill to protect the New River by a vote of 49–19 only to see the bill die in the House. This year the Senate can act with the confidence that it will be enacting a law—a law that will protect this magnificent stretch of the New River from the imminent threat of damming and flooding.

The New River, which flows through North Carolina, Virginia, and West Virginia, is a unique natural resource. It is considered by geologists to be 100 million years old and, as such, the oldest river in North America and perhaps the second oldest in the world. The New River served as a major migration route in prehistoric and historic times and this particular segment of the river is rich in archaeologcal and historical resources. Its zoological significance is recognized by the U.S. Fish and Wildlife Service which has identified 11 species of aquatic life in and along the river which exists nowhere else in the world. The river is a popular site for canoeists and campers because it provides relatively easy access and white water canoeing, which can be enjoyed throughout the year.

Earlier this year, Secretary of the Interior Kleppe formally recognized the unique qualities of the New River by designating a 26.5 mile segment of the upper New River as a component of the National Wild and Scenic River System. By passing S. 158 next week the Senate will be confirming this designation by statute.

Opponents of the legislation point to the value of this river segment as a potential site for a reservoir for a hydroelectric facility. Such a facility, known as the Blue Ridge project, is proposed for construction downstream in Virginia. The project would consist of two impoundments, both in Virginia, and two reservoirs, the upper one extending 70 miles into North Carolina and flooding 40,000 acres in the process, 29,000 of which are under cultivation or in pasture.

The Congress must enact S. 158 in order to prevent the construction of the Blue Ridge project as presently contemplated and to affirm statutorily the decision of the Secretary of the Interior. Preservation of the upper New River, as would be accomplished by enactment of S. 158, has been urged by the Administration, the entire North Carolina congressional delegation, the Governor and State legislature of North Carolina, the legislature of the State of West Virginia, the County Commissioners of the two affected North Carolina counties and supervisors of Grayson County, Virginia, the county in which the impoundments would be built.

While we are certainly aware of our nation's energy needs, it is our view that preservation of this stretch of the New River must take precedence over a pumped storage project. In the final analysis, the Blue Ridge Project is replaceable; other alternatives for meeting national and regional energy needs exist. The upper New River, in its unique, free-flowing and natural state cannot be replaced. We urge you to vote with us in favor of S. 158 to preserve this historic national asset.

Sincerely yours,

LEE METCALF.
RICHARD (DICK) STONE.
FRANK CHURCH.
HENRY M. JACKSON.
FLOYD K. HASKELL.
DALE BUMPERS.

Mr .HASKELL. Mr. President, a vote in favor of the amendment of Senator SCOTT really is a vote, as he said, to kill the bill. Let us be clear on one thing. We are talking about a 26-mile segment of the New River which has already been

designated as wild and scenic by the Secretary of the Interior.

I rise in opposition to the amendment of the junior Senator from Virginia. A vote in favor of the amendment of my distinguished colleague would be identical to a vote against the bill itself. The amendment could have been phrased somewhat differently. It could have said "Nothing contained in this act shall be construed to mean or do anything."

Let us be clear on one thing. This 26-mile segment of the New River has already been designated a wild and scenic river by Secretary of the Interior, Thomas Kleppe. H.R. 13372 is necessary to provide statutory support to that designation. Statutory support is required, because the Federal Power Commssion had previously licensed the construction of the Blue Ridge project which would flood this historic national asset.

That license has been and continues to be the subject of litigation. The conflict between the Secretary's designation of this river segment as a component of the National Wild and Scenic River System and the Federal Power Commission's license permitting in effect its inundation will most certainly be litigated for years to come absent the enactment of H.R. 13372. The amendment we are now considering, introduced by the Senator from Virginia (Mr. WM. L. SCOTT), would remove the operative language of H.R. 13372 and allow the conflict between the license and the secretarial designation to continue unabated. It is in the interest of all parties concerned to end once and for all this conflict. Yet the amendment of my distinguished colleague from Virginia would subject all parties concerned to many more years of litigation.

The existing section 2 of H.R. 13372 makes certain that no Federal Power Commission license issued, either before or after the bill's enactment, shall be effective for the 26-mile portion of the river which is included in the Wild and Scenic Rivers System by both the Secretary of the Interior and the bill. It states emphatically that no project so licensed shall be permitted to flood or adversely affect that river segment. It does not preclude the redesigning of the project under the existing permit so as to avoid the flooding of the designated segment of the New River.

In other words, they can put the project someplace else. I should point out that the FPC itself found at least 22 other locations that would be more beneficial from a hydroelectric viewpoint. Nor does it preclude the issuing of a new license for such a redesigned project or for a project at any of the 22 alternative pumped storage sites which the FPC itself has admitted have a lower installed cost per capacity than does Blue Ridge—sites for facilities which—I might add—would flood far less land than would Blue Ridge.

Mr. President, obviously if the Blue River project cannot be redesigned then this provision would in effect invalidate the Federal Power Commission license and the FPC would have to issue a new license for one of those alternative sites. Only by enactment of section 2 of H.R. 13372 can we insure that the New River will be protected for generations to come.

The FPC itself has said there are other and better sites. The amendment of my colleague would strike the provision and simply state that nothing in the act is to be construed so as to affect the validation of any license issued by the FPC. This amendment would make the bill meaningless. Therefore, I hope that my colleagues will vote no on the amendment and yes on final passage of the bill.

In issuing the license, the FPC, on June 14, 1974, stated that it would not take effect until the end of the 93d Congress so that Congress might act on pending legislation to protect the New River. In the less than half a year remaining, the Senate passed a bill 49–19; the House could muster a majority but not the two-thirds vote necessary to suspend the rules. Mr. President, the FPC, which took 9 long years to consider the license application, informed the Congress in effect that it had only 6 months to consider the wild and scenic river designation. The FPC placed a deadline on Congress and told it it had a 6-month period in which to act while the FPC itself took 18 times that long to take its own action. H.R. 13372, without my colleague's amendment, will once again remind that regulatory body of Congress ultimate authority on matters affecting interstate commerce.

I strenuously urge defeat of Senator SCOTT'S amendment, an amendment which has as its avowed purpose to undo the bill.

I yield the floor.

Mr. WILLIAM L. SCOTT. Mr. President, generally speaking, I am in agreement with the comments that have been made by my colleagues from Colorado and North Carolina but I think they are incomplete.

The first time the Senate considered this matter was when it came before us from the Committee on Public Works. That was on January 22, 1974. At that time, the concept of studying the feasibility of making this area of the river a part of the scenic river system was defeated by a substantial vote, a vote of 51 to 31.

An amendment to the public works bill was offered by the former Senator from North Carolina, Sam Ervin. That was on January 22, 1974.

I do not believe that there is any doubt, really, as to where we stand now, because we can look at the chronology of what has gone on in the past. The license was issued by the Federal Power Commission on June 14, 1974. The Secretary of the Interior, on March 13, 1976, announced that in 30 days he would declare the 26.5 miles of New River and South Fork as part of the National Wild and Scenic River System. I think we should understand that there are only 5 miles of the river in the main stem. The remaining mileage includes one fork but eliminates the other from inclusion in the system. There is some industry on the other branch, so that is not included.

The circuit court of appeals, 11 days after Secretary Kleppe made his announcement, upheld by unanimous decision the validity of the action by the Federal Power Commission. After the circuit court of appeals said that the license was valid, the Secretary made his declaration.

I happened to be in the Secretary's office with a group of Virginia colleagues, and his solicitor was there with him at the time. It was clearly understood, and it was the advice of the solicitor, that the Secretary had no authority to cancel a license that had been issued by the Federal Power Commission. This is what the court said by its unanimous decision earlier this year.

I do not doubt for a moment that Congress does have such power. Certainly, we can reverse one of our created agencies, the Federal Power Commission. But if we do, that raises an increased specter of litigation, because the question arises: Are we taking a property right? Is a license issued by the Federal Power Commission a property right and is the property right being taken when the license is revoked by Congress?

Mr. President, as I indicated before, any sovereign State can take the private property of any of its citizens, but we have, in the fifth amendment, a provision "nor shall private property be taken for public use without just compensation." There is considerable concern that this is private property, a license to construct a hydroelectric power project granted after many years of consideration and the expenditure of large sums of money by the power company.

The power company has indicated that in the event that Congress passes this bill and does take away its license, it is going to ask for compensation. It advises that the difference between the cost of generating electricity by the next most desirable type of energy and the use of waterpower to generate electricity is about $500 million.

Mr. President, the distinguished Senators are quite correct as to the effect of my amendment. I offered the amendment just to point out that we are not talking about wild and scenic rivers; we are talking about vacating or overriding a Federal, quasijudicial agency to vitiate the license that it has granted. I call the Senate's attention to the definitions that are in title XVI, section 1274 of the code that defines the wild rivers. It says:

> Those rivers or sections of rivers that are free of impoundments, and generally inaccessible except by trail.

Certainly, that does not apply to this area.

The scenic rivers are: those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive.

This is not a primitive area.

Recreational rivers are those rivers or sections of river that are readily accessible by road or railroad that may have some development along their shorelines and that may have undergone some impoundment or diversion in the past.

Now, it might well fit within this third definition, but the Appalachian Power Co., in my opinion, will provide much greater recreation in conjunction with

its proposed project than gained by the scenic river designation.

That is one provision of 1273. Another provision states that—

The national wild and scenic rivers shall comprise rivers that are authorized for inclusion therein by act of Congress.

So Congress can do this while the Secretary of the Interior cannot unless a proposed inclusion meets the criteria.

Mr. President, I believe this is an unwise action that the committee has recommended by a divided vote, a vote strictly along party lines, with the Democratic members of the committee being in favor of the bill and the Republican members of the committee being opposed to it.

I do hope my amendment will be agreed to. I think it is a fair amendment. It is one that is based on Federal Power Commission hearings that consumed many years, many thousands of pages of testimony, and several hundred exhibits. The administrative law judge ruled in favor of granting the license on three separate occasions.

Mr. President, we have a rollcall vote ordered. I am willing to yield back the remainder of my time in the event the distinguished Senator from Colorado, the floor leader, is willing to yield back his time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HASKELL. Mr. President, as I understand it, the Senator from Virginia is willing to yield back the remainder of his time. I am willing to yield back the remainder of my time.

Mr. WILLIAM L. SCOTT. 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 Virginia (Mr. WILLIAM L. SCOTT). 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 Washington (Mr. MAGNUSON), the Senator from New Mexico (Mr. MONTOYA), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Minnesota (Mr. MONDALE), the Senator from Mississippi (Mr. STENNIS), the Senator from California (Mr. TUNNEY), the Senator from Michigan (Mr. PHILIP A. HART), the Senator from Idaho (Mr. CHURCH), and the Senator from Iowa (Mr. CULVER), are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. MAGNUSON), and the Senator from Iowa (Mr. CULVER) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BROCK), the Senator from Hawaii (Mr. FONG), the Senator from Nevada (Mr. LAXALT), the Senator from Maryland (Mr. MATHIAS), and the Senator from Idaho (Mr. MCCLURE) are necessarily absent.

The result was announced—yeas 13, nays 72, as follows:

[Rollcall Vote No. 543 Leg.]

YEAS—13

| | | |
|---|---|---|
| Bartlett | Eastland | Long |
| Bellmon | Fannin | Randolph |
| Byrd, Harry F., Jr. | Hansen | Scott, William L. |
| Curtis | Hathaway | Tower |
| | Hruska | |

NAYS—72

| | | |
|---|---|---|
| Abourezk | Goldwater | Nelson |
| Allen | Gravel | Nunn |
| Baker | Griffin | Packwood |
| Bayh | Hart, Gary | Pastore |
| Beall | Haskell | Pearson |
| Bentsen | Hatfield | Pell |
| Biden | Helms | Percy |
| Brooke | Hollings | Proxmire |
| Buckley | Huddleston | Ribicoff |
| Bumpers | Inouye | Roth |
| Burdick | Jackson | Schweiker |
| Byrd, Robert C. | Javits | Scott, Hugh |
| Cannon | Johnston | Sparkman |
| Case | Kennedy | Stafford |
| Chiles | Leahy | Stevens |
| Clark | Mansfield | Stevenson |
| Cranston | McClellan | Stone |
| Dole | McGee | Symington |
| Domenici | McGovern | Taft |
| Durkin | McIntyre | Talmadge |
| Eagleton | Metcalf | Thurmond |
| Ford | Morgan | Weicker |
| Garn | Moss | Williams |
| Glenn | Muskie | Young |

NOT VOTING—15

| | | |
|---|---|---|
| Brock | Hartke | McClure |
| Church | Humphrey | Mondale |
| Culver | Laxalt | Montoya |
| Fong | Magnuson | Stennis |
| Hart, Philip A. | Mathias | Tunney |

So the amendment was rejected.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be 10 minutes before final passage, the time to be equally divided between the Senator from Virginia (Mr. SCOTT) and the Senator from Colorado (Mr. HASKELL), that following that the vote on final passage occur, and that there be a 10-minute time limitation on that vote.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. WILLIAM L. SCOTT. Mr. President, I yield 2 minutes to the distinguished senior Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, the pending legislation would overrule the unanimous decision of the Federal Power Commission.

The Federal Power Commission studied the matter as to what new or additional hydroelectric facilities are needed in the southwestern part of Virginia.

After studying the question for 9 years, taking 7,500 pages of testimony, hearing hundreds of witnesses, the Federal Power Commission unanimously reached a decision that additional hydroelectric power is needed.

As a result of that, the Federal Power Commission granted a license for such a facility to be built. The pending legislation would set that aside.

It would overturn the unanimous decision of the Federal Power Commission and prevent the construction of much-needed, new electrical power facilities for the southwestern part of the State of Virginia.

I think this legislation would be an unwise precedent. At no other time has the Congress overturned a unanimous decision of the Federal Power Commission. This legislation would do that.

At the same time, it would deny to a very important part of our Nation additional hydroelectric facilities.

I would urge my colleagues to vote against the pending legislation, which will come to a vote in a few minutes. Although the desire to keep the river as it is now has appeal, enactment of the pending legislation undoubtedly will increase the cost to the utility consumer in southwest Virginia.

I have spoken earlier in the Senate in more detail. But I say again, this legislation would be precedent establishing and it would set aside the unanimous decision of the Federal Power Commission that we do need additional hydroelectric facilities.

The PRESIDING OFFICER. Who yields time?

Mr. HASKELL. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HASKELL. The last amendment, the amendment of Senator WILLIAM L. SCOTT, was defeated 13 to 72. That vote was really a vote on the bill because, as the distinguished Senator said, the purpose of the amendment was to nullify the bill.

The Secretary of the Interior, with the blessings of President Ford, has taken administrative action to designate this river as the bill would so do.

I might say to my distinguished colleagues on the other side of the aisle that Governor Reagan supported the designation of the New River as a wild and scenic river.

I should say today we received a copy of a letter from George Meany, which appears to withdraw the opposition of the AFL–CIO to the designation.

I should point out that the Federal Power Commission has stated that there are at least 21 other sites on the New River which, from a hydroelectric viewpoint, are preferable to the site that would inundate this stretch.

Mr. President, I think we have a real opportunity to preserve a historic site in the United States. We are not running into an energy-environmental conflict because, as I say, there are at least 21 other sites on the river which the FPC says are preferable from an energy viewpoint.

Mr. GOLDWATER. Will the Senator yield me 2 minutes?

Mr. HASKELL. I have 2½ minutes left. I will yield 1 minute and a half.

Mr. GOLDWATER. Mr. President, I rise to announce my opposition to this dam. That may sound funny coming from a man who was born and raised in the arid west. Of all the votes I have cast in the 20-odd years I have been in this body, if there is one that stands out above all others that I would change if I had the chance it was a vote I cast to construct Glen Canyon Dam on the Colorado.

Today we can build nuclear powerplants. We do not need to destroy running water. While Glen Canyon Dam has created the most beautiful lake in

the world and has brought millions and millions of dollars into my State and the State of Utah, nevertheless, I think of that river as it was when I was a boy and that is the way I would like to see it again.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Will the Senator yield?

Mr. HASKELL. I yield to the distinguished Senator.

Mr. HELMS. Mr. President, I simply wish to thank the able Senator from Colorado and the able Senator from Montana for their leadership in behalf of this bill, and I thank my friend from Arizona for his eloquent comment.

I would say again only what has been said in this Chamber on countless occasions: That here we have an erroneous decision by the Federal Power Commission, and I cannot see any point in the Senate upholding an error by the Federal Power Commission.

We have a pumped storage facility that will consume more electric power than it will generate. We have a facility that, as has been acknowledged by all sides, will be silted over in 20 years and rendered almost totally inefficient.

There is no reason to approve this project, and I do hope that Senators will vote in favor of the pending measure.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAM L. SCOTT. Mr. President, my distinguished colleague from Virginia (Mr. HARRY F. BYRD, JR.) has made comments in opposition to this bill, we have jointly sent a letter to our colleagues. I would like to quote just a portion of that letter, because it may be that some of the Senators did not see it:

> The sole purpose of this bill is to revoke a license granted by the Federal Power Commission to construct a 1.8 million kilowatt hydroelectric project within the State of Virginia, and we oppose the bill for a number of reasons:
>
> 1. The project would provide much needed energy without any damage to the environment.
>
> 2. There would be no cost to the taxpayer as the $845 million project is privately financed by the Appalachian Power Company.
>
> 3. 1500–2000 jobs would be provided—

And that is in an area of high unemployment—

> 4. Several dams are already in existence on the New River within Virginia and West Virginia.
>
> 5. There are only five miles of the main stem of New River in the State of North Carolina compared with 250 miles within Virginia and West Virginia.
>
> 6. A license to construct the Virginia dam was granted by a unanimous vote of the Federal Power Commission after an exhaustive adversary proceeding lasting more than nine years.
>
> 7. The Circuit Court of Appeals for the District of Columbia unanimously approved the granting of the license.

Mr. President, the minority views of the Committee on Interior and Insular Affairs—and these are the views of Senators FANNIN, HANSEN, HATFIELD, MCCLURE, and BARTLETT—are unanimously in opposition. They say:

> The passage of this legislation would raise significant questions of legislative policy.

They also say:

> The enactment will cause the loss of 1800 megawatts of electrical generation capacity.

Mr. President, this is the first time that Congress, to our knowledge, has taken upon itself the burden of overruling the Federal Power Commission, the expert agency that Congress created to determine such issues. The passage of this bill could result in Government liability for taking, in an amount that may be as high as $500 million.

There is a question: Is a license to construct a dam by the Federal Power Commission, affirmed by the circuit court of appeals, property for which just compensation must be paid under the fifth amendment?

The Blue Ridge project—which is the project that would be killed—would also create one of the great recreational attractions in the eastern United States.

Then, last, the construction of the Blue Ridge project—and this is an important factor—would provide significant employment opportunities for a depressed area. Construction of the Blue Ridge project would provide 1,200 to 1,500 construction jobs for a period of 5 years. There would be permanent jobs associated with the facility, and labor representatives have indicated their support for the project.

Mr. President, in conclusion, we are talking about killing a project that will provide the cleanest energy we can obtain in any manner without added costs of alternative power systems. I am in favor of nuclear projects, for example, but a great number of the people who are opposed to this bill are not in favor of the creation of energy through atomic power. We need to develop vast sources of energy to meet future demands, and hydroelectric power proposed at the Blue Ridge project would certainly help in producing additional clean energy within a few years, without cost to the general taxpayer.

Therefore, I hope that the bill will be defeated.

ADDITIONAL STATEMENTS

Mr. JACKSON. Mr. President, today the U.S. Senate has the opportunity to preserve for future generations an important part of our national heritage. By voting in favor of H.R. 13372, we can insure the protection of a 26.5-mile portion of one of the most beautiful rivers in the East.

Geologists tell us that the New River is the oldest river in the world—second only to the Nile. It has been flowing for over a million years. Botanists claim that the vegetation along the banks of the New River is great in variety and unspeakable beauty. Northern evergreens and pines grow amidst flowering shrubs and trees of the South. Some 68 species of fish have been identified in the New River and 11 of these species are thought to be rare and endangered.

The river and its valleys have been home for generations of American families rooted in this land. Those families who have lived on the New River for generation after generation know its beauty best and are most determined of all to preserve it.

S. 158 is necessary because the Federal Power Commission has issued a license to Appalachian Power Co. for the construction of a hydroelectric pump storage project on the New River just across the North Carolina border in Virginia. I am well aware of the various arguments pro and con regarding this project. I have concluded that preservation of this national historic asset must take precedence over this project. I am convinced that this segment of the New River should be saved.

Designation of the New River as a potential component of the National Wild and Scenic Rivers System is justified because it is a river with characteristics which the Congress in 1968 decided to protect for future generations of Americans by enacting the Wild and Scenic Rivers Act (82 Stat. 906, 16 U.S.C. 1271) quite apart from the authority given to the Federal Power Commission by Congress.

In enacting the Wild and Scenic Rivers Act of 1968, Congress declared:

> . . . the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes. (16 U.S.C. 1271). The Congress decided that rivers with . . . outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historical, cultural or other similar values, shall be preserved . . . for the benefit and enjoyment of present and future generations. (16 U.S.C. 1271).

I submit that the New River is exactly what the Congress intended to preserve by enactment of the Wild and Scenic Rivers Act.

Mr. President, last Congress when similar legislation was pending before the Senate—legislation which the Senate passed overwhelmingly—we were treated to the eloquence and poetry of our distinguished colleague Senator Sam Ervin. I think it is fitting that I conclude my remarks today by recalling Senator Ervin's final exhortation to us in this Chamber in May of 1974:

> I share with other Americans anxiety about our energy problems and do not dispute the necessity of balancing the Nation's energy needs with conservation concerns. In the case of the New River, however, I must confess dismay as to how there could be doubt about the choice which should be made. I do not believe it is a close question. If America sacrifices the majesty and beauty of a river such as the New, it will be denying its own birthright to the handiwork of Almighty God.

Mr. President, I urge the adoption of this legislation.

Mr. DOLE. Mr. President, the Senate is now considering a measure of great importance to the Nation as a whole, to the good cause of environmental protection, and to the State of North Carolina.

The pending legislation would reinforce the decision of Interior Secretary Thomas S. Kleppe that a 26.5-mile segment of the New River in North Carolina

be placed in the National Wild and Scenic Rivers System.

Similar legislation has already passed the House, and the Senate can make complete the act begun by the Interior Department earlier this year of protecting one of America's priceless environmental resources.

I support this measure to protect the New River. It would have the effect of vacating a license by the Federal Power Commission that would create an electric power project and an artificial lake where the New River now flows.

Mr. President, the New River is as ecologically significant as it is old. It has flowed for some 100 million years. It is believed to be the oldest river in North America and, some say, the second oldest on Earth.

Interestingly, it is one of few rivers in the Northern Hemisphere which flows South to North. The ecosystem of the New River supports unquestioned natural beauty. Rare plant, animal, and aquatic life abound. Its less exotic creatures include trout and smallmouth bass.

Its waters, riverbeds, and banks, along with its various life forms, provide a living test tube for the sciences of man, literally from A to Z—archeology to zoology.

In April, Secretary of the Interior Thomas S. Kleppe designated a 26.5-mile segment of the New River in North Carolina as a State-administered component of the Rivers System.

The Congress has the opportunity of joining those concerned Americans by adding its approval to the actions of Secretary Kleppe.

I agree with the Secretary's decision, and add my voice to those who have spoken emphatically in favor of preserving that river segment in North Carolina's Ashe and Allegheny Counties.

When differences arise on the often conflicting commitments between energy, along with environmental protection, the one most favored call is for "balance."

To balance, we must weigh.

On one scale, we place the need for energy which could be generated by hydroelectric power, and some temporary construction jobs.

On the other scale, we weigh the natural heritage of the river segment, bountiful beauty, a fragile link to millennia past, and the human factor: damming would displace about 3,000 persons, with waters inundating 42,000 acres of farmlands, nearly a thousand homes, and dozens of churches and cemeteries.

Supporters of the New River and those bills which would add the 26.5-mile stretch in North Carolina to the National Wild and Scenic Rivers System include:

The entire North Carolina congressional delegation, the Department of the Interior, the Environmental Protection Agency, the House Interior Committee, the Senate Interior Committee, and groups which range from conservation organizations to clusters of local citizens.

During the Presidential primaries, Gerald Ford, Ronald Reagan, and Jimmy Carter all supported the compelling arguments for saving the New River.

I am pleased to add my own endorsement.

Mr. RIBICOFF. Mr. President, for the past 14 years the men and women of the New River Valley have been struggling to save their homes and their farmlands from destruction by a massive pumped storage power project. Living on lands settled by their forebears during the 18th century, these people have been battling one of the Nation's giant industries to preserve their rich heritage.

The New River—a beautiful, unspoiled stream running through North Carolina, Virginia, and West Virginia—is one of the oldest rivers in the world. It is considered to be the oldest river in the Western Hemisphere and the second oldest in the world. It abounds with fish, containing 11 different aquatic species, and wildlife feed along its shores. Traditions have deep roots in the area and countless generations have tilled the soil since before the American Revolution.

However, the proposed Blue Ridge power project will end this colorful history and will have disastrous consequences on the river, the land, and the people. Between 40,000 and 50,000 acres of fertile farmland will be inundated if the two dams planned for the power project are constructed. An estimated 900 homes will be lost and approximately 3,000 people will have to be relocated. The entire town of Wilson, Va., will be under more than 150 feet of water. More than $13.5 million a year in agricultural income will be lost. The tax base in many of the affected counties will be seriously disrupted, farm-to-market roads will be blocked and there will be a major upheaval of the well-settled pattern or rural life.

Those opposed to the Blue Ridge project are not opposed to progress. The fact remains, however, that the pumped-storage project proposed for the region will actually consume more energy than it produces, requiring 4 kilowatts to produce 3 kilowatts. Further, I understand that most of the region will not benefit from the power produced at the project.

Mr. President, the Secretary of the Interior took affirmative steps to designate the New River as part of the National Wild and Scenic Rivers System. Unfortunately, however, the decision by the U.S. District Court of Appeals for the District of Columbia has thrown this action into question. Thus, we must take prompt action to clarify the situation by enacting, without any crippling amendments, the measure before us today. Earlier this month the House overwhelmingly supported a similar bill and we should, again, as we did in the last Congress, adopt legislation to afford the needed protection to the New River. Should we fail to act to protect and preserve the New River, I fear that a dangerous precedent may be established and other scenic and historic rivers throughout the Nation will be endangered. I am, therefore, pleased to support H.R. 13372 and urge its enactment.

Mr. HUGH SCOTT. Mr. President, I ask unanimous consent that a letter of August 24, 1976, to the Philadelphia Inquirer be printed in the RECORD.

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

THE NEW RIVER

*To the Editor:*

I am writing to commend you for your excellent editorial of Aug. 2, "The New River debate: Will lobbyists prevail?"

You chose a timely and interesting topic—one which might have remained a regional problem, save for a few pertinent details. For example, ironically enough (as you mention), the New River is in fact believed by geologists to be the second oldest river in the world—preceded only by the Nile.

Quite apart from its geological significance the New River Valley houses numerous highly productive farms. It is to my mind one of the most beautiful regions of the entire nation to remain yet untrammeled by the sophisticated but ill-fitting trappings of modern technology.

Further, the river itself is the last essentially unpolluted, free-flowing river in the East. It is my hope that it will remain so.

The issue, as you have stated it, is clear. The American Electric Power Company wants to begin construction on its pumped storage project, and, in spite of overwhelming sentiment to save the river from disaster, the will of the power company could prevail.

I have written to the chairman of the Senate Interior and Insular Affairs Committee, Sen. Henry Jackson, to express my strong support of S. 158.

I should like to join The Inquirer in urging concerned environmentalists "to make clear to each congressman your demand for favorable action by the Rules Committee."

Let us join in a determination that this issue shall not drift into the back-swirls and eddies of an overburdened Congress from which it may never emerge. Let us insist that the will of the majority be done, and that the New River be preserved in its gloriously natural state for this and for the generations to come.

HUGH SCOTT
*U.S. Senator.*

PHILADELPHIA.

Mr. RANDOLPH. Mr. President, I have carefully studied the intent of S. 158, to designate a segment of the New River in North Carolina as a component of the National Wild and Scenic Rivers System. The real purpose of the measure is to stop construction of the Blue Ridge pumped storage and hydroelectric project by the Appalachian Power Co.

I have received letters and telephone calls from constituents both supporting and opposing the project.

Included among the supporters of the Blue Ridge project is the Charleston Daily Mail newspaper in Charleston, W. Va. I ask unanimous consent that a well-reasoned editorial from the Daily Mail of Saturday, August 21, be printed at this point in my remarks.

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

COST OF NEW RIVER BILL

Members of the United States Senate from West Virginia and most of its southern neighbor states had better take a hard look at a House bill, already approved, that would stop construction of a hydro-electric dam on the New River in North Carolina.

If they don't, all of their constituents are going to be jolted by a boost in their rates for electricity, or the U.S. treasury is going to have to shell out as much as $700 million.

Rep. Ken Hechler and other self-styled ecologists have pushed the bill through the

House, and the Senate much earlier had approved a similar bill.

Now Hechler and some of his hippy supporters are planning a celebration of the death of the dam down in the New River Gorge.

Hechler does not explain who is to make up the difference between the $1 billion Appalachian Power was willing to spend on the dam, and the $500 million more it will take to build a coal-fired facility to produce the 1.8 million kilowatts that the hydro facility would produce.

Given the present rate of inflation, the $500 million probably would grow to $700 million before the coal-fired plant can be put in operation.

The power company, which saw the dam approved unanimously by the Federal Power Commission and the U.S. Circuit Court of Appeals, retains some options.

It can go into the U.S. Court of Claims to get the $77 million or, hang onto your electric bill, it can go to the public service commissions in the states it serves to seek permission to raise your monthly rates.

Those like Hechler who say they want to keep New River as it is (with seven dams already on it) are spending your money.

Mr. RANDOLPH. Mr. President, I fully understand the problems with displaced families who would be relocated because of the project. This is a continuing and complex problem in the development of water resource, highway, and other projects not only in the area of Blue Ridge but in all parts of our Nation. I have endeavored to secure programs to alleviate relocations to the maximum extent possible.

For over 10 years since the Federal Power Commission granted a 2-year preliminary permit to study the power project I have studied the Blue Ridge project on the New River. I felt then as I do now that new energy supplies are needed for West Virginia, Virginia, and other States.

During the past few months many points have been debated, energy figures have been disputed and site replacements have been cited. Since 1963 the Federal Power Commission has been reviewing the project. It was openly argued in proceedings. The Federal Power Commission in June 1974 granted a license to Appalachian Power Co. for the modified Blue Ridge project which provided low-flow augmentation for recreational purposes for the New River in West Virginia.

The Federal Power Commission states convincingly and authoritatively that the Blue Ridge project will not adversely affect the flow of the New River in West Virginia. Claytor Dam, with its large storage capacity, will continue to release the same flows of water. Additionally, the New River travels a hundred miles before reaching Bluestone Lake. The only difference will be the augmentation of low flows during the summer recreation month. It should be noted also that there are presently several dams on the New River.

Some West Virginians fear that Bluestone Lake would be used for power generation if Blue Ridge is developed. With or without the Blue Ridge, I seriously doubt that the Bluestone Lake ever becomes a hydroelectric facility under the supervision of the Corps of Engineers. It would adversely affect the flow of the New River in West Virginia and would adversely impact flood protection in our State. Penstocks have been at Bluestone for almost 25 years, and I shall endeavor to prevent any use of a hydroelectric facility there, based on the current knowledge of the effects of such an installation at Blue Ridge.

I agree that Congress must act as an overseer of Federal agencies. But I question the precedent of Congress overruling a license unanimously granted by the Federal Power Commission, which the FPC recommended three times and was upheld by the Federal courts. Further, after the New River bill is passed today and the President signs it, several legal questions will remain because of the FPC approved license for the project.

As I did in 1974 I support the Blue Ridge project for its capability of providing growing peak demand energy needs. After more than 10 years of consideration, the Federal Power Commission has made its findings for the project's need and its recreational potential and the regulatory process should be allowed to continue.

Finally, Mr. President, I wish to stress that my vote today in no way diminishes my commitment or my efforts for a New River Gorge National Park in West Virginia. This unique gorge must be protected.

The PRESIDING OFFICER. All time has expired. The question is on the engrossment of the amendments and the third reading of the bill.

The amendments were 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?

Mr. MANSFIELD. Mr. President, just to reiterate, this will be a 10-minute vote, and the one immediately following will be a 10-minute vote.

The PRESIDING OFFICER. The Senator is correct.

The question is, Shall the bill pass? On this question the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from Michigan (Mr. PHILIP A. HART), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Mississippi (Mr. STENNIS), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico (Mr. MONTOYA), the Senator from Idaho (Mr. CHURCH), the Senator from Washington (Mr. MAGNUSON), the Senator from Iowa (Mr. CULVER), and the Senator from Minnesota (Mr. HUMPHREY), would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BROCK), the Senator from Hawaii (Mr. FONG), the Senator from Nevada (Mr. LAXALT), the Senator from Maryland (Mr. MATHIAS), and the Senator from Idaho (Mr. MCCLURE) are necessarily absent.

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

The result was announced—yeas 69, nays 16, as follows:

[Rollcall Vote No. 544 Leg.]

YEAS—69

| | | |
|---|---|---|
| Abourezk | Glenn | Nelson |
| Allen | Goldwater | Nunn |
| Baker | Gravel | Packwood |
| Bayh | Griffin | Pastore |
| Beall | Hart, Gary | Pearson |
| Bentsen | Haskell | Pell |
| Biden | Helms | Percy |
| Brooke | Hollings | Proxmire |
| Buckley | Huddleston | Ribicoff |
| Bumpers | Inouye | Roth |
| Burdick | Jackson | Schweiker |
| Byrd, Robert C. | Javits | Scott, Hugh |
| Cannon | Johnston | Sparkman |
| Case | Kennedy | Stafford |
| Chiles | Leahy | Stevens |
| Clark | Mansfield | Stevenson |
| Cranston | McClellan | Stone |
| Dole | McGee | Symington |
| Domenici | McGovern | Taft |
| Durkin | McIntyre | Talmadge |
| Eagleton | Metcalf | Thurmond |
| Ford | Morgan | Weicker |
| Garn | Moss | Williams |

NAYS—16

| | | |
|---|---|---|
| Bartlett | Fannin | Muskie |
| Bellmon | Hansen | Randolph |
| Byrd, Harry F., Jr. | Hatfield | Scott, William L. |
| Curtis | Hathaway | Tower |
| Eastland | Hruska | Young |
| | Long | |

NOT VOTING—15

| | | |
|---|---|---|
| Brock | Hartke | McClure |
| Church | Humphrey | Mondale |
| Culver | Laxalt | Montoya |
| Fong | Magnuson | Stennis |
| Hart, Philip A. | Mathias | Tunney |

So the bill (H.R. 13372) was passed.

Mr. HASKELL. 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.

## DISTRICT OF COLUMBIA APPROPRIATIONS, 1977

The Senate continued with the consideration of the bill (H.R. 15193) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1977, and for other purposes.

The PRESIDING OFFICER (Mr. PEARSON). Under the previous order, the issue now arises on the passage of the District of Columbia appropriations bill. The question is, Shall it pass? 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 Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from Michigan (Mr. PHILIP A. HART), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. MAGNUSON),

the Senator from Minnesota (Mr. MONDALE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Mississippi (Mr. STENNIS), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON), the Senator from Iowa (Mr. CULVER), and the Senator from Minnesota (Mr. HUMPHREY) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BROCK), the Senator from Hawaii (Mr. FONG), the Senator from Nevada (Mr. LAXALT), the Senator from Maryland (Mr. MATHIAS), and the Senator from Idaho (Mr. MCCLURE) are necessarily absent.

The result was announced—yeas 85, nays 0, as follows:

[Rollcall Vote No. 545 Leg.]

YEAS—85

| | | |
|---|---|---|
| Abourezk | Garn | Muskie |
| Allen | Glenn | Nelson |
| Baker | Goldwater | Nunn |
| Bartlett | Gravel | Packwood |
| Bayh | Griffin | Pastore |
| Beall | Hansen | Pearson |
| Bellmon | Hart, Gary | Pell |
| Bentsen | Haskell | Percy |
| Biden | Hatfield | Proxmire |
| Brooke | Hathaway | Randolph |
| Buckley | Helms | Ribicoff |
| Bumpers | Hollings | Roth |
| Burdick | Hruska | Schweiker |
| Byrd, | Huddleston | Scott, Hugh |
| Harry F., Jr. | Inouye | Scott, |
| Byrd, Robert C. | Jackson | William L. |
| Cannon | Javits | Sparkman |
| Case | Johnston | Stafford |
| Chiles | Kennedy | Stevens |
| Clark | Leahy | Stevenson |
| Cranston | Long | Stone |
| Curtis | Mansfield | Symington |
| Dole | McClellan | Taft |
| Domenici | McGee | Talmadge |
| Durkin | McGovern | Thurmond |
| Eagleton | McIntyre | Tower |
| Eastland | Metcalf | Weicker |
| Fannin | Morgan | Williams |
| Ford | Moss | Young |

NAYS—0

NOT VOTING—15

| | | |
|---|---|---|
| Brock | Hartke | McClure |
| Church | Humphrey | Mondale |
| Culver | Laxalt | Montoya |
| Fong | Magnuson | Stennis |
| Hart, Philip A. | Mathias | Tunney |

So the bill (H.R. 15193) was passed.

The title was amended so as to read:

An Act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1977, and for the Pennsylvania Avenue Development Corporation for the fiscal year ending September 30, 1977, and for other purposes.

Mr. CHILES. Mr. President, I ask unanimous consent that the Secretary of the Senate, in the engrossment of the Senate amendments, be authorized to make any technical and clerical corrections.

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

Mr. CHILES. Mr. President, I move that the Senate insist on its amendments, request a conference with the House of Representatives 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. CHILES, Mr. JOHNSTON, Mr. HUDDLESTON, Mr. MCCLELLAN, Mr. EAGLETON, Mr. MATHIAS, Mr. SCHWEIKER, and Mr. YOUNG conferees on the part of the Senate.

S. 158 INDEFINITELY POSTPONED

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Calendar No. 903, S. 158, which is the Senate companion bill to the House New River bill, be indefinitely postponed.

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

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## ANTITRUST CIVIL PROCESS ACT AMENDMENTS OF 1976

The PRESIDING OFFICER. The clerk will state the pending business.

The legislative clerk read as follows:

AUGUST 24, 1976.

*Resolved*, That the House insist upon its amendment to the amendment of the Senate to the bill (H.R. 8532) entitled "An Act to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

*Ordered*, That Mr. Rodino, Mr. Brooks, Mr. Flowers, Mr. Sarbanes, Mr. Seiberling, Ms. Jordan, Mr. Mezvinsky, Mr. Mazzoli, Mr. Hughes, Mr. Hutchinson, Mr. McClory, Mr. Railsback, and Mr. Cohen be the managers of the conference on the part of the House.

AMENDMENT NO. 2232

The PRESIDING OFFICER. The pending question is on agreeing to amendment No. 2232 of the Senator from Alabama.

The amendment is as follows:

I move that the pending motion to concur, with an amendment, in the House amendment to the Senate amendment to the text of the bill (H.R. 8532) be amended by substituting in lieu of the matter therein proposed to be inserted in lieu of the House amendment to the Senate amendment to the text of this bill (H.R. 8532) the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Hart-Scott-Rodino Antitrust Improvements Act of 1977".

TITLE I—DECLARATION OF POLICY

SEC. 101. (a) It is the purpose of the Congress in this Act to support and invigorate effective and expeditious enforcement of the antitrust laws, to improve and modernize antitrust investigation and enforcement mechanisms, to facilitate the restoration and maintenance of competition in the marketplace, and to prevent and eliminate monopoly and oligopoly power in the economy.

(b) The Congress finds and declares that—

(1) this Nation is founded upon and committed to a private enterprise system and a free market economy, in the belief that competition spurs innovation, promotes productivity, prevents the undue concentration of economic, social, and political power, and preserves a free, democratic society;

(2) the decline of competition in the economy could contribute to unemployment, inefficiency, underutilization of economic capacity, a reduction in exports, and an adverse effect on the balance of payments;

(3) diminished competition and increased concentration in the marketplace have been important factors in the ineffectiveness of monetary and fiscal policies in reducing the high rates of inflation and unemployment;

(4) investigations by the Federal Trade Commission, the Department of Justice, and the National Commission on Food Marketing, as well as other independent studies, have identified conditions of excessive concentration and anticompetitive behavior in various industries; and

(5) vigorous and effective enforcement of the antitrust laws, and reduction of anticompetitive practices in the economy, can contribute to reducing prices, unemployment, and inflation, and to preservation of our democratic institutions and personal freedoms.

TITLE II—ANTITRUST CIVIL PROCESS ACT AMENDMENTS

SEC. 201. The Antitrust Civil Process Act (76 Stat. 548; 15 U.S.C. 1311) is amended as follows:

(a) Subsection (a) of section 2 is amended by inserting "and" after the semicolon at the end of subparagraph (1), by striking subparagraph (2) thereof, and by renumbering subparagraph (3) and striking therefrom "(A)" after the words "with respect to," substituting a semicolon for the comma after the words "trade or commerce" and striking the remainder of the subparagraph.

(b) Subsection (c) of section 2 is amended to read as follows:

"(c) The term 'antitrust investigation' means any inquiry conducted by any antitrust investigator for the purpose of ascertaining whether any person is or has been engaged in any antitrust violation or in any activities preparatory to a merger, acquisition, joint venture, or similar transaction, which may lead to any antitrust violation;".

(c) Subsection (f) of section 2 is amended by striking out the words "not a natural person", by inserting immediately after the word "means" the words "any natural person or", and by inserting immediately after the word "entity" the words ", including any natural person or entity acting under colar or authority of State law;".

(d) Subsection (h) of section 2 is amended by striking out the words "antitrust document".

(e) Subsection (a) of section 3 is amended to read as follows:

"(a) Whenever the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, relevant to a civil antitrust investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, or to answer in writing written interrogatories concerning such information, or to give oral testimony concerning such information, or to furnish any combination thereof.".

(f) Subsection (b) of section 3 is amended to read as follows:

"(b) Each such demand shall—

"(1) state the nature of the investigation and the provision of law applicable thereto or the Federal administrative or regulatory agency proceeding involved; and

"(2)(A) if it is a demand for production of documentary material—

"(i) describe the class or classes of documentary material to be produced thereunder, with such definiteness and certainty as to permit such material to be fairly identified; and

"(ii) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

"(iii) identify the custodian to whom such material shall be made available; or

"(B) if it is a demand for answers to written interrogatories—

"(i) propound with definiteness and certainty the written interrogatories to be answered; and

"(ii) prescribe a date or dates at which time answers to the written interrogatories shall be made; and

"(iii) identify the custodian to whom such answers shall be made; or

"(C) if it is a demand for the giving of oral testimony—

"(i) prescribe a date, time, and place at which oral testimony shall be commenced; and

"(ii) identify the antitrust investigator or investigators who shall conduct the examination, and the custodian to whom the transcript of such examination shall be given.".

(g) Subsection (c) of section 3 is amended to read as follows:

"(c) Such demand shall—

"(1) not require the production of any information that would be privileged from disclosure if demanded by, or pursuant to, a subpena issued by a court of the United States in aid of a grand jury investigation; and

"(2)(A) if it is a demand for production of documentary material, not contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation; or

"(B) if it is a demand for answers to written interrogatories, not impose an undue or oppressive burden on the person required to furnish answers.".

(h) Subsection (f) of section 3 is redesignated subsection (h) and the following new subsections are inserted immediately following subsection (e):

"(f) Service of any such demand or of any petition filed under section 5 of this Act may be made upon any natural person by—

"(1) delivering a duly executed copy thereof to the person to be served; or

"(2) depositing such copy in the United States mails, by registered or certified mail duly addressed to such person at his residence or principal office or place of business.

"(g) Service of any such demand or of any position filed under section 5 of this Act may be made upon any person who, in the opinion of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, is not to be found within the territorial jurisdiction of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. If such person has had contacts with the United States that were sufficient to, or if the conduct of such person has so affected the trade and commerce of the United States as to, permit the courts of the United States to assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this Act by such person that it would have if such person were personally within the jurisdiction of such court.".

(i) Section 3 is further amended by inserting the following new subsections immediately after subsection (h), as redesignated:

"(i) The production of documentary material in response to a demand for production thereof shall be made under a certificate, in such form as the demand designates, sworn to by the person, if a natural person, to whom the demand is directed or, if the person to which the demand is directed is not a natural person, by a person or persons having knowledge of the facts and circumstances relating to such production, to the effect that all documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

"(j) Each interrogatory in a demand served pursuant to this section shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer, and the answers shall be submitted under a certificate, in such form as the demand designates, sworn to by the person, if a natural person, to whom the demand is directed, or if the person to which the demand is directed is not a natural person, by a person or persons responsible for the answers, to the effect that all information required by the demand and in the possession, custody, or control of the person to whom the demand is directed, or within the knowledge of such person, has been furnished.

"(k)(1) The examination of any person pursuant to a demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit the transcript of the testimony to the possession of the custodian. The antitrust investigator or investigators conducting the examination shall exclude from the place where the examination is held all persons other than the person being examined, his counsel, the officer before whom the testimony is to be taken, and any stenographer taking said testimony. The provisions of the Act of March 3, 1913 (Ch. 114, 37 Stat. 731; 15 U.S.C. 30) shall not apply to such examinations.

"(2) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts personal business, or in such other place as may be agreed upon between the antitrust investigator or investigators conducting the examination and such person.

"(3) When the testimony is fully transcribed, the witness shall be afforded an opportunity to examine the transcript, in the presence of the officer, for errors in transcription. Any corrections of transcription errors which the witness desires to make shall be entered and identified upon the transcript by the officer, with a statement of the reasons given by the witness for making them. The witness also may clarify or complete answers otherwise equivocal or incomplete on the record, which shall be entered and identified upon the transcript by the officer, with a statement of the reasons given by the witness for making them. The transcript shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the transcript is not signed by the witness within thirty days of his being afforded an opportunity to examine it, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign, together with the reason, if any, given therefor. The officer shall certify on the transcript that the witness was duly sworn by him and that the transcript is a true record of the testimony given by the witness and promptly send it by registered or certified mail to the custodian. Upon payment of reasonable charges therefor, the witness shall be permitted to inspect and copy the transcript of his testimony to the extent and in the circumstances that he would be entitled to do so if it were a transcript of his testimony before a grand jury; and there may be imposed on such inspection and copying such conditions as the interests of justice require.

"(4) Any person compelled to appear under a demand for oral testimony pursuant to this section may be accompanied by counsel. Such person or counsel may object on the record, briefly stating the reason therefor, whenever it is claimed that such person is entitled to refuse to answer any question on grounds of privilege or other lawful grounds; but he shall not otherwise interrupt the examination. If such person refuses to answer any question on the grounds of privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18, United States Code. If such person refuses to answer any question, the antitrust investigator or investigators conducting the examination may request the district court of the United States for the judicial district within which the examination is conducted to order such person to answer, in the same manner as if such person had refused to answer such question after having been supenaed to testify thereto before a grand jury, and upon disobedience to any such order of such court, such court may punish such person for contempt thereof.

"(5) Any person examined pursuant to a demand under this section shall be entitled to the same fees and mileage that are paid to witnesses in the courts of the United States. The court shall award any person, not the subject of an antitrust investigation (or an officer, director, employee or agent thereof), who shall respond to, or be examined pursuant to a demand under this section, reasonable expenses incurred by him in preparing and producing documentary material or in appearing for examination, including reasonable attorneys' fees. A determination made pursuant to this paragraph (5) shall be made subsequent to compliance by such person with such demand.".

(j) Subsection (a) of section 4 is amended by striking the words "antitrust document", and by inserting immediately after the word "custodian" the words "of documentary material demanded, answers to written interrogatories served, or transcripts of oral testimony taken, pursuant to this Act".

(k) Subsection (b) of section 4 is amended by inserting in the first sentence immediately after the word "demand", first appearance, the words "for the production of documents", and by amending the second sentence to read as follows: "Such person may upon written agreement between such person and the custodian substitute true copies for originals of all or any part of such material.".

(l) Subsection (c) of section 4 is amended by inserting in the first sentence immediately after the word "any" the word "such", by inserting in the first sentence immediately after the word "material" the words ", answers to interrogatories, or transcripts of oral testimony", by inserting in the second sentence immediately after the word "material" the words ", answers to interrogatories, or transcripts of oral testimony", by inserting in the third sentence immediately after the word "material", in both places where it appears, the words "or information", by inserting in the fourth sentence immediately before the word "documentary" the word "such", and by adding after the fourth sentence the following new sentence: "Such documentary material and answers to interrogatories may be used in connection with any oral testimony taken pursuant to this Act.".

(m) Subsection (d) of section 4 is amended to read as follows:

"(d)(1) Whenever any attorney of the Antitrust Division of the Department of Justice has been designated to appear before any court, grand jury, or Federal administrative or regulatory agency in any case or

proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony may deliver to such attorney such documentary material, answers to interrogatories, or transcripts of oral testimony for use in connection with any such case, grand jury, or proceeding as such attorney determines to be required. Upon the completion of any such case, grand jury, or proceeding such attorney shall return to the custodian any such materials so delivered that have not passed into the control of such court, grand jury, or agency through the introduction thereof into the record of such case or proceeding.

"(2) The custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony shall deliver to the Federal Trade Commission, in response to a written request, copies of such documentary material, answers to interrogatories, or transcripts of oral testimony for use in connection with any investigation or proceeding under its jurisdiction unless the Assistant Attorney General in charge of the Antitrust Division determines that it would not be in the public interest to provide such material to the Commission. Upon the completion of any such investigation or proceeding, the Commission shall return to the custodian any such materials so delivered that have not been introduced into the record of such case or proceeding before the Commission. While such materials are in the possession of the Commission, it shall be subject to any and all restrictions and obligations which this Act places upon the custodian of such materials while in the possession of the Antitrust Division of the Department of Justice.".

(n) Subsection (e) of section 4 is amended to read as follows:

"(e) Upon the completion of—

"(1) the antitrust investigation for which any documentary material was produced pursuant to this Act; and

"(2) any such case or proceeding,

the custodian shall return to the person who produced such material all such material (other than copies thereof furnished to the custodian pursuant to subsection (b) of this section or made by the Department of Justice pursuant to subsection (c) of this section) which has not passed into the control of any court, grand jury, or Federal administrative or regulatory agency through the introduction thereof into the record of such case or proceeding.".

(o) Subsection (f) of section 4 is amended to read as follows:

"(f) When any documentary material has been produced by any person pursuant to this Act, and no case or proceeding as to which the documents are usable has been instituted and is pending or has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General or upon the Assistant Attorney General in charge of the Antitrust Division, to the return of all such documentary material (other than copies thereof furnished to the custodian pursuant to subsection (b) of this section or made by the Department of Justice pursuant to subsection (c) of this section) so produced by such person.".

(p) Subsection (g) of section 4 is amended to read as follows:

"(g) In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material produced, answers to written interrogatories served, or transcripts of oral testimony taken, under any demand issued pursuant to this Act, or the official relief of such custodian from responsibility for the custody and control of such material, the Assistant Attorney General in charge of the Antitrust Division shall promptly (1) designate another antitrust investigator to serve as custodian of such documentary material, answers to interrogatories, or transcripts of oral testimony, and (2) transmit in writing to the person who submitted the documentary material notice as to the identity and address of the successor so designated. Any successor designated under this subsection shall have with regard to such materials all duties and responsibilities imposed by this Act upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation.".

(q) Subsection (a) of section 5 is amended by striking out all the words following the word "Act", and by striking out the comma after the word "Act" and inserting in lieu thereof a period.

(r) The first sentence of subsection (b) of section 5 is amended to read as follows:

"(b) Within twenty days after the service of any such demand upon any person, or at any time before the compliance date specified in the demand, whichever period is shorter, or within such period exceeding twenty days after service or in excess of such compliance date as may be prescribed in writing, subsequent to service, by the antitrust investigator or investigators named in the demand, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the antitrust investigator or investigators named in the demand a petition for an order of such court modifying or setting aside such demand.".

(s) The second sentence of subsection (b) of section 5 is amended by striking out the final period and inserting a colon in lieu thereof, and by inserting immediately after the colon the words: "*Provided*, That such person shall promptly comply with such portions of the demand not sought to be modified or set aside.".

(t) Subsection (b) of section 5 is amended by inserting the following sentence at the end thereof: "Any such ground not specified in such a petition shall be deemed waived unless good cause is shown for the failure to assert it in such a petition.".

(u) Subsection (c) of section 5 is amended by striking out the word "delivered", and by inserting immediately after the word "material" the words "or answers to interrogatories delivered, or transcripts of oral testimony given".

(v) The third paragraph of section 1505 of title 18, United States Code, is amended by inserting between the words "any" and "documentary" the words "oral or written information or any", and by inserting between the third and fourth paragraphs the following:

"Whoever knowingly and willfully withholds, falsifies, or misrepresents, or by any trick, fraud, scheme, or device conceals or covers up, a material part of any oral or written information or documentary material which is the subject of a demand pursuant to the Antitrust Civil Process Act, or attempts to or solicits another to do so; or".

(w) Section 5 is amended by adding at the end thereof the following:

"(f) Any material or information provided pursuant to any demand under this Act shall be exempt from disclosure under section 552 of title 5, United States Code.".

SEC. 202. Section 5 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 16), is amended by adding at the end thereof the following new subsections:

"(j) A plea of nolo contendere in a criminal proceeding under the antitrust laws shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

"(k) The Attorney General, unless he determines it would be contrary to the public interest, shall upon written request from the Federal Trade Commission, after completion of any civil or criminal proceeding instituted by the United States and arising out of any grand jury proceeding or after the termination of any grand jury proceeding which does not result in the institution of such a proceeding, permit the Commission to inspect and copy any documentary material produced in and the transcripts of such grand jury proceeding. While such materials are in the possession of the Commission, the Commission shall be subject to any and all restrictions and obligations placed upon the Attorney General with respect to the secrecy of such materials.

"(l) Any person that institutes a civil action under this Act may, upon payment of reasonable charges therefor and after completion of any criminal proceeding instituted by the United States in which a defendant enters a plea of guilty or nolo contendere and arising out of any grand jury proceeding, inspect and copy any documentary material produced by such defendant in and the transcript of the testimony of such defendant or any other officer, director, employee, or agent of such defendant in such grand jury proceeding concerning the subject matter of such person's civil action. Any action or proceeding to compel the grant of access under this subsection shall be brought in the United States district court for the district in which the grand jury proceeding occurred. The court may impose conditions upon the grant of access and protective orders that are required by the interests of justice.".

SEC. 203. (a) The provisions of this title, except as provided in subsection (b), shall be effective on the date of enactment of this Act, and the provisions providing for the production of documents or information may be employed in respect of acts, practices, and conduct, that occurred prior to the date of enactment thereof.

(b) The provisions of section 3(k)(5) of the Antitrust Civil Process Act, as added by section 201(i) of this Act, shall become effective on October 1, 1976, or upon enactment, whichever date is later.

## TITLE III—MISCELLANEOUS AMENDMENTS

### AFFECTING COMMERCE

SEC. 301. Section 7 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 18), is amended by striking out in the first sentence thereof the words "engaged in commerce" and "engaged also in commerce,"; by striking out in the second sentence thereof the words "engaged in commerce,"; by inserting in the first sentence thereof after the word "corporation", third appearance, the words ", where the activities of either corporation are in or affect commerce and"; by inserting in the first sentence thereof a comma between the words "where" and "in"; by inserting in the second sentence thereof after the word "corporations" the words ", where the activities of either corporation are in or affect commerce and"; and by inserting in the second sentence thereof a comma between the words "where" and "in".

### FOREIGN ACTIONS

SEC. 302. It is the sense of the Congress that, in the interests of promoting an international rule of law and eliminating safe havens for wrongdoers, that in any civil action or proceeding before any court of the United States involving any act to regulate interstate or foreign trade or commerce, or to protect the same against unlawful restraints or monopolies where a party refuses, declines, or fails to furnish discovery,

evidence, or testimony on the ground that a foreign statute, order, decree, or other law prohibits compliance, the court should consider utilizing all sanctions available under rule 37(b) of the Federal Rules of Civil Procedure in order to reach a fair and equitable determination of the action or proceeding. In determining proper sanctions under rule 37, the court should take account of good-faith efforts by the party to comply with the request for discovery, evidence, or testimony, the reasonableness of the foreign statute, order, decree, or other law prohibiting such compliance, and the pattern of enforcement thereof.

ATTORNEYS' FEES

SEC. 303. Section 16 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 26), is amended by adding at the end thereof the following new sentence: "In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including reasonable attorneys' fees and other expenses of the litigation.".

SEVERABILITY

SEC. 304. If any provision of this Act, or the application of any such 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 thereby.

EFFECTIVE DATE

SEC. 305. (a) Section 301 of this title shall apply to acts, practices, and conduct occurring after the date of enactment of this Act.

(b) Section 302 of this title shall apply to all actions on file on the date of enactment of this Act or hereafter filed, in respect of noncompliance with discovery orders hereafter entered. Nothing contained in this subsection shall be deemed to limit the authority of any court to reenter any discovery order heretofore entered, and thereby make such section 302 applicable thereto.

(c) Unless otherwise specified, the effective date of this Act shall be the date of enactment thereof.

SHORT TITLES

SEC. 306. (a) The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (26 Stat. 209; 15 U.S.C. 1 et seq.), as amended, is amended by adding at the end thereof the following new section:

"SEC. 9. This Act may be cited as the 'Sherman Act'.".

(b) The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (38 Stat. 730; 15 U.S.C. 12 et seq.), as amended, is amended by adding at the end thereof the following new section:

"SEC. 27. This Act may be cited as the 'Clayton Act'.".

(c) The Act entitled "An Act to promote export trade, and for other purposes", approved April 10, 1918 (40 Stat. 516; 15 U.S.C. 61 et seq.), as amended, is amended by adding at the end thereof the following new section:

"SEC. 6. This Act may be cited as the 'Webb-Pomerene Act'.".

(d) The Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (28 Stat. 509; 15 U.S.C. 8 et seq.), as amended, is amended by adding at the end thereof the following new section:

"SEC. 78. Sections 73 and 74 of this Act may be cited as the 'Wilson Tariff Act'.".

TITLE IV—PARENS PATRIAE AMENDMENTS

SEC. 401. The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (38 Stat. 730; 15 U.S.C. 12), is amended by inserting immediately following section 4E the following new sections:

"SEC. 4C. (a)(1) Any attorney general of a State may bring a civil action, in the name of such State in any district court of the United States having jurisdiction of the defendant, to secure monetary and other relief as provided in this section in respect of any damage sustained, by reason of the defendant's having engaged in any activity deemed a per se offense, or arising out of the fraudulent procurement or enforcement of a patent, in violation of the Sherman Act, by the natural persons residing in such State, or any of them: *Provided*, That no monetary relief shall be awarded in respect of such damage that duplicates any monetary relief that has been awarded or is properly allocable to (i) such natural persons who have excluded their claims pursuant to subsection (b)(2) of this section, and (ii) any business entity.

"(2) The court shall award the State as monetary relief threefold the total damage sustained as described in subsection (a)(1) of this section; such other relief as is just in the circumstances to prevent or remedy the violation of the Sherman Act; and the cost of suit, including a reasonable attorney's fee and other expenses of the litigation.

"(b)(1) In any action brought under subsection (a)(1) of this section, the State attorney general shall, at such times, in such manner and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice by publication only would be manifestly unjust as to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

"(2) Any person may elect to exclude from adjudication in an action brought under subsection (a)(1) of this section the portion of the State claim for monetary relief attributable to him. He shall do so by filing a notice of such election with the court within such time as specified in the notice prescribed pursuant to subsection (b)(1) of this section.

"(3) The final judgment in the action brought by the State shall be res judicata as to any claim under section 4 of this Act by any person in respect of damage to whom such action was brought unless such person has filed the notice prescribed in subsection (b)(2) of this section.

"(c)(1) In any action under section 4C(a)(1) in which there has been a determination that a defendant agreed to fix prices or in which it has been determined that a defendant engaged in the procurement by fraud (other than technical fraud) of a patent or the enforcement of a patent procured by fraud (other than technical fraud) in violation of the antitrust laws, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

"(2) In any action brought under subsection (a)(1) of this section, the court shall distribute, or direct the distribution of, any monetary relief awarded to the State either in accordance with State law or as the district court may in its discretion authorize. In either case, any distribution procedure adopted shall afford each person in respect of damage to whom the relief was awarded a reasonable opportunity to secure his appropriate portion of the net monetary relief. In the event that any monetary relief awarded to a State is not completely distributed the court may, in its discretion, after the lapse of a reasonable period of time, direct that the undistributed portion be (A) utilized to reduce future prices of the commodity involved in the violation; or (B) deemed a civil penalty and deposited with the State as general revenues.

"(d) An action brought under this section shall not be dismissed or compromised without approval of the court after providing such notice to persons affected thereby as the court shall direct in the interests of justice.

"(e) In any action brought under this section, the amount of plaintiffs' attorneys' fees, if any, shall be determined by the court.

"(f) In any action brought under this section, the court may in its discretion award reasonable attorneys' fees to a prevailing defendant upon a finding that the State attorney general acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

"SEC. 4D. Whenever the Attorney General of the United States has brought an action under the antitrust laws, and he has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same alleged violation of the antitrust laws, he shall promptly give written notification thereof to such State attorney general.

"SEC. 4E. (a) In any action under section 4 or 4C of this Act, the State or any other plaintiff shall be entitled to recover treble damages in respect to the full amount of overcharges incurred or other monetary damages sustained in connection with expenditures under a federally funded program notwithstanding the fact that the United States funded portions of the amounts claimed.

"(b) The Attorney General of the United States shall have the right to intervene in any such action to protect the interests of the United States.

"(c) Out of any damages recovered pursuant to this section, the United States shall be entitled to the portion of the overcharges or other monetary damages, untrebled, that it sustained or funded. Whenever another Federal statute or law provides a specified method of settlement of accounts between the State and Federal Governments, in respect of such recovery, such method shall be used. Otherwise, the court before which the action is pending shall determine the method.

"(d) In the event of multiple actions in respect of the same alleged overcharges or other damages relating to a federally funded program, the defendant shall not be assessed, in total, more than threefold such damages.

"SEC. 4F. For the purposes of sections 4C, 4D, and 4E of this Act:

"(1) The term 'State attorney general' means the chief legal officer of a State, or any other person authorized by State law to bring actions under section 4C of this Act, and shall include the Corporation Counsel of the District of Columbia, except that such term does not include any person employed or retained on a contingency fee based on a percentage of the monetary relief awarded under this section.

"(2) The term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

"(3) The term 'Sherman Act' means the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (15 U.S.C. 1), as amended or as may be hereafter amended.".

SEC. 402. Section 4B of such Act is amended by striking out the words "sections 4 or 4A" and inserting in lieu thereof the words "sections 4, 4A, or 4C".

SEC. 403. Section 5(i) of such Act is amended by striking out the words "private right of action" and inserting in lieu thereof the words "private or State right of action"; and by striking out the words "section 4" and inserting in lieu thereof the words "sections 4 or 4C".

SEC. 404. If any provision of this title, or the application of any such provision to any person or circumstance, is 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 by such holding.

SEC. 405. Section 1407 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"(h) Notwithstanding the provisions of section 1404 or subsection (f) of this section, the judicial panel or multidistrict litigation may consolidate and transfer with or without the consent of the parties, for both pretrial purposes and for trial, any action brought under section 4C of the Act of October 15, 1914 (38 Stat. 730; 15 U.S.C. 12), as amended by section 401 of the Hart-Scott Antitrust Improvements Act of 1976. The authority granted by this subsection (h) shall be liberally construed and applied.".

SEC. 406. This title shall apply to any cause of action accruing subsequent to the date of enactment of this title.

SEC. 407. This title shall be applicable in a State until that State shall provide by law for its nonapplicability as to such State.

TITLE V—PREMERGER NOTIFICATION AND STAY AMENDMENTS

SEC. 501. The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (38 Stat. 730; 15 U.S.C. 12), is amended by adding a new section 7A to read as follows:

"SEC. 7A. (a) Notwithstanding any other provision of law, except as exempted pursuant to subsection (b)(4) of this section, until expiration of the notification and waiting period specified in subsection (b)(1) of this section, no person or persons shall acquire, directly or indirectly, the whole or any part of the stock or other share capital or of the assets of another person or persons, if the acquiring person or persons, or the person or persons the stock or assets of which are being acquired, or both, are engaged in commerce or in any activity affecting commerce and—

"(1) stock or assets of a manufacturing company with annual net sales or total assets of $10,000,000 or more is or are being acquired by a person or persons with total asests or annual net sales of $100,000,000 or more; or

"(2) stock or assets of a nonmanufacturing company with total assets of $10,000,000 or more is or are being acquired by a person or persons with total assets or annual net sales of $100,000,000 or more; or

"(3) stock or assets of a person or persons with annual net sales or total assets of $100,000,000 or more is or are being acquired by a person or persons with total assets or annual net sales of $10,000,000 or more.

"(b)(1) The notification and waiting period required by this section shall expire thirty days after the persons subject to subsection (a) of this section each file with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter referred to in this section as the 'Assistant Attorney General') duplicate originals of the notification specified in paragraph (3) of this subsection, or until expiration of any extension of such period pursuant to subsection (c)(2) of this section, whichever is later, except as the Federal Trade Commission and the Assistant Attorney General may otherwise authorize pursuant to subsection (c)(4) of this section.

"(2) Notwithstanding any other provision of law or the applicability of subsection (a) of this section, except as exempted pursuant to subsection (b)(4) of this section no person or persons shall acquire, directly or indirectly, the whole or any part of the stock or other share capital or of the assets of another person or persons, if—

"(A) the acquiring person or persons, or the person or persons the stock or assets of which are being acquired, or both, are engaged in commerce or in any activity affecting commerce; and

"(B) the Federal Trade Commission, with the concurrence of the Assistant Attorney General, by general regulation requires, after notice and submission of views, pursuant to section 553 of title 5, United States Code, that such person or persons, or any class or category thereof, shall not do so until the expiration of thirty days following the filing of a notification (specified pursuant to paragraph (3) of this subsection), or until the Federal Trade Commission and the Assistant Attorney General may otherwise authorize pursuant to subsection (c)(4) of this section, whichever occurs first.

"(3)(A) The notification required by this section shall be in such form and contain such information and documentary material as the Federal Trade Commission, with the concurrence of the Assistant Attorney General, shall by general regulation prescribe, after notice and submission of views, pursuant to section 553 of title 5, United States Code.

"(B) The fact of the filing of the notification required by this section and all information and documentary material contained therein shall be considered confidential under section 1905, title 18, United States Code, until the fact of such filing or of the proposed merger or acquisition is public knowledge, at which time such notification, information, and documentary material shall be subject to the provisions of section 552 (b), title 5, United States Code. Nothing in this section is intended to prevent disclosure to any duly authorized committee or subcommittee of the Congress, to other officers or employees concerned with carrying out this section or in connection with any proceeding under this section.

"(4)(A) The Federal Trade Commission, with the concurrence of the Assistant Attorney General, is authorized and directed to define the terms used in this section, to prescribe the content and form of reports, by general regulation to except classes of persons and transactions from the notification requirements thereunder, and to promulgate rules of general or special applicability as may be necessary or proper to the administration of this section, insofar as such action is not inconsistent with the purposes of this section, after notice and submission of views, pursuant to section 553 of title 5, United States Code.

"(B) The following classes of transactions are exempt from the notification requirements of this section:

"(i) goods or realty transferred in the ordinary course of business;

"(ii) bonds, mortgages, deeds of trust, or other obligations which are not voting securities;

"(iii) interests in a corporation at least 50 per centum of the stock of which already is owned by the acquiring person or a wholly owned subsidiary thereof;

"(iv) transfers to or from a Federal agency or a State or political subdivision thereof;

"(v) transactions exempted from collateral attack under section 7 of this Act if approved by a Federal administrative or regulatory agency: *Provided*, That duplicate originals of the information and documentary material filed with such agency shall be contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

"(vi) transactions which require agency approval under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), as amended, or section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), as amended;

"(vii) transactions which require agency approval under section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843), as amended, section 403 or 408(e) of the National Housing Act (12 U.S.C. 1726 and 1730a), as amended, or section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464), as amended: *Provided*, That duplicate originals of the information and documentary material filed with such agencies shall be contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least thirty days prior to consummation of the proposed transaction;

"(viii) acquisitions, solely for the purpose of investment, of voting securities, if, at the time of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

"(ix) acquisitions of voting securities, if, at the time of such acquisition, the securities acquired do not increase, directly or indirectly, the acquiring person's share of outstanding voting securities of the issuer; and

"(x) acquisitions, solely for the purpose of investment, of voting securities pursuant to a plan of reorganization or dissolution, or of assets, other than voting securities or other voting share capital, by any bank, banking association, trust company, investment company, or insurance company, in the ordinary course of its business.

"(C) For the purpose of subsection (b)(4)(B) of this section, 'voting security' means any security presently entitling the owner or holder thereof to vote for the election of directors of a company or, with respect to unincorporated issues, persons exercising similar functions.

"(c)(1) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the periods specified in subsection (b)(1) of this section, require the submission of additional information and documentary material relating to the acquisition by any person or persons subject to the provisions of this section, or by any officer, director, or partner of such person or persons.

"(2) The Federal Trade Commission or the Assistant Attorney General may, in its or his discretion, extend the periods specified in subsection (b)(1) of this section for an additional period of up to twenty days after receipt of the information and documentary material submitted pursuant to subsection (c)(1) of this section.

"(3) No provisions of this section shall limit the power of the Federal Trade Commission or the Assistant Attorney General to secure, at any time, information or documentary material from any person, including third parties, pursuant to the Federal Trade Commission Act or the Antitrust Civil Process Act.

"(4) The Federal Trade Commission and the Assistant Attorney General may waive the waiting periods provided in this section or the remaining portions thereof, in particular cases, by publishing in the Federal Register a notice that neither intends to take any action within such periods in respect of the acquisition.

"(d) If a proceeding is instituted by the Federal Trade Commission or an action is filed by the United States, alleging that a proposed acquisition or merger violates section 7 of this Act, or section 1 or 2 of the Sherman Act (15 U.S.C. 1-2), and the Federal Trade Commission or the Assistant Attorney General (i) files a motion for a preliminary injunction against consummation of such acquisition or merger pendente lite, and (ii) certifies to the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection—

"(1) upon the filing of such certification the chief judge of such district court shall

immediately notify the chief judge of the United States court of appeals for the circuit in which such court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes; and

"(2) the motion for a preliminary injunction shall be set down for hearing by the district judge so designated at the earliest practicable time, shall take precedence over all matters except older matters of the same character and trials pursuant to 18 U.S.C. 3161, and shall be in every way expedited.

"(e) Failure of the Federal Trade Commission or the Assistant Attorney General to request additional information or documentary material pursuant to this section, or failure to interpose objection to an acquisition within the periods specified in subsections (b)(1) and (b)(2) of this section, shall not bar the institution of any proceeding or action, or the obtaining of any information or documentary material, with respect to such acquisition, at any time under any provision of law.

"(f)(1) Whenever any person violates or fails to comply with the provisions of this section, such person shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each day during which such person directly or indirectly holds stock or assets, in violation of this section. Such penalty shall accrue to the United States and may be recovered in a civil action brought by the United States.

"(2) Nothing in this section shall be construed as a limitation on the equity power of the courts of the United States, or as limiting the power of the courts of the United States as provided under section 1651 of title 28, United States Code.".

SEC. 502. The provisions of this title shall be effective one hundred and twenty days after the date of enactment of this Act. Effective upon the date of enactment of this Act, the Federal Trade Commission is authorized and directed to carry out the requirements of section 7A (b)(3) and (b)(4) of the Clayton Act, as amended by this Act.

TITLE VI—ANTITRUST REVIEW AND REVISION COMMISSION

PURPOSE OF THE COMMISSION

SEC. 601. There is hereby established an Antitrust Review and Revision Commission (hereinafter in this title referred to as the "Commission"). In pursuance of title I (Declaration of Policy), the Commission shall study the antitrust laws of the United States, their applications, and their consequences, and shall report to the President and the Congress the revisions, if any, of said antitrust laws which it deems advisable on the basis of such study. The study shall include the effect of said antitrust laws upon—

(a) price levels, product quality, and service;

(b) employment, productivity, output, investment, and profits;

(c) concentration of economic power and financial control;

(d) foreign trade and international competition; and

(e) economic growth.

MEMBERSHIP OF THE COMMISSION

SEC. 602. (a) NUMBER AND APPOINTMENTS.—The Commission shall be composed of eighteen members appointed by the President as follows:

(1) four from the executive branch of the Government;

(2) four from the Senate, upon the recommendation of the President of the Senate;

(3) four from the House of Representatives, upon recommendation of the Speaker of the House of Representatives; and

(4) six from private life.

(b) REPRESENTATION OF VARIED INTERESTS.—The membership of the Commission shall be selected in such a manner as to be broadly representative of the various interests, needs, and concerns which may be affected by the antitrust laws.

(c) POLITICAL AFFILIATION.—Not more than one-half of the members of each class of members set forth in clauses (2), (3), and (4) of subsection (a) shall be from the same political party.

(d) VACANCIES.—Vacancies in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

ORGANIZATION OF THE COMMISSION

SEC. 603. The Commission shall select a Chairman and a Vice Chairman from among its members.

QUORUM

SEC. 604. Ten members of the Commission shall constitute a quorum.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 605. (a) MEMBERS OF CONGRESS.—Members of Congress, who are members of the Commission, shall serve without compensation in addition to that received for their services as Members of Congress, but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(b) MEMBERS FROM THE EXECUTIVE BRANCH.—Notwithstanding section 5533 of title 5, United States Code, any member of the Commission who is in the executive branch of the Government shall receive the compensation which he would receive if he were not a member of the Commission, plus such additional compensation, if any, as is necessary to make his aggregate salary not exceeding $36,000 and he shall be reimbursed for travel, subsistence, and other necessary expenses incurred by him in the performance of the duties vested in the Commission.

(c) MEMBERS FROM PRIVATE LIFE.—The members from private life shall each receive not exceeding $200 per diem when engaged in the performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

POWERS OF THE COMMISSION

SEC. 606. (a)(1) HEARINGS.—The Commission or, on the authorization of the Commission, any subcommittee thereof may, for the purpose of carrying out its functions and duties, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses, and the production of such books, records, correspondence, memorandums, papers, and documents as the Commission or such subcommittee may deem advisable. Subpenas may be issued under the signature of the Chairman or Vice Chairman, or any duly designated member, and may be served by any person designated by the Chairman, the Vice Chairman, or such member.

(2) In case of contumacy or refusal to obey a subpena issued under paragraph (1) of this subsection, any district court of the United States or the United States court of any possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is being carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry; and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(b) OFFICIAL DATA.—Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman or Vice Chairman, such information as the Commission deems necessary to carry out its functions under this Act.

(c) 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 the provisions of 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, and

(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 $200 a day for individuals.

(d) The Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

FINAL REPORT

SEC. 607. The Commission shall transmit to the President and to the Congress not later than two years after the first meeting of the Commission a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable. The Commission may also submit interim reports prior to submission of its final report.

EXPIRATION OF THE COMMISSION

SEC. 608. Sixty days after the submission to Congress of the final report provided for in section 607, the Commission shall cease to exist.

AUTHORIZATION OF APPROPRIATION

SEC. 609. There are hereby authorized to be appropriated such sums as may be necessary to carry out the activities of the Commission.

SEC. 610. Notwithstanding any other provision of law, this Act shall be effective not sooner than January 1, 1977.

Amend the title so as to read: "An Act to improve and facilitate the expeditious and effective enforcement of the antitrust laws, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. MUSKIE, I ask unanimous consent that Mr. Jim Case, of Mr. MUSKIE's staff be granted floor privileges during the remainder of the Senate consideration of the conference report on H.R. 8532.

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

Mr. ABOUREZK. Mr. President, I ask unanimous consent that Chuck Ludlam, of my staff, and Tom Sussman, of Senator KENNEDY's staff, and Buck O'Leary and Bernie Nash, of the subcommittee staff, have the privilege of the floor during the consideration of and voting on this measure.

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

The Chair recognizes the Senator from Nebraska.

Mr. HRUSKA. Mr. President, a parliamentary inquiry first of all: Is the

pending business a message from the House on H.R. 8532?

The PRESIDING OFFICER. The Senator is correct.

Mr. HRUSKA. Mr. President, a request had been made that that message be read. A request had been made that the substitute amendment for the subject of the House message be read; and also, that the pending amendment, that of the Senator from Alabama, by way of a substitute, be read. I do not intend to ask that they be read, but I do believe it would serve some purpose if we had a statement of the substitute that was proposed on motion of the Senator from West Virginia, and also, the substitute that had been proposed by the Senator from Alabama. I make a request, therefore, that they be stated.

Mr. FORD. Will the Senator yield for a unanimous-consent request? The Senator has a question pending, I believe.

Mr. HRUSKA. I have, yes, after which I shall be happy to yield.

The PRESIDING OFFICER. The pending question is on agreeing to an amendment of the Senator from Alabama in the nature of a substitute for the amendment in the motion of the Senator from West Virginia.

Mr. ABOUREZK. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Will the Senator yield for that purpose?

Mr. HRUSKA. Yes, I yield for a parliamentary inquiry.

Mr. ABOUREZK. Mr. President, I understood the Chair to say that the pending business is the amendment by the Senator from Alabama to H.R. 8532.

The PRESIDING OFFICER. That is correct.

Mr. ABOUREZK. I do not recall, Mr. President, that amendment ever having been called up.

The PRESIDING OFFICER. The amendment was called up by the Chair by unanimous consent and it is the pending question.

Mr. FORD. Will the Senator yield for a unanimous-consent request?

Mr. HRUSKA. I ask unanimous consent that I be allowed to yield to the Senator from Kentucky without losing my right to the floor.

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

Mr. FORD. I ask unanimous consent that Amy Bondurant, of my staff, be allowed the privilege of the floor during debate and rollcall on this pending business.

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

Mr. HRUSKA. I have a similar unanimous consent request for the presence on the floor of Peter Chumbris, of the subcommittee staff.

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

Mr. HRUSKA. Mr. President, we have a recurrence here of the legislative subject which has had a long and somewhat tortuous course in its life so far.

Before getting into some of the parliamentary ramifications and the intricacies which have resulted in its being back here, I wish to suggest, Mr. President, that all thoughtful persons who address themselves to the subject of antitrust legislation share a firm belief in the necessity of a vigorous and effective enforcement of our antitrust laws.

Compliance with the statutes and the court decisions and the regulations in this field is imperative if the Nation is to achieve maximum fulfillment of its potential as a mighty commercial and industrial nation. Those of us who oppose the pending measure are as fully dedicated as anyone else to this end. Several provisions we oppose in their entirety; others we would advocate if they were properly modified to eliminate inherent and substantial objections. In both cases, our concern is with an ultimate enactment which will truly produce the desired assurance of a competitive economic system which will produce and market goods with quality and with prices that will benefit consumers, and which will function in a climate that will permit the growth, expansion, and innovation which are so necessary in a thriving country of increasing population.

Mr. President, not all bills labeled as improvements or reforms are necessarily good bills. Not all bills so labeled truly produce beneficial results for the public and the consumer and for those entities which are engaged in producing and distributing merchandise and commodities in the marketplace.

The pending bill, on balance, Mr. President, proposes bad legislation. It will not benefit the consumers who, in the end, will needlessly pay higher prices for goods and services they must buy in the marketplace. It will also impose upon all business, professional, and service groups oppressive and punitive burdens. Such burdens will fall on small groups and individuals as well as large groups.

The bill is not needed for deterrence or for enforcement of those laws which are designed to protect the public from illegal and unfair practices in business. There is ample provision now for these purposes in our statutes, both civil and criminal. The bill is a revolutionary and radical revision of antitrust laws, proposed and processed in undesirable, faulty fashion for presentation to Congress. That applies to the later stages of the development of this bill as well as to its earlier stages.

This legislation will incite litigation to a massive degree and scope. It will not benefit the consumer because he will not, in the main, receive the fruits of any judgments recovered; it is legislation which will cause numerous litigation, in which the lawyers will be the chief beneficiaries, in many cases receiving more dollars in fees than the total distributed and paid to individuals for whose ostensible benefit the action was brought. It will encourage litigation which will aggravate a judicial crisis in our already overloaded court system. Finally, it is legislation which will discourage and greatly impair investment and allocation of capital which is so vitally necessary to a growing nation with expanding needs.

Mr. President, H.R. 8532, in the form which it now enjoys—or suffers, as the case may be—is brought about by a breach of regular order and sound legislative practice. I might suggest that we started on June 10, when the Senate passed an amendment consisting of six titles. Following that action, the House text of H.R. 8532 was stricken, and the six titles were substituted in the place of that text.

Mr. President, on August 24, the House struck all of the Senate-passed text and inserted in lieu thereof the three title texts which had been forwarded to this body with a House message.

The three titles superseded the six titles which the Senate had constructed and approved.

Immediately upon the introduction of the resolution of the House amendments to the Senate bill, there was a motion that the Senate concur in the House amendments to the Senate amendment for H.R. 8532, but with an amendment in the nature of a substitute.

Immediately thereupon a cloture motion was filed to apply to the bill recently sent over by the House with an amendment in the nature of a substitute.

Now, there is currently pending, Mr. President, a motion by the Senator from Alabama that the Senate concur in the House amendment to the Senate amendment as to H.R. 8532, with an amendment as follows: namely, to strike title III and some other minor changes and then to proceed to the consideration and approval of the measure.

Following the approval by the other body of its resolution last week, discussion as to procedure in the Senate brought reference to the Senate approval of the June 10, 1976, bill.

When it developed that resistance to the adoption of the House amendment to the Senate amendment appeared, it was suggested that to do so would constitute a breach of good faith; that the Chiles-Byrd compromise which had been agreed upon on June 10 culminating in votes on several designated amendments, and then upon final passage, was the agreed upon measure.

By this token it was argued, and it was suggested that all concerned should, therefore, agree to the Byrd substitute to keep the good faith of the Senate since this would make further progress toward the goal of enacting an antitrust reform measure.

Mr. President, I describe the situation mildly when I say that it was suggested that there would be a breach of good faith if any opposition and resistance were recorded and registered against the pending measure as sent over to us by the other body.

Exception during those conferences, Mr. President, was taken to suggestions that a "compromise" was now being disregarded and violated by those, such as this Senator, who resist the measure which is the subject of the House message and the substitute measure of the amendment of the Senator from West Virginia. I speak as one who participated in the negotiations last June to bring to a head and final passage the June 10 version of the bill.

The first question which arises is this: Was there a compromise? Mr. President,

in all seriousness, and in all compliance with the record, I want to say that there was no compromise in the sense of a true compromise. The fact is, Mr. President, there was a unanimous-consent agreement during the session on June 10 in which the Senator from West Virginia stated:

I ask unanimous consent that it be in order to offer and to consider en bloc the Chiles-Byrd compromise amendment to amendment 1701, the Hart-Scott substitute; that the vote on the Chiles-Byrd compromise occur no later than 7:45 p.m. today and, if adopted, that the vote on the Hart-Scott substitute, amendment 1701, as amended, occur immediately thereafter.

Mr. President, when the turn of the Senator from Nebraska came to comment upon that unanimous-consent agreement, which had repeatedly been referred to as a compromise, this Senator reserved the right to object to the unanimous-consent request, with the further statement that he would not object, and I did not object. I went on to say, Mr. President, that I would join in the unanimous-consent request for the vote upon the amendment and upon final passage.

But, Mr. President, when it was stated that the unanimous-consent request was a compromise, this Senator took exception. I took exception, Mr. President, in the following language, and I read from page 17541 of the CONGRESSIONAL RECORD:

I think we ought to understand the real nature of the unanimous-consent request. . . .

Omitting some words because one of my colleagues suggested that we have order in the Senate Chamber, and the Presiding Officer thought that was a good idea, and continuing, I said:

. . . especially since it is referred to as a compromise.

The real meaning of "compromise" as I understand it, is that there is a settlement or an adjustment, or perhaps an agreement on several point of difference.

In that sense, what we have before us is not a compromise as much as it is a proposal. It is a proposal which consists of a series of amendments, which will be the sum total of the amendments that will be acted upon before the final passage vote on this measure. The amendment process will be limited to these amendments that are contained in this proposal.

Now, Mr. President, here are the words which I want particularly noted by Members of this body. I continue reading from page 17541:

The adjustment as among the Senators who participated in the conference, is this: That debate before final passage will be limited to these amendments contained in this proposal. There will be full freedom, and there was full freedom on the part of each Senator, not only those who attended the conference but also all Members of the Senate; they are free to advocate, resist, debate against and vote against, or debate for and vote for, the measure.

The purpose is to bring to a close what has promised to be a very extended consideration of this bill, and it was thought that perhaps by this means, each party giving a little bit and gaining a little bit, we could reach the point where, after having acted on this so-called compromise proposal, we would then be ready to vote upon the Hart-Scott substitute; and in the event that it is approved, that we will then make it a part of H.R. 8532, eliminating all of that House-passed bill except the enacting clause and its number.

Mr. President, in order to prevent——

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

Mr. HRUSKA. Mr. President, to prevent the risk of taking these statements out of context——

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

Mr. HRUSKA. After a little bit, after I get this into the RECORD—I ask unanimous consent that there be printed in the RECORD at this point that portion of my remarks commencing in the sixth paragraph from the bottom in the second column over to and including in column 3 the first five full paragraphs.

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

Mr. HRUSKA. Mr. President, reserving the right to object, and I shall not object—in fact, at the conclusion of my remarks I shall join in the unanimous-consent request—this unanimous-consent request pertains to a so-called compromise in regard to the final disposition of the measures before us, H.R. 8532.

I think we ought to understand the real nature of the unanimous-consent request—

Mr. PASTORE. May we have order, Mr. President? This is important.

The PRESIDING OFFICER. The Chair agrees with the Senator from Rhode Island. The Senate will be in order.

Mr. HRUSKA. Especially since it is referred to as a compromise. The real meaning of "compromise," as I understand it, is that there is a settlement or an adjustment, or perhaps an agreement on several points of difference.

In that sense, what we have before us is not a compromise as much as it is a proposal. It is a proposal, which consists of a series of amendments, which will be the sum total of the amendments that will be acted upon before the final passage vote on this measure. The amendment process will be limited to those amendments that are contained in this proposal.

The adjustment, as among the Senators who participated in the conference, is this: That debate before final passage will be limited to these amendments contained in this proposal. There will be full freedom, and there was full freedom on the part of each Senator, not only those who attended the conference but also all Members of the Senate; they are free to advocate, resist, debate against and vote against, or debate for and vote for, the measure.

The purpose is to bring to a close what has promised to be a very extended consideration of this bill, and it was thought that perhaps by this means, each party giving a little bit and gaining a little bit, we could reach the point where, after having acted on this so-called compromise proposal, we would then be ready to vote upon the Hart-Scott substitute; and in the event that it is approved, that we will then make it a part of H.R. 8532, eliminating all of that House-passed bill except the enacting clause and its number.

It will simplify the process, round it out, and bring it to a conclusion on a much more satisfactory basis for everyone concerned, not only in this Chamber but also in the other body and eventually in the White House, if it ever gets there, for the purpose of the President deciding whether he wants to sign it or not.

It was in that spirit that we labored, and I was pleased, personally, with the spirit of good faith and good will that prevailed there, notwithstanding our rather sharp differences as to some of the substance of the amendments which we are about to discuss.

So I suggest to my colleagues, Mr. President, that it would be well to join in this unanimous-consent request, and go along with the very reasonable and highly fruitful path which it describes.

Mr. HRUSKA. Now I yield for a brief question to the Senator from North Carolina.

Mr. MORGAN. The distinguished Senator read part of the statement made on that date down to this last sentence, and I am reading this as a preamble to my question. I believe the Senator said:

The purpose is to bring to a close what has promised to be a very extended consideration of the bill, and it was thought that, perhaps, by this means each party giving a little bit and gaining a little bit that we could reach a point where, after having acted on the so-called compromise proposal, we would then be ready to vote upon the Hart-Scott substitute and, in that event and in the event that it is approved, that we would then make it a part of H.R. 8532, eliminating all of that House-passed bill, except, the enacting clause and its number.

I ask the Senator if he did not further say, following that:

It will simplify the process, round out and bring it to a conclusion on a much more satisfactory basis for everyone concerned, not only in this Chamber, but also in the other body and eventually in the White House, if it ever gets there, for the purpose of the President's deciding whether he wants to sign it or not.

I ask the Senator if that was not also part of the Senator's remarks at the time?

Mr. HRUSKA. Mr. President, all I would suggest is that the opening words in the paragraph last read by the Senator says that it will simplify the process by which the following things will be done.

I find nothing in those words, nor any place else in the statement which has been ordered printed in the RECORD, which binds anyone to say they will comply with the result of that vote and the substance of the bill which would result from that vote.

In fact, there is in the first paragraph, in the paragraph immediately preceding that which the Senator read, an expressed reservation of the freedom of what Senators do as they choose, revise, advocate, modify an amendment, and so on, and that freedom, I take it, even without that caveat, would reside in each and every individual Senator.

Mr. MORGAN. Will the Senator yield for a further question?

Mr. HRUSKA. I am happy to yield.

Mr. MORGAN. Granting that caveat, in the so-called proposal or substitute, that each Senator was given the right to resist, advocate, or debate against and for the bill, would the Senator not say it was a fair conclusion to be drawn from all of his remarks that the purpose of the proposed compromise was to bring the prolonged debate on this matter to a conclusion, not only in this body, but in the Senator's words, also in the other body and eventually in the White House?

We had already debated it for 2 days at this time.

Would the Senator not say that would be a fair conclusion for one sitting in the Senate and listening to those remarks to draw from the Senator's statement on that date?

Mr. HRUSKA. Mr. President, I look in vain for the text of the remarks I made. I find no reference to delay and obstruction and preventing passage of the bill, and if those words occurred to the mind of the Senator they must be a product of his mind. They certainly were not in these remarks nor in the mind of this Senator.

In other words, Mr. President, there was no compromise. It was an agreement as to the procedural handling of the bill. There was no basis for the statement that good faith assurances had been violated.

Mr. President, I hope I am mistaken in the information I received. It was especially regrettable, if it did occur, that reference was made to the Senator from Alabama as one who was also guilty of violating good faith assurances because, as the record particularly shows, he did not attend any of the conferences which resulted in the so-called Chiles-Hart amendment.

That is made especially clear by the later remarks of the chief introducer of the bill, the Senator from Michigan (Mr. PHILIP A. HART).

If there was a "compromise" as implied and in the contentions of the advocates of the bill, what would it be?

Obviously, that the various Senators agreed to accept the Senate bill as the six titles were proposed and as voted by the Senate on June 10. And if that were true, Mr. President, that is not the question and the position of the advocates of the bill at the present time because they have abandoned the six-title bill that was approved by the Senate on June 10 and have gone to other matters.

They have gone to other areas and I will describe in a little bit where they are located and how they were processed.

They have forsaken, in other words, the June 10 version. They have even forsaken the three-title bill approved by the House last Wednesday.

They now favor this package, which one of our colleagues referred to as a mystery package, which is now referred to as the substitute for H.R. 8252, as amended by the House.

So I suggest that if there is any violation of good faith, Mr. President, it is not on the part of those who oppose the Byrd substitute, or the substitute which Senator BYRD motioned for consideration.

Mr. ABOUREZK. Will the Senator yield?

Mr. HRUSKA. I am happy to yield for a brief question.

Mr. ABOUREZK. I was going to not interrupt the Senator from Nebraska during his exposition of this matter, but the statements he is making I think require a bit of correction.

If the Senator will permit me to say a couple of words on that, I would appreciate it so we can get the record clear and straight on this.

First of all, those of us on the committee who favor the Antitrust Improvement Act would have gone through with the normal procedure of things, and that is setting up a conference committee on our part, meeting with the House, and bringing back a conference report to deliberate on and vote on here in the Senate, depending on what we came out with in respect to the House.

Now, for the Senator from Nebraska to stand up here and say that we are changing something on our own volition is really not a very accurate nor a valid statement, simply because the Senator from Nebraska, in conjunction with the Senator from Alabama (Mr. ALLEN), has, in effect, prevented us from going through the normal course of events.

The Senators have forced us into this position now of trying to find some ground close to where the House is, to deprive us of all our bargaining leverage with the House at a conference committee meeting, and to force us to accept a lot of compromises that we ordinarily would not do, by virtue of this threat to filibuster both the motion to appoint conferees and in the conference report, if we ever came back with that.

So to say that we are abandoning our position is really not very valid nor is it accurate, and I wish the Senator would stop using that sort of phrase. The Senator knows how I feel and the rest of us feel about the agreement we made in June.

The agreement was that you would stop delaying the antitrust bill if we weakened the antitrust bill, which we did, which was in an effort to stop the delays.

I just want to put myself on record on that point. I do not want to stand here and argue what everybody's intention was because everybody in the Senate, and especially those of us who were in on the agreement at the time, understood that the delay would be stopped. Now we find ourselves going through the same mish mash all over again.

I want to say one more thing before I yield back to my friend from Nebraska.

Whether or not this bill goes through in any kind of shape this year, I can guarantee, with whatever power I have, in the next session of Congress there will be a stronger antitrust bill that will protect the public much more than this one, and there will be no compromises on my part in the same manner that we entered into this year.

Mr. HRUSKA. Mr. President, I would like to take up one or two points.

Mr. ALLEN. Will the Senator yield for a question?

Mr. HRUSKA. Yes, indeed.

Mr. ALLEN. I have been interested in the Senator's remarks indicating, of course, that there was no compromise. I am wondering, and I wonder if the distinguished Senator could answer, if those who now say there was a compromise, that the Senate amendment was what was compromised upon, why is it, then, that instead of pushing the Senate amendment, as my substitute does, they have, instead, an amendment that no one knew anything about at the time it was introduced? If they say that the Senate amendment was the compromise, why do they now oppose the Senate amendment? I wonder if the Senator could enlighten the Senator from Alabama on that?

Mr. HRUSKA. There is another answer to the remarks of my good and neighboring Senator to the north of my State. He suggests that the agreement was that we would stop delaying on June 10.

Mr. President, I do not find that type of an order, nor that kind of implication in the agreement in its full text, nor anything that led to it, nor that was done afterward. In fact, there was the expressed reservation that every Senator retained what freedom he had "to advocate, resist, debate against and vote against or debate for and vote for." That is an expressed reservation of the freedom that we have in any event.

I find nothing in here to contradict that assumption.

The agreement was that we would limit the number of amendments that would be voted upon and then proceed to final passage. That is what the agreement was. All other rights were reserved.

Now let us get to the other point made by my good friend. He said absent this agreement, this compromise—which was not a compromise, but was a proposal we entered into on procedural grounds—absent that agreement, we would have gone through conference, we would have gone through all the agony of having arguments back and forth. We would have come back to the Chamber and I imagine the result probably would be that there would be a bill now enacted into law.

But let me suggest this point, which the Senator omits entirely from his description of the situation: The bill that came over here from the House had one title. The bill we sent back to the House had six titles. Mr. President, if there ever was room for the application of the nongermaneness rule which would have immediately resulted in a barring of the extra five titles, I would never hope to see such a clear example. There was nothing that the advocates of this legislation gave up by not going to conference. In fact, I would have an idea that if the decision had been made to go to conference on one evening, the next morning they would have reconsidered because they would know, upon reflection, that five nongermane titles would have been stricken in the conference out of hand, just that easily.

So they have given up nothing. The statement to that effect, I believe, does not carry any weight whatsoever.

Mr. President, I repeat, there was no compromise on June 10. It was an agreement to a proposal to limit the number of remaining amendments which would be voted upon before final passage was voted upon. Each Senator retained freedom to act and to vote for or against the end product just as he chose.

But if it be insisted that there was a compromise in which an end product would be agreed upon and enacted, then I say that the violation of good faith does not rest with the proponents of the substitute and the bill we are now considering, but, rather, on those who advocate it. It is they who have abandoned the fruits of the so-called June 10 compromise.

Now comes the substitute which is proposed by the motion offered by the Senator from West Virginia. I should like to discuss that a little bit.

The normal way to reconcile differences between the two bodies of this Congress is, as we all know, a conference—a conference of representatives of the respective committees who have managed the bill, who have processed it, who have drawn it, who have written the reports, and so on. That is healthy, wholesome, and fair. Representation of all sides of the items and the differences thereon is inherent in a conference committee.

The chairman of our committee on the Senate side heartily indicated pursuant to a request by the chief introducer of this bill that he would have appointed as conferees the entire Subcommittee on Antitrust and Monopoly, together with the majority leader, the mniority leader, and one other. That is the normal practice and it is a good practice. It is part of our system. That is the way we work things out.

But this practice and this procedure, Mr. President, I am sad to say, was sabotaged. It was altogether scrapped. It was totally disregarded to the detriment, I think, of the Senate as an institution, to the detriment of the procedures which we have developed here and by which we normally abide.

But this, it was said, and apparently was thought, is a different situation because we have to get a bill. We have to get a bill. And, there is some foundation for thinking, any kind of a bill. Let us get a bill and let us get it soon.

So that practice and that procedure was abandoned, that which we normally follow, and instead of a conference we had this scenario:

We had a number of the bills' advocates from both Houses meeting in secret session to ascertain "what the House might favorably consider." There was no sunshine in that meeting, Mr. President. When I look over the people who attended that meeting I have an idea that every one of them is a staunch advocate of open meetings and sunshine falling on all facets of the legislative process.

There was no sunshine in that meeting, Mr. President. There was no chairman of the Senate committee. He was not notified. He was not aware of the meeting. He was not invited. Normally, we consider the chairman as an integral part of the legislative process. No chairman was there.

The Senate was not represented except for the select proponents of the legislation. The conferees were not there, those who were contemplated, nor were representatives of the Senate Judiciary Committee composing different views of the committee.

All who were present at the meeting were selected proponents of some legislation. One is tempted to say almost any legislation, Mr. President. We have the situation where there were some 41 points of difference. There were some 41 identified points of difference between the House and the Senate passed versions of the bill. Approximately 25 were resolved in favor of the House, 10 in favor of the Senate and 6 resulted in a compromise.

Mr. President, that is fine. It is an excellent way of expediting legislation. Numerous changes resulted in great variation from the Senate-passed six-title bill which was the subject of the much vaunted "compromise" of June 10, and an abandonment of that June 10 compromise by those who so assiduously fought to get it approved by this body.

Mr. President, I suggest that is not a good, sound way to legislate. Those Members of Congress on both sides of the Capitol were entitled to be represented at any conference on the bill, whether it was a pseudoconference, a semisecret or secret conference, or an informal conference. They were entitled to be there so they could say, "Let us work together here and see if we cannot resolve some of these things in a way that will result in a more wholesome bill—one, for example, that would meet some of the strenuous views expressed during the debate, and one that would meet some of the views expressed by the President also on some topics."

But Congress did not follow that course, and the substitute amendment now pending before us by reason of the motion of the Senator from West Virginia first came to light, Mr. President, late Friday afternoon, in a highly interlined and changed form, superimposed upon the House-passed bill containing only three titles, and there were printer's corrections, changes, deletions, additions, and so on. No presentation of its nature or provisions were heard on the floor that day. Not until the Members of this body received and read the CONGRESSIONAL RECORD the next day, on Saturday, if they did not have travel or other plans that would lead them to other destinations; not until Saturday morning did the light of day shine upon the printed version of the so-called substitute for the House-passed amendment to the Senate amendment.

I say again, Mr. President, immediately, and with some difference of opinion as to who was entitled to be recognized and who wanted recognition from the floor, immediately a cloture motion was filed, and we are going to vote on that tomorrow.

Mr. President, that is not a sound way to legislate. Regular, seasoned processes were circumvented, bypassed, and ignored.

"A bill must pass": That was the watchword of all those negotiations. Almost any kind of a bill, but a bill must pass, and that just about sums up the matter.

Mr. President, there are three titles to this bill, the House amendment to the Senate amendment, and likewise three titles in the amendment in the nature of a substitute. There are inherent in these three titles the same objections that we had during the course of the Senate debate. There have been some improvements made. I shall call attention to a number of items here, however, which are still basically and very necessarily and inherently objectionable, and impair the usefulness and the place of this bill as a part of our statutory law.

In the field of parens patriae, for example, we have conceptually a highly harmful and unfair measure. The testimony on that is clear. It will be the source of a great deal of trouble, not only to the businessmen of this country but to the consumers, the courts, and the citizens generally, because of the high burden of increased litigation as well as for a variety of other reasons.

It is sound policy, in the minds of most thoughtful students, that if a State wants to vest its attorney general with certain powers to sue or to litigate, that State is the best place to look for such authority, and it should either grant that authority or hold it; or, if authority exists, it can be modified one way or the other, but the place to get that done is in the State legislature.

Not so in the pending bill. Not so at all. The bill now pending undertakes to assign and vest jurisdiction in the attorneys general of the States over the subject of parens patriae as expressed in title II. That is one of the first objectionable points.

It is true that the State legislature can opt out, as it were. But it takes affirmative action, and that is not the kind of pressure that we would expect a Federal Government to exert upon a State legislature, which should be free and untrammeled to originate, frame, phrase, and structure any authority or jurisdiction which it wants to vest in its attorney general.

Mr. President, what about these private antitrust transactions and the parens patriae? The second circuit, in one of its cases—and I shall read one or two excerpts, because we must bring back to mind, as we embark upon this later stage of the legislative process, what the real evils of the concept of parens patriae are.

The second circuit said:

> There is reason to believe that the practical effect of these procedures, and the fact that possible recoveries run into astronomical amounts, generate more leverage and pressure on defendants to settle, even for millions of dollars, and in cases where the merits of the class representative's claim is to say the least doubtful, than did the old-fashioned strike suits made famous a generation or two ago by Clarence H. Venner.

That was the second circuit court, speaking in the Eisen case.

As former solicitor general Lacovara testified:

> Once a *parens patriae* complaint is filed, with possible recoveries reaching the hundreds of millions of dollars, how could a prudent businessman, still presumptively innocent of any wrongdoing, fail to reach an out-of-court settlement? The *parens patriae* concept is, in short, the mechanism for systemized injustice.

And the American College of Trial Lawyers submitted that:

> No large consumer class action [has] been litigated through trial to a determination of damages. The enormous litigation expenses and undefined but potentially massive damages awards, often in excess of the defendants' net worth, have forced defendants to seek the insurance policy of a "global" settle-

ment of all potential claims, irrespective of the merits of the claims.

Mr. President, the striking part of that quotation is this—and it is a fact:

No large consumer class action has been litigated through trial to a determination of damages.

The reason is obvious. We are going to be asked to approve this title III in the pending bill. There have been some improvements made in the bill since it left the Senate, but not enough of them. I shall call attention to some of the items which remain to be done if we are going to have anything resembling fairness and justice, something we can repair to that will be constructive rather than oppressive, and something that will be wholesome rather than detrimental to consumer as well as investor interests in this Nation.

The items that we still have to do plainly call for a restoration of a sound, regular order and parliamentary procedure.

Methods should be used by which our congressional system works, and by the circumventing of these rules it seems to be a course that is pretty well obstructed.

One of the main points in the bill, as it remains today, has to do with the authorization to sue. It is found in section 4C(a)(1). That section limits State suits. It permits State suits for per se violation and for patent frauds, and that is all. Not so in the Byrd substitute and the House amendment. In those bills the paragraph and section 4C(a) permits treble damage suits, Mr. President, for damage for any violation of the Sherman Act. That was a point that was debated here in this Chamber at great length and with a great deal of attention, because everyone knows that to allow the courts to be available for this type of suit for any violation of the Sherman Act is extremely unfair and imposes exposures for unforeseeable violations, unrecognizable and unpredictable, which are difficult for small business people to perceive, particularly, and the reason is plain. The Sherman Act's "elastic" ban on restraint of trade is such that very often there is no way of telling when there is a potential violation and when there is not.

It penalizes by allowing an open-ended catalog of business activities to be subject to court scrutiny and on the basis of lawsuits because of the ever-broadening court interpretations that are forever coming out. The Senate bill wisely limited suits to activities to where the consumer gets hurt the most and where the violations of the act are easy to perceive, and that is in two areas: A price-fixing agreement and a patent fraud.

Where those violations occur I know of no thoughtful person who would say let us adopt legislation which will protect people who enter into that kind of conduct. There is no one in this Senate Chamber of whom I know who is advocating that. And certainly the same would be true in the other body.

Many acts assumed to be lawful for years and years, and even for the benefit of consumers and for business, are made unlawful by shifting court interpretation, and this leaves many enterprises at the mercy of blackmail class-action suits, where the mere filings of causes of action force settlements even if there is good faith, and even if there is a serious doubt as to the court holding one way or the other.

Of course, that has been very well documented during the course of our debates, but in order that again we have some concrete reminder of it, I ask unanimous consent that a brief passage from report No. 2, minority views, starting at the last full paragraph on page 181 and extending to the penultimate paragraph on page 182 be printed in the RECORD at this point.

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

Due to shifting court interpretations, trade practices assumed for many years to be lawful, and even procompetitive, may thus incur open-ended liabilities under title IV *parens patriae* actions and the risks of massive title IV retribution for a wrong guess may well inhibit aggressive competition. Multimillion dollar *parens partriae* actions may strike at—

"Newspaper and other franchise restrictions on distributor resales; media rate practices; newspaper, gasoline, and other consignment price arrangements; lawyers' bar association fee schedules; real estate broker commission and listing practices; medical association restrictions on advertising; architects' fee and advertising standards; anesthesiologists' "value guides"; engineers', architects' and accountants' bidding restrictions; and optometrists', pharmacists' and druggists' price or advertising restrictions."

Likewise, Sherman Act section 2's "monopolization" provisions may invite massive *parens patriae* actions aimed at—

"Patent pools and patent licensing restrictions; acquisitions and mergers; "predatory" pricing; and "fraud on the Patent Office, * * * and other violations", unspecified, in the majority report." (P. 39.)

Also our hearings revealed that labor unions may find themselves at the paying end of heavy *parens patriae* antitrust liabilities. Since unions have only a partial antitrust exemption, cut back recently by the Supreme Court interpretations, State attorneys general or their private deputies may name labor unions as defendants or coconspirators with employers for allegedly restrictive, collusive, or monopolistic activities charged as curtailing competition or raising prices at the consumer level.

In sum, huge antitrust liabilities under *parens patriae* actions can hit not only alleged corporate price-fixers reaping "ill-gotten gains."

Rather, they will create heavy antitrust exposures particularly for smaller firms, professional and service organizations, media, and even labor unions.

According to Professor Handler's survey of recent Government retail price-fixing cases:

"The largest single category of retail price-fixing charged by the Government related to fee schedules and codes of ethics adopted by various professional associations and real estate boards. No less than 15 of these suits have been brought against groups of lawyers, architects, engineers, accountants, anesthesiologists, veterinarians and real estate brokers." (Hearings, pt. 3 at 136.)

He anticipated for *parens patriae* suits under title IV:

"Based on the cases brought by the Government having a maximum impact on consumers, they open the doors wide for the assertion of claims of astronomical proportions against small business and professional people for conduct whose legality very few questioned until recently." (Hearings, pt. 3 at 137.)

Mr. HRUSKA. The approval of the proposed substitute would reinstate all these hardships and unfairnesses and that should not be done. The Senate version is superior to the substitute and the House amendment to the Senate amendment on this point.

Another example, Mr. President, which would have been brought to the attention of the conferees had a conference been held, is section 4C(a)(1), which provides for triple damages in case of damages incurred on account of violation of the Sherman Act and the pertinent provisions thereof. But that section has a proviso, Mr. President, It prohibits the award to a State of any monetary relief that duplicates any relief "that has been awarded or is properly allocable to, one, such natural persons who have excluded their claims pursuant to subsection (b)(2) and, two, to any business entity."

The House version, the House-passed amendment to the Senate amendment, and the substitute amendment has no such proviso, and the unfairness of the lack of that proviso is obvious. Yet it is going to become law if we are going to pursue the course that has been staked for us, and built right into that law will be that type of unfairness.

Mr. President, we have in another title of the bill, the premerger title, notice requirements which are applicable to companies of $100 million sales or assets. That point was also debated widely here.

It is a highly improvident provision because the testimony of the Chairman of the Federal Trade Commission is to its effect, and in these words, and I am reading from page 210 of part II of the report of the Senate committee. It was Federal Trade Commission Chairman Engman who said:

If we had to conduct full investigation of all mergers exceeding the $100 million assets or sales test that is contained in the bill, the fruits of our efforts might not be worth the cost. Our own premerger notification program sets higher limits of $250 million of assets or sales and appears to be satisfactory for purposes of getting basic information on large mergers.

Mr. President, if we are going to load the law enforcement agencies and divisions of this Federal Government with that type of burdensome and fruitless effort, it seems to me we are not making progress in the right direction.

As originally proposed, this premerger notification act was not an act of regulation or monitoring, Mr. President. It was an act of prohibition.

In its original form and in the form that we debated it here in the Senate, it would have prevented all mergers, apparently, on the idea that all mergers are bad. Every businessman and every lawyer knows that is not true, and every legislator ought to be aware of that to the degree sufficient to bring him to the conclusion that the bill should be suitably modified. But there is no way of modifying it if we have no recourse to a conference and if we have no recourse to the regular orderly processes by which

we have progressed heretofore in matters of this kind.

Obviously, Mr. President, more careful scrutiny is needed. Time in which to exercise that scrutiny should be furnished. There should not be a few select Members of each body deciding for 535 Members what and how we should vote on matters of this kind when there is such a radical departure from the usual way of handling these matters. There should be no secret meeting. There should be no hurried ill-prepared bill text, and so on.

There should be recognition of all these things. And there have been proposed some amendments that we hope will be given proper attention. We hope that some of them will be recognized for the merit they possess and that we can graft them to the corpus of the bill which we have before us in such a fashion that we will avoid at least some of the more glaring and some of the more obnoxious parts of the measure which is before the Senate at this time.

Mr. President, sometimes, in fact, often, reference is made to the fact that this bill has been in process for 10 years, which I deny and no use of commonsense would lend any credibility to such a statement. Sometimes it is said that we have overdebated this, we have overheard it, we have overprocessed it. But when we consider that in its original form it had seven titles, seven titles reaching into some of the most complex and far-reaching legislation affecting the entire economy and the economic and social structure of this Nation, when we realize that and we find that we have eliminated four of those seven titles and we are now down to three, yet those three are possessed of many defects which should be addressed more particularly and in greater detail—when we realize that, I think that any idea of criticism for the purpose of saying that we are overdoing this legislative process here falls into nothing and fades away.

Mr. President, we have prepared some amendments, as I say. Each of the amendments will have a brief explanatory statement. I do not believe many of them will need too much explanation or exposition or narrative. Some of them will. The more important ones will and should, because they address themselves to some fundamental notions of economics and to some of these elements which we hope, by proper and timely action, will avoid a great deal of permanent harm to our legislative picture and to the business and economic picture, and to the well-being of this Nation of consumers who, after all, are going to pay whatever price is attached to the legislation here by way of added expense, added administrative costs, court costs, and so forth.

Mr. President, the Senator from Alabama had expressed a desire to be in the Chamber before termination of the session today.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. HRUSKA. I am happy to yield to the assistant majority leader.

## ORDER FOR RECESS UNTIL 11 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11 a.m. tomorrow.

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

## ANTITRUST CIVIL PROCESS ACT AMENDMENTS OF 1976

The Senate continued with the consideration of the message from the House of Representatives announcing its action on the amendment of the Senate to the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes.

Mr. HRUSKA. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALLEN. 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. ALLEN. Mr. President, I ask for the yeas and nays on my amendment, and I ask unanimous consent that it may be in order at this time to ask for the yeas and nays on the substitute offered by the Senator from West Virginia (Mr. ROBERT C. BYRD).

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

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

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. ALLEN. Mr. President, in order that we may have sufficient Senators in the Chamber for a sufficient second, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

## PHILIP A. HART OFFICE BUILDING

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1111, Senate Resolution 525.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 525) to designate the extension of the Senate Office Building presently under construction as the "Philip A. Hart Office Building".

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MANSFIELD. I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Montana (Mr. MANSFIELD) proposes unprinted amendment No. 409: At the end of the first paragraph, strike the period and add a comma, and add "when completed."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. ALLEN. Mr. President, the distinguished majority leader was kind enough to allow me to to be one of the original sponsors of this resolution. I joined in the resolution as a tribute to a great U.S. Senator, a man who has served with distinction in the Senate for many years. We all hate to see him retire from his career in the Senate; he is a gentle, lovable, and loving man. At the same time, he is dedicated and determined and strong. He has reflected credit upon his State and upon the Nation and he is, I believe, one of the most beloved Members of the U.S. Senate. I think it is entirely appropriate that this honor be accorded to him, that the extension of the Dirksen Senate Office Building be named in his honor. I know that the resolution does provide for appropriate markers to indicate that the building has been so named.

This building will commemorate the great career of the distinguished Senator from Michigan (Mr. PHILIP A. HART) but PHIL HART, himself, will live in the minds and hearts of those who love him far beyond the length of time that this memorial will continue to be a tribute to his memory. I strongly urge the adoption of the resolution.

Mr. HRUSKA. Mr. President, I associate myself with and concur in the remarks just made by our colleague from Alabama. Shortly after his election to the Senate in 1958, the Senator from Michigan (Mr. PHILIP A. HART) became a member of the Committee on the Judiciary. It was my good fortune to have been there a short while before he was placed there, but from the earliest entry to the ranks of the active members of that committee, there was formed a very high regard and a high respect for the personality, for the professional skill and the capability which the Senator has. And, of course, with it all, he is a gentleman and a gentle soul. He has been always fair, always willing to go that extra mile or so that extra distance which was necessary to accommodate a colleague if he could. It has been an enriching experience to have been with him and worked with him. I happily and gladly subscribe to the resolution as one of its cosponsors.

Mr. BAKER. Mr. President, I am very glad to join as a cosponsor of Senate Resolution 525, stating that the extension of the Dirksen Senate Office Building when completed shall be designated as the Philip A. Hart Office Building.

I wish to take this opportunity to state also, on behalf of Mrs. Dirksen and the Dirksen family, that they have asked me to express their full accord with this humane intuition.

Senator HART, who is retiring after 18 productive and constructive years serving his country in the Senate of the United States, has won the respect and affection of all with whom he has been associated. His monument is his work in the Congress, and his commemoration will speak in the hearts of his friends.

I compliment the majority leader, a good and close friend, as are many of us, for his initiative in moving to appropriately honor a respected retiring Member of this body.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution, as amended, was agreed to, as follows:

S. RES. 525

*Resolved*, That insofar as concerns the Senate, the extension of the Senate Office Building presently under construction pursuant to the Supplemental Appropriations Act, 1973 (86 Stat. 1510), is designated and shall be known as the "Philip A. Hart Office Building", when completed.

SEC. 2. Any rule, regulation, document, or record of the Senate, in which reference is made to the building referred to in the first section of this resolution, shall be held and considered to be a reference to such building by the name designated for such building by the first section of this resolution.

SEC. 3. The Committee on Rules and Administration shall place appropriate markers or inscriptions at suitable locations within the building referred to in the first section of this resolution to commemorate and designate such building as provided in this resolution. Expenses incurred under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

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## CARE AND TREATMENT OF VETERANS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1097, H.R. 10394.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 10394) to amend title 38 of the United States Code to promote the care and treatment of veterans in State veterans' homes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Veterans' Affairs with an amendment to strike out all after the enacting clause and insert the following:

That (a) section 641 of title 38, United States Code, is amended to read as follows:

"§ 641. Criteria for payment

"(a) The Administrator shall pay each State at the per diem rate of—

"(1) $5.50 for domiciliary care,

"(2) $10.50 for nursing home care, and

"(3) $11.50 for hospital care,

for each veteran receiving such care in a State home, if such veteran is eligible for such care in a Veterans' Administration facility.

"(b) In no case shall the payments made with respect to any veteran under this section exceed one-half of the cost of the veterans' care in such State home.".

(b) Paragraph (19) of section 101 of title 38, United States Code, is amended by striking out "of any war (including the Indian Wars)" in the first sentence and "of any war" in the second sentence.

(c) (1) The amendments made by subsection (a) of this section shall be effective on October 1, 1976.

(2) At the time of the first payment to a State under section 641 of title 38, United States Code, as amended by subsection (a) of this section, the Administrator of Veterans' Affairs shall pay such State, in a lump sum, an amount equal to the difference between the total amount paid each such State under such section 641 for care provided by such State in a State home from January 1, 1976, to October 1, 1976, and the amount such State would have been paid for providing such care if the amendment made by subsection (a) of this section had been effective on January 1, 1976.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

Mr. CRANSTON. Mr. President, H.R. 10394, which I reported from the Committee on Veterans' Affairs on August 25, would raise the rates at which the Veterans' Administration reimburses State veterans' homes for care provided to eligible veterans. The measure passed the House of Representatives unanimously on December 15, 1975, and was ordered reported by the Senate Committee on Veterans' Affairs on June 16 of this year.

In 1976, 40 State veterans' homes provide care to an average of 11,000 veterans each day in 30 States and the District of Columbia. The total annual cost of running the State home system is nearly $80 million. The States now bear approximately 72 percent of that cost, or $57.8 million. The remaining 28 percent, or $22.2 million, is borne by the Federal Government in the form of reimbursements to the States on a per-diem, per-veteran basis.

Under current law, the VA reimburses State homes at the per-diem rates of $4.50 for each veteran who receives domiciliary care, $6 for a veteran receiving nursing home care, and $10 for a veteran receiving hospital care. These statutory rates of reimbursement have not been altered since 1973, despite an increase in overall State home operating expenses of close to 50 percent in the 3 years since the rates were last revised.

The purpose of H.R. 10394 as reported, Mr. President, is to insure that the Federal Government continue to support a reasonable proportional share of the costs of maintaining and operating the 40 State veterans' homes in the United States. The bill would raise the per-diem reimbursement rate for veterans receiving domiciliary care from $4.50 to $5.50, for veterans receiving nursing home care from $6 to $10.50, and for veterans receiving hospital care from $10 to $11.50. The bill would also apply these higher rates retroactively to January 1, 1976. The total cost of the bill would be $18.8 million in the first full fiscal year, fiscal year 1977 beginning October 1, 1976; $12.083 million in fiscal year 1978; $13.752 million in fiscal year 1979; $14.204 million in fiscal year 1980; and $15.082 million in fiscal year 1981.

I would also like to say a special word of thanks to my good friend and colleague from New Jersey, Senator HARRISON WILLIAMS, under whose chairmanship I am privileged to serve on the Committee on Labor and Public Welfare. He has taken a special interest in the subject matter of this legislation. Two of the country's finest State homes are located in New Jersey, and Senator WILLIAMS has introduced legislation of his own to support the State home system, and testified at our hearings last February. My colleagues on the Veterans' Affairs Committee and I profited greatly from his interest and concern.

Mr. President, I ask unanimous consent that appropriate excerpts from the committee report be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. CRANSTON. Mr. President, informal discussions with the House Committee on Veterans' Affairs indicate that the rates of reimbursement, the retroactive feature, and the technical changes contained in the Senate version of H.R. 10394 will be acceptable to the other body, and that the measure can quickly be sent to the President.

EXHIBIT 1

SUMMARY OF H.R. 10394, AS REPORTED

*Basic purpose*

The basic purpose of the Committee substitute, as amended, is to raise the rates at which the Veterans' Administration reimburses State veterans homes for care provided to eligible veterans in State veterans home facilities. Under current law (38 U.S.C. 641), the VA reimburses State veterans homes at the per diem rates of $4.50 for eligible veterans receiving domiciliary care; $6 for those receiving nursing home care; and $10 for those receiving hospital care. Since these rates are fixed by statute, the Federal proportional share of the cost of operating the State home system has declined as overall operating costs have risen over the past several years. The purpose of the Committee bill is to raise the per-diem rates of VA reimbursement, and thereby to ensure that the Federal Government continues to support a reasonable proportional share of the costs of maintaining and operating the 40 State veterans homes in the United States.

*Summary of provisions*

H.R. 10394 as amended would:

(1) Amend section 641 of title 38, United States Code, to raise the per-diem reimbursement rate for veterans receiving domiciliary

care from $4.50 to $5.50; the per-diem reimbursement rate for veterans receiving nursing home care from $6 to $10.50; and per-diem reimbursement rate for veterans receiving hospital care from $10 to $11.50.

(2) Apply the new, higher rates retroactively to January 1, 1976, thus entitling State veterans homes to the higher rates of reimbursement for any eligible veteran receiving care on or after that date although no payments will be made under the bill until on and after October 1, 1976.

(3) Eliminate the requirement that States be reimbursed only for veterans who served in the Armed Forces during wartime or after January 31, 1955, and permit reimbursement for all otherwise eligible veterans regardless of period of service.

(4) Make minor stylistic changes in section 641 of title 38, United States Code.

BACKGROUND AND DISCUSSION

*Federal reimbursement to State veterans homes*

Although various States established homes for the care of disabled or elderly veterans as early as the first third of the 19th century, it was not until almost 3 million veterans survived the Civil War that the construction of State veterans homes began on a significant scale. Between 1865 and 1885 12 States constructed veterans homes and operated the homes through a combination of State appropriations and private philanthropy. The Federal Government provides no financial assistance to State veteran homes; Federal support was limited to a small National Homes systems of five facilities.

By the 1880s, overcrowding in the National Home system had grown so severe that disabled veterans were sleeping on floors or in makeshift tents on the facility grounds. To relieve the strain, Congress passed the Act of August 27, 1888, the purpose of which was "to encourage the States to establish State homes" for the care of Civil War veterans. The Act authorized payment to the States by the Federal Government of $100 a year per veteran for care provided to "disabled soldiers and sailors of the United States who served in the war of the rebellion" in a State-run veterans facility.

The Senate Committee on Military Affairs, reporting on legislation that subsequently became the Act of August 27, 1888, justified the measure in these terms:

It cannot be seriously doubted that the Federal Government, in the first instance, is justly chargeable with the care of its defenders, and more especially of those who aided to preserve the integrity of the Union in the late war, who, by thousands, have become, from the effects of service and the infirmities of age, physically disabled from earning a livelihood. In no proper sense can the responsibility for the entire care of the veterans of its wars be cast upon the States when the local burden always includes a liberal item of taxation for the support of the indigents usually found in every community. This is a sufficient strain, in that direction, upon the taxpayer.

The care and support of the indigent and disabled soldier is essentially a Federal obligation, and, in the judgment of [the] committee, it is neither wise, just, nor patriotic for a nation, by delay or otherwise, to evade it. . . .

It seems quite plain to [the] committee that a portion of this burden, yea, the greater part of it, should be borne by the Federal Government. The States have carried it over twenty years, and it is scarcely possible to say what the aggregate has been. They ask for no return of moneys thus expended, but they do demand that, in future, the nation assume its just and full share of an obligation that rests upon it alone. That the States, from motives of patriotism and humanity, have erected State homes and given inmates support therein in no wise absolves the Federal Government from its own obligation to extend future aid." (Sen. Rept. No. 754, 50th Cong., 1st Sess. (Mar. 26, 1888), pp. 1, 4.)

The $100 per-annum payment for each veteran receiving care in States veterans homes continued for 32 years. In 1920, legislation was enacted to raise the annual payment to $120; over the next 3½ decades, the payment rates were periodically raised by Congress, reaching $700 a year in 1954.

By 1960, the number of State veterans homes had risen to 33, and the Federal Government's annual contribution to the State home system had grown from a modest $250,000 in 1888 to more than $6.2 million. In 1960, Congress replaced the per-annum reimbursement mechanism with a more efficient and more generous per-diem mechnism, under which the Federal Government reimbursed State veterans homes at the rate of $2.50 for each *day* of care provided to eligible veterans. (Public Law 86–625, section 1.)

In 1964, as part of a concerted Congressional effort to improve the quality and availability of nursing home care for elderly or disabled veterans, Congress enacted legislation to reimburse State veterans homes at a new, higher per-diem rate of $3.50 for any veteran receiving nursing home care there. (Public Law 88–450, section 3(a).) Four years later, the per-diem rates of reimbursement were raised to $3.50 for veterans receiving hospital or domiciliary care, and $5 for veterans receiving nursing home care. (Public Law 90–432, section 1.)

In 1969, in recognition of the growing cost of providing hospital care and the increasing number of hospital beds in the State veterans home system, the per-diem rate of reimbursement for veterans receiving hospital care was raised to $7.50, thus establishing for the first time different rates of reimbursement for the three distinct types of care provided in State homes. (Public Law 91–178, section 1.)

Finally, in 1973, the reimbursement rates were raised to their current statutory levels of $4.50 for domiciliary care, $6.00 for nursing home care, and $10.00 for hospital care. (Public Law 93–82, section 403(a).) These rates are codified in section 641 of title 38, United States Code.

*State veterans homes today*

In 1976, 40 State veterans homes provide care to an average of 11,000 veterans each day in 30 States and the District of Columbia. The total cost of running the State home system is nearly $80 million. States now bear approximately 72 percent of the total cost, or $57.8 million. The Federal Government now pays the remaining $22.2 million, or 28 percent of the total cost.

Although the Federal contribution has grown significantly in dollar terms during the past half decade, the Federal proportional contribution has declined in light of the dramatic rise in total costs. State governments are bearing a larger absolute and proportional share of the financial burden of running the State veterans home system. For example, the cost of providing domiciliary care in the State home system rose 50 percent between 1970 and 1975, while the VA's per-diem reimbursement increased only 29 percent. In 1970, the VA supported 40 percent of the total operating cost of the State domiciliary program; by 1975, the Federal contribution covered only 32 percent of the total cost.

Similarly, the Federal contribution to the cost of nursing care in the State home system declined from 32 percent of the total cost in 1970 to 26 percent 5 years later, and the Federal contribution to the cost of hospital care dropped from 28 percent to 24 percent over the same 5-year period. (See table 1.)

*The effect of H.R. 10394, as reported*

As of fiscal year 1975, the Federal proportional shares of the costs of nursing and domiciliary care in the State home system stood at their lowest point in this decade, and the Federal share of the costs of hospital care was also low. H.R. 10394, as reported, would raise the VA's per-diem reimbursement for all three types of care to levels which will keep the Federal proportional share of total operating costs at levels consistent with the average Federal proportional share during the past 5 years—approximately 30 percent.

TABLE 1.—VA SHARE OF PER-DIEM COSTS FOR DOMICILIARY, NURSING, AND HOSPITAL CARE IN STATE VETERANS HOMES, FISCAL YEARS 1970 TO 1975

| Fiscal year | Per-diem operating costs | VA per-diem rate | Percentage paid by VA |
|---|---|---|---|
| Domiciliary care: | | | |
| 1970 | $8.81 | $3.50 | 40 |
| 1971 | 9.30 | 3.50 | 38 |
| 1972 | 9.99 | 3.50 | 35 |
| 1973 | 11.08 | 3.50 | 32 |
| 1974 | 12.19 | 4.50 | 37 |
| 1975 | 14.04 | 4.50 | 32 |
| Nursing care: | | | |
| 1970 | 15.62 | 5.00 | 32 |
| 1971 | 15.79 | 5.00 | 32 |
| 1972 | 17.15 | 5.00 | 29 |
| 1973 | 18.43 | 5.00 | 27 |
| 1974 | 20.33 | 6.00 | 30 |
| 1975 | 23.20 | 6.00 | 26 |
| Hospital care: | | | |
| 1970 | 26.79 | 7.50 | 28 |
| 1971 | 31.22 | 7.50 | 24 |
| 1972 | 32.38 | 7.50 | 23 |
| 1973 | 35.54 | 7.50 | 21 |
| 1974 | 37.92 | 10.00 | 26 |
| 1975 | 40.97 | 10.00 | 24 |

Source: Figures supplied by the Department of Medicine and Surgery.

*Domiciliary care.*—H.R. 10394 would raise the VA per-diem rate of reimbursement from $4.50 to $5.50. If operating costs are assumed to increase at 10 percent per annum, then the Federal share, with the new, higher rate of reimbursement, would be approximately 32.5 percent of total costs in fiscal year 1977; without an increase in the rate of reimbursement, the Federal share would slip to 27 percent.

*Nursing care.*—H.R. 10394 would raise the VA per diem from $6 to $10.50. Again assuming a 10 percent annual increase in operating costs, the Federal share would be about 37 percent in fiscal year 1977. Without an in-

crease in the rate of reimbursement, the Federal share would drop to 21 percent.

*Hospital care.*—H.R. 10394 the VA per diem rate would raise from $10 to $11.50. Assuming a cost increase of 10 percent annually, the Federal share would be 23 percent in fiscal year 1977. Without the increase, the Federal share would drop to 20 percent by that year.

*The critical importance of nursing care*

Under H.R. 10394, as reported, the largest expenditure of Federal dollars, both absolutely and in proportional terms, would be for the support of nursing care in State veterans homes. This is, in the Committee's view, wholly proper, because it is in this important area of care that VA facilities have comparatively the lowest capacity to meet the demand for such service.

There are now 2.2 million veterans over the age of 65 in the United States. That number will more than double in the next decade, due to the enormous number of veterans of World War II who will celebrate their 65th birthday in the next few years. The rapidly growing number of elderly veterans will mean an increasing demand for nursing care services. Although the VA plans to augment its own nursing care capacity by adding 2,000 additional nursing home care beds by fiscal year 1980 to the 8,000 beds now in operation, the Committee doubts that this 25-percent increase will be enough to cope with the enormous growth in the number of potential nursing care veteran patients.

The Committee believes, therefore, that efforts should be made to increase the nursing care capacity of the State home system. The State homes are expected to operate approximately 6,200 nursing care beds in fiscal year 1977. By increasing by 75 percent the per-diem rate of reimbursement for nursing care, the Committee intends to encourage, where appropriate, the conversion of existing but underutilized domiciliary and hospital care beds to nursing care beds and the construction of new nursing care beds in the State home system.

*Elimination of wartime service requirement*

Under current law, States are reimbursed for care furnished to a veteran only if the veteran served in the Armed Forces during wartime or after January 31, 1955. No reimbursement is currently made for care given to veterans who served during peacetime periods before the Korean conflict.

Public Law 93-82, enacted 3 years ago, eliminated this distinction between wartime and peacetime service for purposes of eligibility for hospital care, outpatient care, and nursing home care furnished by the VA directly, and for community nursing home care at VA expense.

Although the distinction was retained for purposes of eligibility for certain minor health care benefits, the committee has recently ordered reported legislation (S. 2908, the Veterans Omnibus Health Care Act of 1976) that would delete all reference to such a wartime/peacetime distinction in the context of the title 38 health care program.

Consistent with the committee's efforts to eliminate that distinction and with the committee's conviction that eligibility for health care benefits should not be determined on the basis of period of service, H.R. 10394 as reported would delete the existing reference to wartime service in section 641 of title 38. Under the committee bill, States would be reimbursed for care provided to all veterans, regardless of the nature of the period during which such veterans served as members of the Armed Forces.

The committee bill, in section 1(b), would also make necessary conforming amendments in section 101(19) of title 38—the definition of the term "State home"—to eliminate the references to wartime service in that definition.

*Effective date*

Section 401(b) of the Congressional Budget Act of 1974, 31 U.S.C. 1351, subjects to a point of order any bill providing entitlement authority which is to become effective prior to the first day of the fiscal year beginning during the calendar year of enactment—in this case fiscal year 1977 beginning October 1, 1976. Since H.R. 10394 as reported is entitlement legislation, the Committee bill provides for an October 1, 1976, effective date in order to avoid the possibility of a point of order on the Senate floor. Payments to State veterans homes at the new, higher per-diem rates provided by the Committee bill will thus be made effective on and after that date.

For the same reasons under the Congressional Budget Act, payment of sums accrued as a result of the bill's retroactive application feature cannot be paid until after the beginning of fiscal year 1977. Under section 1(c)(2) of the bill as reported, States would be entitled to a lump sum payment equal to the difference between the amount of reimbursement they have actually received from the Federal Government since January 1, 1976, and the amount they would have received had the new, higher rates of reimbursement been in effect for payments made after that date. That lump-sum payment would be added to the first payment in the new fiscal year.

COST ESTIMATE

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Pub. Law 91-510, 91st Congress), the Committee, based on information supplied by the Veterans' Administration and the Congressional Budget Office, estimates that the cost resulting from the enactment of H.R. 10394, as reported, would be $18,792,000 in fiscal year 1977; $12,083,000 in fiscal year 1978; $13,752,000 in fiscal year 1979; $14,204,000 in fiscal year 1980; and $15,082,000 in fiscal year 1981. A full justification for these costs is provided in the report of the Congressional Budget Office, set forth in the section entitled "Agency Reports," *infra*.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

## ORDER FOR RECESS ON SEPTEMBER 23, 1976, TO RECEIVE THE PRESIDENT OF LIBERIA

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on Thursday, September 23, the leadership be authorized to call a recess subject to the call of the Chair for the purpose of joining the House of Representatives in joint meeting to receive the President of Liberia.

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

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

## ANTITRUST CIVIL PROCESS ACT AMENDMENTS OF 1976

The Senate continued with the consideration of the message from the House of Representatives announcing its action on the amendment of the Senate to the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senators may have until 7:30 p.m. today to file amendments relative to the pending matter.

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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. ALLEN. Mr. President, I renew my request for the yeas and nays on my substitute that is pending.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ALLEN. I also request, in accordance with the previous order, the yeas and nays on the substitute introduced by Mr. ROBERT C. BYRD of West Virginia.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## SPECIAL ORDERS FOR TUESDAY

Mr. ROBERT C. BYRD. Mr. President, have orders been entered for the recognition of Senators on tomorrow; and if so, would the Chair advise those Senators?

The PRESIDING OFFICER. The Senator is correct. The Senator from Virginia (Mr. HARRY F. BYRD, JR.) for 15 minutes, the Senator from Wisconsin (Mr. PROXMIRE) for 10 minutes.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, I ask unanimous con-

sent that following the two orders for the recognition of Senators previously entered, the distinguished Senator from Vermont (Mr. LEAHY) be recognized for not to exceed 5 minutes.

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

Mr. ALLEN. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. ALLEN. It is understood, is it not, that those amendments that are filed in accordance with the order by 7:30 this evening will be treated as having been presented to the Journal clerk as of that time and in accordance with the requirements of rule XXII?

Mr. ROBERT C. BYRD. Yes.

Mr. ALLEN. For consideration if and when cloture is invoked.

Mr. ROBERT C. BYRD. Yes.

Mr. ALLEN. I thank the Senator.

## ORDER FOR DIVISION OF TIME TOMORROW

Mr. ROBERT C. BYRD. Mr. President, at the conclusion of the orders for the recognition of Senators tomorrow, the time that remains prior to the expiration of the 1 hour under the cloture rule could be divided.

I, therefore, ask unanimous consent that the remaining time be divided and controlled by Mr. HRUSKA and Mr. ABOUREZK equally.

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

## RECESS TO 11 A.M. TOMORROW

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 recess until the hour of 11 a.m. tomorrow.

The motion was agreed to; and at 5:52 p.m., the Senate recessed until tomorrow, Tuesday, August 31, 1976, at 11 a.m.

## NOMINATION

Executive nominations received by the Senate August 30, 1976:

AMBASSADOR AT LARGE

Graham A. Martin, of North Carolina, a Foreign Service Officer of the class of Career Minister, to be an Ambassador at Large to serve as the Personal Representative of the President to conduct negotiations on the future political status of the Trust Territory of the Pacific Islands with the Congress of Micronesia and other Micronesian leaders.

INTERSTATE COMMERCE COMMISSION

Richard Gilbert Quick, of Pennsylvania, to be an Interstate Commerce Commissioner for a term of 7 years expiring December 31, 1982, vice Kenneth H. Tuggle, resigned.

## CONFIRMATIONS

Executive nominations confirmed by the Senate August 30, 1976:

IN THE AIR FORCE

The following officers to be placed on the retired list in the grade indicated under the provisions of section 8962, title 10 of the United States Code:

*To be lieutenant general*

Lt. Gen. Donald G. Nunn, [redacted] FR (brigadier general, Regular Air Force), U.S. Air Force.

Lt. Gen. James T. Stewart, [redacted] FR (major general, Regular Air Force), U.S. Air Force.

IN THE NAVY

Rear Adm. Alfred J. Whittle, Jr., U.S. Navy, having been designated for commands and other duties of great importance and responsibility commensurate with the grade of vice admiral within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

IN THE AIR FORCE

Air Force nominations beginning Robert G. Beabout, to be lieutenant colonel, and ending David J. E. Strate, to be lieutenant colonel, which nominations were received by the Senate and appeared in the Congressional Record on August 6, 1976.

IN THE ARMY

Army nominations beginning Richard L. Abbott, to be first lieutenant, and ending Katherine Zimmerman, to be first lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on August 2, 1976.

IN THE NAVY

Navy nominations beginning Robert J. Backman, to be permanent lieuteant (jg.) and temporary lieutenant, and ending Jonathan J. Bridge, to be lieutenant (jg.), which nominations were received by the Senate and appeared in the Congressional Record on August 6, 1976.

## WITHDRAWAL

Executive nomination withdrawn from the Senate August 30, 1976:

INTERSTATE COMMERCE COMMISSION

Warren B. Rudman, of New Hampshire, to be an Interstate Commerce Commissioner for a term of 7 years expiring December 31, 1982, vice Kenneth H. Tuggle, resigned, which was sent to the Senate on February 4, 1976.

# EXTENSIONS OF REMARKS

## THE YUGOSLAV-AMERICAN CLUB OF SAN PEDRO

### HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Monday, August 30, 1976*

Mr. ANDERSON of California. Mr. Speaker, on May 6, 1926, a small group of Yugoslav Americans met in the Point Fermin Cafe in San Pedro, Calif. They decided to form a club aimed at preserving their heritage and at the same time promoting patriotism as American citizens. These were the founding fathers of the Yugoslav-American Club at San Pedro: Anton Baraka, Nicholas Baskovich, Matt Bogdanovich, Steve Franetovich, Vincent Karmelich, Steve Lakich, Joseph Mardesich, Miho Marinkovich, Jack Mirkovich, James Mirkovich, Justo Pesutich, Luka Sekulich, Sam Simich, Steven Stambuk, Marin Suglian, Jack Trudnich, Nick Vilicich, Joseph Yaksitch, and Joseph Zokovick.

Today, 50 years later, the old cafe is still an operating business overlooking Point Fermin Park and the Pacific Ocean. And the Yugoslav-American Club of San Pedro has developed into a thriving social organization that is well known and respected throughout southern California, reflecting as it does the pride and self-awareness of the Yugoslav community of San Pedro.

The history of the Yugoslav community in Los Angeles goes back as early as 1841, when California was still a Mexican possession. Most owned restaurants or were merchants; but by 1879 hearty Dalmatians were fishing the coast off Los Angeles.

Southern California, with its mild coastal climate, bears a strong resemblance to the Adriatic Coast of Yugoslavia. Soon, the port town of San Pedro boasted a growing Slavic community. Yugoslav-Americans were instrumental in developing what was to become the greatest fishing fleet on the Pacific Coast.

By the 1920's, San Pedro's Yugoslavs comprised a significant portion of the town's population. May 6, 1926, is remembered as the day the Yugoslav-American Club was founded; it was formally incorporated on November 30, 1927.

For the first few years, meetings were held regularly at the Point Fermin Cafe, but as the club grew, the need for a larger, permanent meeting hall became apparent. Funds were raised; and on Labor Day, 1935, the Yugoslav-American clubhouse was officially opened. Yugoslav Hall, as it is often called, has served as a center for community activities ever since, providing a meeting place and hall for all San Pedro residents.

Today, comprised of over 700 families, the Yugoslav-American Club of San Pedro is as strong and as active as ever, still embodying the principles upon which it was founded. On December 18, 1926, the founders of the club issued a proclamation which reads in part:

> This event represents a new and bright page in the annals of our activities and the beginning of a fruitful and unified effort for the welfare and benefit of all people. We are leaving behind us a period of insecurity and entering into a new era of manhood, stability, and work. . . .
>
> . . . Therefore, we call upon all Yugoslavs—the Serbs, Croats, and Slovens, to unite brotherly hearts and to join us in this great undertaking, thus proving by actual deeds that we are true brothers who are aware of our duties and obligations.

Mr. Speaker, it is in that spirit that the members of the Yugoslav-American Club of San Pedro have contributed to the good of our community. On September 4, 1976, a golden anniversary banquet and ball will be held in the clubhouse to celebrate the 50-year history of the organization.

I would like to take this opportunity to congratulate the Yugoslav-American Club of San Pedro on an outstanding and