SOVIET TRIAL IS WARNING TO ALL OPPONENTS OF THE REGIME

HON. BERTRAM L. PODELL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 4, 1971

Mr. PODELL. Mr. Speaker, the plight of the Soviet Jews was brought home most vividly by the dramatic sequence of events surrounding the recent Leningrad trials. Jews in Russia have been subject to overt persecution and yet have not been granted the right to emigrate by Soviet officials.

The injustices that have been committed against the Jews have now become public knowledge. One article that documents the seriousness of the problem is one by Murray Zuckoff, editor of the Jewish Telegraphic Agency. I place it in the CONGRESSIONAL RECORD to demonstrate that their plight has grown more serious.

The article follows:

SOVIET TRIAL IS WARNING TO ALL OPPONENTS OF THE REGIME

(By Murray Zuckoff)

The trial of the 11 Soviet citizens—seven of whom have been identified as Jews—and three more trials scheduled to be conducted early next year in Leningrad, Kishinev and Riga, is in effect a warning to all those in the Soviet Union and its east European satellites that any opposition to the regime will be unmercifully crushed. The trial is not a "show trial" but a secret trial. It is closed to the foreign press, unreported by Soviet news agencies, and lawyers from abroad are not permitted to come to the Soviet Union to defend the prisoners in the dock and to assure impartial and objective proceedings. This makes the trial all the more ominous and significant than previously imagined. What is at stake is not merely the right of Jews to emigrate to Israel or any other country of their choice or the right of Jews to live as Jews with the same guarantees that other minority groups have under the Soviet constitution. The trial is not merely an attempt to discourage Jews from emigrating. At stake in this trial and the others scheduled is a concerted effort by the Kremlin rulers to crush all opposition to the regime by those who are dissatisfied with current conditions.

The trial reveals that Jews are in the dock as scapegoats because they are in the forefront of the struggle against the criminal rule of the Russian oligarchs. The Soviet authorities know better than anyone else that the form of Jewish resistance, which currently is expressed as a struggle for the right to emigrate, has far greater ramifications. The Jews in the Soviet Union, in fact, are inspiring others to open resistance. Unlike the image of Jews in many western countries where they are linked to the status quo, the Soviet Jews are in the forefront of an anti-establishment movement. This does not mean that they are organizing open rebellion but it does mean that their actions are giving heart and courage to others to do so. The sixteen Soviet republics are seething with unrest and discontent. Artists, intellectuals, scientists and writers are in ferment against the stranglehold the ruling elite is exercising on free intellectual expressions. But these elements are isolated, atomized and fragmented by the very nature of their profession and generally impotent as a community to exert any far-reaching pressure on the regime. By contrast, the Jews in the Soviet Union, despite their dispersal throughout the country, are a cohesive and integrated community in its tradition, ideals and objectives. They are also, as a national minority, subject throughout the country to the same abuse and chafe under the same repressive mechanism which deprives them of the right—in practice—to pursue their Jewishness.

SOVIET RULERS AFRAID OF JEWS WILL INSPIRE OTHERS TO REBELLION

What undoubtedly concerns the Brezhnevs and Kosygins is not the desire of Jews to leave the Soviet Union, but the prospect that their demand, which can be summarized, as "Let us leave or let us live," could open a Pandora's Box and pave the way for the restructuring of the entire social fabric as a more democratic and equitable society. It seems unlikely that a mere wish to emigrate would have required such an elaborate frameup as attempted hijacking. Evidently, what is of greater concern to the Soviet authorities is that the defiance of the Jews against repression, their insistence that they be allowed freedom of expression and movement as provided under what Soviet leaders contend is the "most democratic constitution in the world," will provide the spark and flame for more widespread opposition. One has only to recall how 1,000 Soviet Jews recently defied Soviet police to conduct a memorial observance at the mass grave of 30,000 Jews slaughtered by the Nazis in 1942 in Rumboli Forest on the outskirts of Riga. One need only recall the outpourings of thousands of Jews—young and old—on the streets of Leningrad to celebrate Simchat Torah.

One needs also to recall that during the 1930's, the infamous Moscow Trials against the "Old Bolsheviks"—many of whom were Jewish—was sparked by the assassination of Kirov, a Communist Party hack in Leningrad. His assassination, which many Sovietologists contend was ordered by Stalin to serve as a pretext to crush opposition to his rule, was developed as a "plot" against the "workers' republic" by "renegades" and "traitors" working with, if not for, Hitler. But the actual reason for those trials, which lasted three years and which led to the death of dozens of Bolshevik leaders and the incarceration of thousands of people, was to find a scapegoat for the economic failures of the then Five-Year plan. The refusal of the Soviet authorities to permit the foreign press and lawyers to attend the current trial, is also extremely significant and revealing. During the Moscow trials this permission was not only granted but encouraged. At that time, Stalin felt he had the sympathy of the world on his side and an airtight case against the victims. Now, apparently, the Kremlin leaders fell they have neither. The secret trial now being conducted will be recorded as an infamy in the annals of world history. But the heroism of the Jews to confront their oppressors and to speak out, even at the knowledge that they face imprisonment and possible death, will be recorded as a monumental contribution toward ending the Soviet system of despotism. In the last analysis, the struggle to free the Soviet people from the shackles of enslavement—mental and physical—will be attributed to the heroism of those who dared to defy.

SENATE—*Friday, February 5, 1971*

(Legislative day of Tuesday, January 26, 1971)

The Senate met at 12 o'clock meridian, on the expiration of the recess, and was called to order by the Acting President pro tempore (Mr. METCALF).

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

Almighty God, whose Word declares that "out of the heart are the issues of life," grant to Thy servants who serve Thee here strong hearts, brave hearts, and hearts firmly fixed to do Thy will. Help them to fulfill in daily life and private practice the words of the Master: "Blessed are the pure in heart for they shall see God." Make and keep them wise and good and strong men, filled with Thy spirit and guided by the ideals of the Founding Fathers. May they walk and work with faith in that coming day when the kingdoms of this world live under Thy divine sovereignty in justice and lasting peace, and to Thee we ascribe all honor and glory. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Thursday, February 4, 1971, be approved.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees be authorized to meet during the session of the Senate today.

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

S. 602—INTRODUCTION OF A BILL RELATING TO THE CONFEDERATED SALISH AND KOOTENAI TRIBES, MONTANA

Mr. MANSFIELD. Mr. President, on behalf of my distinguished colleague (Mr. METCALF) and myself I send to the desk a bill to provide for the disposition of judgments, when appropriated, recovered by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Mont., in paragraphs 7 and 10, docket No. 50233, U.S. Court of Claims, and for other purposes.

Mr. President, I ask unanimous consent that the bill be appropriately referred.

The ACTING PRESIDENT pro tempore (Mr. METCALF). Without objection, the bill will be received and appropriately referred.

The bill (S. 602) to provide for the disposition of judgments, when appropriated, recovered by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Mont., in paragraphs 7 and 10, docket No. 50233, U.S. Court of Claims, and for other purposes, introduced by Mr. MANSFIELD (for himself and Mr. METCALF), was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

ORDER OF 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. MONTOYA. 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.

AMENDMENT OF RULE XXII OF THE STANDING RULES OF THE SENATE

The ACTING PRESIDENT pro tempore. The Chair lays before the Senate the pending business which the clerk will report.

The assistant legislative clerk read as follows:

A motion to proceed to the consideration of Senate Resolution 9, amending rule XXII of the Standing Rules of the Senate with respect to limitation of debate.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Alabama (Mr. ALLEN) to postpone until the next legislative day consideration of the motion of the Senator from Kansas (Mr. PEARSON) that the Senate proceed to the consideration of Senate Resolution 9 to amend rule XXII of the Standing Rules of the Senate with respect to the limitation of debate.

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the period for the transaction of routine morning business for not more than 30 minutes, with a time limitation of 3 minutes therein, is now in effect.

The Senator from New Mexico (Mr. MONTOYA) is recognized.

ECONOMIC DEVELOPMENT—FIELD HEARINGS TO EXAMINE THE PROPER DIRECTION AND FORM OF AN EFFECTIVE PROGRAM

Mr. MONTOYA. Mr. President, I rise to apprise the Senate of field hearings which will be held during the course of the next few weeks with respect to Appalachia and the other regional commissions.

The concept of creative federalism enunciated by Lyndon Johnson early in his Presidency, and the statement of awareness that we must "help State and local governments develop greater capacity to plan and manage their own affairs" which was contained in the state of the Union address by President Nixon, are both clear characterizations of the direction that government must take. If we start from the premise that the responsibility of government is to serve the people, then I believe it is our duty to achieve the best level of understanding of the kinds of public services that the people of the United States need to maintain proper growth and development.

The lasting effect of the great depression of the 1930's was not the catastrophic economic losses suffered, as terrible as they were, rather, it was the loss of the initiative and ability to render services to the public suffered by local and State governments. We now fully appreciate the result of the continuous movement of power to the National Government.

In and of itself, this centralization was not bad. It enabled us to frame the recovery from the depression, to mobilize for and conduct our national defense during World War II and to make the changeover from a wartime economy to an economy directed toward peaceful pursuits. The centralization of power served its purpose and like all other political responses, it has run its course.

We are now faced with a new set of imperatives, a new set of needs, a new set of national directions. In order to carry them forward we must decentralize government activities and the responsibilities for decisionmaking. This is not to say that there is no longer a need for a strong, active, and concerned Federal Government. What it means is that along with that kind of Federal Government, we must reestablish strong, active, and committed State and local governments. We have all been engaged in politics—the art of government—long enough to realize that there is no single answer, that the art of government is the art of change without violent upset. We must be in a position to evaluate and reevaluate what will work and under what circumstances it will work best.

The President, in his state of the Union message, put great emphasis on revenue sharing. Whether his recommendations will be enacted and whether they will work are questions which we will consider during the 92d Congress. But revenue sharing alone is not the answer. Our experiences over the past 25 years with a series of different approaches to long-term unemployment problems, short-term economic responses, natural catastrophe mechanisms, and the need for intelligent, well-reasoned assessments of priorities has given us a fund of experience and knowledge on which to draw.

As a result of President Johnson's concept of creative federalism, the Congress in 1965 enacted the Appalachian Regional Development Act and the Public Works and Economic Development Act. These programs, which have been in operation for 6 years, provide us with an excellent base from which to examine and recommend legislation in response to the broad range of the problems of the decade of the 1970's.

As we at the Federal level have been working with the programs to which I have referred, a number of States have developed responses of their own. During the months of February, March, and April, we shall inquire in depth as to how these programs have worked, what has been learned from them and how the lessons can be used to shape a new program of State-Federal action to achieve the goal of economic prosperity in a framework of healthy social, cultural, and environmental development.

In the literature of political science and economics, and in the recommendations of Government agencies are a number of worthy proposals. At this time we are not in a position to choose a particular approach to pursue. What the Subcommittee on Economic Development intends to do during these next 3 months is examine many of those ideas in a general framework. We are looking to the creation of legislation to establish a national economic development program, a public works and public facilities investment plan to determine how priorities for public works should be established, to create an inventory of what is needed, and to equip State and local governments to assume the major role in these determinations.

We will concern ourselves with such questions as what constitutes proper development, how to determine the development goals and objectives of State and local governments, and how the Federal Government should be structured to assist the State and local governments in meeting these responsibilities.

As I have said, there are many suggestions. There have been many experiments, the most notable of which are the Appalachian regional development program and the approaches of the Public Works and Economic Development Act.

On February 8, 9, and 10, the Subcommittee on Economic Development will consider S. 575, a bill to extend and revise the Appalachian Act introduced by Senator RANDOLPH, the chairman of the Committee on Public Works, and Senator JOHN SHERMAN COOPER, the ranking minority member. Through these hearings, we will determine what has worked and why it has worked.

As Senator RANDOLPH said in his introductory remarks in this Chamber on February 3:

I am proud that the Appalachian Development Program has been a leader and an innovater in the areas of government organization and revenue sharing. The Committee on Public Works recognizes the significance of the bold new steps that have been taken in Appalachia, and we are studying the Appalachian program as a possible pattern for economic development and other programs elsewhere.

I concur in his observation and agree with his further statement:

Based on what we have learned in the past six years and what we expect to learn this year, I am sure that the Appalachian program will be modified and refined. We will, however, want to preserve the momentum and the spirit of cooperation and Federal-State partnership generated under the Appalachian program.

Senator RANDOLPH and Senator COOPER have done much to bring to the attention of the Senate, the Congress, and the Nation, the need for this Appalachian

program and the important purposes which it serves. Following these hearings, the subcommittee will begin a series of field hearings which will take us to Raleigh, N.C., February 18, 19, and 20; Memphis, Tenn., March 5 and 6; Los Angeles, Calif., April 1, 2, and 3; Albuquerque and Santa Fe, N. Mex., April 5 and 6; Seattle, Wash., April 14 and 15; Anchorage and Fairbanks, Alaska, April 16, 17, and 18. The sites of these hearings were chosen because in each place we expect to examine a different aspect of the major problems associated with economic development:

Raleigh, N.C., because of the knowledge and experience of the Governors, other members of State governments, local officials, and private citizens in that area of the South in working with the Appalachian program and the regional economic development program under title V of the Public Works and Economic Development Act.

Memphis, Tenn., because of the strong desire of the leaders of the States of the Midsouth to create a regional economic development program and because of the depth of experience with economic development districts established under title III of the Public Works and Economic Development Act which has been gained in that area.

We will hold hearings in Los Angeles to examine in some detail the long-term development problems of a major metropolitan area which has large minority populations not benefiting from the general prosperity of the area. The current technological unemployment in Los Angeles also should provide us with some interesting testimony.

In New Mexico we can concentrate on the alternatives of the regional commission and State development approach. We will be able to examine the issue with Governors, other State officials, and private individuals who have been working within the regional concept for the last 5 years. During these hearings we can also discuss the specific needs of Indians for separate treatment in order to help them defeat their long-term depression situation.

In Seattle, we will be able to discuss with the Governors of the Northwest their great concern for a regional development commission and to look into the question of pervasive unemployment which that general area has experienced.

In Alaska, we will be able to take full advantage of the knowledge gained by that State in its efforts to achieve economic revitalization following the disastrous earthquake in 1964. In Alaska we will be able to test the one-State approach as compared with the multistate approach.

It is our intention wherever we go to also raise the question of how best to describe the form of the Federal response to those situations where plant closings, loss of vital natural resources, and elimination of Government facilities create economic catastrophes. In this regard, I will join with Senator RANDOLPH and other Members of the Senate in the introduction of a bill to revitalize the accelerated public works program. We shall use this legislation which will be introduced next week as a vehicle for discussion on how best to do this job.

All of the witnesses will be asked to testify on the following outline of questions. We hope that they will respond to as many of the areas as they believe their experience and professional capability allow them.

First. What are the objectives of economic development?

In terms of these goals, what specifically has been the impact of the following on the economic development of your area:

Titles I, II, III, and IV of the Public Works and Development Act as administered by the Economic Development Administration: Its impact on immediate economic development and its impact on continuing economic development.

The regional commissions as created by title V of the Public Works and Economic Development Act.

Any other private, local, State, or Federal programs and agencies which you believe have the task of fostering economic development.

Would you comment on the following proposed local-State-Federal structure for implementing these economic development goals or, if you have other suggestions, please present them to the committee:

Should the entire State be divided into multicounty development areas, and if so—

Who would authorize and designate the districts: The State, Federal legislation, the local communities or some combination of these?

What criteria would be used to delineate these districts?

Should these districts be limited to areas of economic distress or would they be organized around areas of potential economic growth—for example, growth centers?

Would these districts focus in nonmetropolitan areas or should they include metropolitan areas?

What would be the authority and responsibilities of the districts?

What would be the relation of these districts to the State? To Federal agencies? To local governmental authorities? To other multicounty districts which might already operate in the area?

Should the State establish a State-level economic development agency within the office of the Governor? If so—

What responsibilities and authority should this agency need to be effective?

What would be the relation of the agency to local governmental units and locally initiated plans and projects? Local development districts?

What would be the relation of this State-level agency to other State line agencies?

What would be the relation of this State agency to Federal Departments?

Would such an agency and a State development plan be a prerequisite to further Federal assistance?

Should the Federal Government be organized on a multistate regional basis or should we proceed on a State-by-State basis?

What would be the advantage of multistate regional commissions, such as the Appalachia Regional Commission and the title V commissions?

What criteria would be used to designate these regional groupings?

What responsibilities and authority should these regional commissions have to be effective?

Would the commissions include the entire State or only that area meeting the designation criteria? Why?

Should the regional commissions be represented at the Federal level as part of the Department of Commerce or within the executive offices by a Federal coordinator for economic development for example? What would be the role of the Federal side of the regional commission?

What would be the advantage of proceeding on a State-by-State basis?

Would the States be represented at the Federal level through a line agency or within the executive office by a Federal coordinator for economic development for example?

What would be the function of the Federal coordinator?

What would be the relation of the Federal coordinator to local development districts? The States? To other Federal Departments?

Should there be a regional counterpart in the Federal administrative regions to assist the Federal coordinator and the States?

What would be the relation of the private sector to such a structure?

What programs and devices do you recommend to accomplish these goals of economic development? For example, the use of supplemental grants and development corporations.

Second. What should be the role of the Federal and State governments in short-term economic readjustments in rural and urban areas which suffer abrupt and severe unemployment and loss of income due to setbacks in economic activity?

What programs and devices would be necessary to carry out such assistance?

What structure could best accomplish this assistance effort? For example, the use of a Federal coordinating field committee.

Following these hearings and an examination of the record, we shall draft legislation. We shall then hold hearings in Washington, D.C., with a wide range of witnesses who can give us their critical comments and their best suggestions on how to develop a workable procedure to achieve our goals.

Preparation for this program evaluation has been proceeding for some weeks. Members of the subcommittee have indicated their intense interest in the subject. I look to their support and participation in this undertaking. I know that we can develop a good bill in the tradition of the Committee on Public Works. I look forward to working with Senator HOWARD BAKER, the ranking minority member of the subcommittee, and all of his colleagues together with my Democratic colleagues. In this spirit of cooperation, we can approach this large and difficult task with reasonable hope for success to the benefit of the people of this country.

READING OF WASHINGTON'S FAREWELL ADDRESS—APPOINTMENT BY THE VICE PRESIDENT

The ACTING PRESIDENT pro tempore. On behalf of the Vice President and purusant to the order of the Senate of January 24, 1901, the Chair appoints the Senator from Maryland (Mr. BEALL) to read Washington's Farewell Address on February 22, 1971.

ORDER OF BUSINESS

Mr. MONTOYA. 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. ALLEN. 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.

FEDERAL SPENDING AT HOME AND ABROAD

Mr. ALLEN. Mr. President, on January 22, 1971, President Richard M. Nixon delivered his state of the Union message before a joint session of the Congress. It is not my purpose to criticize his message. Instead, I want to elaborate on one portion of his speech in which he recognized that States and cities are confronted with a financial crisis. Figuratively speaking, States and municipalities have just about milked the local tax sources dry. Yet, Federal program has been piled on top of Federal program in recent years and almost all of them require local governments to come up with additional tax revenues. This has gone on to the point that State and local governments are rapidly reaching the point of no return. Essential local services must be cut back or else Federal revenues are necessary to maintain the most fundamental local services. Consequently, I support the principle of revenue sharing. However, I am not certain that revenues for sharing cannot be obtained by means more desirable than deficit financing.

Mr. President, let me elaborate on this point. An editorial printed in the Mobile Press of December 8, 1970 refers to—

> The crazy pattern by which the United States spends money to help Communist causes.

The editorial refers, for example, to the action by President Nixon in freezing an appropriation of $1 million to begin work on the long delayed Tennessee-Tombigbee Waterway, which is of such tremendous importance to the economy of the 23 States of the Nation and the port city, Mobile, Ala., in particular—since released. The editorial then questions why the U.S. State Department advocates spending $600,000 of our tax revenues to survey a road from Zambia, where Communists are in the saddle into the brush country of Botswana. The editorial states in part:

> Part of the all-weather road would cross through Rhodesian and South African territories. The intent of this whole project is to give Zambian Communists military and guerrilla access to Rhodesia and South Africa.

Mr. President, it is a matter of common knowledge that foreign aid of this type flows in a continuous stream to aid, abet, and promote the military and economic welfare of Communist dominated nations throughout the world.

Mr. President, we hear so much of priorities. By what manner of reasoning is this military access road through sparsely popuated bush country of Africa given a higher priority than completion of the Tennessee-Tombigbee Waterway system of transportation which is of inestimable economic benefit to this Nation?

More specific details of this $600,000 giveaway to countries allied with international communism are printed in a letter to the editor to which reference is made in the editorial previously mentioned. Mr. President, I ask unanimous consent that the editorial and the letter be printed in the CONGRESSIONAL RECORD at the conclusion of my remarks.

At this point, Mr. President, let me call attention to a series of double standards applied by the United States in its dealings with independent nations of Rhodesia and South Africa and Communist satellite nations. More importantly, let us examine some of the causes and some of the paradoxes which result from these double standards.

First, the citizens of our Nation as were governments of all nations told by the President that the political forms of government and economic systems adopted by other nations were not of vital interest to our Nation. On the other hand, when the President of the United States and the State Department address their remarks to African nations, precisely opposite statements are made as they relate to Rhodesia and South Africa.

An explanation for this doubletalk is not hard to find. For one thing, our policies with respect to Rhodesia and South Africa are dictated by the United Nations, while our policies with respect to Communist nations in Africa and Communist-dominated nations in other areas of the world are dictated by Alice in Wonderland rhetoric from the State Department. Such rhetoric is supposed to perpetuate the "bridge-building" processes with Communist Russia, her satellites, and other Communist-dominated nations of the world.

With respect to Rhodesia, for example, we are told that the United States is bound by terms of the United Nations Treaty. Consequently, we are bound to accept United Nations Security Council determinations respecting a finding of a threat to international peace and security. Sure enough, article 30 of the United Nations Charter authorizes the Security Council to make such determinations. In the case of Rhodesia, such a determination was made by the Security Council. Accordingly, we are told the United States is bound to accept further dictates of the United Nations Security Council and impose economic sanctions against the independent nation of Rhodesia.

Of course, such a determination requires a ridiculous and unbelievable assumption that the United Nations has jurisdiction over the nation and over the question of its political form of government. In view of the fact that the United Nations Charter is supposed to exclude jurisdiction over internal affairs of member nations, and all nations for that matter, it has been necessary to create two mythical legal fictions.

Fiction No. 1—contrary to international law, the fiction is advanced by argument that Rhodesia is not an independent nation. By some unexplained reason, Rhodesia is supposed to remain a ward of Great Britain. If one accepts this fiction, which even England no longer persists in, the Security Council, it is argued, has acquired jurisdiction over internal affairs of Rhodesia because Great Britain requested the United Nations to intervene and deny the fact of Rhodesian independence as established by International law.

Fiction No. 2—this fiction requires a determination by the United Nations Security Council that Rhodesia is a threat to international peace and security.

Mr. President, the fabrication used by the United Nations Security Council to argue that Rhodesia is a threat to international peace is preposterous. The argument is that if Rhodesia fails to voluntarily relinquish its sovereign right to adopt its own constitution and create its own government and distribute its powers in a manner it deems fit, then such refusal to relinquish its sovereignty will create dissatisfactions among Rhodesia's tribal neighbors and present a possibility that Rhodesia's tribal neighbors will resort to war and violence against Rhodesia. The argument is so astounding as to suggest that it derives from "Alice in Wonderland" as most recently revised and edited by the State Department.

One concluding point. Many of my colleagues have distinguished themselves for their tenacity in upholding the proposition that the Commander in Chief of the Armed Forces of the United States has no power to commit the forces of this Nation in furtherance of treaty commitments in the Far East without consent of Congress.

We have heard time and again of the dangers of delegating to the President powers to entangle our Nation in dangerous adventures abroad. Yet, Mr. President, I have heard no objection in the Senate to provisions of articles 39 and 41 of the United Nations Charter, which delegates to the Security Council of the United Nations the power to determine threats to international peace or the power delegated to that agency to commit the Armed Forces of our Nation to acts of war in foreign lands. Why?

Article 39 clearly authorizes the Security Council to determine threats to the peace and to take such actions as provided in articles 40 and 41.

Article 40 delegates to the Security Council power to take actions such as needed to effect economic strangulation and other actions short of actual warfare.

But article 42 delegates power to the Security Council to "take such action by air, sea, or land, forces as may be necessary" to win a war and restore international peace and security.

Furthermore, article 48 provides that

the Security Council shall carry out its decisions with troops of the United States or other nations as the Security Council shall determine.

So we hear talk about the power in Congress to commit Armed Forces in defense of our Nation—we hear incessant complaints about actions of the President to defend our troops in South Vietnam despite the fact that such actions are directed toward disengagement and physical protection of our troops. But where is the complaint about the power of the Security Council to make determinations and to commit our troops in acts of warfare under direction of the United Nations Security Council? Why the silence on this delegation of power?

Here we are authorizing expenditures of billions of dollars in foreign aid which is desperately needed to strengthen the economy of our nation. Who gave a higher priority to projects of Communist dominated nations—funds to build a military access road to threaten the peace and security of independent Rhodesia, while the economic welfare of this nation represented by the Tennessee-Tombigbee river system is left empty-handed? And we talk about priorities. And we talk about funding meager revenue sharing with state and local governments by authorizing deficits, which necessarily entail inflationary deficit financing. And, while on this subject let me ask this question. How much money could we save the taxpayers if we ceased to import from Communist Russia an inferior grade chrome ore which mineral is so essential to our national defense and to our economy? How much would be saved if we simply imported American owned inventories of superior grade chrome ore from Rhodesia at less than one half the price demanded by Russia? This poorly camouflaged program of economic aid to Communist Russia must stop. The money saved could well be spent for revenue sharing with state and local governments.

Mr. President, I say that no President of the United States, and no candidate for President of the United States, will be permitted to evade these questions and the issues involved. They are vital to the safety and welfare of our nation and while we may duck them for a while we cannot successfully evade them.

Mr. President, I am confident that Congress will give the President's revenue sharing proposal careful consideration. I trust the American people will learn from congressional hearings just how much revenue could be made availabel for sharing with local governments by cutting out hostile economic sanctions imposed against our former allies and by putting an end to giveaway programs to Communist dominated nations.

I ask unanimous consent that the editorial to which I have referred be printed at this point in the RECORD.

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

[From the Mobile (Ala.) Press, Dec. 8, 1970]

WHO DOES U.S. DIPLOMACY REPRESENT?

An editorial in last Friday's Mobile Register and a letter to the editor on the same page, when taken together show the crazy pattern by which the United States spends money to help Communist causes.

The editorial justifiably deplored President Nixon's freezing of an appropriation of $1 million to begin work on the long-delayed Tennessee-Tombigbee waterway. The letter from A. Theron, Box 353, Umtali, Rhodesia, raises questions as to why the U.S. State Department wants $600,000 merely to survey (just the foot-in-the-door for more taxpayers money) a road from Zambia, where Communists hold power, into the sparsely populated brush country of Botswana.

Part of the all-weather road would cross through Rhodesian and South African territory. The intent of this whole project is to give Zambian Communist military and guerrilla access to Rhodesia and South Africa. Meanwhile, Botswana would become another staging ground for Red forces and offer them position from which to encircle the two white states.

Congress has considered passage of the wasteful and damaging appropriation in line with our silly restrictions on trade with Rhodesia, and it still has a chance of approval.

As everyone can see, the State Department is being led around by its nose by Russians and their allies, while the Tenn-Tom waterway, which would peacefully benefit 23 states of America is left empty handed.

The Soviets already dominate the Indian Ocean, and once the strictly military road is built into Botswana, Rhodesia and South Africa will be in deep jeopardy.

Upon what manner of reasoning does this make sense as a policy of the U.S. government?

The five southern states directly affected by the Tenn-Tom proposal should vigorously protest this discrimination, and the remainder of the 23 states should join in the effort.

ROAD PROJECT

The EDITOR.

DEAR SIR: What is the U.S. government up to in ths part of Southern Africa?

On Nov. 20, in the capital of Botswana, Mr. David Newsom, United States under-secretary of state, signed an agreement whereby the United States government is to provide $600,000 for the survey of an all-weather road from the Botswana capital, Gaborone, to the bank of the Zambesi River, opposite Zambia. The area through which it is to run is almost completely uninhabited, undeveloped bush country.

This sounds innocent enough unless you are aware of the fact that Botswana does not have access to the bank of the Zambesi River, although both black governments claim that they do. Therefore, to reach the river bank, the road will have to intrude upon either Rhodesian territory or into the Caprivi Strip which is governed by South Africa. Is it in the least likely that either Rhodesian or South African governments will allow such an unnecessary road to pass through their territory? And it is entirely unnecessary since Zambia is already served by three crossing points over the Zambesi River from Rhodesia, over which such imports as coal, farming machinery, foodstuffs and new vehicles are freely allowed to pass.

A high percentage of Zambia's copper exports leave the country by the same routes. It must therefore be obvious to all but the deliberately blind that the concealed purpose of this new road is to facilitate terrorist entry into Rhodesia by the back door, i.e., across the Botswana-Rhodesia border which, being an ill-defined line through wild bush-country will be infinitely more difficult to defend than is the Zambesi Valley.

Zambian terrorists are Communist-trained and equipped. It can hardly be a coincidence that the Communist Russian ambassador from Zambia and the under-secretary for state of the United States of America happened to visit his obscure black capital at the same time. Yet this seems so, for the Russian ambassador has chosen this exact time to present his credentials to the president of Botswana.

So what do we find? The Russian Navy has trebled its strength in the Indian Ocean. The Russian government is doing all in its power to prevent Britain from supplying arms to South Africa for the defense of the Cape sea routes, and now we have the United States financing an unnecessary road from the Zambian border to the South African border to provide easy access for the destruction of Rhodesia and attack on the Republic of South Africa. A road which is the answer to the terrorists' prayers. And the U.S.A. has provided the answer!

It's a great pity that once again the American taxpayers' money is being wasted on yet another dangerous venture of interference in an area which is no concern of the U.S.A.

Mr. David Newsom is said to be on a tour of Southern Africa to assess the present situation here. One wonders why Rhodesia is not on his itinerary. Surely we are entitled to a reassessment of our situation after more than five years of successfully repulsing terrorist attacks, as well as the iniquitous United Nations sanctions which the United States supports. But then we are used to the incompetent judgments of the ignorant politicians from abroad, so another one will make no difference. But what if it puts America into another Vietnam-type predicament here?

A. THERON.

UMTALI, RHODESIA.

COAL MINE HEALTH AND SAFETY INSTITUTE FOR WEST VIRGINIA

Mr. BYRD of West Virginia. Mr. President, I was extremely pleased a few days ago when the Bureau of Mines selected a site for the new Coal Mine Health and Safety Institute. The site chosen is on a 250-acre tract of land near the Raleigh County Airport in Beckley, W. Va., which was donated by the Raleigh Count Airport Authority as a testament to the storng local support for locating the Institute in Beckley.

I am familiar with the site, not only because I consider Beckley to be my hometown, but also because I was able to accompany Bureau of Mines' officials on inspection tours of the two Beckley sites that were considered for construction of this much-needed facility.

There is a great need to provide an education and training center to expand and upgrade the health and safety expertise of mine management and mine workers, as well as the Federal and State agencies responsible for mine health and safety. The United States has never had enough of this expertise; and, now that the coal industry is moving to close the gaps in our Nation's energy supply picture, the need is particularly urgent and acute.

In 1969, as chairman of the Senate Appropriations Subcommittee on Deficiencies and Supplementals, I was able to add $300,000 to the supplemental appropriations bill, to initiate the planning of the Institute. I felt strongly then, as I do now, that new efforts should be made to improve the health and safety of America's coal miners.

Mr. President, coal miners in West Virginia and elsewhere have long suffered the hazards and ill-health that, for cen-

turies, have been associated with their occupation. Yet, remedies for many of these critical problems have still to be found. Though work in the areas of mine health and safety has gone forward for some time, only recently has national attention focused on the largely forgotten miner and his working condition. The 1968 tragedy at Mannington, W. Va., and this year's tragedy at Hyden, Ky., brought the plight of the coal miner home to every American.

The task of improving health and safety standards in the mines involves a coordinated effort among the State and Federal governments, operators, and miners themselves. But to do an effective job of eliminating the hazards of coal mining, we need qualified, highly skilled, specialized personnel to conduct inspections; and we need highly trained mining engineers and laboratory technicians of superior caliber. These are the people who will lead the way toward solving the health and safety problems plaguing miners today; and these are the people who will be trained at the Institute.

West Virginia is the ideal location for the facility, Mr. President, since it is both the principal coal-producing State and one in which all the typical coal mining operations and the attendant hazards are found. In addition to having one of the Nation's outstanding mining schools within its own boundaries, West Virginia is also centrally located with respect to other fine mining schools in Virginia, Kentucky, and Pennsylvania.

At the Institute in Beckley, comprehensive training will be provided for about 400 Bureau of Mines inspectors and inspector-trainees, as well as for about 400 students from State mine health and safety agencies and from mine management and labor. It will also provide seminars and other short courses dealing with particular problems. These short courses will be offered both on campus and through home-study programs.

The Mine Health and Safety Institute will supplement—not supplant—the mining schools at West Virginia University and elsewhere, which are needed to supply more and better mining engineers. However, it is possible that these university-trained engineers may wish to attend the Institute for specific courses.

Mr. President, specific design of the Institute is still in the making; but, in general, it will consist of classrooms, laboratories, shops, dormitories, cafeteria, library, gymnasium, and supporting utility and maintenance facilities. An underground "classroom mine" is planned to provide the students with actual experience with the equipment and the environment that they will encounter in their work. The General Services Administration will supervise the construction of the Institute and will soon select an architect-engineer contractor for the project.

Mr. President, I was very pleased to offer my help in securing this most necessary facility for West Virginia. Three West Virginians, among others, should be commended for their outstanding efforts in helping to bring the Academy to their county. Mr. Walter James, president of the Raleigh County Court; Mr. Paul Hutchinson, assistant prosecuting attorney for Raleigh County; and Mr. Charles Lewis, president of the Raleigh County Airport Authority were instrumental in acquiring the necessary land for the Academy.

This new Mine Health and Safety Academy is a facility of which all West Virginians and the Nation can be extremely proud. It is a new beginning to better the quality of life for our Nation's coal miners.

Mr. President, the steps leading up to the establishment of a Mine Health and Safety Institute date back to 1967; but the real groundwork was laid in 1969, when the planning funds were added to the supplemental appropriations bill.

I ask unanimous consent to include two letters in the RECORD, with respect to this subject.

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

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF MINES,
Washington, D.C., September 8, 1969.

Hon. ROBERT C. BYRD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BYRD: Thank you for the convincing argument in your letter of August 11, 1969, for establishing the proposed Mine Health and Safety Academy somewhere in West Virginia. We can assure you that your State is being considered in this regard.

Your special effort to secure funds to begin the initial planning of this Academy is appreciated very much. We join you in hoping that action will be taken to bring this much needed institute into existence at an early date.

Sincerely yours,

JOHN F. O'LEARY, *Director.*

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., January 26, 1971.

Hon. ROBERT C. BYRD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BYRD:

Thank you for your letter dated January 7, 1971, regarding the Mine Safety Institute.

The site selection committee considered the Pinecrest Sanitarium site to be the best location for the Institute, but because of several problems connected with vestment of title to the Federal Government, the alternate site has been selected. This is the airport site, and, although it was the alternate selection, we believe that it will be quite satisfactory for the Institute.

The General Services Administration is performing all contractual services for us in this matter, and a contract for the development of an architectural program will be awarded in the near future. GSA's design staff will prepare estimates of construction costs and will submit them to us for use in preparation of our budget request.

Again, thank you for your interest in this matter.

Sincerely yours,

HOLLIS M. DOLE,
Assistant Secretary of the Interior.

A WIDER WAR FOR WHAT?

Mr. CHURCH. Mr. President, although the present censorship of news from Indochina prevents the American people from knowing the facts of what is happening there, it appears that U.S. participation in the air war has expanded. Tom Wicker, in a piercing column, wonders about the purpose of current military operations in and over both Cambodia and Laos. Wicker observes:

In the guise of winding down the war the Nixon Administration is widening the war in the most destructive way.

In considering the results of America's air warfare—"it will perpetuate a thousand Mylais throughout the region" and "napalm and bombs do not make distinctions or respect the innocent"—Mr. Wicker asks, "a wider war for what?" a question he and the American people are unable to answer.

If the top officials of this Nation really believe that by "a wider war, more indiscriminate slaughter from the air, the continuing erosion of American society, the mounting destruction of Southeast Asia," that is "by such costly means a generation of peace can be achieved," then, Mr. Wicker concludes, the administration "owes it to humanity to explain how."

I ask unanimous consent that Tom Wicker's column from the New York Times of January 31, 1971 be inserted here in the RECORD.

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

A WIDER WAR FOR WHAT?

(By Tom Wicker)

WASHINGTON.—The way Secretaries Laird and Rogers tell it, any air strike for any purpose anywhere in Southeast Asia serves the Administration's ultimate goal of protecting the withdrawal of American troops from South Vietnam, and is therefore justified. That means that in the guise of winding down the war, the Nixon Administration is widening the war in the most destructive way.

The first and most terrible facts of this policy is that it will perpetrate a thousand Mylais throughout the region. Air warfare is indiscriminate; villages are burned, children and women killed, the countryside blasted. Napalm and bombs do not make distinctions or respect the innocent.

But considerations of elementary humanity rarely move statesmen. They are practical men. They must make large decisions, ponder global questions, gauge the national interest. Even on that rarefied level, the statesmen of this Administration seem singularly immune to the most compelling truths.

The nation was told last spring that the invasion of Cambodia was the greatest success of the war, a vertiable Marengo—that it had bought amounts of time ranging up to two years to bring off the American withdrawal, that it would not involve American forces in another limitless war, that it had proved the capacity of the South Vietnamese army.

Now, just as critics said would be the case, the invasion can be seen to have moved, not destroyed, the so-called sanctuaries. They have been shifted out of Cambodia, it seems, into the Laotian panhandle. So still another country must be invaded if the sanctuaries are to be wiped out, and the withdrawal to proceed. American air power, which Mr. Nixon himself said would not be needed in Cambodia, now is needed throughout Southeast Asia. Some success!

In fact, the Administration's achievement in Southeast Asia is reminiscent of the financier who boasted: "Last year I was broke, but today I owe millions." The situation, of course, could be much worse, and no doubt it would be if the Administration had

not been saved, over its own objections, from even greater folly.

Mr. Nixon and his men fought hard against the so-called Cooper-Church amendment. It invaded the President's prerogative, they said, as if that were original sin; it tied his hands in protecting the lives of American troops, and it wasn't needed anyway because Mr. Nixon had no intention of doing any of the things it sought to prevent him from doing. Some assurance!

But the most important matter today is not whether the Administration has violated either the letter or the spirit of the amendment, or both, by using air power. What matters is that, if the amendment were not part of the law, American troops might well be going into the Laotian panhandle or down Cambodia's Route 4 with the South Vietnamese.

It matters also that the Cooper-Church amendment imposes at least some Congressional limitations upon the escalation now going on, and that its mere existence means that both Congressional and public scrutiny of Mr. Nixon's war policy will be more searching than anything applied in the early years of the war in Vietnam—a classic case, perhaps, of locking the barn after the horse has been stolen.

Congress, as Senator Fulbright has conceded, can do little to make the President desist from his Southeast Asian air war. It is important to remember, therefore, that this air war is not some dreadful natural catastrophe, like a typhoon, and that Mr. Nixon cannot ask, as Lyndon Johnson used to ask, "What else could I do?"

The fact is that the widened air war is a direct consequence of the president's policy of Vietnamization, as even Mr. Rogers made plain. As withdrawal proceeds, there is a growing danger of strong attack on the remaining troops, and Mr. Nixon must take steps to protect them.

It ought to be asked how the million-man South Vietnamese army can be expected to protect the whole country, once the Americans have left, if it cannot now protect even the American withdrawal. But above all, it has to be asked why the policy of Vietnamization, requiring an expanded air war, further invasions of other countries by the South Vietnamese, and all the wanton destruction and indiscriminate killing that will result—why is Vietnamization to be preferred to a negotiated settlement of the war?

How does Vietnamization, rather than negotiation, lead to what Mr. Nixon repeatedly refers to as "a generation of peace"? What is the logic of a policy that requires the bombing of three countries and the invasion of two in order to evacuate one? And to the extent that protecting the troop withdrawals requires the bombing of North Vietnam itself, how can that be a step toward peace when it shatters the only real achievement of the Paris talks, the so-called "understanding" by which the bombing was stopped in 1968?

It is true that to make or allow a negotiated settlement in Southeast Asia would require large concessions by Mr. Nixon and probably would result in political arrangements for the region that he does not desire. But there is no guarantee whatever that Vietnamization will not ultimately bring equally undesirable or worse conditions; the chances are that it will. A wide war, more indiscriminate slaughter from the air, the continuing corrosion of American society, the mounting destruction of Southeast Asia—if Mr. Nixon really believes that by such costly means a generation of peace can be achieved, he owes it to humanity to explain how.

A WAR WITHOUT END

Mr. CHURCH. Mr. President, the Indochina War has disabled our society in many ways, one being the debasement of the language as a vehicle for doubletalk. It is reassuring, then, when a commentary, dealing with America's part in the war, speaks so directly to the point. Mr. Frank Getlein has written such a lucid analysis. I ask unanimous consent that his column from the Washington Evening Star of February 3, 1971, be inserted here in the RECORD.

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

[From the Washington Evening Star, Feb. 3, 1971]

NO END IN SIGHT TO INDOCHINA WAR

(By Frank Getlein)

As the extent of our air support for the Cambodian regime became known in the last couple of weeks, some Senators began to mutter that this new, massive commitment was a violation of the President's pledge not to use military force in Cambodia in support of that regime and also a direct defiance of the Senate of the United States.

Sen. John Stennis, D-Miss., in contrast, fresh from beating back the dread threat of democratic procedures in the Senate, announced that American troops on the ground well may be necessary very soon in Cambodia, troops, to be sure, to be titled "air controllers," but authentic, American fighting men on the ground.

Stennis' predictions about military futures usually come true because, under the geriatric system of government employed in both houses of Congress, he is, now and forever, chairman of the Armed Services Committee. As such he is the willing tool of the Pentagon and is therefore let in on information withheld from the government at large.

The Defense Department has already revealed that while the Cooper-Church amendment forbids the use of American "advisers" in Cambodia, the department is standing by ready to send "instructors" instead.

Presumably, should the Senate attempt once more to regain some vestige of its old constitutional powers in regard to war and forbid the sending of instructors, Secretary Laird is capable of saying, "Yes, we certainly won't send instructors if the Senate doesn't want us to, but we do have an obligation to send in these 50,000 teachers, so please stand clear."

Meanwhile, back with "controllers on the ground" of Sen. Stennis. If anything at all about our expanding involvement in Cambodia is clear, it is that when the controllers are on the ground, directing our air fire against the enemy, the enemy is going to start shooting the controllers. At that point, naturally, all bets are off, including the pledged word of the President and the specific injunction of the Senate. American boys will be under attack and American boys will be defended—by more American boys.

We will be in Cambodia for the same basic reason we have been in Vietnam for the last five years or more: We have to have soldiers in both countries to defend our soldiers in both countries.

One thing that all this adds up to is that the Pentagon lies. This is hardly new. The Defense Department doctrine that it has a right—perhaps even a duty—to tell lies was first enunciated by Arthur Sylvester. At the time it was thought to mean that the Pentagon had the right to lie to the press, a right routinely exercised by most government departments at one time or another.

It is now clear that the Sylvester doctrine really means that the Pentagon has the right to lie to the press, to the people, to the President and Congress, and, in all probability, to itself. No military establishment anywhere near sanity could create the permanent fiasco the Pentagon has constructed in Southeast Asia except by believing its own lies.

But the automatic lying and similar word games played by military apparatchiks in uniform and in Congress and Cabinet is not the worst meaning of the Cambodian reincursion, as it will doubtless be called when we move to protect our controllers on the ground. The worst is that the permawar has already begun.

There have been three permawars in European history. The first raged throughout the five-century life of the Roman Empire and finally destroyed the empire. The second was the Hundred Years War, and the third the Thirty Years War, which established freedom of religion for princes.

The permawar in Indochina has just about hit the 30-year mark itself, if you count the beginning as the Japanese military occupation of World War II. But it isn't the length that makes it an authentic example of permawar. It's the style of rationalization, the shifting structure of reasons why we are there.

We will be on the ground in force in Cambodia to protect our ground controllers who will be guiding our gunships and bombers which will be fighting the Communists both to support the regime and to protect our boys in Vietnam who are basically fighting because they keep getting attacked by the Viet Cong and North Vietnamese. For these reasons we will destroy Cambodia as we have destroyed South Vietnam and large parts of North Vietnam.

Meanwhile, should peace somehow threaten to break out, we still have Laos, relatively undamaged so far, as the next place to enlarge operations.

The war has taken on a life of its own, independent of the Pentagon as well as of the other branches of government the Pentagon deceives. There is no reason to believe it cannot go on forever.

ORDER OF BUSINESS

Mr. CHURCH. 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. CHURCH. 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.

The "EXPANSIONARY BUDGET" MEANS CUTBACKS FOR THE ELDERLY

Mr. CHURCH. Mr. President, a so-called full employment budget has been presented by President Nixon to the Congress and to the American public. It has been described as "expansionary;" it is based upon the hope that the economy can soon grow by about $20 billion more than most economists think possible; and it is described as a potent force for reducing unemployment and inflation at one and the same time.

This kind of Presidential optimism may buoy up hopes for some, but to older Americans the program promises only belt-tightening rather than anything "expansionary" at all. My views are based on the following evidence:

One. The February 3 Washington Post reported that:

Health, Education, and Welfare Secretary Richardson urged that Social Security bene-

fit increases be held at six per cent, rather than the 10 per cent proposed by House Ways and Means Committee Chairman Wilbur Mills. The Secretary said that a 6 per cent increase would "cover" the 5.5 per cent increase in the cost of living for 1970. But the Secretary ignores the fact that some of the sharpest living cost rises occurred in medical costs (And Medicare covers less than 50 per cent of health care expenses of the elderly), in rentals and real property taxes, and in transportation—all of which are high-cost items for the elderly.

In addition, the Secretary is unwilling to face up to the likelihood that living costs probably will continue to rise during the coming year. He is apparently willing to let the elderly continue to finish a poor second in the race with rising prices.

Second. The February 3 New York Times carried additional information about Secretary Richardson's comments before a closed meeting of the Ways and Means Committee. That newspaper reported that the Secretary is proposing reductions in medicare coverage while calling for an increase in the $60-a-year deductible feature. In addition, some medicaid patients would be required to pay a fee for services based upon a broader means test than now exists.

Additional details are not now available, but it is easy to understand why William Hutton of the National Council of Senior Citizens charges the administration with "trying to balance the budget on the backs of sick old people."

Third. Sharp cutbacks are proposed in the President's budget for the Administration on Aging. This 5-year-old agency, established under the Older Americans Act, has already suffered downgrading under recent reorganizational changes. But in the new budget, the following additional slashes are proposed:

A budget request of $29.5 million for programs under the Older Americans Act, representing only 28 percent of the $105 million funding authorization for fiscal 1972 under the law;

Slashing the community programs on aging—title III—to the bone by proposing a $3.65 million cutback in funding;

A $1 million reduction for vitally needed research and demonstration;

Less $1.15 million for title V training, at a time when there is a great demand for competent personnel to serve the aged; and

A $3 million reduction in funding for the highly successful foster grandparent program.

Yet, this is the year of the White House Conference on Aging. This is the time when we should be moving toward a national action policy for older Americans.

But without adequate funding, the hard-won legislative achievements of the past will be of little benefit for those struggling on limited, fixed incomes.

As chairman of the Senate Special Committee on Aging, I intend to take a close look at the President's budget in order to search out other reductions which have a direct relationship to the well-being of older Americans. In addition, I will write to directors of programs threatened by cutbacks based more upon bookkeeping than upon genuine understanding of older Americans and their needs.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Leonard, one of his secretaries.

REPORT OF THE NATIONAL ENDOWMENT FOR THE HUMANITIES—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Labor and Public Welfare:

To the Congress of the United States:

In transmitting this Fifth Annual Report of the National Endowment for the Humanities, I commend to your attention the work supported by the Endowment during fiscal year 1970 in increasing the cultural resources of our nation and in providing insight into and understanding of the complexities of contemporary problems.

The National Endowment for the Humanities, which is one of the two Endowments comprising the National Foundation on the Arts and the Humanities, has been able in its short existence to implement a wide variety of programs designed to promote progress and scholarship in the humanities through studies in history, language, literature, jurisprudence, philosophy, and related fields. In addition a major emphasis has been a heightened concern with human values as they bear on social conditions underlying the most difficult and far-reaching of the nation's domestic problems, such as divisions between races and generations.

With its positive response to my proposal of last year to increase funding for the National Foundation on the Arts and the Humanities, the Congress enabled the Endowment to make a significantly greater contribution to the quality of life for all Americans. The role of government in this area, as I emphasized last year, should be one of stimulating private giving and encouraging private initiative. I am therefore happy to report that the work of the National Endowment for the Humanities attracted 125 gifts from private sources totalling over $2 million during fiscal year 1970, more than matching Federal funds available for that purpose.

It is my hope that the 92nd Congress will recognize the innovative and vital role of the National Endowment for the Humanities as described in this Fifth Annual Report.

RICHARD NIXON.

THE WHITE HOUSE, *February 5, 1971.*

S. 609—INTRODUCTION OF THE URBAN LAND IMPROVEMENTS AND HOUSING ASSISTANCE ACT OF 1971

Mr. JAVITS. Mr. President, I introduce a bill entitled "The Urban Land Improvement and Housing Assistance Act of 1971."

This bill would authorize Federal incentive grants to State and local governments to strengthen their capacity to utilize land more productively and, thereby, to increase housing opportunities for all income groups within their jurisdictions.

In the Housing Act of 1968, Congress established a national housing goal of 26 million new or rehabilitated housing units within 10 years. In the past several years, we have enacted numerous housing and urban development programs. Yet, we seem to be further and further away from our objective of providing every American family with a safe, sanitary, and decent place in which to live.

The housing crisis is particularly serious in the central cities where the available land is most limited and most expensive. The poor can be effectively locked in this way into a decaying inner city housing stock through fragmented, outmoded, and restrictive suburban zoning ordinances. These conditions impose ever-increasing burdens on urban services and make it increasingly difficult for the cities to meet necessary demands with ever-shrinking financial resources.

Under these circumstances, it is crucial that States and localities be encouraged to reform their laws and be assisted in overcoming the obsolescence and fragmentation in zoning, taxing, and building standards which have effectively inhibited full utilization of land in metropolitan areas, have contributed to the contrasting picture of decaying urban slums and sprawling suburbs, and have prevented the establishment of a true housing market and freedom of choice within a metropolitan area.

The bill I introduce today would not inhibit the States and localities in the implementation of their land use and taxing powers. Rather, it would utilize Federal supplementary and incentive grants to strengthen local will and capacity to modernize those laws and practices which have such an enormous effect on land use and development.

Section 101 of the bill would establish supplementary Federal grants—to pay 50 percent of the local share—of those assisted local programs and services which would be affected by more intensive land utilization and expanded housing. To be eligible for such supplementary assistance, a locality would have to reform its zoning or tax laws, or undertake a program to develop new construction systems and materials in order to increase the supply of low-cost housing. A locality would also be eligible for such an incentive grant if it were to adopt and enforce a building code comparable to nationally accepted standards. Under these circumstances, supplementary Federal grants would be available for such impacted local services as transportation, education, water and sewers. This section also would permit Federal grants, in addition to supplements, for up to 50 percent of the amount of local tax abatement for low- and moderate-income housing. Such tax abatement would permit substantial reductions in per unit costs and rental rates for such housing.

Section 102 would deny Federal assistance under HUD programs to those lo-

calities which exclude publicly assisted housing for low- and moderate-income persons through restrictive land use practices. Federal support would thus not be available to subsidize land development in localities with overly restrictive, unreasonable, and discriminatory patterns of land use control.

The total funds authorized to be appropriated for the programs established by title I are $10 million for the present fiscal year, $50 million for the fiscal year 1972, and $100 million for the fiscal years thereafter. It is the objective of these programs, to stimulate the expenditure of far more at the State and local level. Thus, the amounts authorized could have a considerable multiplier effect.

Finally, in recognition of the fact that the direct activities of the Federal Government cause and affect urban growth, this bill would require two reports to the Congress. The first, by the President, with respect to the establishment of a national policy on the location of Federal buildings and offices which shall give consideration to social and community priorities; and the second, by the Secretary of Housing and Urban Development, after consultation with the Secretary of Defense, on the possible use of military installations located in urban areas for housing and related community facilities.

Under present law, decisions on the location of Federal agencies are made on cost grounds alone. However, in many cases, a move by a Federal agency to a particular urban area can contribute to its future stability, renewal, and growth. It can create new opportunities for minority enterprise and for jobs for the unemployed and the underemployed.

Recent proposals to permit the use of Federal property for housing and related facilities are quite appropriate. However, such recommendations do not deal with the status and possible use of military installations located in or near urban areas which have not yet been declared surplus by the Federal Government. In New York City alone, there are hundreds of acres of land owned by the Federal Government and supposedly used for national security reasons. Given the very great shortage of land in our cities, I believe it crucial that the Federal Government be certain that it must maintain the military status of such land and that such facilities could not be relocated without impairing the national security. Just as we must establish priorities for the use of funds, so we should establish priorities for the use of that most scarce resource, vacant urban land.

Accordingly, section 202 of this bill would require the Secretary of Housing and Urban Development to report to the Congress as to the status of military installations located in or near urban areas and the possible usefulness of any installation determined to be no longer necessary for national defense purposes as sites for housing and related facilities.

In conclusion, Mr. President, Congress has repeatedly established goals and objectives for the provision of housing and the renewal of our cities. We must recognize, however, that even if the funding were adequate—and it has not been—the achievement of these objectives has been and will be frustrated by significant institutional obstacles. The Federal Government must be more sensitive and farsighted in judging the impact of its own construction programs on the pattern of urban growth and of the effect of the use—and misuse—of the land that it owns. More importantly, local zoning ordinances, building codes and taxing powers need to be significantly revised, so as to promote maximum housing opportunity and proper land utilization.

The ACTING PRESIDENT pro tempor (Mr. METCALF). The bill will be received and appropriately referred.

The bill (S. 609) to assist the States and their localities in utilizing land resources more effectively and in providing housing to meet present and future needs, and for other purposes, introduced by Mr. JAVITS, was received, read twice by its title and referred to the Committee on Banking, Housing and Urban Affairs.

OPTIONAL PROCEDURE FOR ADDING COSPONSORS

Mr. JAVITS. Mr. President, a parliamentary inquiry.

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

Mr. JAVITS. I understand that the existing practice of adding the names of Senators to bills does not require an oral request, but only that the request be proffered in writing at the desk. Is that correct?

The ACTING PRESIDENT pro tempore. It requires a signed request left at the desk.

PRESIDENTIAL DICTATORSHIP

Mr. CHURCH. Mr. President, my friend and colleague, the distinguished chairman of the Senate Foreign Relations Committee, J. WILLIAM FULBRIGHT, spoke last night at South Florida University on a subject of utmost importance to this Congress and to the future of our Republic—the effect of the Indochina war on our democracy. Senator FULBRIGHT described the dilemma we now face:

> Out of a well-intentioned but misconceived notion of what patriotism and responsibility require in a time of world crisis, Congress has permitted the President to take over the two vital foreign policy powers which the Constitution vested in Congress: the power to initiate war and the Senate's power to consent or withhold consent from significant foreign commitments. So completely have these two powers been taken over by the President that it is no exaggeration to say that, as far as foreign policy is concerned, the United States has joined the global mainstream; we have become, for purposes of foreign policy—especially for purposes of making war—a Presidential dictatorship.

To overcome this predicament, the chairman urged that Congress defend its independence. He concluded:

> We are prepared to defend and use the established procedures of Congressional democracy, in the hope that, by so doing, we may help to save our country from the disasters of continuing war and eventual dictatorship.

I ask unanimous consent that this excellent speech be inserted here in the RECORD.

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

THE LEGISLATOR: CONGRESS AND THE WAR

Twenty-five years ago this month, as a junior member of the Senate, I made a speech which I called "The Legislator." Since that winter a quarter century ago, I have had to change my opinions about a lot of things. But looking back at that statement about Congress and its role, it occurred to me that here was one area in which I have had cause to feel confirmed in a judgment formed long ago. The theme of that statement, which will also serve as my theme today, was expressed as follows:

"The legislator may not often give us the inspired leadership which is necessary in the crises of human affairs, but he does institutionalize, in the form of law, those measures which mark the slow lifting of mankind up from the rule of the tooth and the claw. Like the stop on a jack, the legislator may not elevate our civilization, but he does prevent our slipping back into the tyranny of rule by brute force. Many Americans are impatient at the lack of vision and initiative of the Congress, but they should not forget that it is the Congress that stands between their liberties and the voracious instinct for power of the executive bureaucracy." [1]

Whatever may be said against Congress—that it is slow, obstreperous, inefficient or behind the times—there is one thing to be said for it: it poses no threat to the liberties of the American people. The size and diversity of legislative bodies in general prevent them from working their unchecked will; indeed they have no single will to enforce. To the best of my knowledge, no elected legislative body has ever been known to establish its *own* dictatorship over a population.

The same cannot be said for executives, elective and otherwise, which *have* been known to impose authoritarian rule. Men with responsibility for running things naturally want to eliminate obstacles to efficient and speedy action. Sometimes they are motivated by a simple appetite for power; more commonly, at least in democracies like the United States, executives try to maximize their authority so as to be able to carry out policies which they sincerely believe to be in the best interests of the population. I do not believe, for example, that President Roosevelt tried to "pack" the Supreme Court out of a desire to destroy the independence of the judiciary, or that Presidents Johnson and Nixon took over the constitutional war powers of the Congress out of a desire to eliminate Congressional authority in foreign relations. Each of these Presidents was acting on his own best conception of the national interest, to which the Supreme Court in the one instance and the Senate in the other had become exasperating obstacles. All that these Presidents had in common with simple power seekers was a supreme confidence in their own judgment as against the judgment of others, and a willingness to run over constitutional obstacles to the working of their will.

There is no great mystery in the inclination of executives to override obstreperous legislatures whenever they can get away with it. The real puzzle is the frequency with which legislative bodies acquiesce tamely in the loss of their own authority. All over the world constitutional government is in decline. Experiments in democratic government have been abandoned in much of Asia, Africa and Latin America, and even in Europe. Dictatorship is now the dominant

[1] University of Chicago, Feb. 19, 1946.

form of government in the world, not only in Communist countries but in a very large part of what we call the "free world." In most of these countries parliamentary bodies of one kind or another have been retained for decorative and ceremonial purposes, but they are without power or real influence; their function is to "cooperate." In many cases, their loss of authority came about with their own cooperation, enlisted as a seeming necessity in time of national emergency.

The genius of the American Constitution is that it does not compel us to rely on the conscience and principles of our Presidents to protect us from dictatorship. Through the separation of powers and the federal system our Constitution provided countervailing institutions with countervailing powers to protect us against the danger of executive usurpation. If our Presidents are men of conscience and principle, as most of them have been, that is all to the good, but it is not something you can count on; as one of our prominent officials has pointed out—in a different context—every barrel is bound to contain a "rotten apple" or two. Under our Constitution we do not have to rely on such good fortune for the protection of our liberties—*as long as* the countervailing institutions, which is to say, Congress, the courts and the state governments, exercise their countervailing powers. The contingency that the Founding Fathers could not have foreseen—and could not have done anything about if they had—was that one or more of the other institutions of government would cease to exercise and cease to defend their own authority against executive incursions.

That, however, is exactly what Congress has let happen in the field of foreign relations. Out of a well-intentioned but misconceived notion of what patriotism and responsibility require in a time of world crisis, Congress has permitted the President to take over the two vital foreign policy powers which the Constitution vested in Congress: the power to initiate war and the Senate's power to consent or withhold consent from significant foreign commitments. So completely have these two powers been taken over by the President that it is no exaggeration to say that, as far as foreign policy is concerned, the United States has joined the global mainstream; we have become, for purposes of foreign policy—especially for purposes of making war—a Presidential dictatorship.

I. THE WAR

One of the most unheralded events of American constitutional history occurred on January 12, 1971, when President Nixon signed into law a bill which, among other things, repealed the Gulf of Tonkin resolution. With that tarnished, contested and thoroughly unlamented act of Congress went the last of compliance with pretense that clear provision of the Constitution which says that the power to initiate war belongs to Congress, not the President. The event of its repeal was the more significant for the fact that it caused so little stir. It passed unnoticed because it was thought to make no difference. The President believes, and has said, that he has full authority to conduct the war in Indochina without Congressional authorization, and the Congress now agrees.

The near unanimity with which Congress and the Administration finally agreed to repeal the Gulf of Tonkin resolution masks a disagreement of vastly greater significance than the superficial agreement on repeal. To the Administration and its Congressional supporters in the repeal of the Tonkin resolution was unobjectionable because, in their view, the President has full authority to make war under his powers as Commander-in-Chief, with or without Congressional approval. To those of us, on the other hand, who are "strict constructionists" of the Constitution, repeal of the Tonkin resolution represented a withdrawal of Congressional sanction from the one legislative instrument which, though fraudulently obtained, nonetheless provided some facade of constitutional legitimacy to the war in Indochina. The President signed the repealer because he thought it did not matter, because he thought he could conduct the war without it. I voted for repeal because I thought it *did* matter, because I want this disastrous and unnecessary war ended and I believe that Congress has the authority to end it.

And so it does, under any fair reading of our Constitution, but *authority* is one thing and *power* is something else. The President after all is the one who commands the troops; if he chooses to ignore the constitutional authority of Congress, all that the Congress can do is to complain, withhold funds or write specific restrictions into the law about what may or may not be done with the armed forces.

None of these approaches is a satisfactory substitute for the opportunity to decide, in *advance*, whether or not American forces will be committed to battle in some specific place for some specific purpose. Complaining is a lung exercise; it may have some impact on public opinion, but a determined Executive can easily dismiss the dissenters as "mavericks" or "cranks."

Withholding funds is a far more meaningful and, in my opinion, a perfectly legitimate and appropriate means of restraining the Executive from initiating, continuing or extending an unauthorized war, or from taking steps which might lead to war. For reasons with which I sympathize, however, many of my colleagues find it extremely difficult to cast their votes against military appropriations, even though, had then been given the chance, they would have opposed the initial involvement. A few Senators believe that, even though it may have been a mistake to get into a war, and even though the President may have done it without constitutional authority, once you are in it is your duty to go all out and win. A large number find themselves confronted with a Hobson's choice in the matter of appropriations for a war: it becomes a question not of whether you approve or disapprove of the war, but of whether you wish to support or abandon our boy out there on the firing line.

The last two Administrations have contended that the Congress has shown its approval of the Indochina war by continuing to provide funds for it. The "approval" they have given is like the "approval" Congress gave to President Theodore Roosevelt's action in sending the fleet halfway around the world by providing the funds he then demanded to bring the fleet home.

Two months ago, during the hectic closing days of the 91st Congress, the Administration sent up to Congress a hurried supplementary aid request, including $255 million for Cambodia. The Administration assured us that the funds did not constitute an American military commitment to Cambodia and that there would be no greater American involvement. Secretary Rogers said: ". . . if I thought for a moment that the request we are making was going to risk further involvement by American forces I wouldn't be making this request."[2]

My own view, then and now, was that providing money to finance the war in Cambodia was in fact a *commitment*, whether we called it that or not. It was also clear that the need was not urgent, since the Administration was already borrowing funds for Cambodia from other programs and could continue to do so for another month or two while the request was given careful consideration by Congress. Most important of all, it seemed obvious, in light of our Vietnam experience, that, even though the Administration might say in all sincerity it had no intention of becoming directly involved with American ground forces in Cambodia, events, once set in motion, have a way of forcing people into actions they never intended.

I have never been taken with the notion that history, by some force of predestiny, is bound to repeat itself, but I would not carry that to the point of turning our backs on experience. As we stand poised on the brink of deep military involvement in Cambodia, it seems worth recalling that, six years ago, when we began making air strikes in support of a faltering South Vietnamese regime, the Johnson Administration's confidence in a limited American involvement was strikingly similar to that of the Nixon Administration now with respect to Cambodia. In January 1965, the United States Government ordered air strikes to interdict Communist supply routes through Laos. On February 7, 1965, American carrier-based aircraft bombed a Vietcong base in North Vietnam in retaliation for an attack on the American helicopter base at Pleiku in South Vietnam; it was explained at the time that the United States did not seek "a wider war." Later the same month it became known that American planes and helicopters were providing direct fire support for South Vietnamese ground forces. On March 8, 1965, 3,500 United States Marines landed at Danang their mission, said the Pentagon, was limited to defending American bases; our Ambassador in Saigon said that there had been no "fundamental change" in American policy. By the summer of 1965 American forces were engaged in a full-scale land war in South Vietnam, but the White House still asserted, in June, that "There has been no change in the mission of United States ground combat units in Vietnam."

With this experience in mind, it seemed to a few of us in the Senate this past December that it would be prudent to delay the supplementary funds for Cambodia for a month or two so that Congress could consider what we might be getting ourselves into in Cambodia. The majority of my colleagues did not share this view, however, and they went ahead and provided the funds requested by the Administration. Senator Gravel of Alaska kept this extremely serious matter under discussion in the Senate for two days; for that he was accused of "filibustering."

At the initiative of Senators Church and Cooper, Congress attached an amendment to the supplemental aid bill prohibiting the use of funds for the introduction of either American ground combat forces or military advisers into Cambodia. It was further specified that American aid "shall not be construed as a commitment by the United States to Cambodia for its defense." Having failed to persuade my colleagues to delay the authorization, I supported the Cooper-Church amendment as the next-best restriction on American involvement in Cambodia.

I was nonetheless disturbed by the Cooper-Church amendment in a number of respects. First of all, I questioned the meaning of the assertion that our aid "shall not be construed as a commitment:" the money *was* a commitment, it seemed to me, and the proviso seemed to say in effect: "This commitment shall not be construed as a commitment."

Secondly, the Cooper-Church amendment left open the possibility of unlimited American air action in Cambodia—although President Nixon had said last June 30 that there would be "no United States air or logistics support" for continuing South Vietnamese operations in Cambodia and, on that same day, a White House official added that American aircraft were "not assigned the task of close air support" in Cambodia. Still, this was not a matter of law and Presidents have been

[2] *Supplemental Foreign Assistance Authorization, 1970*, Hearings before the Committee on Foreign Relations, U.S. Senate, 91st Cong., 2d Sess., on S. 2542 and S. 2543 (Washington: U.S. Government Printing Office, 1970), p. 24.

known to change their minds—as President Nixon now has.

Finally—and, in the long run, most important—the enactment by Congress of *restrictions* on the use of the armed forces, unaccompanied by any form of *authorization* for their use, seems to acknowledge that, in the absence of restrictions, the President can do whatever he pleases—anything goes, that is, unless it is explicitly prohibited. Recent Presidents have claimed this unlimited right to use the armed forces under an inflated interpretation of their powers as Commander-in-Chief. But under the Constitution, on the other hand, as written and as interpreted by the framers, Congress alone has the authority to initiate military action for any purpose beyond repelling a sudden attack. This being the case, it should not be necessary to pass a law to stop the President from doing something he does not have legal authority to do anyway, except insofar as he is authorized to do it by Congress. It should not be necessary, but after years of usurpation, it obviously is. As far as the President's use of the armed forces is concerned, the logic of the Constitution is that nothing goes unless it is authorized by Congress; the logic of the Cooper-Church amendment—and of practice over the last three decades—is that anything goes unless it is prohibited.

The difficulties of this approach have become apparent in recent weeks. Regarding itself as being at liberty to do anything in Cambodia that is not specifically forbidden by law, the Administration has only to re-define its successive steps toward deeper involvement in Cambodia in terms that fit the letter—as sharply distinguished from the spirit—of the law. The result has been a further enrichment of that murky language known as "Pentagonese." Instead of "advisers," for example, who are forbidden by the law, we now have a "military equipment delivery team" to travel around the Cambodian countryside checking on the deployment of American military equipment. A Pentagon spokesman acknowledged that the "team" members might just possibly drop some hints to Cambodians on how the American equipment works—showing them, for example, where the on-and-off buttons are—but under no circumstances are they to give the Cambodians any "advice." I must confess that I have a little trouble grasping the distinction, but it may just be that it takes a finer legal mind than I possess.

Another fine distinction has to do with close air support of Cambodian forces and South Vietnamese forces operating in Cambodia. The Cooper-Church amendment prohibits "ground combat troops" but it says nothing about American soldiers hovering a few feet off the ground in helicopter gun ships—and these were present in force during the recent battle to open the road from Phnom Penh to the sea. There has even been at least one instance in which a helicopter retrieval team jumped briefly into civilian clothes for a quick foray into Phnom Penh airport, thereby converting themselves, for the moment, from the "combat troops" prohibited by the Cooper-Church amendment into "tourists" or "sightseers" or some other such innocent category. I am reminded of an old story, probably apocryphal, about the invention of the mace, which was said to have been devised for the convenience of warlike medieval clerics, who were forbidden by ecclesiastical law to shed blood but found it quite satisfactory to deal with their enemies in inflicting fatal—but bloodless—concussions.

As far as the President's own disavowal last June of close air support, that, it is now explained, pertained only to the specific South Vietnamese military operation against enemy sanctuaries which were *then* in progress and not to later operations. The President's words were not understood in that restrictive sense at the time, but Secretary Laird has since explained that the difference between interdiction of supplies for the war in Vietnam and close air support for battles fought in Cambodia is a trifling matter of "semantics" which people ought not to work themselves into such a lather about. In any case, the Secretary now explains, "We will use air power, and as long as I am serving in this job, I will recommend that we use air power to supplement the South Vietnamese forces as far as the air campaign in South Vietnam, Laos, and Cambodia."[3] By ways of epilogue in this evolving exercise in semantics, Secretary of State Rogers suggested last week that it isn't "close air support" anyway "in the exact definition of that term" unless you have "coordinators and communicators on the ground in Cambodia."[4]

Underlying this unedifying controversy over semantics and law is a fundamental difference of view about American policy in Indochina. It is this difference which led the Congress to enact the Cooper-Church amendment and which drives the Administration to evade its spirit and intent, if not its exact letter. The Administration contends that its air strikes in Cambodia and Laos, including now the close air support provided by helicopter gun ships, are an essential part of the Vietnamization program designed to hasten the departure of American troops from Indochina. Some of us in the Senate are convinced, on the other hand, that, the Administration's policy will lead at best to the indefinite perpetuation of a war scaled-down to a level considered tolerable to a majority of the American people. At worst—and it is by no means a remote possibility—our reduced forces may be confronted with a full-scale enemy offensive compelling us either to withdraw in disorder or to re-escalate the war with an all-out attack on North Vietnam.

If the Administration is correct in its prognosis, then its double-talk and evasions to get around the law make perfectly good sense—militarily if not legally. If the critics are right, as I believe, then the current restraints imposed by Congress are utterly insufficient to the task. All they really do is to provide the Administration with an excuse for doing anything and everything that is not explicitly forbidden—and, as we have seen, all it takes to transfer some contemplated military action from the prohibited category to the permissible is a certain agility in semantics and an extraordinary contempt for the constitutional authority of Congress. The present Administration has shown itself to be richly endowed with both of these attributes.

The Administration casts every new military venture in terms of advancing Vietnamization, saving American lives and hastening American withdrawal; a more candid prognosis is provided by one of the Administration's strong supporters, retired Admiral U. S. Grant Sharp, who served as Commander-in-Chief of the Pacific Theater, including Vietnam, from 1964 to 1968. In a recent article the Admiral says that, although the Vietnamization program is succeeding, "Less well known and given little emphasis is the continued need for other combat forces in Southeast Asia, even after the Vietnamese take over the ground combat function." The United States Army, writes Admiral Sharp, will still have to provide helicopters, artillery, logistics support, and security forces to protect the remaining American units. The United States Air Force, the Admiral goes on, will have to continue its interdiction of enemy supply lines in Laos and Cambodia "for the foreseeable future," and low-level reconnaissance flights over North Vietnam will have to be continued to detect force and supply buildups. In the event that these reconnaissance planes are fired upon—and why would the North Vietnamese not fire upon them?—We must of course—in Admiral Sharp's view—have planes ready to fire back. We must in any case be ready to renew air strikes on North Vietnam at any time, Admiral Sharp believes, this capacity has a useful "deterrent" effect on North Vietnam. The Admiral does not say what exactly it deters them from, but he concludes—quite accurately, in my opinion—that, even though Vietnamization progresses and American forces are scaled down, "the American presence in the Southeast Asia area is going to be large for some time."[5]

The Admiral has provided a capsule summary of what can be expected from Vietnamization—assuming of course that it lives up to the Administration's highest hopes. Admiral Sharp is now retired of course and no longer responsible for American policy, but Secretary of State Rogers gave evidence of the accuracy of the Admiral's expectations with his assertion on January 29 that American air power might well be available to support a South Vietnamese expedition into Laos as well as Cambodia.[6] That operation is now apparently underway, shrouded in secrecy from the American people, though not from the enemy.

Our present course, as Admiral Sharp recognizes, is patently not one of "ending the war," as the Administration contends, but one of perpetuating the war in an altered form. The distinction between *ending* the war and *perpetuating* it may yet be dismissed by Mr. Laird as a fuss over "semantics," but some of us in the Senate think the matter is more than one of philology. We think it is a basic question of whether our country is to be at war or at peace, and we are not disposed to paper over basic disagreements with artful and evasive language.

The hard choices have yet to be made regarding Indochina. The Administration, I readily concede, has had some success in delaying and obscuring these choices. They have gotten a great many Americans convinced, as they seem to be, that we can withdraw from the war—part way—and at the same time win it. Sooner or later the futility and danger of our present course will become apparent and we will have to choose between a political settlement based on the actual strength of indigenous forces in Indochina and the indefinite continuation of a war which has reduced Indochina to a charnel house and divided the American people as they have not been divided since their own Civil War.

II. CONGRESS AND ITS RESPONSIBILITIES

The violations of trust, and indeed of the Constitution, which currently agitate the Congress are reflections of the deep division in our country and in our Government over the war in Indochina. I do not think these differences between the Executive and some of us in Congress can be eliminated by briefing sessions, Congressional hearings, or even by generally worded legislative prohibitions. If we as legislators are to have any effect in bringing our own best judgment to bear in those areas where the Constitution has given us definite responsibilities, we are going to have to make full use of the legislative in-

[3] Quoted by George C. Wilson, in "Laird Says United States Will Make Full Use of Air Power," *Washington Post*, January 21, 1971, pp. A1, A5.

[4] Quoted by John W. Finney, in "Rogers Assures Senators on Role in Cambodia War," *New York Times*, January 29, 1971, pp. 1, 2.

[5] Admiral U. S. Grant Sharp, "Vietnamization *Plus* American Forces," *New York Times*, January 18, 1969, p. 39.

[6] Reported by Terence Smith, in "Rogers Says United States Might Aid a Drive by Saigon in Laos," *New York Times*, January 30, 1971, pp. 1 ,4.

strumentalities which are properly at our disposal; the power to pass or reject legislation, including military appropriations bills; the power to consent or withhold consent from proposed foreign commitments; and, above all, the power to authorize, or refuse to authorize, the initiation of war.

Congress has not only to start using these powers again; it also has to reestablish its right to use them. That should not be necessary, but after three decades of atrophy due to Congressional passivity, people in general—and Presidents in particular—have forgotten that it is Congress which is supposed to initiate wars, if wars are to be initiated, and the Senate which is supposed to approve treaties, if commitments are to be made at all. Congress has the job not only of reasserting its powers but of reestablishing its good name.

There is no denying that the institution has fallen into disrepute. Ridiculing Congress is quite respectable, like shouting catcalls in a vaudeville house, while words of irreverence for the Presidency are severely frowned upon, like cutting up in church. Even some of our college generation—who, according to reports, have not been excessively reverent in recent years—nonetheless seem to direct their criticisms toward Congress as an *institution* but only toward *individual* Presidents. The office of the Presidency is inexplicably immune.

I noted with interest Mr. John Gardner's recent widely publicized appeal for public support for his new organization "Common Cause." "We must shake up and renew outworn institutions," Mr. Gardner wrote. ". . . One of our aims will be to revitalize politics and government." The appeal then went on to cite the need for reform of state and city governments, political parties and, above all, Congress—all of which, I readily agree are in need of improvement. But what struck me as most interesting, and symptomatic, was the absence of any reference to the Presidency.

Does this mean that thoughtful and public-spirited people such as John Gardner and most university students are satisfied with the Presidency as an institution, whatever objections they may have to specific Presidents and specific policies? I would find that hard to believe, especially since my own view of the matter—which I hope to spell out in other speeches in the near future—is that the Presidency has become an ominously powerful office, more urgently in need of reform than any other institution of American government. I further strongly suspect that the cause—or at least one cause—of our reluctance to subject the Presidency to the same critical analysis that we readily—and rightly—apply to other institutions of government is a habit of mind so deeply rooted as to elude our own awareness of it.

Without quite acknowledging it to ourselves, we perceive the Presidency with something of the awe and reverence accorded to monarchs of an earlier age. Even in the American republic, there seem to be atavistic longings for a king who can "do no wrong." When we are most dissatisfied with a President, it is not for essentially human failings, like a lack of competence or foresight; more commonly it is for superhuman failings, for a lack of "charisma," for his failure as a "father figure," for a failure to measure up as a suitable object of worship. In constitutional monarchies people can get the instinct for emperor worship out of their systems by lavishing affection upon a powerless king or queen. In Presidential republics, all the inflated esteem is directed toward the most powerful man in the country giving rise to a permanent, residual danger of dictatorship—a danger which becomes concrete in time of emergency, and acute when the emergency is of long duration.

That is the condition of America today, and it is precisely for this reason that now, more even than in ordinary times, the Congress must defend its independence. The conventional view holds that, in time of emergency, patriotism demands that we set aside our differences and unite behind out President. And so, I agree, we should, in those uncommon instances such as the Japanese attack on Pearl Harbor, when the emergency is overwhelming and immediate. But when the emergency has abated, or when, as in the years since World War II, it is chronic and recurrent but less than overwhelming, when the country is in a condition of permanent, low-grade emergency—then it is the legislator's duty to do everything he can to defend the authority of the legislature against executive incursion.

At best it is a holding action, because a condition of permanent crisis must almost certainly lead any society to eventual dictatorship. In the long run, I have little doubt, the preservation of democracy in America will turn on questions of the kind of country we want America to be and of the kind of role we want it to play in the world. Until those questions are resolved, however, and with a view toward resolving them in a manner consistent with the preservation of our liberties, the most important service a legislator can perform is to let nothing of consequence go unquestioned or unexamined. The legislator's job is to analyze, scrutinize and criticize, responsibly and lawfully, but vigorously, candidly and publicly. He may in certain instances be mistaken, or inadvertently unfair—legislators after all are no more immune from error than executives—but, from the standpoint of preserving our liberties, an occasional excess of criticism is less harmful than a habit of undeserved praise.

The major virtue of legislatures, as I mentioned at the start of my talk, is neither wisdom nor prescience—and certainly not "charisma"—but a basic inability to threaten the liberties of the people. The ancient Egyptians spent themselves into penury to give their mummified Pharaohs glorious sendoffs to heaven; humble folk were rewarded by vicarious participation in the ascent. We in turn build great monuments to revered departed Presidents, perhaps for similar reasons. But who would dream of mummifying or deifying a legislature? The plodding, workaday character of Congress, its lack of dash and mystery, its closeness to ordinary people with ordinary problems, even its much reviled "parochialism," make of our national legislature an object entirely unsuitable for deification. That is why Congress is incapable of threatening our democratic liberties; that too is why an assertive, independent Congress is the first line of defense against an expanding Executive, which can and does threaten our liberties.

Many years ago a Senate colleague of mine said that we have laws enough to last 10,000 years and what was now required was the wisdom that comes from deliberation. Something of the same might now be said about our foreign military commitments: we suffer from no lack of them, and what is now required is the wisdom to sort them out and determine which are in our interests and which are not.

As far as the war in Indochina is concerned, a great many of us in the Senate—and, according to the Gallup Poll, a sizable majority of the American people—are now convinced that our involvement in that conflict has been a disastrous mistake. Some of us are no less convinced that our present course leads not to an end of the war but to its indefinite perpetuation in an altered form. Feeling as we do about the matter, we are prepared to defend and use the established procedures of Congressional democracy, in the hope that, by so doing, we may help to save our country from the disasters of continuing war and eventual dictatorship.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. METCALF) laid before the Senate the following letters, which were referred as indicated:

PROPOSED LEGISLATION FOR THE PROCUREMENT OF MILITARY EQUIPMENT

A letter from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to authorize appropriations during the fiscal year 1972 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes (with an accompanying paper); to the Committee on Armed Services.

REPORTS OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on reports issued or released by the General Accounting Office of the previous month, January 1971 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the opportunities to economize on the purchases of dairy and bakery products for U.S. Forces in Southeast Asia, Department of Defense, Department of State, dated February 4, 1971 (with an accompanying report); to the Committee on Government Operations.

PROPOSED LEGISLATION TO AMEND THE REVISED ORGANIC ACT OF THE VIRGIN ISLANDS

A letter from the Attorney General of the United States, transmitting a draft of proposed legislation to amend the Revised Organic Act of the Virgin Islands (with an accompanying paper); to the Committee on the Judiciary.

REPORT OF A COMMITTEE

The following reports of committees were submitted:

By Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, without amendment:

S. Res. 33. Resolution authorizing the printing of additional copies of Senate Report 91–1496, entitled "TFX Contract Investigation" (Rept. No. 92–1).

BILLS INTRODUCED

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

By Mr. MANSFIELD (for himself and Mr. METCALF):

S. 602. A bill to provide for the disposition of judgments, when appropriated, recovered by the Confederated Salish and Kootenai Tribes of the Flathead Reservations, Montana, in Paragraphs 7 and 10, Docket No. 50233, United States Court of Claims, and for other purposes; to the Committee on Interior and Insular Affairs.

(The remarks of Mr. MANSFIELD when he introduced the bill appear earlier in the RECORD under the appropriate heading.)

By Mr. MONTOYA:

S. 603. A bill for the relief of George F. Scott and his wife, Margaret Ann Scott; to the Committee on the Judiciary.

S. 604. A bill to increase annuities payable under the provisions of title 5, United States Code, relating to civil service retirement; to the Committee on Post Office and Civil Service.

S. 605. A bill to amend the Internal Revenue Code of 1954 to provide that the first $5,000 received as civil service retirement annuity from the United States or any agency thereof shall be excluded from gross income; to the Committee on Finance.

S. 606. A bill to amend the Civil Service Retirement Act, as amended, to provide minimum annuities for employee annuitants and spouse survivor annuitants; to the Committee on Post Office and Civil Service.

(The remarks of Mr. MONTOYA, when he introduced S. 604, S. 605, and S. 606, appear below under the appropriate heading.)

By Mr. METCALF:

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

S. 608. A bill to establish an independent agency to be known as the United States Office of Transportation Consumers' Counsel to represent the consumers of the Nation before Federal regulatory agencies and courts with respect to transportation matters; to improve methods for obtaining and disseminating information with respect to the operations of transportation companies and other matters of interest to consumers, and for other purposes; to the Committee on Commerce.

(The remarks of Mr. METCALF when he introduced the bills appear below under the appropriate heading.)

By Mr. JAVITS:

S. 609. A bill to assist the States and their localities in utilizing land resources more effectively and in providing housing to meet present and future needs, and for other purposes; to the Commitee on Banking, Housing and Urban Affairs.

S. 610. A bill for the relief of Anthony A. Baptiste;

S. 611. A bill for the relief of Giovanni and Elena Giatto;

S. 612. A bill for the relief of Peter Chung Ren Huang;

S. 613. A bill for the relief of Michael Davis;

S. 614. A bill for the relief of Sister Mary Sylvana (Maria Mattozi);

S. 615. A bill for the relief of Michele Palazzolo;

S. 616. A bill for the relief of George Hecter;

S. 617. A bill for the relief of Siu-Kei-Fong;

S. 618. A bill for the relief of Antonia Berardi;

S. 619. A bill for the relief of Piedad V. Montesdeoca;

S. 620. A bill for the relief of Patricia C. LiBassi; and

S. 621. A bill for the relief of Lucio Martella; to the Committee on the Judiciary.

(The remarks of Mr. JAVITS, when he introduced S. 609, appear earlier in the RECORD under the appropriate heading.)

By Mr. DOMINICK:

S. 622. A bill for the relief of Raimondo Pasquarelli;

S. 623. A bill for the relief of Manuel Aranguena Ortuondo;

S. 624. A bill for the relief of Fung Yut Ma (Mar);

S. 625. A bill for the relief of Lugarda Losoya Damian-Ruiz; and

S. 626. A bill for the relief of Werner Alfred Thanner; to the Committee on the Judiciary.

By Mr. METCALF:

S. 627. A bill to repeal the provisions of the Federal Power Act which exempt from Federal Power Commission regulation the issuance of securities by public utilities subject to certain State regulation; to the Committee on Commerce.

By Mr. EASTLAND:

S. 628. A bill for the relief of Anthony Glorioso; and

S. 629. A bill for the relief of Chen-Pai Miao; to the Committee on the Judiciary.

By Mr. JACKSON:

S. 630. A bill to provide for the cooperation between the Secretary of the Interior and the States with respect to the future regulation of surface mining operations, and for other purposes; and

S. 631. A bill declaring a public interest in the open beaches of the Nation, providing for the protection of such interest, for the acquisition of easements pertaining to such seaward beaches and for the orderly management and control thereof; to the Committee on Interior and Insular Affairs.

(The remarks of Mr. JACKSON, when he introduced the bills, appear below under the appropriate headings.)

By Mr. JACKSON (for himself, Mr. ALLOTT, Mr. CHURCH, Mr. GRAVEL, Mr. JORDAN of Idaho, Mr. Moss and Mr. STEVENS):

S. 632. A bill to amend the Water Resources Planning Act (79 Stat. 244) to include provision for a national land use policy by broadening the authority of the Water Resources Council and river basin commissions and by providing financial assistance for statewide land use planning; to the Committee on Interior and Insular Affairs.

(The remarks of Mr. JACKSON when he introduced the bill appear below under the appropriate heading.)

By Mr. ALLOTT (for himself and Mr. DOMINICK):

S. 633. A bill for the relief of James E. Fry, Junior, and Margaret E. Fry; to the Committee on the Judiciary.

By Mr. ALLOTT:

S. 634. A bill for the relief of Michael D. Manemann; to the Committee on the Judiciary.

By Mr. ALLOTT (for himself, Mr. BIBLE, Mr. JACKSON, Mr. DOMINICK, Mr. BENNETT, and Mr. Moss):

S. 635. A bill to amend the Mining and Minerals Policy Act of 1970; to the Committee on Interior and Insular Affairs.

(The remarks of Mr. ALLOTT when he introduced the bill appear below under the appropriate heading.)

By Mr. CASE (for himself and Mr. MONTOYA):

S. 636. A bill to permit immediate retirement of certain Federal employees; to the Committee on Post Office and Civil Service.

(The remarks of Mr. CASE when he introduced the bill appear below under the appropriate heading.)

S. 604, S. 605, AND S. 606—INTRODUCTION OF BILLS TO CORRECT THE INEQUITIES AFFECTING RETIRED CIVIL SERVICE EMPLOYEES

Mr. MONTOYA. Mr. President, I am introducing legislation to provide an increase in the annuities of civil service retirees and their survivors. We are all aware of the many studies done in recent years on the problems facing this country's senior citizens. It is interesting to note that the common conclusion of all these studies and investigations show that the major problem encountered by the elderly is inadequate income. All of us in this Chamber are aware of the many hours of discussion given in the final days of the 91st Congress to increasing benefits under social security. I feel that it should be pointed out that the majority of civil service annuitants are not covered by social security, but rely solely on their civil service annuities for retirement income. The financial needs of these retirees are no different than those of social security recipients, and it is only fair that similar attention and action be given to increasing civil service annuities.

Of an approximate 997,000 retired Federal employees and survivors, some 276,000 receive annuities of less than $100 per month, and about 515,000 receive less than $200 per month. Using a poverty level income of $3,000 per annum, there are presently 619,000 or more than 60 percent of these former Government workers and survivors living in poverty.

No one needs to be reminded of the ever increasing cost of living, which steadily reduces the purchasing power of everyone, but especially those on fixed retirement incomes, often to the point of putting them in dire financial need. My bill would provide some assistance by granting the greatest percentage increases to those with the present lowest annuities, putting the money where it is most desperately needed. Many of these people retired a number of years ago when salaries were much lower and the retirement computation formula was much less liberal than it is today. The small annuities their years of service produced are not adequate to maintain an acceptable standard of living in today's economy.

S. 605, the second bill I introduce excludes the first $5,000 of civil service retirement annuity from gross income under Internal Revenue Code of 1954. Under present law, social security pensions and railroad retirement benefits are exempted from income tax payment.

The same treatment should be accorded at least a portion of civil service anuities.

S. 606, the third bill I introduce provides minimum annuities under the civil service retirement law. My bill would guarantee a monthly annuity to a single person of $100 per month, and $200 per month for annuitants with a spouse or dependents. If such guarantees are awarded social security beneficiaries, like treatment should be granted civil service annuitants.

The ACTING PRESIDENT pro tempore (Mr. METCALF). The bills will be received and appropriately referred.

The bills, introduced by Mr. MONTOYA, were severally read twice by their titles and referred as follows:

S. 604. A bill to increase annuities payable under the provisions of title 5, United States Code, relating to civil service retirement; to the Committee on Post Office and Civil Service.

S. 605. A bill to amend the Internal Revenue Code of 1954 to provide that the first $5,000 received as civil service retirement annuity from the United States or any agency thereof shall be excluded from gross income; to the Committee on Finance.

S. 606. A bill to amend the Civil Service Retirement Act, as amended, to provide minimum annuities for employee annuitants and spouse survivor annuitants; to the Committee on Post Office and Civil Service.

S. 607 AND S. 608—INTRODUCTION OF BILLS ENTITLED "UTILITY CONSUMERS' COUNSEL AND INFORMATION ACT OF 1971" AND "INTERGOVERNMENTAL TRANSPORTATION CONSUMERS' COUNSEL AND INFORMATION ACT OF 1971," RESPECTIVELY

Mr. METCALF. Mr. President, I introduce for appropriate reference two bills designed to provide information and counsel which the public and regulators need in their dealings with large public service corporations. They are: The Utility Consumers' Counsel and Information Act of 1971, and the Transportation Consumers' Counsel and Information Act of 1971.

The first bill was the subject of 21 days of hearings before the Senate Subcommittee on Intergovernmental Relations in 1969. Title 1 of the bill, which deals with counsel, includes all the changes made by the subcommittee during its five markup sessions on the bill (S. 607) during the 91st Congress. Title 1, as now introduced, was both improved and approved by the subcommittee.

Title 2 of the bill is identical to the markup version presented to the subcommittee by staff, following the hearings and consultation between majority and minority staff. The addition and deletion of reporting requirements reflect the recommendations made by witnesses. Their testimony, in the seven volumes of hearings on S. 607, is a useful reference for those who wish to familiarize themselves with the legislation, as is the summary of the hearings by the subcommittee chairman (Mr. MUSKIE) which appears in the CONGRESSIONAL RECORD, volume 116, part 4, page 5014.

The second bill I am introducing today, the Transportation Consumers' Counsel and Information Act of 1971, is identical to S. 4588, which I introduced on December 16, 1970. This bill is similar in concept to the utility consumers' bill. The need for the transportation consumers' bill, especially as regards the railroad industry and the Interstate Commerce Commission—or its successor—is elaborated in the CONGRESSIONAL RECORD, volume 116, part 31, page 41880.

Mr. President, these two bills are designed to give meaning to two of the consumer rights enunciated or endorsed by Presidents Kennedy, Johnson, and Nixon. They are the right to be informed and the right to be heard.

At present it is difficult and in some cases impossible for users or regulators of utility and transportation services to obtain detailed basic information about electric, gas, telephone, rail, and airline companies. By basic information I mean: Who owns the company? Who works for it? Where does its money go? What are its policies? Law enforcement, in antitrust as well as rate and service matters, depend on timely and full answers to such questions.

The public has as much difficulty being heard as it does becoming informed. Our peculiar regulatory system permits a regulated corporation to pass on to consumers the costly presentations to the commission and the elaborate advertising and public relations efforts that accompany them. But the public is not provided, through either the tax or rate structure, funds for its own presentations, its own experts to counter the claims made by the corporation.

Indeed, a prospective party to a rate case may have to spend hundreds or even thousands of dollars, before obtaining counsel, simply to purchase the transcript of the other side's testimony to the commission. Administrative procedures designed to discourage public participation permeate commissions.

The Interstate Commerce Commission, for example, contracts with a private reporting firm to make one public copy of transcripts. The ICC permits that reporting company to charge more than a dollar a page for transcripts, according to information reported by the ICC staff this month.

The ICC recently announced the great freight rate and rate base investigation of 1971. The ICC says its investigations and hearings will include participation by shippers, farmers, stockmen, merchants, the public generally. I believe, Mr. Chairman, that those of us who want our constituents to have a voice in regulatory matters such as freight rates had better pay attention, very soon, to the procedures used by the commissions for providing necessary information and public counsel.

Friday night we heard the President discuss governmental power. The actual power structure among regulatory commissions and the industries they were created to regulate is quite unlike the examples used by the President.

Regulatory responsibility for energy and transportation corporations is not centralized in Washington. It is diffused among more than 50 commissions, most of them at the State level. Most of these commissions are dominated by the industry groups they are supposed to regulate. Reorganization and shuffling of responsibilities between Federal and State and local commissions will not provide power for the people in their dealings with energy and transportation corporations which have government-like characteristics, power, and influence.

The public needs entry into the regulatory system, through easy access to full information and its own independent counsel. That is the way to achieve the adversary proceedings from which fair decisions ensue. That, I submit, is a revolutionary concept, in the finest American sense. That is the goal of these two bills which I today introduce.

Mr. President, I ask unanimous consent to have the text of the bills printed at this point in the RECORD.

The PRESIDING OFFICER (Mr. CHILES). The bills will be received and appropriately referred; and, without objection, the bills will be printed in the RECORD.

The bills, introduced by Mr. METCALF, were received, read twice by their titles, and ordered to be printed in the RECORD, as follows:

S. 607. A bill to establish an independent agency to be known as the U.S. Office of Utility Consumers' Counsel to represent the consumers of the Nation before Federal and State regulatory agencies with respect to matters pertaining to certain electric, gas, telephone, and telegraph utilities; to provide grants and other Federal assistance to State and local governments for the establishment and operation of utility consumers' counsels; to improve methods for obtaining and disseminating information with respect to the operations of utility companies of interest to the Federal Government and other consumers; and for other purposes; to the Committee on Government Operations:

S. 607

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the Utility Consumers' Counsel and Information Act of 1971.

DEFINITIONS

SEC. 2. As used in this Act—

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

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

(c) The term "utility" means:

(1) any company which owns or operates facilities used for the generation, transmission or distribution of electric energy for sale, other than sale to tenants or the employees of the company operating such facilities for their own use and not for resale:

(2) any company which owns or operates facilities used in the production, generation or distribution of natural or manufactured gas for heat, light and power (other than distribution only in enclosed portable containers or distribution to tenants or employers of the company operating such facilities for their own use and not for resale); and

(3) any company which is a common carrier as defined in the Communications Act of 1934, as amended.

(d) The term "company" means a corporation, a partnership, an association, a joint-stock company, a business trust or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; having an annual gross operating revenue in excess of $1 million; but not including any cooperatively, federally, municipally, or other publicly owned person, company or organization.

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

(f) The term "interests of consumers of utility services" means any matter relating to rates, charges, methods of service, adequacy of service and safety measures which directly affect the consumer of utility services.

TITLE I—UTILITY CONSUMERS' COUNSEL

ESTABLISHMENT OF OFFICE

SEC. 101. (a) There is hereby established within the executive branch of the Government an independent agency to be known as the United States Office of Utility Consumers' Counsel (referred to hereinafter as the "Office"). The Office shall be headed by a Consumers' Counsel (referred to hereinafter as the "Counsel"), who shall be appointed for a term of five years by the Presi-

dent, by and with the advice and consent of the Senate, and who shall receive compensation at the rate provided for level 2 of the Executive Schedule.

(b) The Counsel may—

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

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

PERSONNEL AND POWERS OF THE OFFICE

SEC. 102. (a) The Counsel shall, subject to civil service laws and the Hatch Act, appoint and fix the compensation of such personnel as he determines to be required for the performance of the functions of the Office.

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

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

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

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

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

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

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

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

REPRESENTATION OF PUBLIC INTEREST

SEC. 103. (a) Notwithstanding any other provision of law, the Counsel is authorized to petition for, initiate, appear, or intervene in, any investigation, complaint, action, appeal, or other proceeding, except a criminal proceeding, before any Federal, State, or local agency, Federal or State court, in accordance with the rules of practice and procedure of such agency or court, where in the opinion of the Counsel, there is a matter or controversy affecting substantially the interests of consumers of utility services within the United States: *Provided*, That such action by Counsel before any State or local agency or State court shall be authorized only when:

(1) it is requested by the Governor of a State or any official designated by him for such purpose; or

(2) it is requested by an agency or official duly authorized by a State to represent the interests of utility consumers before any State or local agency or court; or

(3) it is requested by a local government serving a population of fifty thousand persons or more, or a combination of local governments covering ten percent of the population of the service area of a utility within any State; or

(4) it is requested by a duly certified petition signed by the consumers of services of a utility within any State as follows: if the total of such consumers equals one thousand or less, petition must be signed by 20 percent of such consumers; if the total of such consumers equals an amount over one thousand but less than ten thousand, petition must be signed by ten percent of such consumers; or if total of such consumers equals ten thousand or more, petition must be signed by five percent of such consumers.

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

(c) Notwithstanding any other provision of law, Counsel is entitled as a matter of right to appear as a party before any Federal agency or Federal court, but not including the Supreme Court of the United States, with respect to any matter or proceeding described in subsection (a), and coming within the jurisdiction of such Federal agency or court.

PUBLIC INFORMATION AND REPORTS

SEC. 104. (a) The Counsel from time to time shall compile and disseminate to the public, through such publications and other means as he determines to be appropriate, such information as he considers to be necessary or desirable for the protection of the interests of consumers of utility services.

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

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

GRANTS TO STATE AND LOCAL GOVERNMENTS

SEC. 105. (a) (1) The Counsel is authorized to make grants to any State or local government, or combination of such governments, that serve a population of one hundred thousand or more persons, for up to 75 per centum of the cost of performing any of the following functions:

"(i) representing the interests of consumers of utility services before Federal, State or local agencies and Federal or State courts, including but not limited to the initiation, appearance or intervention, with respect to any investigation, complaint, action, appeal, or other proceeding and the preparation and presentation of evidence, briefs, and arguments in connection therewith;

(ii) compiling and making available to the public information which is necessary or desirable for the protection of the interests of consumers of utility services;

(iii) making available, to the extent possible technical assistance, statistics, information and personnel for consultation and assistance to Federal, State and local governments and agencies, and to nongovernmental organizations having a special interest in matters affecting the interest of consumers of utility services.

"(2) No grant under this subsection shall be made to any State or local agency authorized by law to regulate one or more of the utilities defined under this Act."

"SEC. 105(b)(1) The Counsel is authorized to make grants to any State or local agency authorized by law to regulate one or more of the utilities defined under this Act for the following purposes:

"(i) increasing the number and quality of professional staff personnel assigned to matters affecting the interests of consumers of utility services;

"(ii) developing personnel, systems and facilities, including automatic data processing equipment, for obtaining essential information, making studies and other evaluation of data, and assisting in the making of decisions with respect to matters affecting the interests of consumers of utility services; or

"(iii) providing for training and education programs, including internship, workstudy, fellowship and similar programs for professional staff positions relating to matters affecting the interests of consumers of utility services.

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

(d) The non-Federal contribution may be in cash or in kind, including but not limited to plant, equipment, and services, or as otherwise determined by the Counsel. If, in any fiscal year, a recipient under this section provides non-Federal contributions exceeding its requirements, such excess may be used to meet its non-Federal requirements for the next fiscal year.

(e) The Counsel shall allocate grants under this Act in such manner as will most nearly provide an equitable distribution of grants among States and local governments, taking into consideration such facts as size of population, extent of utility services, the urgency of programs or projects, and the need for funds to carry out the purposes of this Act.

TECHNICAL ASSISTANCE TO STATE AND LOCAL GOVERNMENT

SEC. 106. The Counsel may furnish technical advice and assistance, including information, on request to any State or local regulatory agency for the purpose of establishing and carrying out any program of utility consumer interest within the general purposes of this Act. The Counsel may accept payments, in whole or in part, for the costs of furnishing such assistance. All such payments shall be credited to the appropriation made for the purposes of this section.

REPORTING REQUIREMENTS

SEC. 107. A State or local government office receiving a grant under this Act shall make reports and evaluations in such form, at such times, and containing such information concerning the status and application of Federal funds and the operation of the approved program or project as the Counsel may require, and shall keep and make available such records as may be required by the Counsel for the verification of such reports and evaluations.

REVIEW AND AUDIT

SEC. 108. The Counsel and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of a grant recipient that are pertinent to the grant received.

TERMINATION OF GRANTS

SEC. 109. (a) Whenever the Counsel, after giving reasonable notice and opportunity for hearing to a grant recipient under this Act, finds—

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

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

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

(b)(1) If the recipient of a grant under section 106 is dissatisfied with the Counsel's final action under subsection (a), such recipient may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such recipient is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Counsel. The Counsel thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(2) The findings of fact by the Counsel, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Counsel to take further evidence, and the Counsel may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) The court shall have jurisdiction to affirm the action of the Counsel or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

MODEL LAWS

SEC. 110. The Counsel shall make a full and complete investigation and study for the purpose of—

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

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

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

APPROPRIATIONS AUTHORIZED

SEC. 111. There are authorized to be appropriated annually for the purposes of this title an amount equal to "three-tenths of one per centum of the aggregate annual net operating revenues of all utilities."

SAVING PROVISION

SEC. 112. Nothing contained in the Act shall be construed to alter, modify, or impair any other provision of law, or to prevent or impair the administration or enforcement of any other provision of law, except as specifically amended or to the extent that it is inconsistent with this Act.

TITLE II—PUBLIC INFORMATION WITH RESPECT TO CERTAIN UTILITIES

SEC. 201. (a) The Federal Power Commission with respect to electric companies and gas companies and the Federal Communications Commission with respect to common carriers as defined in section 2(c)(3) of this Act, shall obtain the information required pursuant to subsection (b) with respect to each such utility and shall publish such information at least annually in reports prepared for and made readily available to the public, especially in the service area of each such utility.

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

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

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

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

(4) average rate of interest on long-term debit;

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

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

(7) dividend on preferred stock;

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

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

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

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

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

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

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

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

(16) all payments included in any account for the purpose of supplying free goods and services or goods and services supplied below the usual charge for the purpose of securing additional customers;

(17) all payments included in any account for contributions, gifts, donations, dues, honorariums, and any other gratuities;

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

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

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

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

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

(23) summaries of franchises or certificates of convenience and necessity;

(24) with respect to such purchase of fuel, whether coal, oil, gas or nuclear, including all cost components, the following information: supplier from whom purchased; producing company; location of mine or mines, well or field from which fuel is extracted; summary of terms of fuel purchase contract, including length of contract—long term or spot sale, and price provisions—fixed price, price escalation clauses; quantity purchased, stated in tons, barrels, cubic feet or pounds as appropriate for type of fuel; price of fuel per ton, barrel, cubic feet or pound, as well as stated in cents per million BTU where specified, at the originating source; cost of transportation per ton, barrel, cubic foot or pound of fuel, as well as stated in cents per million BTU where available; total cost of fuel as delivered to each powerplant per ton, barrel, cubic foot or pound, as well as stated in cents per million BTU; cost of fuel as burned stated in cents per million BTU at each powerplant; and average cost per kilowatt-hour of energy generated at each plant attributable to fuel, exclusive of cost associated with investment. Where more than one fuel is burned in a plant, composite heat rate for all fuels used at plant must be shown;

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

(26) a description of expenses incurred, whether in payment of money, performance of services, use of officers, agents or employees on company time or any other things of value, with respect to (1) the candidacy, nomination, election or appointment of any person for any Federal, State or local office; (2) any referendum or other issue for which an official vote of the people has been authorized, or (3) any lobbying with respect to Federal, State or local legislative or administrative bodies;

(27) the names and addresses of the holders of 1 per centum or more of any issue of long-term debt including, in those cases where the debt is held by a party other than the beneficial owner, the name and address of each beneficial owner of 1 per centum or more of any issue of debt of the company;

(28) the names and addresses of any party who holds or held more than 10 per centum of the short-term debt (such figure to be derived on the basis of the short-term debt outstanding as of January 1 of the reporting year) at any time during the calendar (or repeating) year; including, in those cases where the liability is held by a party other than the beneficial owner, the name and address of each beneficial owner of 10 per centum or more of the short-term debt in the company;

(29) brief descriptions of rate schedules currently in effect for all classes of retail service and facilities, including but not limited to residential, rural, commercial or industrial service for general or limited use, which will inform the public accurately in clear, non-technical language of the rates, terms of purchase, character and conditions of each class of service; and

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

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

(c) The Federal Power Commission, the Federal Communications Commission, and the Securities Exchange Commission are hereby authorized and directed to coordinate and assist in carrying out the provisions of this Act and to conduct investigations and promulgate such regulations as are necessary to implement this Act each in accord-

ance with its own rules of procedure. It shall be a violation of this Act to fail to provide information required by this Act or to give false information. Any person so violating the Act shall also be deemed to have violated the Federal Power Act, the Natural Gas Act, the Public Utility Holding Act or the Federal Communications Act, and the civil and criminal penalties and procedures for enforcement provided in each of said Acts shall apply, whichever is most appropriate.

AUTOMATIC DATA PROCESSING

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

APPROPRIATIONS AUTHORIZED

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

S. 608. A bill to establish an independent agency to be known as the U.S. Office of Transportation Consumers' Counsel to represent the consumers of the Nation before Federal regulatory agencies and courts with respect to transportation matters; to improve methods for obtaining and disseminating information with respect to the operations of transportation companies and other matters of interest to consumers, and for other purposes; to the Committee on Commerce:

S. 608

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intergovernmental Transportation Consumers' Counsel and Information Act of 1971."

DEFINITIONS

SEC. 2. As used in this Act—

(a) An "affiliate" of a company means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such company, or that has one or more directors or officers in common with such company.

(b) The terms "company" and "person" mean any individual, firm, corporation, partnership, association, joint stock company, business trust, foundation, unincorporated organization, body politic, or any similiar entity or combination of the foregoing, and include any trustee, receiver, assignee, or other similar representative thereof.

(c) The term "control" means possession of the power to direct or cause the direction of or to substantially influence the management and policies of a company, whether through ownership of voting or nonvoting securities, ownership of debt issues, by contract, or otherwise, unless such power is the result of an official position with the company. Control is presumed to exist if any person or company directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing 10 per centum or more of the voting securities of any company. The Counsel may, after furnishing all persons in interest notice of opportunity to be heard, determine that control in fact exists notwithstanding the absence of a presumption to that effect.

(d) The term "Federal agency" means any independent Federal agency, or any department, agency, or instrumentality of the executive branch of the Government, including, but not limited to the Interstate Commerce Commission, Civil Aeronautics Board, Federal Maritime Commission, National Mediation Board, National Transportation Safety Board, the Department of Transportation and its constituent agencies, and any successors thereto.

(e) The term "long-term debt" means any indebtedness of a company having a maturity of one year or more from the date of issuance. The term "short-term debt" means any indebtness of a company other than long-term debt.

(f) The term "regulatory proceeding" means any formal or informal proceeding, meeting, or session before any Federal agency or Federal court relating to rulemaking, enforcement, management, mergers, reorganization, financing, certification, rates, routes, service, safety, bankruptcy, accounting, recordkeeping, environmental impact, or other matters concerning transportation companies or transportation services.

(g) "Transportation company" means any company subject to regulation by the Interstate Commerce Commission, the Civil Aeronautics Board, or the Federal Maritime Commission.

(h) "Transportation consumer" means any person who purchases, uses, or is in any way affected by transportation or the operations of transportation companies.

(i) "Transportation holding company system" means two or more affiliated companies, one or more of which is a transportation company.

(j) "Transportation" means the conveyance or the means of conveyance of persons or property between any two points, rail, air, pipeline, highway, or water.

TITLE I—TRANSPORTATION CONSUMERS' COUNSEL

ESTABLISHMENT OF OFFICE

SEC. 101. (a) There is hereby established within the executive branch of the Government an independent agency to be known as the United States Office of Transportation Consumers' Counsel (referred to hereinafter as the "Office"). The Office shall be headed by a Transportation Consumers' Counsel (referred to hereinafter as the "Counsel"), who shall be appointed for a term of five years by the President, by and with the advice and consent of the Senate, and who shall receive compensation at the rate provided for level 2 of the Executive Schedule. In appointing the Counsel, the President shall solicit the views and recommendations of consumer organizations and groups representing consumer interests in transportation matters, including State and local bodies.

(b) The Counsel is authorized, subject to the civil service and classification laws, to select, employ, appoint, and fix the compensation of such personnel as he determines to be required for the performance of the functions of the Office, and to define their authority and duties.

(c) No person appointed as Counsel or employed by the Counsel shall at any time during his tenure, have any financial interest, direct or indirect, in any transportation company or affiliate; nor shall any such person be employed or retained by or accept employment with a transportation company or an affiliate of a transportation company for a period of three years following termination of his employment in the Office of Counsel.

POWERS OF THE OFFICE

SEC. 102. In the performance of the functions of the Office, the Counsel is authorized—

(a) to promulgate such rules and regulations as may be required to carry out the functions of the Office, including the establishment of uniform rules of accounting for any class or classes of companies as to which information is required to be obtained pursuant to this Act;

(b) to exercise the powers set forth in sections 12, 304(a)(7), 904(b), 1003(e), and 1377 of title 49 of the United States Code, and section 820 of title 46 of the United States Code, but the exercise of such powers and the performance of the functions of the Office shall not be subject to the provisions of sections 3501–3511 of title 44 of the United States Code.

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

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

(e) to use the services, equipment, personnel, and facilities of other Federal agencies, with their consent, with or without reimbursement therefor as determined mutually by the Counsel and such other agencies.

COOPERATION OF OTHER FEDERAL AGENCIES

SEC. 103. Upon request made by the Counsel, each Federal agency is authorized and directed—

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

(b) to furnish to the Office such information and assistance as the Counsel may determine to be necessary or desirable for the performance of the functions of the Office.

REPRESENTATION OF PUBLIC INTEREST

SEC. 104. (a) Notwithstanding any other provision of law, the Counsel is authorized to petition for, initiate, appear, intervene, or otherwise participate in, any regulatory proceeding which, in the opinion of the Counsel, involves a matter of controversy affecting substantially the interests of transportation consumers.

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

(c) Notwithstanding any other provision of law, Counsel is entitled as a matter of right to appear as a party before any Federal agency or Federal court, with respect to any matter or proceeding described in subsection (a), and coming within the jurisdiction of such Federal agency or court.

(d) This Act shall not operate to exclude any other individual, consumer organization, or group representing the public interest from intervening or otherwise participating in such proceedings, nor shall it affect the decision of any Federal agency to assign its own staff personnel to intercede or assist in developing any part of the record of proceedings in which the Counsel or other groups shall appear; nor shall the participation by Counsel affect the right of any person to appear in such proceedings in forma pauperis.

(e) The Counsel is authorized to attend and represent the interests of transportation consumers at any meeting of any advisory

committee or other private or public organization with any Federal agency.

TITLE II—PUBLIC INFORMATION AND REPORTS

INFORMATION WITH RESPECT TO TRANSPORTATION COMPANIES

SEC. 201. The Counsel shall obtain detailed corporate and financial information, determined in accordance with uniform accounting rules, prescribed by the Counsel, with respect to each transportation company and each affiliate of a transportation company or a transportation holding company system which shall include, but not be limited to, the following information:

(a) As to the capitalization and control—

(1) the name, address, and description of the business of each parent, subsidiary, or affiliate company, including a full description of the relationship between such companies;

(2) a description of all classes of common stock, preferred stock, long-term debt, bonds, and debentures, including information as to voting rights, redemption and conversion features, dividends, premiums, and interest payable, maturity dates, provision for security, and any other terms and conditions that are material or that may confer control or management powers upon the holder of the security or the debt;

(3) percentages of capitalization obtained from common stock, preferred stock, long-term debt, and earned surplus, respectively;

(4) the amount of dividends and interest paid on each class of stock and debt, and—

(i) yearend preferred dividend yield (annual preferred dividend payments divided by yearend aggregate market price of preferred stock);

(ii) yearend yield on common stock (annual common dividend payments divided by yearend aggregate market price of common stock);

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

(iv) average rate of interest of short-term debt;

(v) rate of return on average common stock equity.

(5) the name and address of:

(i) each holder of record and each beneficial owner of 1 per centum or more of any class or series of common or preferred stock in the company;

(ii) each holder of record and each beneficial owner of 1 per centum or more of any issue of long-term debt of the company.

(iii) any person beneficially owning 5 per centum or more of the outstanding short-term debt of the company at any time during the reporting year;

(iv) any person controlling, directly or indirectly, 5 per centum or more in the aggregate of the voting rights of the company.

(b) As to management—

(1) the name and address of each officer and director and his compensation from the company, including pension and retirement plans and the amounts paid, accrued, or reserved for such plans, stock options, deferred compensation plans, indemnification, and insurance, together with a complete description of the duties of such director or officer and the approximate amount of time, stated in hours per week, spent in the performance of such duties;

(2) the names and addresses of all other companies which such officers and directors also serve as officers or directors, and a description of any position which such officer or director holds or has held in any Federal agency at any time within the preceding fifteen years;

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

(4) terms of restricted stock option plans available to officers, directors, and employees and, except for plans available to all employees on equal terms, including name, title, salary, and retirement benefits of each person to whom stock options have been granted, number of options each has exercised, date on which options were exercised, option price of the stock and market price of the stock when option was exercised.

(c) As to operations—

(1) summaries of all certificates of convenience and necessity issued to or applied for by the company, if any, and the amount expended for and in procuring each such certificate;

(2) a summary of the terms of any rate bureau, pooling or mutual aid agreements or arrangements, including a complete breakdown of joint rates attendant thereto;

(3) assets and liabilities of the company, including a description of each asset subject to a mortgage, lien, or other claim, indicating the terms thereof;

(4) net annual earnings after taxes and after subsidy, if any, stated:

(i) in dollars;

(ii) as percentage of depreciated average original cost;

(iii) as a percentage of operating revenues;

(5) sources and application of all funds, including all revenues, income, borrowings, and sale of equity.

(6) information as to all direct or indirect expenditures, whether in payment of money, provision of goods or services, use of officers or employees on company time or otherwise, including specific details of the exact amounts, purposes, and tax treatment of each item, included in any account for:

(i) dues, expenses, or assessments of trade associations or rate bureaus of any kind;

(ii) any legal, professional, or consultant services;

(iii) advertising, public relations, and promotion of any kind;

(iv) contributions, gifts, donations, honorariums, and gratuities, including travel, entertainment, or other personal expenses of individuals paid for, in whole or in part, by the company;

(v) protesting the granting of any certificate, franchise, or authority of any other party, or intervening in any proceeding in which such certificate, franchise, or rights are at issue;

(vi) promoting or opposing the candidacy, nomination, election, or appointment of any person for any Federal, State, or local office, or any lobbying with respect to Federal, State, or local legislative or administrative bodies; and a list of each contribution or expenditure of any director or officer of the company for such purposes;

(7) a list of all goods, services, rights, or privileges extended free, below cost, or below normal charges, to any actual or potential customer or class of customers including credit extension, concessions, and rebates of any kind, and the extent to which such goods, services, rights, or privileges are paid for by charges to such customers or class of customers;

(8) amounts, terms, and conditions, including simple annual interest rates, of all loans and extension of credit to directors, officers, affiliates, customers, and others, and the total amounts of interest collected on each class of such loans or credit during the year;

(9) details of any transactions with affiliates, banks, finance companies, holders of any class of stock or long-term debt, and customers concerning the purchase, sale, or lease of any real or personal property, indicating as to each the identity of the other party, terms of the purchase, sale, or lease contract, including any provision for security, the assessed value of the property and the method by which such transaction was negotiated, including a description of any opportunity given to other parties to enter competitive bids and details of any such bids received.

(d) Such other information as the Counsel may deem appropriate to obtain, compile, publish, and disseminate to inform transportation consumers.

REPORTS

SEC. 202. (a) The information to be obtained by the Counsel pursuant to section 201 of this title shall, at least annually and at such other times as the Counsel may deem appropriate, be published in reports prepared for and made readily available to the public. Such reports shall be issued as soon as possible after the end of the annual accounting period. Supplementary reports may be issued at any time to reflect any changes that materially affect the ownership, financial condition, or operation of transportation companies or affiliates. To the degree practicable, the reports provided for in this section shall be presented in readily comprehensible style and format and shall contain pertinent national averages and comparative historical data.

(b) The Counsel from time to time shall compile and disseminate to the public, through such publications and other means as he determines to be appropriate, such information as he considers to be necessary or desirable for the protection of the interests of transportation consumers. To the greatest extent possible, such information shall be made conveniently available to the public and in time to be of use in regulatory proceedings. The Counsel shall consult with consumer organizations, including State and local bodies, regarding the information to be compiled and disseminated and the most effective manner of dissemination thereof.

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

(d) The Counsel shall transmit to the President from time to time such recommendations for proposed legislation as the Counsel may consider to be necessary or desirable for the adequate protection of the interests of transportation consumers, accompanied by an explanation of why the desired objective cannot be achieved under existing legislation.

AUTOMATIC DATA PROCESSING

SEC. 203. Federal agencies are hereby authorized and directed to make full use of automatic data processing in preparing the information required under this Act and other Acts to which they are subject, to the end that the Counsel, the Congress, and the public shall receive information in a timely and understandable manner. Federal agencies are hereby directed to include, in their annual reports, accounts of their progress toward full use of automatic data processing.

PENALTIES

SEC. 204. (a) Any person who violates this Act or any rule, regulation, or order issued by the Counsel hereunder, or who fails or refuses to provide any information or report required by this title, shall be subject to a civil penalty not greater than $1,000 for each violation. Any person who knowingly and willfully violates this section or any rule, regulation, or order issued by the Secretary hereunder shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not greater than $2,500 for the first offense and not greater than $5,000 for each subsequent offense. If any such violation is a continuing one, each day of such violation shall constitute a separate offense.

(b) If any person owning or controlling securities or debt of any transportation company, required to be disclosed under this Act or any regulation issued under this Act, shall withhold or fail to disclose the fact of such ownership or control to the Counsel, title to such securities or debt, after notice and hearing before the Counsel, shall be forfeited and shall vest in the United States government.

APPROPRIATIONS

SEC. 205. There are authorized to be appropriated annually for the purposes of this Act an amount equal to one-tenth of 1 per centum of the aggregate annual gross operating revenues of all transportation companies.

S. 630—INTRODUCTION OF THE SURFACE MINING RECLAMATION ACT OF 1971

Mr. JACKSON. Mr. President, I introduce for appropriate reference the "Surface Mining Reclamation Act of 1971." This measure is identical to S. 3132 which I introduced in the 90th Congress and S. 524 which I introduced in the 91st Congress. I ask unanimous consent that the text of the bill and a brief explanation of its principal provisions be printed in the RECORD at the conclusion of my remarks.

The purpose of this measure is to implement recommendations made by the Department of the Interior in a 1967 report entitled "Surface Mining and the Environment." The study on which that report was based revealed:

First, that 3.2 million acres of land have been affected by surface mining;

Second, that approximately 20,000 active surface mining operations are disturbing our land at a rate estimated to exceed 150,000 acres annually; and

Third, that it was estimated that by 1980 more than 5 million acres will have been affected by these operations.

In the 3½ years since that report was transmitted to Congress the trend toward surface mining has increased. The Nation's demand for coal and other minerals has far outstripped anyone's expectations, and in spite of efforts on the part of some of the States to regulate strip mine activities and to require the reclamation of these lands our Nation's inventory of wasted lands continues to grow larger.

It is my belief that there is a national interest in the development of a program to encourage and assist State government to remedy past mistakes wherever possible and, more important, to take affirmative action to prevent future instances of unnecessary degradation of the environment through erosion, landslides, air and water pollution, loss of fish and wildlife habitat, and the creation of hazards to public health and safety.

The ACTING PRESIDENT pro tempore (Mr. METCALF). The bill will be received and appropriately referred; and, without objection, the bill and explanation will be printed in the RECORD.

The bill (S. 630) to provide for the cooperation between the Secretary of the Interior and the States with respect to the future regulation of surface mining operations, and for other purposes, introduced by Mr. JACKSON, was received, read twice by its title, referred to the Committee on Interior and Insular Affairs and ordered to be printed in the RECORD, as follows:

S. 630

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Surface Mining Reclamation Act of 1971".

DEFINITIONS

SEC. 2. For the purpose of this Act, the term—

(a) "Secretary" means the Secretary of the Interior;

(b) "reclamation" means the reconditioning or restoration of an area of land or water, or both, that has been adversely affected by surface mining operations;

(c) "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States, or between a State and any other place outside thereof, or within the District of Columbia, or a possession of the United States, or between points in the same State but through a point outside thereof;

(d) "surface mine" means (1) an area of land from which minerals are extracted by surface mining methods, including auger mining, (2) private ways and roads appurtenant to such area, (3) land, excavations, workings, refuse banks, dumps, spoil banks, structures, facilities, equipment, machines, tools, or other property on the surface, resulting from, or used in, extracting minerals from their natural deposits by surface mining methods or the onsite processing of such minerals;

(e) "surface mined areas" means any area on which the operations of a surface mine are concluded after the effective date of a State plan or the regulations issued under section 8 of this Act, whichever is applicable;

(f) "person" means an individual, partnership, association, corporation, or other business organization;

(g) "State" includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam; and

(h) "State plan" or "plan" means the whole or any portion or segment thereof.

CONGRESSIONAL FINDING

SEC. 3. The Congress finds and declares—

(a) That extraction of minerals by surface mining is a significant and essential industrial activity and contributes to the economic potential of the Nation;

(b) That there are surface mining operations in the Nation that burden and adversely affect commerce by destroying or diminishing the availability of land for commercial, industrial, recreational, agricultural, and forestry purposes, by causing erosion and landslides, by contributing to floods and the pollution of waters, by destroying fish and wildlife habitat and impairing natural beauty, by counteracting efforts to conserve soil, water, and other natural resources, by destroying or impairing the property of citizens, and by creating hazards dangerous to life and property;

(c) That regulation by the Secretary and cooperation by the States as contemplated by this Act are appropriate to prevent and eliminate such burdens and adverse effects;

(d) That, because of the diversity of terrain, climate, biologic, chemical, and other physical conditions in mining areas, the establishment on a nationwide basis of uniform regulations for surface mining operations and for the reclamation of surface mined areas is not feasible;

(e) That the initial responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining operations and for the reclamation of surface mined areas should rest with the States; and

(f) That it is the purpose of this Act to provide a nationwide program to prevent or substantially reduce the adverse effects to the environment from surface mining, to assure that adequate measures will be taken to reclaim surface mined areas after operations are completed, and to assist the States in carrying out such a program.

MINES SUBJECT TO ACT

SEC. 4. After the effective date of this Act, each surface mine, the products of which enter commerce or the operations of which affect commerce, and the surface mined area thereof shall be subject to this Act.

FEDERAL AND STATE COOPERATION

SEC. 5. (a) In furtherance of the policy of this Act, the Secretary is authorized, whenever he determines that it would effectuate the purposes of this Act, to cooperate with appropriate State agencies in developing and administering State plans for the regulation of surface mines and the reclamation of surface mined areas, consistent with the provisions of section 7 of this Act, and to cooperate and consult with other Federal agencies in carrying out the provisions of this Act.

(b) In cooperating with appropriate State agencies under this Act, the Secretary may provide such agency (1) technical and financial assistance in planning and otherwise developing an adequate State plan for the regulation of surface mines and the reclamation of surface mined areas, (2) technical assistance and training, including necessary curricular and instructional materials, and financial and other aid for administration and enforcement of such a plan; and (3) assistance in preparing and maintaining a continuing inventory of surface mined areas and active mining operations within the State for the evaluation of current and future needs and the effectiveness of mining and reclamation regulatory measures.

(c) The amount of any grant the Secretary may make to any State to assist them in meeting the total cost of the cooperative program in each State shall not exceed 50 per centum of such cost: *Provided,* That such payment shall not be made for more than three years unless a State plan has been submitted and approved by the Secretary and thereafter such payment shall be contingent at all times upon the administration of the State program in a manner which the Secretary deems adequate to effectuate the purposes of this Act.

(d) The appropriate State agency with which the Secretary may cooperate under this Act shall be a single agency designated by the State to have responsibility for the administration and enforcement of a State plan approved under this Act: *Provided,* That the Secretary may, upon request of the Governor or other appropriate executive or legislative authority of the State, waive the single State agency provision hereof and approve another State administrative structure or arrangement if the Secretary determines that the objectives of this Act will be enhanced by the use of such other State structure or arrangement.

ADVISORY COMMITTEES

SEC. 6. (a) The Secretary may appoint advisory committees which shall include, among others, State representatives, persons qualified by experience or affiliation to present the viewpoint of operators of surface mines, and persons qualified by experience or affiliation to present the viewpoint of conservation and other interested groups, to advise him in carrying out the provisions of this Act. The Secretary shall designate the chairman of each committee.

(b) Advisory committee members, other than employees of Federal, State, or local governments, while performing committee business, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including traveltime. While so serving away from their homes

or regular places of business, members may by paid travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons intermittently employed.

STATE PLAN

SEC. 7. (a) A State may, after public hearings, submit to the Secretary at any time a State plan or a proposal for a revision in a plan previously approved by the Secretary for the regulation of surface mines and the reclamation of surface mined areas located within the State. The Secretary shall, after giving appropriate Federal agencies a reasonable opportunity to review and comment thereon, approve a State plan or revision thereof if—

(1) He determines that, in his judgment, the plan includes laws and regulations which—

(A) promote an appropriate relationship between the extent of regulation and reclamation that is required and the need to preserve and protect the environment;

(B) provide that an adequate mining plan be filed with, and approved by, the State agency and a permit be obtained to insure, before surface mining operations are commenced or continued, that they will be conducted in a manner consistent with said mining plan;

(C) contain, in connection with surface mines and surface mined areas, criteria relating specifically to (i) the control of erosion, flooding, and pollution of water, (ii) the isolation of toxic materials, (iii) the prevention of air pollution by dust or burning refuse piles or otherwise, (iv) the reclamation of surface mined areas by revegetation, replacement of soil, or other means, (v) the maintenance of access through mined areas, (vi) the prevention of land or rockslides, (vii) the protection of fish and wildlife and their habitat, and (viii) the prevention of hazards to public health and safety;

(D) promote the reclamation of surface mined areas by requiring that reclamation work be planned in advance and completed within reasonably prescribed time limits;

(E) provide for evaluation of environmental changes in surface mined areas and in areas in which surface mines are operating in order to accumulate data for assessing the effectiveness of the requirements established;

(F) provide adequate measures for enforcement, including criminal and civil penalties for failure to comply with applicable State laws and regulations; periodic inspections of surface mines and reclamation work; periodic reports by mining operators on the methods and results of reclamation work; the posting of performance bonds adequate to insure the land is reclaimed; and the revocation of permits for failure to comply with the terms of the permits or of the provisions of the regulations or laws under which permits are issued; and

(2) The Secretary determines that, in his judgment, the plan includes—

(A) adequate provision for State funds and personnel to assure the effective administration and enforcement of the plan and, if needed, the establishment of training programs for operators, supervisors, and reclamation and enforcement officials in mining and reclamation practices and techniques;

(B) provision for the making of such reports to the Secretary as he may require; and

(C) authorization by State law and that it will be put into effect not later than sixty days after its approval by the Secretary.

(b) After approval of a plan, the Secretary, on the basis of such inspections, investigations, or examinations as he deems appropriate and reports submitted by the State, shall make a continuing evaluation of the effectiveness of the approved plan and the enforcement thereof. Whenever he determines, after notice to the State agency referred to in subsection (d) of section 5, and opportunity for a hearing:

(1) that the State, in administering the plan, has failed to comply substantially with it or to enforce it adequately, he shall notify the State thereof and if within a reasonable time the State has not taken adequate measures, in his judgment, to correct the situation, he may withdraw his approval of the plan and issue regulations for such State under section 8 of this Act; and

(2) that a revision of an approved plan is appropriate to effectuate the purposes of this Act, he shall notify the State thereof and if within a reasonable time the State has not revised said plan and obtained the approval of the Secretary thereon, he may withdraw his approval of the plan and issue regulations for such State under section 8 of this Act.

FEDERAL REGULATION OF SURFACE MINES

SEC. 8. (a) If, at the expiration of two years after the effective date of this Act, a State fails to submit a State plan, or a State has submitted a plan which has been disapproved and has within such period failed to submit a revised plan for approval, the Secretary, in consultation with an advisory committee appointed pursuant to this Act, shall issue promptly regulations for the operation of surface mines and for the reclamation of surface mined areas in such State: *Provided*, That if the Secretary has reason to believe that a State will submit an acceptable plan within one additional year after the expiration of the two-year period, he may delay the issuance of Federal regulations for such one-year period of time. If a State has within two years after the effective date of this Act submitted a plan for approval and the two-year period provided in the first sentence of this section has expired before the Secretary has approved or disapproved the plan, the Secretary shall delay the issuance of Federal regulations pending the approval or disapproval of the plan. The Federal regulations issued by the Secretary for a particular State shall be consistent with the principles set forth in subsection (a)(1) of section 7 of this Act.

(b) The Secretary shall publish in the Federal Register the regulations which he proposes to issue for a particular State. Interested persons shall be afforded a period of not less than sixty days after the publication of such regulations within which to submit written data, views, or arguments. Except as provided in subsection (c) of this section, the Secretary may, after the expiration of such period and after consideration of all relevant matter presented, issue the regulations with such modifications, if any, as he deems appropriate.

(c) On or before the last day of a period fixed for the submission of written data, views, or arguments, any person who may be adversely affected by the regulations which the Secretary proposes to issue may file with the Secretary written objections thereto stating the grounds therefor and requesting a public hearing on such objections. The Secretary shall not issue regulations respecting which such objections have been filed until he has taken final action upon them as provided in subsection (d) of this section. As soon as practicable after the period of filing such objections has expired the Secretary shall publish in the Federal Register a notice specifying the provisions of the regulations to which such objections have been filed.

(d) If such objections requesting a public hearing are filed, the Secretary, after notice, shall hold a public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. At the hearing any interested person may be heard. As soon as practicable after the completion of the hearing, the Secretary shall act upon such objections and make public his decision.

(e) The Secretary may from time to time revise such regulations in accordance with the procedures prescribed in subsections (a) through (d) of this section.

TERMINATION

SEC. 9. If a State submits a proposed State plan to the Secretary after Federal regulations have been issued pursuant to section 8 of this Act, and if the Secretary approves the plan, such Federal regulations shall cease to be effective within the State sixty days after the approval of the State plan by the Secretary. Such Federal regulations shall again become effective if the Secretary subsequently withdraws his approval of the plan pursuant to subsection (b) of section 7 of this Act.

INSPECTIONS AND INVESTIGATIONS

SEC. 10. (a) The Secretary is authorized to cause to be made such inspections and investigations of surface mines and surface mined areas as he shall deem appropriate to evaluate the administration of State plans, or to develop or enforce Federal regulations, and for such purposes authorized representatives of the Secretary shall have the right of entry to any surface mine or upon any surface mined area.

(b) The head of each Federal agency shall permit by agreement authorized representatives of the State or the Secretary to have the right of entry to any surface mine or upon any surface mined area located on lands under his jurisdiction, unless the Secretary of Defense finds that such entry would not be in the interest of the national security.

REGULATIONS

SEC. 11. The Secretary may issue such regulations as are deemed necessary to carry out the purposes of this Act.

INJUNCTIONS

SEC. 12. At the request of the Secretary, the Attorney General may institute a civil action in a district court of the United States for a restraining order or injunction or other appropriate remedy (a) to prevent a person from engaging in surface mining operations without a permit from the Secretary required under section 8 of this Act, or in violation of the terms and conditions of such permit or the Federal regulations issued under section 8 of the Act; (b) to prevent a person from placing in commerce the products of a surface mine produced in violation of an approved State plan; or (c) to enforce the right of entry under section 10 of this Act. The district courts of the United States in which such person resides or is doing business or is licensed or incorporated to do business shall have jurisdiction to issue such order or injunction or to provide other appropriate remedy.

PENALTIES

SEC. 13. (a) If any person shall fail to comply with any regulation issued under section 8 of this Act for a period of fifteen days after notice of such failure, such person shall be liable for a civil penalty of not more than $100 for each and every day of the continuance of such failure. The Secretary may assess and collect any such penalty, and upon application therefor may remit or mitigate any such penalty imposed.

(b) Any person who knowingly violates any regulation issued pursuant to section 8 of this Act shall, upon conviction, be punished by a fine not exceeding $2,500, or by imprisonment not exceeding one year, or by both.

(c) The penalties prescribed in this section shall be available to the Secretary in addition to any other remedies afforded to him under this Act in enforcing the regulations issued under section 8 of this Act.

RESEARCH

SEC. 14. The Secretary is authorized to conduct and promote the coordination and acceleration of research, studies, surveys, experiments, demonstrations, and training in carrying out the provisions of this Act. In carrying out the activities authorized by this

section, the Secretary may enter into contracts with, and make grants to, institutions, agencies, organizations, and individuals, and collect and make available information thereon.

APPROPRIATIONS

SEC. 15. (a) There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out the provisions of this Act.

(b) All appropriations and donations made pursuant to this Act, and all permit fees or other charges paid pursuant to section 8 of this Act shall be credited to a special fund in the Treasury to be known as the Mined Lands Reclamation Fund. Such sums shall be available, without fiscal year limitation, for carrying out the provisions of this Act.

OTHER FEDERAL LAWS

SEC. 16. Nothing in this Act shall affect in any way the authority of the Secretary or heads of other Federal agencies under other provisions of law to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface mining operations and to reclaim surface mined areas on lands under their jurisdiction: *Provided*, That such conditions shall be at least equal to any law and regulation established under an approved State plan or to any regulation issued under section 8 of this Act for the State in which such lands are located. Each Federal agency shall cooperate with the Secretary and the States, to the greatest extent practicable, in carrying out the provisions of this Act.

The explanation presented by Mr. JACKSON is as follows:

BRIEF EXPLANATION OF PRINCIPAL PROVISIONS

1. The proposal would establish a State-Federal program for the regulation of surface mining operations in the Nation. The purpose of the program is to prevent in the future the needless degradation to the environment and destruction of land values which have occurred in the past, and to assure that reasonable steps will be taken to reclaim mined areas after surface mining is completed.

The National Surface Mine Study authorized by Congress under the Appalachian Regional Development Act of 1965 found that surface mining throughout the Nation produces significant detrimental effects upon the land.

2. The proposal would apply to surface mines operating on the date of its enactment and thereafter and to areas on which surface mining operations cease after the date of enactment. It would apply to such operations wherever found in a State, including those conducted on Federal and Indian trust lands.

3. The proposal recognizes that because of the diversity of terrain, climate, and other factors from State and even within a single State, a uniform system of regulations is both impracticable and undesirable. It gives the States the initial opportunity to control the problem now.

4. The proposal would authorize the Secretary of the Interior to provide both technical and financial assistance to the States in developing and enforcing adequate State plans for the regulation of surface mines and the reclamation of surface mined areas. The financial assistance would be in the form of up to 50 percent grants to cover the Federal share of the State program.

5. The proposal would authorize the Secremittees, possibly on a regional basis, to assist tary to establish a series of advisory comhim in carrying out his responsibilities under this legislation. The membership of the committees would include appropriate State and Federal people and various people from industry, conservation, or other organizations and individuals.

6. The proposal would encourage each State to submit for the approval of the Secretary an adequate and complete State plan for the regulation of surface mines and the reclamation of surface mined areas located in the State. While the plan may be submitted at any time, it must be submitted within 2 years after enactment if a State wants to forestall Federal regulation. The Secretary, however, may extend this time another year, if he believes that a State will submit an approvable plan by then. In the process of adopting a State plan, the State must initiate public hearings to give interested persons and organizations an opportunity to comment thereon.

An approvable plan must—

(a) Promote an appropriate relationship between the extent of regulation and reclamation that is required and the need to preserve and protect the environment;

(b) Provide a system of permits and the filing of mining plans to enable the State to know how and what kind of operations will be commenced or continued;

(c) Provide means and measures for preventing or controlling the adverse effects of mining operations, such as air and water pollution, erosion, the prevention of slides, and the protection of fish and wildlife areas;

(d) Provide for the reclamation of surface mined areas, including the posting of an adequate performance ordinance bond which will insure that the entire cost of the reclamation will be covered; and

(e) Provide adequate measures of enforcement, funds, and personnel.

Before approving a plan, the Secretary must be satisfied that it can be carried out under State law within 60 days after his approval. Also, the Secretary must submit it to other Federal agencies having affected land holdings within the State which the plan covers or having some other direct interest in surface mining operations therein for their review and comment. We expect that their review and comment would not delay approval for any appreciable time.

7. Once approved, the Secretary would, based on State reports and field investigations, etc., continue to evaluate its effectiveness and, most particularly, the adequacy of the State's enforcement. The latter is probably the "key" to assuring that the objectives of this legislation will be met. If he determines, after an opportunity for a hearing, that the State plan has not been adequately enforced, the Secretary will notify the State of the problem and make recommendations on how enforcement can be improved. If the State fails to take corrective steps, the Secretary is authorized to withdraw his approval of the plan and issue Federal regulations.

8. Technology and conditions will change. Also, it is possible that experience will show that all or a part of the plan is defective or difficult to administer adequately. The proposal recognizes these possibilities and provides a system for instituting revisions by each State and by the Secretary.

9. Two years after enactment of this proposal, the Secretary shall issue promptly Federal regulations for the operation of surface mines and the reclamation of surface mined areas for any State or portion thereof which has not submitted a plan, unless the Secretary gives a 1 year extension to submit it, or which has had a plan disapproved.

As of early 1969, only 14 States had laws regulating surface mining operations. Some existing State laws do not cover surface mining of all minerals. Thus, most State governments will need to enact State legislation to authorize such regulation or to amend existing regulation. Moreover, the development of State plans will necessitate time consuming study and consultation by State officials with mining industry representatives and other interested persons. Review of proposed State plans by the Federal Government will also be time consuming. It is anticipated, however, that in the case of some of the States which already have laws governing surface mining State plans might be submitted very soon after enactment.

10. In establishing Federal regulations for surface mining in a State, the Secretary is required to consult with an appropriate advisory committee. The regulations must be consistent with the appropriate criteria set forth for the State plan in his proposed legislation.

11. The proposal would provide for the publication of proposed Federal regulations in the Federal Register and for a public hearing on request of interested parties.

12. The proposal would authorize a Mined Lands Reclamation Fund to carry out the provisions of this Act.

13. The proposal would make the State plan applicable to Federal lands and to Indian trust lands. It, however, would not repeal, modify, or otherwise affect present or future Federal statutes or regulations relating to surface mining operations, except that, where there is an approved State plan or regulation issued under this legislation, the Federal lease, permit, etc., conditions must be at least equal to them.

14. The proposal would authorize the Secretary to carry out an accelerated program of research, studies, surveys, experiments, demonstrations, and training in aid of this legislation.

S. 631—INTRODUCTION OF THE NATIONAL OPEN BEACHES ACT OF 1971

Mr. JACKSON. Mr. President, I introduce for appropriate reference the National Open Beaches Act of 1971.

The Nation's ocean shoreline is a resource which, as was reported by the Outdoor Recreation Resources Review Commission—ORRRC—in 1962 in a report entitled "Shoreline Recreation Resources," has been neglected by the Nation as a recreational resource. It has "largely been left for acquisition and exploitation by whatever public or private agencies desired to undertake its ownership, control and management."

Mr. President, it is my view that the ocean beaches of the United States are a part of the common heritage of all of the people, that they are impressed with a public interest, and that new means must be found to protect this great resource and, to the maximum extent possible, make it available for public use and enjoyment.

In May of 1969, Congressman ECKHARDT of Texas introduced a National Open Beaches Act which proposes some innovation approaches towards enlarging public access and public rights to the use of the Nation's beaches. The bill I introduce today is patterned after that measure.

This bill is designed to establish a simple legal presumption: namely, that the public has a basic right of access to and over the open seacoast beaches of the United States. This right is based on the recognition that the ocean beaches of this Nation have traditionally served as thoroughfares and havens for persons pursuing all types of travel, commerce and recreation. The bill recognizes that the concept of the beach as a common resource of all citizens is threatened by shorelines being fenced or enclosed upon assumptions which in many cases and in many States are not founded on clear legality.

The purpose of this legislation is best described by quoting from sections 102 and 103 which provide that:

Congress declares and affirms that the beaches of the United States are impressed with a national interest and that the public shall have free and unrestricted right to use them as a common to the full extent that such public right may be extended consistent with such property rights of littoral landowners as may be protected absolutely by the Constitution. It is the declared intention of Congress to exercise the full reach of its constitutional power over the subject.

No person shall create, erect, maintain or construct any observation, barrier, or restraint of any nature which interferes with the free and unrestricted right of the public, individually and collectively, to enter, leave, cross or use as a common the public beaches.

This measure, if enacted, would in no way affect the rights of littoral property owners. These rights are fully protected. The bill would establish procedures whereby easements for access to the beaches could, where necessary, be purchased or condemned for public use. Funds necessary for this purpose would come from the land and water conservation fund on a 25-percent State and 75-percent Federal matching basis.

Mr. President, it has been estimated that our population will grow from 200 to 300 million in the next 30 years. The extent of the total American shoreline will, however, be exactly the same in the year 2000 as it is now. If action is not taken to preserve a portion of this valuable resource for public use, America's recreational shoreline may vanish under the onslaught of other demands—industrial, commercial, residential.

Many beaches which were open to the public only a few years ago are now marked with signs reading "Private Property—Keep Out," "No Trespassing—Private Beach," "Subdivision: Lots for Sale." Unfortunately, these are the signs of the times in our Nation's waterways, and seashores, and they make it increasingly difficult for the public to gain access to them. Inasmuch as the majority of outdoor recreation is centered around water, whether it be streams, lakes, or seashore, steps must be taken to provide greater access to these national assets.

The total detailed shoreline of the United States, excluding both Alaska and Hawaii, is 59,157 statute miles. Of this total, 21,724 miles has been classified as recreation shoreline by the ORRRC study report. Of this total detailed shoreline only 1,209 miles—just barely 2 percent—is in public ownership and available, or potentially available, for recreational use. Of the area classified as recreational shoreline only 5.7 percent is available for recreational use. Table 4 from the ORRRC report breaks these figures down by major coastlines. Mr. President, I ask unanimous consent that this table be printed at this point in the RECORD.

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

TABLE 4.—MILEAGE OF DETAILED SHORELINE, RECREATION SHORELINE,[1] PUBLIC RECREATION SHORELINE, AND RESTRICTED SHORELINE, BY MAJOR COASTLINES

[In statute miles]

Shoreline location	Detailed shoreline	Recreation shoreline	Public recreation shoreline	Restricted shoreline
Atlantic Ocean	28,377	9,961	336	263
Gulf of Mexico	17,437	4,319	121	134
Pacific Ocean	7,863	3,175	296	127
Great Lakes	5,480	4,269	456	57
U.S. total	59,157	21,724	1,209	581

[1] Recreation shoreline is measured by the same methods used by the Coast and Geodetic Survey. The total in this table and the State totals found elsewhere in the study are the result of including all such measured shoreline that meets the criteria for recreation shoreline as noted above. These figures will undoubtedly be different than data published by many States. While some difference in the totals may be attributed to the inability of this study to identify all public shoreline areas, a major reason for the difference is in the different criteria used by this study and by the various States in their reports.

Mr. JACKSON. Mr. President, the fourth column of the table, "Restricted Shoreline," refers to areas of "restricted military use." These areas amount to 581 miles, or almost one-half of the total Nation's shoreline which is presently dedicated to public recreational use. If, after the military use of this shoreline is completed, these areas could be dedicated to public recreational use, the amount of shoreline available to the public would be increased by a full 50 percent without any further expenditure of Federal or State funds.

On October 22 of last year, the President signed my bill, S. 1708, the Federal Lands for Parks and Recreation Act of 1969. This measure makes surplus Federal lands which are suitable for park and recreational use available to State and local government at little or no cost. The Federal Lands for Parks Act provides a means by which surplus military shoreline may be dedicated to public use.

Table 5 from the ORRRC study report shows the status of the Nation's recreational shoreline by State, mileage, type, ownership, and development status. Mr. President, I ask unanimous consent that this table be printed at this point in the RECORD.

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

TABLE 5.—ESTIMATED MILEAGE, BY STATE, OF THE U.S. RECREATION SHORELINE, BY TYPE, OWNERSHIP, AND DEVELOPMENT STATUS

State	Total (miles)	Type			Ownership			Development status
		Beach (miles)	Bluff (miles)	Marsh (miles)	Public: Recreation areas (miles)	Public: Restricted areas (miles)	Privately owned (miles)	
Alabama	204	115		89	3	1	200	Low.
California	1,272	283	883	106	149	100	1,023	Moderate.
Connecticut	162	72	61	29	9		153	High.
Delaware	97	41		56	9	9	79	Moderate.
Florida	2,655	1,078	406	1,171	161	122	2,372	Low-moderate.
Georgia	385	92		293	5		380	Moderate.
Illinois	45	13	32		24	4	17	High.
Indiana	33	33			3		30	Do.
Lousiana	1,076	257		819	2		1,074	Low.
Maine	2,612	23	2,520	69	34		2,578	Do.
Maryland	1,368	40	912	416	3	113	1,252	Do.
Massachusetts	649	240	288	121	12	6	631	High.
Michigan	2,469	292	1,959	218	357		2,112	Low.
Minnesota	264	22	175	67	19		245	Do.
Mississippi	203	134		69		25	178	High.
New Hampshire	25	7	9	9	3		22	Very high.
New Jersey	366	101	33	232	18	15	333	Do.
New York	1,071	231	590	250	47		1,024	Moderate.
North Carolina	1,326	285	260	781	139	42	1,145	Low.
Ohio	275	20	195	60	9	5	261	High.
Oregon	332	133	181	18	101		231	Moderate.
Pennsylvania	57	9	44	4	19		38	Do.
Rhode Island	188	39	145	4	8	10	170	High.
South Carolina	522	162		360	9	10	503	Moderate.
Texas	1,081	301	421	359	5	18	1,058	Very low.
Virginia	692	160	118	414	2	26	664	Low.
Washington	1,571	121	1,294	156	46	27	1,498	Moderate.
Wisconsin	724	46	634	44	13	[1] 48	663	Do.
Total	21,724	4,350	11,160	6,214	1,209	581	19,934	

[1] Includes some Indian lands held in trust.

Mr. JACKSON. Mr. President, the ORRRC report presented some additional statistics which place the demand upon our public-owned beaches in perspective. Using their criteria that each person requires 150 square feet of beach space, the 1,209 miles of public recreational shoreline could only accommodate 2.1 million persons at any one time. This calculation is based upon the assumption that all of these 1,209 miles are prime beach shoreline, when in fact a significant portion consists of marshes, bluffs, and rocky beaches. In addition, many of the beaches best adapted for outdoor recreation are not readily accessible to urban areas where the need is greatest.

Recognition of the attraction of people to water is exemplified by the public pressures on the 22 national parks, seashores, lakeshores, and monuments managed by the National Park Service on our seashores or on the Great Lakes. These Federal marine areas have been heavily used, and the growing demand for quality recreation will continue to challenge efforts to maintain their esthetic values. Recent visitor-use projections by the National Park Service indicate that between 1969 and 1978, visitation will increase an average of 110 percent at Assateague Island, Cape Cod, Cape Hatteras, Fire Island, and Point Reyes National Seashores. It is reasonable to expect that the 82 National Wildlife Refuges operated by the Bureau of Sport Fisheries and Wildlife along our country's coastline will also realize significant increases in recreational usage.

It is apparent that more must be done to make our beaches more available to the public. In 1967, the Bureau of Outdoor Recreation published a report entitled "Outdoor Recreation Trends" which categorized the various outdoor recreation activities and projected the demands for each. The report concluded that the greatest increases would come in activities which were water based or water related. It was estimated that by 1980 swimming would be the number one outdoor recreation activity, increasing 72 percent between 1965 and 1980. In these same 15 years, it was estimated water-skiing would increase 121 percent, boating 76 percent, hiking 78 percent, and camping 78 percent.

These statistics make it abundantly clear that there is nearly insatiable demand for water-based outdoor recreation experiences. Maintaining the quality of the already overburdened public seashores will be a nearly impossible future task unless additional areas are set aside and opened to all Americans.

This is no new revelation. The National Park Service published a booklet in 1955 entitled "Our Vanishing Shorelines" which stated that—

> Present facilities are already inadequate and will be smothered by increased attendance unless additional recreation areas are provided.

Fortunately, many new areas have been established over the past decade. In the future, however, seashore suitable for recreation cannot be expected to be acquired in large quantities, primarily because of escalating land prices. Other approaches must be taken.

Mr. President, the need for additional public recreational opportunities on our waterfront areas was further elaborated upon in a 1969 report entitled "Our Nation and the Sea," prepared by the Commission on Marine Science, Engineering, and Resources. The report indicated that the existing publicly held marine recreation properties can never accommodate the pressures imposed upon them.

This is certainly evident when it is considered that the 71.2 million visitors of our coastal areas in 1964 will grow to 121.0 by the year 1975. As a result, the Marine Sciences Commission recommended that—

> Federal, State, and local governments should give primary emphasis to acquiring access to the shores for purposes of recreation, especially near urban populations. Steps short of acquisition should be used to the extent feasible but, when necessary to control coastal use, land should be acquired.

The report also concluded that all levels of government should take action to insure that provisions are made for public access to waterfront in many of the private development projects along the shore. The Commission felt that because many private developments involving landfills may adversely affect a resource that belongs to everyone, then the developer should compensate for filling in these acres by providing access to the public for the use of adjacent waters.

Mr. President, the predominance of private control and ownership of the Nation's beaches and the lack of public access raises some very important questions of law, of public policy, and of the responsibilities of State and Federal Government. One of the major questions posed in the ORRRC study was as follows:

> What is the right of the public in this limited resource, and is it superior to that of the private owner who has held domain for scores of years while public agencies ignored the resource?

The ORRRC study report went on to say that:

> This report is based on the assumption that the total physical shoreline of the Nation can and should be considered available for public development and use. No attempt has been made to evaluate the legal, political, financial, and policy difficulties that would accompany attempts to place more of the national shoreline under public control and management. The report does not imply that it is feasible or desirable to espouse public ownership of the entire shoreline. However, it does recognize the public interest in the shoreline as a national boundary and the necessity to consider the entire shoreline when policies of shoreline recreation are being formulated.

The "National Open Beaches Act of 1970" raises these and other important questions discussed in the ORRRC report. Hearings on this measure and preliminary legal studies will provide a basis on which Congress can address itself to a determination of what the Federal role should be in making the Nation's beaches accessible to the public.

Mr. President, I ask unanimous consent that articles from the New York Times and the Christian Science Monitor be printed in the RECORD together with the text of the bill at the conclusion of my remarks.

Mr. President, I further ask unanimous consent that the text of an excellent speech by Mr. Louis E. Reid, Jr., of the Bureau of Outdoor Recreation on the subject of open beaches be placed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore (Mr. METCALF). The bill will be received and appropriately referred; and, without objection, the bill and material will be printed in the RECORD.

The bill (S. 631) declaring a public interest in the open beaches of the Nation, providing for the protection of such interest, for the acquisition of easements pertaining to such seaward beaches and for the orderly management and control thereof, introduced by Mr. JACKSON, was received, read twice by its title, referred to the Committee on Interior and Insular Affairs, and ordered to be printed in the RECORD, as follows:

S. 631

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the presence and accessibility of the sea, being a very substantial factor in the value and kind of interstate travel, and the beach being a marine resource created by the action of the sea, it is necessary and proper and promotes the public welfare to provide orderly protection of the public interest in the beaches.

TITLE I

SEC. 101. Congress finds that the sea beaches of the United States are of such character as to use and potential development as to require separate consideration from other lands with respect to the elements and consequences of title in littoral owners. Such land has been treated by and large over most of its extent and during most of the time that it has been controlled by European and Anglo-American law, as a common. It has been of little use for farming, grazing, timber production, mining or residency—the traditional uses of land—but has served as a thoroughfare and haven for fishermen and sea venturers and a place of recreation for the citizenry. The elements and consequences of title in littoral owners are thus colored by these traditional uses but are not fully formulated nor precisely drawn in the laws of the several States to meet the exigencies of the present day. Congress finds that the traditional concept of the beach as a common is now being threatened by shorelines being fenced or enclosed upon assumptions not founded on clear legality.

SEC. 102. Congress declares and affirms that the beaches of the United States are impressed with a national interest and that the public shall have free and unrestricted right to use them as a common to the full extent that such public right may be extended consistent with such property rights of littoral landowners as may be protected by the Constitution. It is the declared intention of Congress to exercise the full reach of its constitutional power over the subject.

SEC. 103. No person shall create, erect, maintain, or construct any obstruction, barrier, or restraint of any nature which interferes with the free and unrestricted right of the public, individually and collectively, to enter, leave, cross, or use as a common the public beaches.

SEC. 104. (a) An action shall be cognizable in the district courts of the United States without reference to jurisdictional amount,

at the instance of the Attorney General or a United States district attorney to:

(1) establish and protect the public right to beaches,

(2) determine the existing status of title, ownership, and control, and

(3) condemn such easements as may reasonably be necessary to accomplish the purposes of this Act.

(b) Actions brought under the authority of this section may be for injunctive, declaratory, or other suitable relief.

SEC. 105. The following rules applicable to considering the evidence shall be applicable in all cases brought under section 104 hereof:

(1) a showing that the area is a beach shall be prima facie evidence that the title of the littoral owner does not include the right to prevent the public from using the area as a common;

(2) a showing that the area is a beach shall be prima facie evidence that there has been imposed upon the beach a prescriptive right to use it as a common.

SEC. 106. (a) Nothing in this Act shall be held to impair, interfere, or prevent the States—

(1) ownership of its lands and domains,

(2) control of the public beaches in behalf of the public for the protection of the common usage or incidental to the enjoyment thereof, or

(3) authority to perform State public services, including enactment of reasonable zones for wildlife, marine, and estuarine protection.

(b) All interests in land recovered under authority of this Act shall be treated as subject to the ownership, control and authority of the State in the same measure as if the State itself had acted to recover such interests. In order that such interest be recovered through condemnation, the State must participate in acquiring such interest by providing matching funds of not less than 25 per centum of the value of the land condemned.

TITLE II

SEC. 201. In order further to carry out the purposes stated in title I, section 101, it is desirable that the States and the Federal Government act in a joint partnership to protect the rights and interests of the people in the use of the beaches. The Secretary of the Interior shall administer the terms and provisions of this Act and shall determine what actions shall be brought under section 104 hereof.

SEC. 202. The Secretary of the Interior shall place at the disposal of the States such research facilities as may be reasonably available from the Federal Government, and, in cooperation with the other Federal agencies, such historical, geological, geodetic, and other information and facilities as may be reasonably available for assisting the States in such protection of public rights. The President may promulgate regulations governing the work of such interagency cooperation.

SEC. 203. Section 5(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4608) is amended by adding immediately after the first sentence, the following new sentence: "Any State shall be entitled to 75 per centum of the cost of planning, acquisition, or development of projects designed to secure the right of the public to beaches where the State has complied with the requirement of the Open Beaches Act of 1969 and where adequate State laws are established, in the judgment of the Secretary of the Interior, to protect the public's right in the beaches."

SEC. 204. The Secretary of Transportation is authorized to provide financial assistance to any State, and to its political subdivisions for the development and maintenance of transportation facilities necessary in connection with the use of public beaches in such State if, in the judgment of the Secretary of the Interior, such State has defined and sufficiently protected public beaches within its boundaries by State law. Such financial assistance shall be for projects which shall include, but not be limited to construction of necessary highways and roads to give access to the shoreline area, the construction of parking lots and adjacent park areas, as well as related transportation facilities. All sums appropriated to carry out title 23 of the United States Code are authorized to be made available in an appropriations Act to carry out this section.

TITLE III

SEC. 301. The following terms as used in this Act shall have the following meanings:

(a) "Sea" includes the Atlantic, Pacific, and Arctic Oceans, the Gulf of Mexico, and the Caribbean and Bering Seas.

(b) "Beach" is the area along the shore of the sea affected by wave action directly from the open sea. It is more precisely defined in the situations and under the conditions hereinafter set forth as follows:

(1) In the case of typically sandy or shell beach with a discernible vegetation line which is constant or intermittent, it is that area which lies seaward from the line of vegetation to the sea.

(2) In the case of a beach having no discernible vegetation line, the beach shall include all area formed by wave action not to exceed two hundred feet in width (measured inland from the point of mean higher high tide).

(c) The "line of vegetation" is the extreme seaward boundary of natural vegetation which typically spreads continuously inland. It includes the line of vegetation on the seaward side of dunes or mounds of sand typically formed along the line of highest wave action, and, where such a line is clearly defined, the same shall constitute the "line of vegetation." In any area where there is no clearly marked vegetation line, recourse shall be had to the nearest clearly marked line of vegetation on east side of such area to determine the elevation reached by the highest waves. The "line of vegetation" for the unmarked area shall be the line of constant elevation connecting the two clearly marked lines of vegetation on each side. In the event the elevation of the two points on each side of the area are not the same, then the extension defining the line reached by the highest wave shall be the average elevation between the two points. Such line shall be connected at each of its termini at the point where it begins to parallel the true vegetation line by a line connecting it with the true vegetation line at its farthest extent. Such line shall not be affected by occasional sprigs of grass seaward from the dunes and shall not be affected by artificial fill, the addition or removal of turf, or by other artificial changes in the natural vegetation of the area. Where such changes have been made, and thus the vegetation line has been obliterated or has been created artificially, the line of vegetation shall be reconstructed as it originally existed, if such is practicable; otherwise, it shall be determined in the same manner as in other areas where there is no clearly marked "line of vegetation," as in (2), above.

(d) "Area caused by wave action" in subsection (b)(2) above means the area to the point affected by the highest wave of the sea not a storm wave. It may include scattered stones washed by the sea.

(e) "Public beaches" are those which, under the provisions of this Act, may be protected for use as a common.

(f) "Matching funds," as provided by a State, include funds or things of value which may be made available to the State for the purpose of matching the funds provided by the Federal Government for purchasing beach easements as, for instance, areas adjacent to beaches donated by individuals or associations for the purpose of parking. The value of such lands or other things used for matching Federal funds shall be determined by the Secretary of the Department of the Interior. State matching funds shall not include any moneys which have been supplied through Federal grants.

SEC. 302. The short title of this Act shall be the "Open Beaches Act of 1971".

The material presented by Mr. JACKSON is as follows:

[From the New York Times, Mar. 29, 1970]

FEW SEASIDE BEACHES LEFT OPEN TO PUBLIC IN DEVELOPERS' RUSH

(By Bayard Webster)

The shoreline of the United States has been so built up, industrialized and polluted during the last decade that there are relatively few beaches left for the family in search of a free, solitary hour by the sea.

From Maine to Florida and on around to Texas, from Southern California up to Washington State, the nation's seashores have become cluttered with hotels, motels, sprawling development, military complexes and industries of every kind.

Miles of tranquil beaches where hundreds of seaside retreats were once open to everyone for swimming or fishing have been fouled by oil spills, industrial effluents, farm pesticides and city sewage.

"It's a kind of urban-industrial ooze that's infected the whole coastline," says Derekson W. Bennett, conservation director of the American Littoral Society at Sandy Hook, N.J., a national organization interested in coastal marine problems.

What remains—shore land that is not dirty, crowded or closed to the public—amounts to a tiny fraction of the country's total coast zone, about 1,200 miles or 5 per cent of the shore areas considered suitable for recreation or human habitation.

The prospect of continuing encroachment, together with the intensified natural erosion often caused by heedless development (even in normal weather, winds and waves can eat away or shift up to 20 feet of beach a year), has alarmed many marine biologists and conservationists.

"A lot of us familiar with the coast are terribly concerned that if the present development and pollution continues unchecked there just won't be any useable coast left in a few years," says Dr. Arthur W. Cooper, head of the department of botany at North Carolina State University in Raleigh.

Although he and other conservationists have been encouraged by indications that some states and bureaus of the Federal Government are becoming interested in protecting the nation's coastline as a separate natural resource, they fear that it may already be too late to reverse the trend.

Close to the heart of the problem are two factors largely beyond the control of governmental authorities. One is the sharp increase in recent years in the nation's population. The other is the rush to the large coastal cities by millions of people from inland rural areas.

The result is that popular demand for open recreational space near the water is rising just as private and industrial developers are fencing off the best of it—if not the last of it in any given area—and land prices are spiraling far beyond the means of most urban dwellers.

IMPACT IS OUTLINED

Reports from most of the 21 coastal states show that tremendous pressures from expanding population and industrial needs have had these effects on the nation's coastal areas:

Land values have skyrocketed. In South Carolina, frontfoot prices have soared from $75 to $1,600. In Massachusetts, an acre of shore land now sells for around $50,000, up five-fold since 1965.

The craving for vacation space by the sea has led to the development in such places as Virginia Beach, Va., and Ocean City, Md., of coastal sections in which houses, motels and hotels are built as close as six feet apart for many miles along the beach.

The search for coastal sites by companies that need substantial water supplies has resulted in the loss of many miles of scenic coastline. In California, for example, power companies are taking over large stretches of the coast for nuclear power plants.

Pollution by many of these industries has wiped out untold square miles of fish and shellfish producing areas. In Georgia, for instance, pollution in the Savannah River has eliminated a multi-million dollar coastal shellfish industry.

The "dredge-and-fill" operations of developers in such tidal areas as Miami have covered up thousands of square miles of salt marshes regarded as invaluable sources of seafood and as nursing and feeding grounds for finfish and waterfowl.

Shore erosion, always a danger, has greatly accelerated because of improper land use that stems from a lack of knowledge of the dynamics of beach erosion.

LACK OF COORDINATION SEEN

Underlying these problems there is a lack of coordination among industries and local, state and Federal agencies.

In a study of coastal problems made recently for the National Council on Marine Resources and Engineering Development, Harold F. Wise & Associates, a Washington firm specializing in coastal planning, discovered that most states and communities "are not cognizant of the coast zone as an environment apart from other regions of the state."

The study urged that the Federal Government, acting through Congress, "declare a national policy on the resources of the Coastal Zone."

There is no absolute measurement of the length and area of the nation's coastline, which changes with tides and storms, and there are few available statistics showing the varied land use of the shore areas. Thus it has been difficult for conservationists to find specific data to buttress their arguments.

Scientific studies of land use along the coasts are currently being made for the American Geographical Society by George P. Spinner, a marine scientist from Princeton, N.J., and by the Association of Coastal States, an organization just formed in Atlanta to promote preservation of the shores.

The United States Coast and Geodetic Survey has estimated, however, that there are approximately 53,000 miles of coastline bracketing the continental United States. This includes shore areas along major bays and inlets.

Of these miles of beaches, bluffs and marshes, fewer than half are regarded as suitable for recreation or human habitat. And of these 26,000 miles, only some 1,200 miles are publicly owned and therefore easily available to everyone.

In recent years, the decline in the amount of shore land open to the public has come mostly through changing patterns of land use: Owners who had always allowed friends and passersby to use their beaches sold out to industries or developers, who then promptly put up "No Trespassing" signs.

The rapid rate at which habitable land by the sea is being taken over by commercial interests can be seen on the coast of North Carolina.

For decades, visitors to the Outer Banks and Cape Hatteras had occasionally ventured north by boat or beach buggy to fish or just to explore the wild, unspoiled stretch of beach that runs for 35 miles along the Currituck Banks from Kitty Hawk to the Virginia border.

Gulls and shore birds wheel over the rolling dunes and virgin beach in all seasons. There are no roads, except for the makeshift one at the southern end. In summer the area is a fishing and swimming paradise.

But in the last year, despite the lack of transportation facilities, real estate developers have been gobbling up the land on speculation for a price of about $1-million a mile or about $190 a front foot. The future price to private lot buyers will be much higher.

DEVELOPER IS CONCERNED

Not far away there is a large development of individually styled houses placed in widely separated areas whose principal owner, David Stack, the North Carolina historian, is concerned about the deterioration of the shore.

"I'm proud of my development, which we started 20 years ago," he said. "But if I knew then what I know now about ecology, I'm not sure I would have developed that land or changed it in any way—I might have just left it alone."

"One of the main problems with the seashore is that no one understands how it should be preserved," he said. "The main thing is to leave it alone. The closer you build to it the more you harm its natural dynamics, the things that hold it together—the dunes, the dune grasses and the beach. When you disturb these natural aspects and build on them, the shore only erodes faster."

The disappearance of natural beaches is most apparent near the country's most populous areas. From Massachusetts to North Carolina, in Florida, in California near Los Angeles and San Francisco and along the Gulf Coast, a sprawling confusion of buildings crowd the shore

SPRAWL IN OCEAN CITY

Perhaps the best example of such conditions is Ocean City, on Maryland's eastern shore. Not long ago a visitor watched as a bulldozer pushed around mounds of sand in an effort to repair damage inflicted by winter storms. To the north, almost as far as the eye could see, wall-to-wall houses, motels, bowling halls, pizza parlors and recreation centers—all empty—stretched out in the pale winter sun.

A few decades ago, Ocean City was less than half its present size. But several years ago, as land values rose, the City expanded its boundaries to take in more than twice as much shoreline.

As a result, crowded development accelerated with the aid and encouragement of the city, and additional real estate taxes rolled into the city treasury.

And there is Miami Beach. "The only thing Miami Beach is good for is a horrible example," says Joseph B. Browder, the 31-year-old southeastern field representative for the Audubon Society.

He cited erosion caused by hotels built almost right in the surf, housing projects built on thousands of once-wild acres of tidal marshes, thermal pollution in Biscayne Bay, and pollution by sewage in both ocean and bay.

Although all of the country's coastal areas are plagued by pollution, the main ones tend to have different specific problems stemming from industralization and housing development.

In New England, the large number of glacier-formed, deep-water inlets are greatly admired by industries requiring multi-fathom harbors such as tanker-oriented oil companies and chemical plants.

In the New York metropolitan area, every conceivable problem is found: oil spills, agricultural (fertilizer and pesticide) run-off into bays and estuaries, sewage pollution, thermal pollution and the loss of tidal marsh areas. Connecticut alone has lost almost 80 per cent of its salt marshes.

The South Atlantic coast, with its combination of deep and shallow water ports as well as its vast collection of salt marshes and bay areas, feels the impact of most of the spectrum of recreational and industrial pressures.

On the Pacific side of the nation, the narrow green coastal plain slopes down to the bluffs that make up much of the California and Oregon coast. Most of the problems there are concentrated near the cities. Elsewhere, the rugged and often inaccessible coastline makes shore acreage less desirable and more expensive to build on.

A few weeks ago, several thousand feet above the coast, C. Martin Litton, pilot, nature photographer and a director of the Sierra Club, relaxed at the controls of a four-seater Cessna and pointed to an area below him. Huge gashes, piles of earth and cleared areas marked the place where one of the coast's last unspoiled arroyos, Diablo Canyon, was being cut and filled to make way for a nuclear power plant.

The canyon, lying a few miles west of San Luis Obispo, is a green wilderness of glen and forest. "This was the last wild, unspoiled canyon on the coast," Mr. Litton said. "Now look at it."

Although there is no Federal law regarding access to, or use of, beach areas, some of the states are showing interest in preserving their shores.

The Oregon Supreme Court has ruled that the state's entire beach area must be kept free for use of the public and that property owners must permit the public to use it.

In Hawaii, the Legislature has been asked to declare an area 100 feet deep around all the islands open for public use.

In Washington, members of Congress are seeking ways to write laws that would allow the public free and unrestricted access to all seashore areas but not encroach on state prerogatives or the rights of individual owners.

But conservationists say that even though the problems are beginning to be recognized, their very magnitude will make solutions difficult. For even if the urban growth rate slows down or stabilizes, they say, pressures for more coastal vacation areas by the sea are sure to go on building.

Results of these pressures are graphically shown in the view from an airliner. As the aircraft nears the shore a passenger can see the traditional checkerboard of communities spreading out in an ever-widening pattern.

But if he looks closely he will also see that as the checkerboard becomes larger and the shoreline comes nearer, the number of squares—homesites—grows larger and the size of each square decreases.

[From the Christian Science Monitor, Jan. 2, 1970]

A PRECEDENT FOR OTHER STATES? NO MORE "KEEP OFF" SIGNS ON OREGON BEACHES

(By Malcolm Bauer)

SALEM, OREG.—Oregonians and their visitors received a big Christmas present from Oregon state officials: the more than 300 miles of the state's Pacific Ocean beaches.

The Oregon Supreme Court ruled unanimously that all of the dry-sand areas of the oceanfront, including those under private ownership, are reserved for public use.

Soon afterward the Oregon State Highway Commission closed all beaches to motor vehicles, proclaiming: "Beaches are for people."

The two official actions underwrite the dedication of the state's shoreline to public recreation. The tens of thousands of tourists who visit Oregon each year will be among the beneficiaries.

Gov. Tom McCall hailed the Supreme Court decision as a reason for thanksgiving in the holiday season. He called it "a most significant act in the continuing story of the efforts of thousands of Oregonians in their determination that the sands of the ocean shore are for public use in perpetuity."

The Governor said the ruling had set a precedent for similar establishment of public rights on the beaches of other states.

The court based its decision on the historical record of public use of the beaches below the vegetation line, affirming that such customary use had established a right by preemption prevailing over private ownership.

COURT ACTION

For more than a half-century, Oregon law has designated the ocean shore below mean high tide—the wet sands—as public property. The effect of the court's ruling is to extend the claim of the public landward over the dry sands to the line of vegetation.

The court test of public vs. private property rights along the beaches was precipitated by the rush of development along the Oregon coast, particularly that area within 100 miles or less of metropolitan Portland.

The particular case on which the court acted grew out of a Cannon Beach motel owner's staking off the dry sand in front of his property. This raised public protests. Both 1967 and 1969 Oregon Legislatures passed bills with the purpose of asserting the public right to the dry sands. The court, in effect, upheld the 1969 law, ending several years of controversy on the beach-property rights issue.

Explaining the State Highway Commission's action in closing the beaches to motor vehicles, Glenn Jackson, commission chairman, said: "I think that closing the beaches to vehicular traffic will be carrying out the wishes of a majority of the people."

SENTIMENT ASSESSED

There has been ample evidence over the past several years of a majority sentiment for public use of the beaches. Citizens' committees have been formed to advocate the public's right to such use. A 1968 initiative measure promoted by such organizations asserted this right. However, it was rejected, probably because it included a one-cent-a-gallon tax on gasoline to provide a fund for purchase of private property along the shore.

It is not yet certain whether or not such funds will be required now that the State Supreme Court has upheld the right of public use by preemption. But the eventual effect is expected to be that the more than 300 miles of sands—wet and dry—will be reserved for public recreation without restriction by waterfront property owners or hazard from racing vehicles.

There will be some exceptions to the prohibition of vehicles on the beaches. Permits will be issued for the aged, crippled, and others who cannot walk onto the beach, and for woodcutters salvaging driftwood.

But there will be, officials say, no fences, no gates, no "no trespassing" signs on Oregon's Pacific sands, from the Columbia River on the north to the California line on the south. That cannot be said of the coastline of any other state in the Union.

REMARKS OF LOUIS E. REED, JR.

The opportunity to meet with the Sixth National Access to Recreational Waters Conference here in Traverse City, Michigan, is one I appreciate very much. The subject matter I am to discuss is of unquestioned importance to those who are concerned with recreation and conservation.

One of the most interesting cartoons I have seen recently shows a painter hard at work on a waterfront sunset scene. All appears tranquil except for the onslaught of a frenzied property owner. He is shown charging past a sign reading "Private Beach" and yelling, "That's my sunset you are painting."

And therein lies a problem. Someone needs to determine whether it was indeed his sunset.

The "Private Beach" sign is a standard manifestation of an overpopulated Twentieth Century America. It's normal to desire a little piece of land of your own. It's fine, but just imagine what would happen if Columbus came sailing up to America today. He would find the shores fenced and "Private Beach" signs galore. Would he have to return to Europe, leaving us undiscovered? Would Henry Hudson and Ponce de Leon and Juan Rodrequez Cabrillo and Samuel de Champlain be unknown to history if they had faced "Private Beach" signs such as are common today?

Well, the questions are fanciful. The seacoast beaches were open when those gentlemen came to the New World. And when a lot of our other forebears arrived as well. But for the most part the coasts bristle with access restrictions today. Possibly less than five percent of our beaches are open to the general public, and that amount is steadily decreasing. And that is why I am here. I'll warn you now that a Great Lakes shore location may be the worst possible place to make these remarks. You will see why as I go along.

I was invited to discuss a particular bill that is before Congress, a highly imaginative approach to one of our most serious recreation and conservation problems. The measure I am talking about is H.R. 11016, introduced by Congressman Bob Eckhardt of Houston, Texas, and eight co-sponsors, and styled a "National Open Beaches" bill. The co-sponsors are Mr. Button of New York, Mr. Dingell of Michigan, Mr. Edwards of California, Mr. Halpern of New York, Mr. Mann of South Carolina, Mr. Mikva of Illinois, Mr. Podell of New York, and Mr. Udall of Arizona.

I am not here to advocate the bill or to promote its defeat. The Administration has not yet taken an official position on the measure. Until it does, as a career professional employee in the Executive Branch of the Government, it would be improper for me to take a position on the proposal.

Fundamentally, this bill sets forth and, if passed, would establish one simple legal presumption. It says the public has a basic right of access to and over the open seacoast beaches of the Nation. This right is based on a declaration of a public interest in the beaches.

I can sense immediately that some of you, even those with the greatest stake in making as much water available to access as possible, are experiencing a violent reaction. What about property rights, you are thinking. Does the Federal government propose to preempt property rights, an area traditionally reserved to the States?

Let me set your minds at rest on that point at once. H.R. 11016 would in no way affect property rights, not any property right, whether possessed by individual or corporation.

The National Open Beaches bill justifies its main presumption in this way. It says that the margins of the sea from time immemorial have been used for recreational purposes and for fishing. It cites the public right to interstate travel. This includes the right to travel on and across the open beaches.

The key language in the measure is this: I quote. "Congress declares and affirms that the beaches of the United States are impressed with a national interest and that the public shall have free and unrestricted right to use them as a common to the full extent that such public right may be extended consistent with such property rights of littoral landowners as may be protected absolutely by the Constitution. It is the declared intention of Congress to exercise the full reach of its constitutional power over the subject. No person shall create, erect, maintain, or construct any obstruction, barrier, or restraint of any nature which interferes with the free and unrestricted right of the public, individually and collectively, to enter, leave, cross, or use as a common the public beaches." That's the end of the quotation.

The bill establishes a prima facie determination that the right to exclusive use of the beaches has never been granted by the sovereign to littoral land holders, with certain exceptions. It says that an individual may own seacoast land, lock, stock, and barrel, but that he does not have legal basis for excluding you or anyone else from access to and across the beach unless he can prove that his particular title grants him that right.

Of major significance here is this fact: in nearly all States ownership up to either the vegetation or to the mean high tide line resides in the State. Almost without exception, when ownership of an individual extends seaward beyond that point, there is a specific provision in the land grant which says so. In other words, the State normally owns what is called the wet sand.

The fact that the State almost always owns the seacoast to the vegetation or mean high tide line means that the rights of the public to such areas are almost without meaning unless the public also possesses the right of access to and use of the immediately adjacent seacoast.

If the public has this right, the recreation seeker for once occupies the unique position of not having to prove that he has a right to go on a beach. The littoral owner would have to prove that the public doesn't have an access right, if this bill were to become law.

So we are left with this situation: the National Open Beaches bill declares the legal presumption that the seacoast beaches of the Nation are a common, and therefore open to access. Property owners' rights would not be affected by its passage. Let me stress that point in two ways. On the one hand, rights of property owners whose titles provided the right to restrict or deny access to the beach would not be affected. On the other hand, property owners whose titles did not provide that right would be left with all the property rights they ever possessed.

If Congressman Eckhardt's Open Beaches bill passed, you would see a lot of "Private Beach" signs come down. But not, remember, because any portion of the property rights would be extinguished. The fences and signs would come down because the beaches wouldn't be restricted to the private use of the beach owner and those he invited to come swimming.

Property owners would not have the right to erect or maintain structures which would restrict the right of access.

All of this is based on more than just theory or expectations. Texas has passed an Open Beaches bill quite similar to H.R. 11016. As a result, the fences that long had kept the public off part of Galveston Beach have come down. You can go down there and get to the water now. The littoral owners still own all the rights they ever owned, but now Texas law asserts the public's traditional and historic right of access to those beaches. The law says that the littoral owners never possessed the right to limit access and use.

Congressman Eckhardt was a member of the Texas Legislature and a sponsor of the legislation at the time it passed. The Texas bill did three things. It authorized and directed the Attorney General to protect the people's interest in beaches. It established a prima facie determination that the right to use the beaches had never been granted by the sovereign to littoral land holders. It established a prima facie determination that the public had obtained a prescriptive right to the use of the beach.

This law has been tested in the Texas courts. The strongest case to date determined that by long use the public had gained a prescriptive right to use of Galveston Beach. No determination has been made to date on the basis of the presumption of retention by the sovereign of the easement right.

In some circumstances, the courts might hold that fences running into the sea are legal. Take the big cattle ranching area along

Matagorda Peninsula in Texas. These grazing lands are bounded by fences running into the sea and in effect are partially fenced by the sea on one side. The finding of a court there, if a legal case were joined, might be that the public has not enjoyed a continuing use and that the littoral owner had gained a right to limit public access.

Congressman Eckhardt's H.R. 11016 proposes Federal law, of course. The proposition has been attracting increasing attention. This summer the Izaak Walton League of America, for example enacted a resolution at its annual convention endorsing the proposition.

There is no reason that individual states could not consider passing the same kind of open beach laws which Texas has passed. Of course, State constitutions and State property laws vary greatly. In some States a presumptive Open Beaches bill could be enacted and effective, possibly not in others. State beach access law is usually fuzzy and frequently untested and undefined by the courts. Congressman Eckhardt's office has done considerable work on a model State law which is available upon request.

I have dwelt at length with the presumptions of the bill which is before the House. It has other features which I wish to mention.

The National Open Beaches bill faces up to the prospect that the public needs access to some seacoast beaches where it would lack the right of access, even under the presumptions of H.R. 11016. The measure therefore provides machinery with which access easements or even full title to beaches could be purchased. These purchases would involve the States, their political subdivisions, and the Federal government, with the former two acquiring the easements or titles. They could use matching Federal grant money from the Land and Water Conservation Fund. H.R. 11016 proposes that this be available on a 75–25 basis.

I have purposely delayed comments on a couple of items until this point. H.R. 11016, if enacted, would apply to the seacoast beaches of the Atlantic, Pacific, and Arctic Oceans, the Gulf of Mexico, and the Caribbean and Bering Seas. That purposely does not include the Great Lakes, other lakes, or river shorelines. There is good reason. Use of such inland shorelines as commons traditionally open to the public is much less well defined than are the uses of the sea beaches as commons.

I also have not told you how the measure defines a beach. It says that a beach is the area along the shore of the sea affected by wave action directly from the open sea. This area is more precisely defined in the case of typically sandy or shell beaches. There, it is the area seaward from the discernible vegetation line. When no vegetation line exists, it is the area not to exceed 200 feet in width measured inland from the point of mean higher high tide. Mean higher high tide is a precise term to the U.S. Coast and Geodetic Survey, as those of you familiar with its lexicon know. For the rest of us, it seems sufficient to say that it doesn't mean flood tides.

Hearings on this measure have not to date been scheduled. Whether they will be this session or next will depend on the amount of public interest shown, if tradition prevails. There seems to be a certain incubation period for conservation legislation. I don't know how long it might take for H.R. 11016 to hatch, or even if it will hatch. I do know that it is an interesting and arresting idea. It could simplify a number of recreation problems by eliminating much of the need to buy easements or titles to seacoast beaches. We will need more of such thinking if we are to provide adequate access to our recreational waters for the people of the Nation.

S. 632—INTRODUCTION OF NATIONAL LAND USE POLICY ACT OF 1971

Mr. JACKSON. Mr. President, I introduce, for appropriate reference, the National Land Use Policy Act of 1971. This measure was first introduced in January of 1970. During the 91st Congress the bill was the subject of extensive hearings and was favorably reported to the Senate by the Committee on Interior and Insular Affairs on December 14, 1970. The text of the measure introduced today is the same as amended and ordered reported by the Interior Committee in the last Congress.

When this measure was first introduced 1 year ago land use planning and management on a national and statewide basis was not viewed as an important tool in dealing with environmental problems and in taking positive steps to improve the quality of life. Fortunately, over the past year this situation has changed. The administration, the Nation's Governors, members of State legislatures, conservationists, and representatives of industry are now all coming to recognize that the key institutional mechanism and the most important body of law available for dealing with the problems posed by future growth and development are our land use planning institutions at the State and local level coupled with the creative and purposeful use of land laws.

Regulation and control of the land in the larger public interest is essential if real progress is to be made in achieving a quality life in quality surroundings for all Americans. It is essential because control of the land is the key to insuring that all future development is in harmony with sound ecological principles. The land use and environmental problems of the present, serious as they are, look relatively insignificant when they are compared with the problems we will have in 10, 20, 30 years if we fail to develop the institutional and legal capacity to deal with the demands that future requirements are making on our limited land and resource base.

For example:

By 1975 our park and recreation areas, many of which are already overcrowded, will receive twice as many visits as today, perhaps 10 times as many by the year 2000;

By 1978 we must construct 26 million new housing units. This is equivalent to building 2.5 cities the size of the San Francisco-Oakland metropolitan area every year;

Each decade, new urban growth will absorb 5 million acres, an area equivalent to the State of New Jersey;

Demands for electrical energy double every 10 years; by 1990 demands will increase by 284 percent.

In the face of these and similar projections for highways and new industrial plants State and Federal Governments have done little to plan for and deal with the problem of accommodating future growth in a manner that is compatible with a quality environment. We have instead created conditions which encourage haphazard growth and compound environmental problems. Too much of our effort is devoted to reclaiming a small portion of what is being lost in the growing tides of environmental change. Too little is devoted to preventing the loss of irreplaceable resources.

The pressures upon our finite land resource cannot be accommodated without better planning and more effective control. Our land resources must be inventoried and classified. The Nation's needs must be cataloged, and the alternatives must be evaluated in a systematic manner. These and other concerns can only be met if governmental institutions have the power, the resources and the will to enter into effective land use planning, if plans at all levels of government are coordinated, and if public decisions on land use are backed up with effective controls in the form of zoning and taxing policies.

One of the recurring and most complex problems of land use decisionmaking today is that existing legal and institutional arrangements are in many respects archaic. They were not designed to deal with contemporary problems. Industry, for example, is unable to get effective decisions on plant siting and location without, in some cases, running an interminable gauntlet of local zoning hearings injunctions, and legal appeals. In other cases, industry is welcomed into areas which should be dedicated to other uses under the banner of broadening the tax base. Often this really means higher taxes, fewer amenities and more problems.

While the institutions for land use planning and management at the local, State and Federal level are not at present adequate to the task which lies ahead, they can, if revised and reformed, provide more effective institutional structures which can go far to meet the challenge of the land. With appropriate modification, with Federal monetary assistance, with increased staffing and with the Federal and State governments exercising a more vigorous role of coordination and oversight these institutions can provide the American people with national land use planning and decisionmaking which can go far toward eliminating conflict, maximizing public participation, and providing for land use patterns that will enhance environmental values and the quality of life while, at the same time, meeting the Nation's growing demands for raw materials, goods, and services.

By the same token, the Federal and State constitutional principles on which our traditional concepts of land use law are based—the police powers, general welfare clauses, and the power of taxation—have a tremendous capacity to be utilized more effectively and more creatively to encourage better land use planning and management.

The tools for improving local, State, and Federal administration of our land resource are available. What is lacking is an agreed upon national statement of goals toward which we should be working together with effective policies at all levels of government which will permit and encourage attainment of the goals we seek to achieve.

It is my view, and it is the view of the many witnesses who testified before the

Interior Committee on S. 3354 last year, that the National Land Use Policy Act will provide the necessary Federal structure and policy initiatives to proceed with the development of a rational and coherent set of land use management policies at all levels of government.

Further hearings on this measure and on any legislative proposals that the President may be making in his environmental message next week will be scheduled in late February or March.

Mr. President, I ask unanimous consent that the text of the bill, my introductory statement from the 91st Congress, excerpts from the committee report from the 91st Congress and a newspaper article on the administration's proposed land use bill be printed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill, statement, and article will be printed in the RECORD.

The bill (S. 632) to amend the Water Resources Planning Act (79 Stat. 244) to include provision for a national land use policy by broadening the authority of the Water Resources Council and river basin commissions and by providing financial assistance for statewide land use planning, introduced by Mr. JACKSON (for himself and other Senators), was received, read twice by its title, referred to the Committee on Interior and Insular Affairs, and ordered to be printed in the RECORD, as follows:

S. 632

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Water Resources Planning Act (79 Stat. 244), as amended (82 Stat. 935), is further amended by this Act to read as follows:

"SECTION 1. This Act may be cited as the 'Land and Water Resources Planning Act of 1971.'

"SEC. 2. In order to insure that the Nation's limited land resource base is properly planned and managed and in order to meet the Nation's rapidly expanding demands for water, it is hereby declared to be the policy of the Congress to encourage the conservation, development, and utilization of the land and water resources of the United States on a comprehensive and coordinated basis by the Federal Government, States, localities, and private enterprise with the cooperation of all affected Federal agencies, States, local governments, individuals, corporations, business enterprises, and others concerned.

"TITLE I—LAND AND WATER RESOURCES COUNCIL

"SEC. 101. (a) There is hereby established a Land and Water Resources Council (hereinafter referred to as the 'Council').

"(b) The Council shall be composed of the Vice President; the Secretaries of Agriculture; Commerce; Health, Education, and Welfare; Housing and Urban Development; the Interior; Transportation; and the Army; the Chairmen of the Council on Environmental Quality and the Federal Power Commission; and the Administrator of the Environmental Protection Agency.

"(c) The Vice President shall be the Chairman of the Council.

"(d) The Chairman of the Council shall request the heads of Federal agencies who are not members of the Council to participate with the Council when matters affecting their responsibilities are considered by the Council.

"(e) The Council shall have a Director, who shall be appointed by the President by and with the consent of the Senate. He shall serve at the pleasure of the President and shall be compensated at the rate provided for level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). The Director shall have such duties and responsibilities as the Chairman, after consultation with the members of the Council, may assign.

"(f) Each member of the Council shall designate a member of his staff to work with the Director in formulating policies for the approval of the Council. These designees shall meet at the call of the Director.

"(g) In addition to the designee appointed pursuant to subsection (f), each member of the Council shall appoint one member of his staff as a permanent liaison officer between the Council and the department, counsel, or commission represented by the member.

"SEC. 102. The Council shall—

"(a) prepare an inventory and maintain a continuing study of the land resources of the United States, and report biennially to the President and the Congress on land resources and uses, projections of development and uses of land, and analyses of current and emerging problems of land use;

"(b) maintain a continuing study of the adequacy of administrative and statutory means for the coordination of Federal programs which have an impact upon land use and of compatibility of such programs with State and local land-use planning and management activities; it shall appraise the adequacy of existing and proposed Federal policies and programs which affect land use; and it shall make recommendations to the President with respect to such policies and programs;

"(c) maintain a continuing study and issue biennially or at such less frequent intervals as the Council may determine, an assessment of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and the national interest therein; and

"(d) maintain a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation and of the adequacy of administrative and statutory means for the coordination of the water and related land resources policies and programs of the several Federal agencies; it shall appraise the adequacy of existing and proposed policies and programs to meet such requirements; and it shall make recommendations to the President with respect to Federal policies and programs.

"SEC. 103. The Council shall establish, after such consultation with other interested entities, both Federal and non-Federal as the Council may find appropriate, and with the approval of the President, principles, standards, and procedures for Federal participants in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of Federal water and related land resources projects. Such procedures may include provision for Council revision of plans for Federal projects intended to be proposed in any plan or revision thereof being prepared by a river basin planning commission.

"SEC. 104. Upon receipt of a plan or revision thereof from any river basin commission under the provisions of section 204(c) of this Act, the Council shall review the plan or revision with special regard to—

"(a) the efficacy of such plan or revision in achieving optimum use of the land and water resources in the area involved;

"(b) the effect of the plan on the achievement of other programs for the development of agricultural, urban, energy, industrial, recreational, fish and wildlife, and other resources of the entire Nation; and

"(c) the contributions which such plan or revision will make in obtaining the Nation's economic, social, and environmental goals.

Based on such review the Council shall—

"(1) formulate such recommendations as it deems desirable in the national interest; and

"(2) transmit its recommendations, together with the plan or revision of the river basin commission and the views, comments, and recommendations with respect to such plan or revision submitted by any Federal agency, Governor, interstate commission, or United States section of an international commission, to the President for his review and transmittal to the Congress with his recommendations in regard to authorization of Federal projects.

"SEC. 105. The Council shall—

"(a) consult with other officials of the Federal Government responsible for the administration of Federal land use planning assistance programs to States, their political subdivisions, and other eligible agencies in order to enhance coordination; and

"(b) periodically review (1) provisions of the statewide land use plans, (2) State water resources planning programs, and (3) interstate agency studies and plans, to the extent necessary or desirable for the proper administration of this Act.

"FEDERAL PLANNING INFORMATION CENTER

"SEC. 106. (a) The Council shall develop and maintain an information and data center, with such regional branches as the Council may deem appropriate, which has on file—

"(1) copies of all approved statewide land use plans, including approved modifications and variances;

"(2) copies of all federally initiated and federally assisted plans for activities which directly affect or involve land use;

"(3) to the extent practicable and appropriate, the plans of local government and private enterprise which have more than local significance for land use planning;

"(4) statistical data and information on past, present, and projected land use patterns which are of national significance;

"(5) studies pertaining to techniques and methods for the procurement, analysis, and evaluation of information relating to land use planning and management;

"(6) such other information pertaining to land-use planning and management as the Council deems appropriate.

"(b) All Federal agencies are required, as a part of their planning procedures on projects involving a major land-use activity, to consult with the Council for the purpose of determining whether the proposed activity would conflict in any way with the plans of other Federal, State, or local agencies. In the event a conflict is discovered, the matter shall be reported to the Council. If the conflict is not resolved by the agencies involved within a reasonable period of time, the Council shall investigate the conflict and report its findings, along with its recommendation concerning the proper resolution of the issue, to the Congress, the President, the State agency or agencies responsible for land-use planning and enforcement of any approved statewide land use plan in the State concerned, and any other State or local agency involved.

"(c) The Council shall make the information maintained at the center available to Federal, State, and local agencies involved in land use planning and to members of the public, to the extent practicable. The Council may charge reasonable fees to defray the expenses incident to making such information available.

"TITLE II—RIVER BASIN COMMISSIONS

"CREATION OF COMMISSIONS

"SEC. 201. (a) The President is authorized to declare the establishment of a river basin land and water resources commission upon request therefor by the Council, or request addressed to the Council by a State within

which all or part of the basin or basins concerned are located if the request by the Council or by a State (1) defines the area, river basin, or group of related river basins for which a commission is requested, (2) is made in writing by the Governor or in such manner as State law may provide, or by the Council, and (3) is concurred in by the Council and by not less than one-half of the States within which portions of the basin or basins concerned are located and, in the event the Upper Colorado River Basin is involved, by at least three of the four States of Colorado, New Mexico, Utah, and Wyoming or, in the event the Columbia River Basin is involved, by at least three of the four States of Idaho, Montana, Oregon, and Washington. Such concurrences shall be in writing.

"(b) Each such commission for an area, river basin, or group of river basins shall, to the extent consistent with section 401 of this Act

"(1) serve as the principal agency for the coordination of Federal, State, interstate, local and nongovernmental plans for the development of land and water resources in its area, river basin, or group of river basins;

"(2) upon written request of the Council and of the Governors of not less than one-half of the participating States, prepare and keep up to date, to the extent practicable, a comprehensive, coordinated joint plan of Federal, regional, State, local, and nongovernmental plans which significantly involve land use or have significant impacts upon land-use patterns; of zoning and other land-use regulations. The comprehensive plan shall specifically indicate the relation of planned or proposed Federal projects to land-use development in the region.

"(3) prepare and keep up to date, to the extent practicable, a comprehensive coordinated joint plan for Federal, regional, State, local, and nongovernmental development of water and related resources. The plan shall include an evaluation of all reasonable alternative means of achieving optimum development of water and related land resources of the area, basin or basins, and it may be prepared in stages, including recommendations with respect to individual projects;

"(4) recommend long range schedule of priorities for the collection and analysis of basic data and for investigation, planning, and construction of projects; and

"(5) foster and undertake such studies of land-use and water resources problems in its area, river basin, or group of river basins as are necessary in the preparation of the plans described in clauses (2) and (3) of this subsection.

"(c) River basin commissions established pursuant to the Water Resources Planning Act (79 Stat. 244) prior to the date of enactment of this amendment shall continue to function after its enactment, and shall be governed by its terms.

"MEMBERSHIP OF COMMISSIONS

"SEC. 202. Each river basin commission shall be composed of members appointed as follows:

"(a) A chairman appointed by the President who shall also serve as chairman and coordinating officer of the Federal members of the commission and who shall represent the Federal Government in Federal-State relations on the commission and who shall not, during the period of his service on the commission, hold any other position as an officer or employee of the United States, except as a retired officer or retired civilian employee of the Federal Government.

"(b) One member from each Federal department or independent agency determined by the President to have a substantial interest in the work to be undertaken by the commission, such member to be appointed by the head of such department or independent agency and to serve as the representative of such department or independent agency.

"(c) One member from each State which lies wholly or partially within the area, river basin, or group of river basins for which the commission is established, and the appointment of each such member shall be made in accordance with the laws of the State which he represents. In the absence of governing provisions of State law, such State member shall be appointed and serve at the pleasure of the Governor.

"(d) One member appointed by any interstate agency created by an interstate compact to which the consent of Congress has been given, and whose jurisdiction extends to the lands or waters of the area, river basin, or group of river basins for which the river basin commission is created.

"(e) When deemed appropriate by the President, one member, who shall be appointed by the President, from the United States section of any international commission created by a treaty to which the consent of the Senate has been given, and whose jurisdiction extends to the waters of the area, river basin, or group of river basins for which the river basin commission is established.

"ORGANIZATION OF COMMISSIONS

"SEC. 203. (a) Each river basin commission shall organize for the performance of its functions within ninety days after the President shall have declared the establishment of such commission, subject to the availability of funds for carrying on its work. A commission shall terminate upon decision of the Council or agreement of a majority of the States composing the commission. Upon such termination, all property, assets, and records of the commission shall thereafter be turned over to such agencies of the United States and the participating States as shall be appropriate in the circumstances: *Provided,* That studies, data, and other materials useful in land and water resources planning to any of the participants shall be kept freely available to all such participants.

"(b) State members of each commission shall elect a vice chairman, who shall serve also as chairman and coordinating officer of the State members of the commission and who shall represent the State governments in Federal-State relations on the commission.

"(c) Vacancies in a commission shall not affect its powers but shall be filled in the same manner in which the original appointments were made: *Provided,* That the chairman and vice chairman may designate alternates to act for them during temporary absences.

"(d) In the work of the commission every reasonable endeavor shall be made to arrive at a consensus of all members on all issues; but failing this, full opportunity shall be afforded each member for the presentation and report of individual views: *Provided,* That at any time the commission fails to act by reason of absence of consensus, the position of the chairman, acting in behalf of the Federal members, and the vice chairman, acting upon instructions of the State members, shall be set forth in the record: *Provided further,* That the chairman, in consultation with the vice chairman, shall have the final authority, in the absence of an applicable bylaw adopted by the commission or in the absence of a consensus, to fix the times and places for meetings, to set deadlines for the submission of annual and other reports, to establish subcommittees, and to decide such other procedural questions as may be necessary for the commission to perform its functions.

"DUTIES OF THE COMMISSIONS

"SEC. 204. Each river basin commission shall—

"(a) engage in such activities and make such studies and investigations as are necessary and desirable in carrying out the policy set forth in section 2 of this Act and in accomplishing the purposes set forth in section 201(b) of this Act;

"(b) submit to the Council and the Governor of each participating State a report on its work at least once each year. Such report shall be transmitted through the President to the Congress. After such transmission, copies of any such report shall be sent to the heads of such Federal, State, interstate, and international agencies as the President or the Governors of the participating States may direct;

"(c) submit to the Council for transmission to the President and by him to the Congress and the Governors and the legislatures of the participating States a comprehensive, coordinated, joint plan, or any major portion thereof or necessary revisions thereof, for water and related land resources development in the area, river basin, or group of river basins for which such commission was established. Before the commission submits such a plan or major portion thereof or revision thereof to the Council, it shall transmit the proposed plan or revision to the head of each Federal department or agency, the Governor of each State, and each interstate agency, from which a member of the commission has been appointed, and to the head of the United States section of any international commission if the plan, portion or revision deals with a boundary water or a river crossing a boundary, or any tributary flowing into such boundary water or river, over which the international commission has jurisdiction or for which it has responsibility. Each such department and agency head, Governor, interstate agency, and United States section of an international commission shall have ninety days from the date of the receipt of the proposed plan, portion, or revision to report its views comments, and recommendations to the commission. The commission may modify the plan, portion, or revision after considering the reports so submitted. The views, comments, and recommendations submitted by each Federal department or agency head, Governor, interstate agency, and United States section of an international commission shall be transmitted to the Council with the plan, portion, or revision;

"(d) undertake such studies of regional land use conditions, patterns, and projections as may be requested by the Council and concurred in by the Governors of at least one-half of the States included within the commission's jurisdiction; and

"(e) submit to the Council at the time of submitting the plans and studies required by subsections (c) and (d) of this section any recommendations it may have for continuing the functions of the commission and for implementing the plans or study recommendations, including means of keeping the plans up to date."

"POWERS AND ADMINISTRATIVE PROVISIONS OF THE COMMISSIONS

"SEC. 205. (a) For the purpose of carrying out the provisions of this title, each river basin commission may—

"(1) hold such hearings, site and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reports thereon as it may deem advisable;

"(2) acquire, furnish, and equip such office space as is necessary;

"(3) use the United States mails in the same manner and upon the same conditions as departments and agencies of the United States;

"(4) employ and compensate such personnel as it deems advisable, including consultants, at rates not to exceed $100 per diem, and retain and compensate such professional or technical service firms as it deems advisable on a contract basis;

"(5) arrange for the services of personnel from any State or the United States, or any

subdivision or agency thereof, or any intergovernmental agency;

"(6) make arrangements, including contracts, with any participating government, except the United States or the District of Columbia for inclusion in a suitable retirement and employee benefit system of such of its personnel as may not be eligible for or continuing in another governmental retirement or employee benefit system or otherwise provide for such coverage of its personnel;

"(7) purchase, hire, operate, and maintain passenger motor vehicles; and

"(8) incur such necessary expenses and exercise such other powers as are consistent with and reasonably required to perform its functions under this Act.

"(b) The chairman of a river basin commission, or any member of such commission designated by the chairman thereof for the purpose, is authorized to administer oaths when it is determined by a majority of the commission that testimony shall be taken or evidence received under oath.

"(c) To the extent permitted by law, all appropriate records and papers of each river basin commission shall be made available for public inspection during ordinary office hours.

"(d) Upon request of the chairman of any river basin commission, or any member or employee of such commission designated by the chairman thereof for the purpose, the head of any Federal department or agency is authorized (1) to furnish to such commission such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and (2) to detail to temporary duty with such commission on a reimbursable basis such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

"(e) The chairman of each river basin commission shall, with the concurrence of the vice chairman, appoint the personnel employed by such commission, and the chairman shall, in accordance with the general policies of such commission with respect to the work to be accomplished by it and the timing thereof, be responsible for (1) the supervision of personnel employed by such commission, (2) the assignment of duties and responsibilities among such personnel, and (3) the use and expenditure of funds available to such commission.

"COMPENSATION OF COMMISSION MEMBERS

"SEC. 206. (a) Any member of a river basin commission appointed pursuant to section 202 (b) and (e) of this Act shall receive no additional compensation by virtue of his membership on the commission, but shall continue to receive, from appropriations made for the agency from which he is appointed, the salary of his regular position when engaged in the performance of the duties vested in the commission.

"(b) Members of a commission, appointed pursuant to section 202 (c) and (d) of this Act, shall each receive such compensation as may be provided by the State or the interstate agency, respectively, which they represent.

"(c) The per annum compensation of the chairman of each river basin commission shall be determined by the President, but when employed on a full-time annual basis shall not exceed the maximum scheduled rate for grade GS–18 of the Classification Act of 1949, as amended; or when engaged in the performance of the commission's duties on an intermittent basis such compensation shall be not more than $100 per day and shall not exceed $12,000 in any year.

"SEC. 207. (a) Each commission shall recommend what share of its expenses shall be borne by the Federal Government, but such share shall be subject to approval by the Council. The remainder of the commission's expenses shall be otherwise apportioned as the commission may determine. Each commission shall prepare a budget annually and transmit it to the Council and the States. Estimates of proposed appropriations from the Federal Government shall be included in the budget estimates submitted by the Council under the Budgeting and Accounting Act of 1921, as amended, and may include an amount for advance to a commission against State appropriations for which delay is anticipated by reason of later legislative sessions. All sums appropriated to or otherwise received by a commission shall be credited to the commission's account in the Treasury of the United States.

"(b) A commission may accept for any of its purposes and functions, appropriations, donations, and grants of money, equipment, supplies, materials, and services from any State or the United States or any subdivision or agency thereof, or intergovernmental agency, and may receive, utilize, and dispose of the same.

"(c) The commission shall keep accurate accounts of all receipts and disbursements. The accounts shall be audited at least annually in accordance with generally accepted auditing standards by independent certified or licensed public accountants, certified or licensed by a regulatory authority of a State, and the report of the audit shall be included in and become a part of the annual report of the commission.

"(d) The accounts of the commission shall be open at all reasonable times for inspection by representatives of the jurisdictions and agencies which make appropriations, donations, or grants to the commission.

"TITLE III—A NATIONAL LAND USE POLICY AND PROGRAM OF ASSISTANCE TO THE STATES

"PART 1—FINDINGS, POLICY, AND PURPOSE

"FINDINGS

"SEC. 301. (a) The Congress hereby finds that there is a national interest in a more efficient and comprehensive system of national, regional, statewide, and local land use planning and decisionmaking and that the rapid and continued growth of the Nation's population, expanding urban development, proliferating transportation systems, large scale industrial and economic growth, conflicts in emerging patterns of land use, the fragmentation of governmental entities exercising land-use planning powers, and the increased size, scale, and impact of private actions, have created a situation in which land-use management decisions of national, regional, and statewide concern are often being made on the basis of expediency, tradition, short-term economic considerations, and other factors which are often unrelated to the real concerns of a sound national land-use policy.

"(b) The Congress further finds that a failure to conduct competent, ecologically sound land use planning has, on occasion, required public and private enterprise to delay, litigate, and cancel proposed public utility and industrial and commercial developments because of unresolved land use questions, thereby causing an unnecessary waste of human and economic resources and a threat to public services and often resulting activites in the area of least public and political resistance, but without regard to relevant ecological and environmental land use considerations.

"(c) The Congress further finds that many Federal agencies are deeply involved in national, regional, State, and local land-use planning and management activities which because of the lack of a consistent policy often result in needless, undersirable, and costly conflicts between agencies of Federal, State, and local government; that existing Federal land-use planning programs have a significant effect upon the location of population, economic growth, and on the character of industrial, urban, and rural development; that the purposes of such programs are frequently in conflict, thereby subsidizing undesirable and costly patterns of land-use development; and that a concerted effort is necessary to interrelate and coordinate existing and future Federal, State, local, and private decisionmaking within a system of planned development and established priorities that is in accordance with a national land-use policy.

"(d) The Congress further finds that while the primary responsibility and constitutional authority for land-use planning and management of non-Federal lands rests with State and local government under our system of government, it is increasingly evident that the manner in which this responsibility is exercised has a tremendous influence upon the utility, the value, and the future of the public domain, the national parks, forests, seashores, lakeshores, recreation, and wilderness areas and other Federal lands; that the interest of the public in State and local decisions affecting these areas extends to the citizens of all States; and that the failure to plan and, in some cases, poor land-use planning at the State and local level, pose serious problems of broad national, regional, and public concern and often result in irreparable damage to commonly owned assets of great national importance such as estuaries, ocean beaches, and other areas in public ownership.

"(e) The Congress further finds that the land use decisions of the Federal Government often have a tremendous impact upon the ecology, the environment and the patterns of development in local communities; that the substance and the nature of a national land use policy ought to take into consideration the needs and interests of State, regional, and local government as well as those of the Federal Government, private groups and individuals; and that Federal land use decisions require greater participation by State and local government to insure that they are in accord with the highest and best standards of land use management and the desires and aspirations of State and local government.

"DECLARATION OF POLICY

"SEC. 302. (a) In order to promote the general welfare and to provide full and wise application of the resources of the Federal Government in strengthening the environmental, recreational, economic and social well-being of the people of the United States, the Congress declares that it is a continuing responsibility of the Federal Government, consistent with the responsibility of State and local government for land-use planning and management, to undertake the development of a national policy, to be known as the national land-use policy, which shall incorporate ecological, environmental, esthetic, economic, social and other appropriate factors. Such policy shall serve as a guide in making specific decisions at the national level which affect the pattern of environmental, recreational and industrial growth and development on the Federal lands, and shall provide a framework for development of regional, State, and local land-use policy.

"(b) The Congress further declares that it is the national land-use policy to—

"(1) favor patterns of land-use planning, management and development which are in accord with sound ecological principles and which encourage the wise and balanced use of the Nation's land and water resources;

"(2) foster beneficial economic activity and development in all States and regions of the United States.

"(3) favorably influence patterns of population distribution in a manner such that a wide range of scenic, environmental, and cultural amenities are available to the American people;

"(4) contribute to the revitalization of existing rural communities and encourage, where appropriate, new communities;

"(5) assist State government to assume land-use planning responsibility for activities within their boundaries;

"(6) facilitate increased coordination in the administration of Federal programs so as to encourage desirable patterns of land-use planning; and

"(7) systematize methods for the exchange of land use, environmental and ecological information in order to assist all levels of government in the development and implementation of the national land-use policy.

"(c) The Congress further declares that intelligent land-use planning and management provides the single most important institutional device for preserving and enhancing the environment, for ecologically sound development, and for maintaining conditions capable of supporting a quality life and providing the material means necessary to improve the national standard of living.

"PURPOSE

"SEC. 303. It is the purpose of this title—

"(a) to establish a national policy to encourage and assist the several States to more effectively exercise their constitutional responsibilities for the planning, management, and administration of the Nation's land resources through the development and implementation of comprehensive statewide land use plans and management programs designed to achieve an ecologically and environmentally sound use of the Nation's land resources;

"(b) to establish a grant-in-aid program to assist State and local governments to hire and train the personnel, and establish the procedures necessary to develop, implement, and administer a statewide land use plan which meets Federal guidelines and which will be responsive and effective in dealing with the growing pressure of conflicting demands on a finite land resource base;

"(c) to establish reasonable and flexible Federal guidelines and requirements to give individual States guidance in the development of statewide land use plans and to condition the distribution of certain Federal funds on the establishment of an adequate statewide land use plan;

"(d) establish the authority and responsibility of the Land and Water Resources Council (formerly the Water Resources Council) to administer the Federal grant-in-aid program, to receive the statewide use plans and State water resources programs for conformity to the provisions of this title, and to assist in the coordination of Federal agency activities with statewide land use plans;

"(e) to develop and maintain a national policy with respect to federally conducted and federally supported projects having land use implications; and

"(f) to coordinate planning and management relating to Federal lands with planning and management relating to non-Federal lands.

"PART 2—

"STATEWIDE AND INTERSTATE LAND USE PLANNING GRANTS

"SEC. 304. (a) In order to carry out purposes of this title the Council is authorized to make land use planning grants to—

"(1) an appropriate single State agency, designated by the Governor of the State or established by law, which has statewide land use planning responsibilities and which meets the guidelines and requirements set out in section 305 of this title; and

"(2) any interstate agency which is authorized by Federal law or interstate compact plan for land use.

"(b) The Council is authorized to make land use planning grants in accordance with the provisions of this title to assist and enable eligible State and interstate regional agencies—

"(1) to prepare an inventory of the State's or region's land and related resources;

"(2) to compile and analyze information and data related to—

"(A) population densities and trends;

"(B) economic characteristics and projections;

"(C) directions and extent of urban and rural growth and changes;

"(D) public works, public capital improvements, land acquisitions, and economic development programs, projects, and associated activities;

"(E) ecological, environmental, geological, and physical conditions which are of relevance to decisions concerning the location of new communities, commercial development, heavy industries, transportation and utility facilities, and other land uses;

"(F) the projected land use requirements within the State or region for agriculture, recreation, urban growth, commerce, transportation, the generation and transmission of energy, and other important uses for at least fifty years in advance;

"(G) governmental organization and financial resources available for land use planning and management within the State and the political subdivisions thereof or within the region; and

"(H) other information necessary to conduct statewide land use planning in accord with the provisions of this title.

"(3) to provide technical assistance and training programs for appropriate interstate, State, and local agency personnel on the development, implementation and management of statewide land use planning programs;

"(4) to arrange with Federal agencies for the cooperative planning of Federal lands located within and near the State's or region's boundaries;

"(5) to develop, use, and encourage common information and data bases for Federal, regional, State, and local land use planning;

"(6) to establish arrangements for the exchange of land use planning information among State agencies; and among the various governments within each State and their agencies; between the governments and agencies of different States; and among States and interstate compact agencies, river basin commissions, and regional commissions;

"(7) to establish arrangements for the exchange of information with the Federal Government for use by the Council and the State and interstate agencies in discharging their responsibilities under this Act;

"(8) to conduct hearings, prepare reports, and solicit comments on reports concerning specific portions of the plans and the plans in their entirety; and

"(9) to conduct such other related planning and coordination functions as may be approved by the Council.

"FEDERAL GUIDELINES AND REQUIREMENTS FOR STATEWIDE LAND USE PLANS

"SEC. 305. (a) A State agency specified in section 304(a) must meet or give assurances that it will meet the following requirements in the development of a statewide land use plan to be eligible for statewide land use planing grants under this title—

"(1) a single State agency, designated by the Governor or established by law, shall have primary authority and responsibility for the development and administration of the statewide land use plan;

"(2) a competent and adequate interdisciplinary professional and technical staff, as well as special consultants, will be available to the State agency to develop the statewide land use plan;

"(3) to the maximum extent feasible, pertinent local, State, and Federal plans, studies, information, and data on land use planning already available shall be utilized in order to avoid unnecessary repetition of effort and expense.

"(b) During the five complete fiscal year period following the initial publication of regulations by the Council implementing the provisions of this title, the State agency must, as a condition of continued grant eligibility, develop a statewide land use plan which—

"(1) identifies the portions of the State subject to enforcement of the statewide land use plan, which shall include all lands within the boundaries of the State except—

"(A) lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents; and

"(B) at the discretion of the State agency, lands located within the boundaries of any incorporated city having a population in excess of two hundred and fifty thousand or in excess of 20 per centum of the State's total population, which has land use planning and regulation authority;

"(2) identifies those areas (within the State, except where otherwise indicated)—

"(A) where ecological, environmental, geological, and physical conditions dictate that certain types of land use activities are undesirable;

"(B) where the highest and best use, based upon projected local, State, and National needs, on the Statewide Outdoor Recreation Plan required under the Land and Water Conservation Fund Act, and upon other studies, is recreational-oriented use;

"(C) which are best suited for agricultural, mineral, industrial and commercial development;

"(D) where transportation and utility facilities are or it appears should, in the future, be located;

"(E) which furnish the amenities and the basic essentials to the development of new towns and the revitalization of existing communities;

"(F) which, notwithstanding Federal ownership or jurisdiction, are important to the State for industrial, commercial, mineral, agricultural, recreational, ecological, or other purposes;

"(G) which although located outside the State, have substantial actual or potential impact upon land use patterns within the State; and

"(H) which are of unusual national significance and value.

"(3) includes appropriate provisions designed to insure that projected requirements for material goods, natural resources, energy, housing, recreation and environmental amenities have been given consideration;

"(4) includes provisions designed to insure that the plan is consistent with applicable local, State, regional, and Federal standards relating to the maintenance and enhancement of the quality of the environment and the conservation of public resources;

"(5) provides for assuring orderly patterns of land use and development;

"(6) includes provisions to insure that transportation and utility facilities do not interfere with Congressional policies relating to the status and use of Federal lands, and are established in compliance with regional and State needs, State policies, and policies and goals set forth in other Federal legislation;

"(7) provides for measures such as buffer zones, scenic easements, prohibitions against nonconforming uses, and other means of assuring the preservation of esthetic qualities, to insure that federally designated, financed, and owned areas, including but not limited to elements of the national park system, wilderness areas, and game and wildlife refuges are not damaged or degraded as a result of inconsistent or incompatible land use patterns in the same immediate geographical region;

"(8) provides for flood plain identification and management;

"(9) provides for other appropriate factors having significant land use implications.

"(c) To retain eligibility for statewide land use planning grants after the end of five complete fiscal years from the beginning of the first fiscal year after the initial publication of regulations by the Council implementing the provisions of this title, the statewide land use plan developed in accordance with subsection (b) of this section and the State land use planning agency must meet the following Federal guidelines and requirements—

"(1) the statewide land use plan must be approved by the Council in accordance with section 306;

"(2) the agency must have authority to implement the approved plan and enforce its provisions;

"(3) the agency's authority may include the power to acquire interests in real property;

"(4) the agency's authority must include the power to prohibit, under State police powers, the use of any lands in a manner which is inconsistent with the provisions of the plan;

"(5) the agency must have authority to conduct public hearings, allowing full public participation and granting the right of appeal to aggrieved parties, in connection with the dedication of any area of the State as an area subject to restricted or special use under the statewide land use plan; and

"(6) the agency must have established reasonable procedures for periodic review of the plan for purposes of granting variances from and making modifications of the plan, including public notice and hearings, in order to meet changed future conditions and requirements.

"(d) Nothing in this section shall be deemed to preclude a State from planning for land use or from implementing a statewide land use plan in stages, with respect to either (1) particular geographical areas including but not limited to coastal zones, or (2) particular kinds of uses, as long as the other requirements of this Act are met.

"(e) Nothing in this Act shall be deemed to preclude the delegation by the State agency to local governmental entities of authority to plan for land use and enforce land use restrictions adopted pursuant to the statewide land use plan, including the assignment of funds authorized by this Act, to the extent available, except that—

"(1) the State agency shall have ultimate responsibility for approval and coordination of local plans and enforcement procedures;

"(2) only the plan submitted by the State agency will be considered by the Council;

"(3) the statewide land use plan submitted by the State agency must be consistent with the guidelines established by this Act; and

"(4) the State agency shall be responsible to the Council for the management and control of any Federal funds assigned or delegated to any agency of local government within the State concerned.

"REVIEW OF STATEWIDE LAND USE PLANS

"SEC. 306. (a) Upon completion of each statewide land use plan—

"(1) The State agency responsible for the development of the plan shall submit it to the Council.

"(2) The Council shall submit the plan for review and comments to those Federal agencies the Council considers to have significant interest in or impact upon land use within the State concerned. A period of ninety days shall be provided for the review.

"(3) Upon completion of the review period established by paragraph (2) of this subsection, the Council shall review the plan along with the agency comments and approve the plan if it—

"(A) conforms with the policy, guidelines, and requirements declared in this title;

"(B) is compatible with the plans and proposed plans of other States, so that regional and national land use considerations are accommodated; and

"(C) does not conflict with the objectives of Federal programs authorized by the Congress.

"(b) A State may at any time make modifications of or grant variances from its statewide land use plan: *Provided*, That such modification or variance does not render the statewide land use plan inconsistent with the policies, guidelines, and requirements declared in this Act: *And provided further*, That such modification or variance is reported to the Council on or before its effective date. The Council shall approve the modification or variance unless it causes the plan to no longer meet the criteria set forth in subsection (a).

"(c)(1) In the event the Council determines that grounds exist for disapproval of a statewide land use plan or, having approved such a plan, subsequently determines that grounds exist for withdrawal of such approval pursuant to section 314, it shall notify the President, who shall order the establishment of an ad hoc hearing board, the membership of which shall consist of:

"(A) The Governor of a State other than that which submitted the plan, whose State does not have a particular interest in the approval or disapproval of the plan, selected by the President, or such alternate person as the Governor selected by the President may designate;

"(B) One knowledgeable, impartial Federal official, selected by the President, who is not a member of or responsible to a member of the Council;

"(C) One knowledgeable, impartial private citizen, selected by the other two members: *Provided*, That if the other two members cannot agree upon a third member within twenty days after the appointment of the second member to be appointed, the third member shall be selected by the President.

"(2) The hearing board shall meet as soon as practicable after all three members have been appointed. The Council shall specify in detail to the hearing board its reasons for considering disapproval or withdrawal of approval of the plan. The hearing board shall hold such hearings and receive such evidence as it deems necessary. The hearing board shall then determine whether disapproval or withdrawal of approval would be reasonable, and set forth in detail the reasons for its determination. If the hearing board determines that disapproval would be unreasonable, the Council shall approve the plan.

"(3) Members of hearing boards who are not regular full-time officers or employees of the United States shall, while carrying out their duties as members, be entitled to receive compensation at a rate fixed by the President, but not exceeding $150 per diem, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons in Government service employed intermittently. Expenses shall be charged to the account of the Executive Office of the President.

"(4) Administrative support for hearing boards shall be provided by the Executive Office of the President.

"(5) The President may issue such regulations as may be necessary to carry out the provisions of this subsection.

"COORDINATION OF FEDERAL PROGRAMS

"SEC. 307. (a) All Federal agencies conducting or supporting activities involving land use in an area subject to an approved statewide land use plan shall operate in accordance with the plan. In the event that a departure from the plan appears necessary in the national interest, the agency shall submit the matter to the Council. The Council may approve a federally conducted or supported project a portion or portions of which may be inconsistent with the plan if it finds that (1) the project is essential to the national interest and (2) there is no reasonable and prudent alternative which would not be inconsistent with an approved statewide land use plan. In the event that the Council fails to approve the project, the project may be undertaken only upon the express approval of the President. The President may approve projects inconsistent with a statewide land use plan only when overriding considerations of national policy require such approval.

"(b) State and local governments submitting applications for Federal assistance for activities having significant land use implications in an area subject to an approved statewide land use plan shall indicate the views of the State land use planning agency as to the consistency of such activities with the plan. Federal agencies shall not approve proposed projects that are inconsistent with the plan.

"(c) All Federal agencies responsible for administering grant, loan, or guarantee programs for activities that have a tendency to influence patterns of land use and development, including but not limited to home mortgage and interest subsidy programs and water and sewer facility construction programs, shall take cognizance of approved statewide land use plans and shall administer such programs so as to enable them to support controlled development, rather than administering them so as merely to respond to uncontrolled growth and change.

"(d) Federal agencies conducting or supporting public works activities in areas not subject to an approved statewide land use plan shall, to the extent practicable, conduct those activities in such a manner as to minimize any adverse impact on the environment resulting from decisions concerning land use.

"(e) Officials of the Federal Government charged with responsibility for the management of federally owned lands shall take cognizance of the planning efforts of State land use planning agencies of States within which and near the boundaries of which such Federal lands are located, and shall coordinate Federal land use planning for those lands with State land use planning to the extent such coordination is practicable and not inconsistent with paramount national policies, programs, and interests.

"PART 3—STATE WATER RESOURCES PLANNING GRANTS

"SEC. 308. In recognition of the need for increased participation by the States in water resources planning, and to carry out the purposes of this title, the Council is authorized to make water resources planning grants to an appropriate single State agency designated by the Governor of the State or established by law to carry out a program which meets the criteria set forth in section 309. The agency may be the same as the one designated pursuant to section 305(a)(1) for administration of the statewide land use plan.

"SEC. 309. The Council shall approve any program for comprehensive water and related land resources planning which is submitted by a State, if such program—

"(a) provides for comprehensive planning with respect to intrastate or interstate water resources, or both, in such State to meet the needs for water and water-related activities, taking into account prospective demands for all purposes served through or affected by water and related land resources development, with adequate provision for coordination with all Federal, State, and local agencies, and nongovernmental entities having responsibilities in affected fields;

"(b) provides, where comprehensive statewide development planning is being carried on with or without assistance under section

701 of the Housing Act of 1954, or under the Land and Water Conservation Fund Act of 1965, for full coordination between comprehensive water resources planning and other statewide planning programs and for assurances that such water resources planning will be in conformity with the general development policy in such State;

"(c) designates a State agency to administer the program;

"(d) provides that the State agency will make such reports in such form and containing such information as the Council from time to time reasonably requires to carry out its functions under this title;

"(e) sets forth the procedure to be followed in carrying out the State program and in administering such program;

"(f) provides such accounting, budgeting, and other fiscal methods and procedures as are necessary for keeping appropriate accountability of the funds and for the proper and efficient administration of the program; and

"(g) includes adequate provision for consolidation or coordination with the statewide land use plan. The Council shall not disapprove any State water resources program without first giving reasonable notice and an opportunity for hearing to the State agency administering such program.

"PART 4—ADMINISTRATION OF LAND USE AND WATER RESOURCES PLANNING GRANTS

"ALLOTMENTS

"SEC. 310. (a) From the sum appropriated pursuant to section 404 the Council is authorized to make State land use planning grants to agencies the proposals of which are approved in any amount not to exceed ninety per centum of the estimated cost of the planning for the five full fiscal years after the initial publication by the Council of regulations implementing the provisions of this title. Thereafter, grants may be made in an amount not to exceed two-thirds of the State agency's planning and operating costs.

"(b) Land use planning grants shall be allocated to the States with approved programs based on regulations of the Council, which shall take into account the amount and nature of the State's land resource base, population, pressures resulting from growth, financial need, and other relevant factors.

"(c) Any land use planning grant made for the purpose of this title shall increase, and not replace State funds presently available for State land use planning activities. Any grant made pursuant to this title shall be in addition to, and may be used jointly with, grants or other funds available for land use planning surveys, or investigations under other federally assisted programs.

"(d) No funds granted pursuant to this Act may be expended for acquisition of any interest in real property.

"SEC. 311. (a) From the sums appropriated pursuant to section 404 of this Act for any fiscal year the Council shall from time to time make allotments to the States for water resources planning, in accordance with its regulations and the provisions of this Act, on the basis of (1) the population, (2) the land area, (3) the need for comprehensive water and related land resources planning programs, and (4) the financial need of the respective States. For the purposes of this section the population of the States shall be determined on the basis of the latest estimates available from the Department of Commerce, and the land area of the States shall be determined on the basis of the official records of the United States Geological Survey.

"(b) From each State's allotment under this section for any fiscal year the Council shall pay to such State an amount which is not more than 50 per centum of the cost of carrying out its State program approved under section 309, including the cost of training personnel for carrying out such program and the cost of administering such program.

"PAYMENTS

"SEC. 312. The method of computing and paying amounts pursuant to this title shall be as follows:

"(1) The Council shall, prior to the beginning of each calendar quarter or other period prescribed by it, estimate the amounts to be paid to each State under the provisions of this title for such period, such estimate to be based on such records of the State and information furnished by it, and such other investigation, as the Council may find necessary.

"(2) The Council shall pay to the State, from the allotments available therefor, the amount so estimated by it for any period, reduced or increased, as the case may be, by any sum (not previously adjusted under this paragraph) by which it finds that its estimate of the amount to be paid such State for any prior period under this title was greater or less than the amount which should have been paid to such State for such prior period under this title. Such payments shall be made through the disbursing facilities of the Treasury Department, at such times and in such installments as the Council may determine.

"FINANCIAL RECORDS

"SEC. 313. (a) Each recipient of a grant under this Act shall keep such records as the Director of the Council shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant, and the total cost of the project or undertaking in connection with which the grant was made and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(b) Such other records shall be kept and made available and such reports and evaluations shall be made as the Director may require regarding the status and application of Federal funds made available under the provisions of this title.

"(c) The Director of the Council and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of the grant that are pertinent to the determination that funds granted are used in accordance with this Act.

"SANCTIONS FOR NONCOMPLIANCE

"SEC. 314. (a) The Council shall have authority to terminate any financial assistance extended to a State agency for land use planning under this title and withdraw its approval of a statewide land use plan, whenever, after the State concerned has been given notice of a proposed termination and an opportunity for hearing, the Council finds that—

"(1) the designated State land use planning agency has failed to adhere to the guidelines and requirements of this title in the development of the land use plan;

"(2) the State has not enacted legislation which allows the State agency to meet the requirements of subsection (c) of section 305; or

"(3) the plan submitted by such State and approved under section 306 has been so changed or so administered that it no longer complies with a requirement of such section.

"(b) Whenever the Council after reasonable notice and opportunity for hearing to a State agency finds that—

"(1) the program submitted by such State and approved under section 309 has been so changed that it no longer complies with a requirement of such section; or

"(2) in the administration of the program there is a failure to comply substantially with such a requirement,

the Council shall notify such agency that no further payments will be made to the State under this title until it is satisfied that there will no longer be any such failure. Until the Council is so satisfied, it shall make no further payments to such State for water resources planning under this title.

"SEC. 315. (a) After the end of five fiscal years from the beginning of the first fiscal year after the initial issuance of regulations by the Council implementing the provisions of this title, no Federal agency shall, except with respect to Federal lands, propose or undertake any new action or financially support any new State-administered action which may have a substantial adverse environmental impact or which would or would tend to irreversibly or irretrievably commit substantial land or water resources in any States which has not prepared and submitted a statewide land use plan in accordance with this Act.

"(b) Upon application by the Governor of the State or head of the Federal agency concerned, the President may temporarily suspend the operation of paragraph (a) with respect to any particular action, if he deems such suspension necessary for the public health, safety, or welfare: *Provided*, That no such suspension shall be granted unless the State concerned submits a schedule, acceptable to the Council, for submission of a statewide land use plan: *And provided further*, That no subsequent suspension shall be granted unless the State concerned has exercised due diligence to comply with the terms of that schedule.

"TITLE IV—GENERAL

"EFFECT ON EXISTING LAWS

"SEC. 401. Nothing in this Act shall be construed—

"(a) to expand or diminish either Federal or State jurisdiction, responsibility, or rights in the field of land and water resources planning, development, or control; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States, or of two or more States and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

"(b) to change or otherwise affect the authority or responsibility of any Federal official in the discharge of the duties of his office except as required to carry out the provisions of this Act;

"(c) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of land and water resources or to exercise licensing or regulatory functions in relation thereto, except as required to carry out the provisions of this Act; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington January 17, 1961, or the International Boundary and Water Commission, United States and Mexico;

"(d) as authorizing any entity established or acting under the provisions hereof to study, plan, or recommend the transfer of waters between areas under the jurisdiction of more than one river basin commission or entity performing the function of a river basin commission.

"DEFINITIONS

"SEC. 402. For the purposes of this Act—

"(a) the term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

"(b) the term 'interstate agency' means any river basin commission or interstate compact agency established in accordance with Federal law;

"(c) the terms 'basin' and 'river basin' are descriptive of geographical areas and have identical meaning; and

"(d) the term 'new action,' as used in section 315, means any action which has not been previously authorized by the Congress.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 403. There are authorized to be appropriated not more than $16,000,000 annually for the administration of this Act, no more than $10,000,000 of which may be used for contract studies.

"SEC. 404. There are hereby authorized to be appropriated to the Council for grants to States, river basin commissions, and interstate agencies not more than $100,000,000 annually to carry out the purposes of this Act.

"ADMINISTRATIVE PROVISIONS

"SEC. 405. (a) For the purpose of carrying out the provisions of this Act, the Director with the concurrence of the Council may: (1) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reports thereon as he may deem advisable; (2) acquire, furnish, and equip such office space as is necessary; (3) use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States; (4) employ and fix the compensation of such personnel as it deems advisable, in accordance with the civil service laws and Classification Act of 1949, as amended; (5) procure services as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), at rates not to exceed $100 per diem for individuals; (6) purchase, hire, operate, and maintain passenger motor vehicles; and (7) incur such necessary expenses and exercise such other powers as are consistent with and reasonably required for the performance of its functions under this Act.

"(b) Any member of the Council is authorized to administer oaths when it is determined by a majority of the Council that testimony shall be taken or evidence received under oath.

"(c) To the extent permitted by law, all appropriate records and papers of the Council may be made available for public inspection during ordinary office hours.

"(d) The Council shall be responsible for (1) the appointment and supervision of its personnel, (2) the assignment of duties and responsibilities among such personnel, and (3) the use and expenditures of funds.

"DELEGATION OF FUNCTIONS

"SEC. 406. (a) The Council is authorized to delegate to the Director of the Council its administrative functions, including the detailed administration of the grant programs under title III.

"(b) The Council may not delegate the responsibilities of a policy nature vested in it by this Act. This restriction applies specifically to, but is not necessarily limited to, the following responsibilities of the Council—

"(1) the recommendation function set forth in subsection (b) of section 106;

"(2) the approval and disapproval functions set forth in section 306;

"(3) the approval and disapproval functions set forth in section 309;

"(4) the approval functions set forth in subsection (b) of section 315; and

"(5) the functions set forth in section 410.

"UTILIZATION OF PERSONNEL

"SEC. 407. (a) The Council may, with the consent of the head of any other department or agency of the United States, utilize such officers and employees of such agency on a reimbursable basis as are necessary to carry out the provisions of this Act.

"(b) Upon request of the Council, the head of any Federal department or agency is authorized (1) to furnish to the Council such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and (2) to detail to temporary duty with the Council on a reimbursable basis such personnel within his administrative jurisdiction as the Council may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay or other employee status.

"TECHNICAL ASSISTANCE

"SEC. 408. The Council may provide technical assistance to any eligible State, river basin commission, or interstate agency to assist it in the performance of its functions under this Act.

"STUDIES

"SEC. 409. The Council may, by contract or otherwise, make studies and publish information on subjects related to State, regional, and national land use planning and water resources use.

"RULES AND REGULATIONS

"SEC. 410. The Council, except with respect to subsection (c) of section 306—

"(a) shall promulgate rules and regulations for the administration of title III, including the detailed terms and conditions under which grants may be made, and

"(b) with the approval of the President, shall prescribe such rules, establish such procedures, and make such arrangements and provisions relating to the performance of its functions under title III and the use of funds available therefor, as may be necessary in order to assure (1) coordination of the program authorized by this Act with related Federal planning assistance programs, including the program authorized under section 701 of the Housing Act of 1954 and (2) appropriate utilization of other Federal agencies administering programs which may contribute to achieving the purposes of this Act.

"(c) shall make such other rules and regulations as it may deem necessary or appropriate for carrying out its duties and responsibilities under the provisions of this Act."

The statement and article, presented by Mr. JACKSON, are as follows:

S. 3354—INTRODUCTION OF THE NATIONAL LAND USE POLICY ACT OF 1970

Mr. JACKSON. Mr. President, I introduce, for appropriate reference, the National Land Use Policy Act of 1970.

The National Environmental Policy Act of 1969 which the Congress enacted in December and which the President signed into law on January 1 goes far toward providing a congressional declaration of national goals and policies to guide Federal actions which have an impact on the quality of man's environment. That act makes a concern for environmental values and amenities a part of the charter of every agency of the Federal Government. It provides a model for State government. It enhances coordination and better planning by establishing new decisionmaking procedures and by creating an overview agency—a Council on Environmental Quality in the Office of the President.

A national land-use policy is, in my judgment, the next logical step in our national effort to provide a quality life in a quality environment for present and future generations of Americans. Intelligent land-use planning and management provides the single most important institutional device for preserving and enhancing the environment, for ecologically sound development, and for maintaining conditions capable of supporting a quality life and providing the material means necessary to improve the national standard of living.

To be effective in giving direction to the shape of future events, a national land-use policy must recognize the potential and the limits of Federal control. It must encourage State government to assume a position of leadership in developing plans and implementing land-use management powers over matters which are of multicounty, regional, State, and National concern.

The measure I introduce today, the National Land Use Policy Act of 1970, proposes a specific plan of Federal and State action for meeting the challenge of the land, the competing demands which are made upon it, and the needs and aspirations of present and future generations.

Meeting the challenge of the land promises to be a difficult task. It will not be resolved by one act in one legislative session. It will require experimentation and the refinement of many programs over a long period of time. It will cost money. It will require hard decisions about what is to be conserved and what is to be lost in the tides of social and technological change which sweep this country. And most important, it will require a national effort based upon a high level of State and Federal cooperation.

The National Land Use Policy Act of 1970 as introduced today does not purport to be a final product or to provide final answers to all of the relevant questions which may be raised. It does, however, provide a starting point for review and for analysis. It furnishes a working draft which Federal, State, and local officials, planners, and representatives of industry, business, and public interest groups may comment upon.

This measure recognizes the direct responsibility which the Federal Government has with respect to the development and administration of national land use policies governing the public lands and federally acquired lands. It also recognizes that at the present time neither the Nation nor the respective States have established a consistent policy with respect to the management of the Nation's land resource base or with respect to the many grant-in-aid programs designed to assist and, often, influence various aspects of land-use planning and management activities at the State, regional, and local levels.

I am hopeful that hearings on this measure will bring to bear the recommendations of the Nation's best experts on national land-use policies. Fortunately, the excellent studies and the final recommendations of the Public Land Law Review Commission will also soon be available to provide data and guidance. I am also hopeful that hearings and additional staff studies will result in useful legislative recommendations for consolidating and avoiding inconsistent requirements between existing Federal grant-in-aid programs in the area of State and local land-use planning and management.

At the Federal level we are already beginning to see and to reap the results of our past failure to have developed a consistent national land-use policy. Increasingly we are finding instances where Federal funds which have been expended to preserve a part of our natural heritage or to create new recreational opportunities are coming into serious and, often, totally unnecessary conflicts with other federally funded programs such as highway and airport construction, communications, national defense facilities, and water resource development.

I am not too concerned that there is occasional conflict between these different Federal programs. The wide range of goals and objectives which the National Government seeks to achieve will, of necessity, involve some competition and conflict over priorities, over funding, and over the use of specific land resources. Our political system was designed to resolve conflicts of this nature. I am confident that it is capable of doing so in an intelligent manner.

I am, however, very concerned that many of these conflicts which have centered around

incompatible uses of the same land resource have been totally unanticipated and unintended. These conflicts have simply been the result of poor planning procedures. They have not placed at issue important questions of national priorities, goals, and objectives. These conflicts have resulted from a lack of coordination; a failure to relate national programs to local aspirations, and an institutional inability to factor in the full range of national and local values as a part of the planning process for specific Federal projects.

It is my view that the need for a more orderly systematic program of National, State, and local land use planning is clear. The need may be seen in the extensive hearing records the Senate Interior Committee compiled earlier this year on the proposed 800-mile trans-Alaska oil pipeline system and on the Everglades National Park superjet airport and water shortage controversy.

The Nation's land-use planning and management problems may also be seen in the committee's hearing records on virtually every one of the four new national parks; the eight new national recreation areas; the nine new national seashore and lakeshore; and the almost 100 new wilderness areas, national monuments, and historic sites that have been enacted into law sine 1960.

Each time a major decision is made concerning the utilization of scarce and valuable lands, competition among uses must be recognized, conflicts resolved, and priorities established. It is time that we faced these issues nationwide. It is time that we establish some basic goals and requirements to improve present planning and, therefore, the world of future generations.

The dramatic land-use conflicts we have faced in recent years—the Grand Canyon Dam controversy, the Everglades situation, the proposed trans-Alaska pipeline, the confrontation between highway builders and parks, the issue of reservoirs versus wild and scenic rivers, open beaches versus private and commercial development, industry versus scenic preservation, and commerce versus wilderness—should not have become public cause celebres.

Individual cases should not have occupied so much of the limited available time of the Congress, of the President, and of Cabinet officers. Questions of National and State land-use policy can be, and should be resolved by prior planning based upon national goals, values, and aspirations. They should not be resolved on an expedient, after the fact, case-by-case basis which requires undoing prior decisions and which result in a waste of money and manpower.

Let me cite one example. In 1934, the Congress established the Everglades National Park. This represented a national land-use decision that the Everglades should be preserved for all time for the enjoyment of all future generations. In 1948, the State of Florida and the Corps of Engineers, pursuant to a congressional authorization, initiated construction of a flood control project. Today this flood control project imposes artificial controls upon the historic flow of water to the park and, to a major extent, threatens the park's very life and existence. In 1968, the Dade County Port Authority, with Department of Transportation funding and assistance, initiated construction of a super jet airport within 6 miles of the park. This jet airport also threatens the life of the park and all of the values for which it was preserved in 1934 by the Congress. If the jet airport were to be constructed as planned it would create a serious noise problem, it would cause grave water pollution problems and, finally, it would encourage and greatly accelerate residential, commercial, and industrial developments which are in direct conflict and totally incompatible with maintenance of the park as a great national recreation and scientific asset.

There were no villains in this conflict and controversy. There were different groups of public officials, representing different constituencies, seeking to attain and maximize different public goals which had been institutionalized and given legitimacy in a series of authorization and appropriation acts of Federal, State, and local governments.

The Congress and the Park Service sought to preserve the Everglades. The Corps of Engineers sought to enhance flood control, to conserve and to make available for municipal, commercial, and recreational uses the water which the wildlife and the ecology the Everglades had for years depended upon. The Dade County Port Authority sought to relieve pressure on the existing Miami International Airport and to develop a transportation facility which would be adequate for local needs for the foreseeable future. The Department of Transportation sought to and did fund a transportation demonstration project involving rapid transit systems and a new concept in airport design—away from the cities, but covenient and accessible. The position of the State of Florida, like that of many States today in the face of Federal programs which bypass State government and treat directly with agencies of local government, was, at best, ambivalent.

The Everglades jet airport controversy is a classic study in the deficiencies of present land use policy at the State and National levels. The extensive hearings by the Senate Interior Committee on this situation revealed the following:

Three Departments of the Federal Government pursuing programs which are in direct conflict.

Three counties of the State of Florida seeking to conduct planning and make decisions which are of statewide and national significance.

A State whose greatest industry is tourism, but which has not exercised the land use planning and management powers to protect one of its greatest tourist attractions:

Important conflicts and breakdowns in communication between State and local government and between the Federal Government and agencies of State government.

One of the most important lessons to be gained from the Everglades controversy, and one of the reasons it is a classic case, is that millions of dollars were authorized by different Committees of the Congress, and spent by different agencies of the Federal Government, and by State and local agencies in the pursuit of separate goals and objectives, totally without any recognition that success, that attainment of the goals sought at the same point in time and place by these different groups would involve serious and, in many cases, irreconcilable land-use conflicts.

In this case a satisfactory resolution has apparently been achieved if the recently announced intentions of Federal, State, and local government are affectuated. But the victory is a minor one when it is considered against the magnitude, the depth, and the pervasiveness of the Nation's pending and future land use problems.

Look at these other examples of State and national land use planning problems:

Transportation and utility systems which are planned and constructed on a single purpose basis without considering other public values.

The inability of private enterprise to get decisions from State and local government within a reasonable time for the siting and location of heavy industrial activities such as refineries, thermal powerplants, utilities, and factories.

Damage caused to commonly owned assets—estuaries, beaches, and public parks, forest and recreation areas—by unregulated and incompatible developments on the boundaries of these areas.

These are only a few of the problems we presently face. It is clear that these problems will become more serious in the future. Look at these growth projections:

Our population will grow by 100 million people in the next 30 years.

Our gross national product, barring a recession, will double in the next 10 years, going from $942 billion to $1.8 trillion.

Both of these factors, population and economic growth, will bring unprecedented pressures to bear on our Nation's finite land resource base. If a consistent, future oriented national land-use policy is not established conflicts will multiply, unbalanced development will take place, and irreversible decisions will have been made without proper consideration of alternatives.

Here are some of the problems I see at the Federal level.

At the present time a whole host of agencies are deeply involved in land-use planning. For example, the Bureau of Outdoor Recreation, in conjunction with State government, is currently preparing a nationwide recreation plan. Other agencies of the Federal Government are preparing highway plans, airport plans, water resources plans, and navigation plans. The Department of Housing and Urban Development is deeply involved in urban planning. Other departments are actively engaged in various aspects of land-use planning related to their areas of program responsibility.

Most of these plans are necessary and desirable. The problem is this however: To date, no one in the Federal Government has ever put these plans together to see if they are consistent, to see if they make sense, and to see if they are compatible with local goals and aspirations.

As a result there are needless and costly conflicts between agencies and departments of the Federal Government, between State and Federal Government, and between State and local government.

One of the basic problems at the Federal level is that many agencies and departments of the Federal Government are pursuing separate, single-purpose missions—highway building, dam construction, urban redevelopment, and others—without adequate land-use information, without coordination, without considering alternatives, and without proper environmental and land-use guidelines.

At the State level a different, and in my view, a more difficult set of land-use problems are faced. Under our system of government the States have the basic constitutional authority for land-use management. Federal powers in this area are very circumscribed and, in a real sense, limited to federally owned lands.

Historically the States have delegated their land-use management authority to units of local government—to counties, to cities, to port authorities and to other special purpose units of government. My State, the State of Washington alone, has more than 1,600 local governmental entities of which nearly 1,400 have property taxing powers. All of these, and many private groups as well, directly and indirectly, influence land-use decisions.

This broad delegation of power to local government is in keeping with the sound philosophy of control by the people at the local level. But, it has also created some very important problems.

For example, the proposed superjet airport which, if constructed, would have threatened the existency of the Everglades National Park as planned, financed, and scheduled for construction by a unit of local government, the Dade County Port Authority. This raises the following question: Should decisions such as this which clearly involve the life or death of a great national park owned by all of the 200 million people of this country be left to the decision of the commissioners of a local port authority?

In virtually every community and certainly in every major city, every State, and every region of the country, similar, if less dramatic, land-use conflicts are being faced daily. The continued growth of the Nation in terms of population; expanding urban areas; proliferating transportation systems; a dynamic economy; the growing number of governmental entities; and the increased size, scale, and impact of private actions, have created a situation in which many, if not most, land-use management decisions are not being rationally made. Instead, land-use planning and management decisions are being made at all levels of government on the basis of expediency, tradition, archaic legal principles, short-term economic considerations, and other factors which are often unrelated to what the real concerns of National, State and local land-use managment should be.

Many small cities or counties all across the Nation do not have land use management plans. They have not inventoried their land resources or taken action to protect them. When major industries move into these areas, they locate where it is cheapest and most convenient. And often, this means they locate in areas which, with the benefit of planning and foresight, should have been reserved for other uses such as recreation, parks, or low-density housing.

Industrial development is not, of course, the only problem. A similar situation exists with respect to residential land development, the location of utility and transportation corridors, commercial development, and the siting of public facilities such as thermal power plants.

Most local instances of poor land-use management and planning do not present critical national, regional, or state-wide problems. But sometimes, as in the Everglades, they do. It then becomes a problem of broad public concern when a lack of planning or poor planning causes irreparable damage to assets of statewide, regional, or national importance.

The Nation's ocean beaches for example, are such an asset. The American public has a valid interest in how they are developed and managed. The management of areas adjoining and on the periphery of our national parks, forests, and recreation areas greatly affects the value of large national investments in unique natural assets. Should such areas be developed according to the unilateral decisions of private developers or the lack of decisions of State and local jurisdictions? Or should these decisions be shared with the State?

By the same token, there are many land use decisions made by the Federal Government which require greater participation by State and local government. Often the Federal Government is seeking the use of a local community's most valuable asset: its land and environment. We must guarantee not only that the use of this asset is necessary, but that it is made in accord with the highest and best standards of land use and environmental management.

Mr. President, the National Land Use Policy Act of 1970 is designed to deal with many of the problems to which I have referred.

As introduced today, this measure has three major aspects. First, it would establish a grant-in-aid program to assist State and local government in hiring and training the personnel, and developing the competence necessary to improve land-use planning and management at the State level.

Second, action forcing provisions are included which are designed to encourage every State through an agency to be designated by the State's Governor, to inventory their land resources and develop a statewide environmental, recreational, and industrial land-use plan within 3 years. The States would be encouraged to assume appropriate land-use management powers over those assets and land resources which are of regional, statewide, or national significance. These might include undeveloped ocean beaches; portions of major river systems and lakes; buffer zones around existing State and National parks and recreation areas; areas involving multicounty and interstate environmental problems such as air, water, and noise pollution; transportation and utility corridors; and areas which are compatible for heavy industries such as refineries, major metal processing plants, and thermal powerplants. The legislation would not affect areas located within incorporated cities which have exercised land-use planning and management authority.

Development and implementation of a statewide land-use plan may require the creation of a new governmental agency in some States, and a restructuring of existing institutions in other States. The legislation sets forth certain minimal standards on environmental, recreational, and industrial land-use planning which the statewide land-use plan will have to meet to qualify for continued grant-in-aid eligibility.

Within 4 years of the date of enactment of the act, the statewide land-use planning agency must have the authority to implement the statewide environmental, recreational, and industrial land-use plan. This would include the authority to acquire land; to control the types of development which may take place in areas subject to the plan; to conduct hearings allowing for full public participation; and to make changes in the statewide plan when required by changed conditions.

The legislation provides that if a State should fail to adopt an acceptable land-use plan within 4 years, the State's entitlement to certain additional Federal assistance programs, which shall be designated by the President, may be reduced at the rate of 30 percent per year until the State has complied with the act. Programs to be designated by the President would be those which tend to create land-use problems unless they are properly planned. These might include Federal highway construction trust funds and other public work programs.

Third, the act will assign to the Land and Water Resources Planning Council—formerly the Water Resources Council—the responsibility of administering the grant-in-aid program, working with State and local government, and reviewing State land-use plans.

In addition, the Council would have important responsibilities for coordinating Federal-State relations in this area, and for maintaining a data and information center on all Federal and federally assisted activities which have land-use planning and management ramifications.

Because the Water Resources Council already administers similar programs concerning the water and related land resources of the Nation, the National Land Use Policy Act of 1970 has been drafted as an amendment to the Water Resources Planning Act of 1965. The experience, the established communications network, the river basin commission system, and staff organization of the Council will provide an excellent base for the development of this broader function.

Mr. President, the hour is late and much has already been lost, but I believe we still have time to meet the challenge of the land. We still have a choice about the shape of America's future. We have a land worthy and capable of preservation and proper development.

EXCERPTS FROM REPORT NO. 91-1435 ON S. 3354, THE NATIONAL LAND USE POLICY ACT IN THE 91ST CONGRESS

INTRODUCTION

The United States is blessed with vast, productive, and hospitable land resources. Lush valleys, sandy beaches, majestic mountains, fertile plains, and dense forests have been abundant enough during most of American history to support our energetic population and free enterprise with relatively few conflicts arising out of the many uses to which we have dedicated our lands. If a neighbor was seriously inconvenienced, he could resort to the judicial process and the common-law remedies of nuisance and trespass for redress of economic injuries and invasions of recognized property interests.

The pressures of industrialization technological advancement, population growth, and urbanization early in the twentieth century, however, brought increased land use conflicts and resulting social problems. Populations became more dense, properties within urban areas became more scarce and expensive. Citizens in heavily populated areas found that the common law remedies were inadequate to protect property interests, assure quality living conditions, and provide optimum use of land resources. They turned to government, which adopted the concept of zoning to regulate the permissible uses of private property.

Today the nation as a whole is beginning to experience the pressures once felt only by population centers. In all parts of the country conflicting desires concerning the use of specific lands are becoming apparent. The electric power industry, the timber industry, and the chemical products industry are waging numerous battles with conservationists and anti-pollution leagues. Farmers' groups are opposing real estate developers, ecologists are battling highway construction interests. Governmental agencies are frequently involved on one side or the other of these controversies, more often on both.

Present methods, procedures, and institutions for land use decisionmaking are inadequate to meet the nation's needs. Present practices have resulted in uncoordinated, haphazard land use patterns, which do not reflect in proper proportion the legitimate interests of various constituencies. They too often fail to take adequate account of noneconomic factors and long-range environmental effects. Very often they trigger additional similar decisions, with the result that chain reactions are begun which are virtually impossible to stop. They have permitted unnecessary waste of valuable natural resources and have contributed to undesirable disruption of ecological systems. This pattern was summarized for the Committee at the hearings on S. 3354 by Governor Francis Sargent of Massachusetts:

"For decades we have been dealing with our environmental problems on a piecemeal basis. Haphazard development—an almost reckless pursuit of the goal of meeting present needs—has brought us serious trouble. We should have been thinking about the whole system, about the total environment, and about the problems created in one aspect of our surroundings by stopgap solutions in another.

"We have used up available land in chunks, without thinking through the best possible method of insuring that the land would serve us properly. We should have realized that high-density housing and industry over wide areas would cause acute air pollution, that unlimited development along our riverbanks would bring water pollution, that if we failed to plan in a coordinated fashion we would find it difficult, and prohibitively expensive, to put things right (*Hearing Record*, p. 14.)"

These effects have in turn contributed to polarization of community sentiment, expensive litigations, and a measure of economic instability. Projections into the future suggest that these adverse consequences will be severely aggravated in the coming years unless our land use decision-making processes are vastly improved.

The Committee believes that it will be in the interest of the United States and of her citizens for the Congress to establish mechanisms that will encourage State governmental initiative in land use planning and regulation of land use decision-making

to the extent necessary to protect vital public interests. The Committee recognizes the importance of land use patterns to the welfare of local communities, and acknowledges the right of States to delegate land use planning and regulation authority. The Committee also recognizes the Constitutional power of the States to regulate land use, and endorses the principle that States and their delegates should regulate use of lands within their boundaries, as long as such use does not conflict with Constitutionally recognized national interests. The Committee believes that all levels of government, including the Federal Government, have a responsibility to exercise their legitimate powers with the objective of securing desirable land use patterns within their jurisdictions.

The Committee further believes that the various levels of government should coordinate their initiatives and efforts in the field of land use planning and management. The proper interests of the various levels of government should be evaluated in view of their duties to their constituents and their powers to plan for and regulate land use, and their decision-making processes should be integrated into a coherent nationwide mechanism. This would allow a unified national approach, taking into account the comparative interest of and degrees of impact on the various government constituencies. The mechanism should be flexible enough to respond to changing conditions and priorities.

The Committee finds a need for a national consensus upon priorities for land use. The ever-increasing mobility of the American people has increased national interest in conservation and resource issues that once were merely of local or regional concern. Political interdependence has caused national coalitions to form around land use decisions the direct impact of which is purely regional, and the growing economic interdependence of various regions and localities gives communities an interest in the economic stability that is likely to result from sound land use planning in other areas.

The most important point on which the Committee feels the Congress should define a national consensus is the urgency of the situation. With our expanding technology and population imposing new pressures upon a finite land resource base, the number and seriousness of land use conflicts will increase if solutions are delayed. It is essential that we inventory and evaluate our land resources and establish priorities before very many more irreversible land use commitments are made. As Governor Sargent noted:

"Given the predicted pressures of population growth and subsequent development expansion, land use planning both public and private must be tempered with an urgency of purpose. If we do not act now, the opportunities which are currently available will not exist come the end of this decade." (*Hearing Record*, p. 15.)

SUMMARY OF THE LEGISLATION

S. 3354. would amend the Water Resources Planning Act (79 Stat. 244, as amended, 82 Stat. 935), to provide for development of a national land use policy, to establish a grant-in-aid program to assist the States to formulate and implement comprehensive statewide land use plans, and to improve Federal land use practices. It would upgrade the interdepartmental Water Resources Council into an enlarged and strengthened Land and Water Resources Council and assign it comprehensive authority for administration of the national land use policy and the program of land use planning and management assistance to the States. It would establish under the Council's jurisdiction a Federal Planning Information Center as a clearninghouse for Federal projects involving land use implications and as a general data bank for land use planning and management information.

The bill authorizes the Land and Water Resources Council to make grants to State agencies to engage in comprehensive statewide land use planning. States are permitted to set priorities and delegate certain planning functions to units of local government. Grants to interstate agencies are also authorized, to supplement and help coordinate State planning efforts.

Certain general criteria designed to protect national interests must be met in order for a State planning agency to receive continued Federal funding and ultimate Council approval of its statewide land use plan. Particularly, approval may be withheld or withdrawn unless the plan is implemented and its provisions enforced. However, approval of a statewide land use plan may not be withheld or withdrawn without the consent of an impartial hearing board consisting of State as well as Federal representation.

If a State fails to submit a land use plan at all within five years after the beginning of the grant program, Federal agencies are required to suspend projects and proposals for projects within that State which would tend to have substantial adverse environmental impact or which would tend to irreversibly or irretrievally commit substantial land or water resources within that State. On the other hand, Federal agencies are required to coordinate their activities having land use consequences and their Federal land management efforts with approved statewide land use plans.

The Council would be authorized to fund State land use planning to the extent of ninety percent of planning costs during the first five years of the program, and two-thirds of planning and operating costs after that. No grant funds could be used for the acquisition of interests in real property. Appropriations of up to $100 million per year are authorized for State and interstate agency grants, and $16 million per year are authorized for administration, including contract studies.

PURPOSE

S. 3354 expresses a national commitment to comprehensive land use planning and management and would establish a national framework for land use planning and regulation. The framework is designed to afford maximum discretion to State and local governments consistent with Constitutionally and Congressionally recognized national interests. The bill aims at close coordination of Federal, State, and local planning efforts to avoid overlaps and conflicts. The need for flexibility to meet changing conditions and desires is acknowledged and accommodated.

The Committee is aware of many of the pitfalls associated with planning, some of which were noted by the Council on Environmental Quality in its first annual report: (1) inflexibility, (2) aloofness from community sentiment, (3) failure to implement, and (4) compartmentalization. S. 3354 attempts to overcome each of these problems. Procedures for modifying plans would be required to be established; funds are made available for hearings; substantial incentives are provided for implementation; comprehensive guidelines must be followed; and interdisciplinary staffs must be employed in the planning process. The Committee believes that the involvement of the Federal Government, with its comprehensive, national responsibilities and its substantial resources, may be able to overcome many of the problems that State and local agencies by themselves cannot solve.

While flexibility to changing conditions and responsiveness to community sentiment are integral concepts in S. 3354, the stress on implementation and comprehensiveness are perhaps the most distinctive features of the bill. Strong incentives are provided to encourage implementation of the fruits of the planning efforts. The competitive forces at work in our private economy are sufficiently strong that relatively short-term economic incentives are likely to continue to determine land use patterns unless the provisions of the land use plans developed pursuant to this legislation are given the force of law. S. 3354 provides financial assistance for implementation and directs Federal agencies to coordinate their activities with implemented plans. The bill also requires that the planning and regulation functions be combined and integrated into a single agency, a departure from customary practices which is designed to aid in effective implementation.

The comprehensiveness of the plans envisioned by S. 3354 is a response to the wide variety of land use conflicts we presently see in the United States and the obvious need to compare the demands for various kinds of uses with each other in light of available resources and community values. Thus, while the Committee encourages efforts at land use planning which are geographically or functionally focused, it believes that the long-range needs of the United States will be best served by the establishemnt of a single mechanism capable of evaluating all kinds of resources and all kinds of potential uses.

The primary focus of S. 3354 is on State government. This accords with the States' Constitutional authority to control the uses to which lands within their boundaries may be put. The States have well-established political institutions capable of responding to citizen wishes and are the most clearly defined mechanisms capable of handling a majority of land use problems on a comprehensive basis.

Considerable concern has been expressed that State governments (1) may not be adequately attuned to the subtleties of local intrastate problems and (2) may not be able to cope effectively with interstate regional problems. It has been suggested that local governments and regional councils should be chosen for the primary focus of attention. Recognizing the factors that give rise to these suggestions, the Committee nevertheless believes that any mechanism runs the risk of being either overly narrow or insufficiently direct in outlook and capability. In choosing State government as the most appropriate institution on Constitutional, cultural, political, and institutional grounds, the Committee does not mean to exclude other mechanisms from playing an important role in the planning and regulation processes. The bill specifically allows States to delegate planning and regulation authority to units of local government; it also permits grants to be made for advisory planning to interstate agencies. In addition, it provides for Federal administration and coordination to protect and promote national interests in land use patterns.

It is intended that the establishment of a framework from which land use policy decisions may evolve in a systematic manner will contribute to both steady economic growth and environmental quality. S. 3354 is designed to provide a system of forums for the resolution of conflicts and establishment of consensuses. The Committee believes this apparatus will contribute to our orderly development as a nation both economically and environmentally, at the same time helping to draw together diverse interest groups into a stronger, more unified social fabric.

Because of the national scope of land use planning problems and the many specific activities of the Federal Government which are affected by or which have implications for land use patterns and their environmental and economic effects, the Committee believes it is appropriate not only to establish a national framework for land use decisionmaking, but also to promote (1) national consensuses as to goals to be sought and values to be maintained and (2) improvement of the methods and techniques associated with land use planning and management. S. 3354 outlines the objectives and

parameters of national policy concerning land use in the form of incentives, guidelines, and requirements for Federal financing of and cooperation with State, local, and regional planning efforts. In general, these goals are aimed at achieving (*a*) environmental quality, (*b*) economic growth, and (*c*) conservation of natural resources. Also in furtherance of these objectives the bill provides for training, research, and land use planning information centers.

Some Federally-financed land use planning has been done pursuant to section 701 of the Housing Act of 1954. While the Committee commends these efforts and encourages their continuation, it recognizes a need for a more comprehensive, systematic national approach to the question of wise and balanced use of the country's land resources than section 701 planning is able to provide. The very strength of section 701 land use planning lies in its integration with other kinds of planning to achieve social goals in developed and developing areas. S. 3354, on the other hand, regards the nation's finite land resources as sufficiently important to warrant independent comprehensive treatment. Section 701 planning, although not expressly confined to urban areas, inevitably tends to focus on these. In this respect it responds to already recognized, comparatively immediate needs. S. 3354 on the other hand, would include planning for needs barely visible on the horizon and attempt to accommodate uses of land resources expected to arise, in the distant, as well as in the near future.

It is anticipated that section 701 land use planning will continue to serve an important function as an integral part of social and economic development within communities. S. 3354 would help to systematize such planning efforts and at the same time look to the macrocosm of national needs and priorities within the framework of Congressionally established criteria. It would establish politically responsible, independent on-going mechanisms designed to assure intelligent land use decision-making in the United States for the indefinite future. Its aim is more to establish governmental initiative and control than to promote particular goals. It would assure that forums are made available to carry out community desires concerning land use, whatever they might be. The Committee believes the program that would be established by S. 3354 to be different in both concept and scope from planning under setcion 701 of the Housing Act of 1954, and believes that the two programs will complement rather than conflict with each other.

BACKGROUND

Senator Jackson introduced S. 3354 on January 29, 1970. He was soon thereafter joined by Senators Church, Cranston, Curtis, Gravel, Harris, Hart, Hartke, Mansfield, McGovern, Metcalf, Moss, Nelson, Packwood, Ribicoff, Stevens, Williams of New Jersey, Yarborough, and Young of Ohio as co-sponsors. Since the Committee on Interior and Insular Affairs agreed on October 7, 1970, to report the bill, Senators Allott, Anderson, Bible, Hatfield, and Jordan of Idaho have also joined as co-sponsors of the Committee bill, at the same time reserving their rights to raise questions and to consider alternatives with respect to particular issues that may be raised in connection with it. Identical bills which have been introduced into the House of Representatives are H.R. 16670 (Morton), 16989 (Meeds), and 19525 (McCarthy). All three of the House bills are pending before the House Committee on Interior and Insular Affairs.

Hearings on S. 3354 were held before the full Committee on March 24, April 28, April 29, and July 8, 1970. Testimony was received from the following persons: The Honorable Rogers Morton, Representative from Maryland; the Honorable Russell Train, Chairman of the Council on Environmental Quality; the Honorable John Nassikas, Chairman of the Federal Power Commission; the Honorable John Carver, member of the Federal Power Commission (testifying on his own behalf only); the Honorable John Love, Governor of Colorado; the Honorable Francis Sargent, Governor of Massachusetts; Margaret Seeley, Robert Zapsic, Thomas Haga, Douglas Powell, and Joseph Pollard, representing the National Association of Counties; Harry Woodbury, Vice-President of the Consolidated Edison Company of New York; James Turnbull, Executive Vice President of the American Forest Products Association; Kenneth Davis, President of the Society of American Foresters; William Towell, Executive Vice President of The American Forestry Association; Thomas Kimball, Executive Director of the National Wildlife Federation; Gordon Zimmerman, Executive Secretary of the National Association of Soil and Water Conservation Districts; Peter Borrelli, Eastern Representative of the Sierra Club; Herman Ruth, representing the American Society of Consulting Planners; Rex Allen, President, William Slayton, Executive Vice President, and Carl Feiss, representing the American Institute of Architects; Walter Monasch, President, and Thomas Roberts, Executive Director, representing the American Institute of Planners; Campbell E. Miller, President and Richard Wilkinson, representing the American Society of Landscape Architects; Allison Dunham and Fred Bosselman of the American Law Institute (testifying on their own behalves only); and Lynton Caldwell, of the University of Indiana, a consultant to the Committee. In addition, numerous written communications were received and inserted in the record, including twenty-eight solicited letters from State Governors.

COMMITTEE AMENDMENTS

When Senator Jackson introduced the bill, he described it as a "working draft" and as "a starting point for review and for analysis," thereby anticipating a significant number of changes before the bill would be reported. As a result of the hearings, executive communications, and informal recommendations, the Committee has adopted many suggestions for amendments.

The principal innovations in the reported version of the bill which distinguish it from the bill as introduced are provisions designed to increase the administrative and political effectiveness of the Land and Water Resources Council; allowance of five years rather than three years for the States to develop statewide land use plans; authorization for inclusion of cities within State land use planning programs financed pursuant to the bill; specific allowance for States to set planning priorities with respect to geographical areas and functional uses; express permission for States to delegate certain land use planning and management functions; adoption and use of restrictions upon the Council's authority to disapprove statewide plans considered for disapproval; provisions designed to coordinate Federal land management efforts with State land use planning and management; authorization for funding of up to ninety percent of State and interstate agency planning costs during the first five years of the program and up to two-thirds of the planning and operating costs after that, instead of up to two-thirds of the planning costs during the first three years and up to one-fourth of the planning and operating costs after that; prohibition on use of Federal funds to finance acquisition of interests in real property; provision for suspension of new Federal projects having substantial adverse environmental impact or a tendency to irreversibly or irretrievably commit substantial land or water resources if a State fails to submit a plan, in place of reduction of a State's grant-in-aid funds and denial of right-of-way permits across Federal lands within the State if the Council fails to approve its land use plan; and establishment of a $116,000,000 ceiling on annual appropriations.

As introduced, S. 3354 proposed to amend the Water Resources Planning Act (79 Stat. 244), as amended (82 Stat. 935), by inserting a new title pertaining to land use planning and amending the remaining titles by deletions and insertions. However, because of the complexity of the measure and the number of amendments to the bill as introduced that were adopted by the Committee, the format has been changed to provide for repeal of the Water Resources Planning Act and substitution of the Committee bill.

NEED FOR THE LEGISLATION

Present methods of land use regulation

The power to control land use in the United States is vested principally in private owners. This power is tempered by licensing and zoning regulations, which are exercises of governmental police powers. Though Constitutionally vested in State governments these powers have typically been delegated to agencies of local government. Comprehensive zoning authority has been retained at the State level only in Hawaii. Retention by the State governments of licensing powers is more common, but in these instances the functional jurisdiction of the State agencies is normally quite limited. Power to control land use is also vested in governmental entities with respect to governmentally-owned lands and lands they are authorized to condemn pursuant to valid exercises of the power of eminent domain.

Zoning by an agency of local government is of course most effective with respect to land use patterns within the geographical jurisdiction of the agency. An industrial facility, for example, may be desired in one jurisdiction, but may have undesirable environmental impact upon the lives of residents of an adjoining jurisdiction. The latter may have no effective means of expressing their dissatisfaction. The problems are increased if there are numerous governmental agencies within a geographical area with power to affect the environment outside the particular areas of their jurisdiction.

Licensing of particular kinds of activities by either State or local agencies may involve a larger geographic constituency, but the citizenry is usually faced with a narrow either-or decision on a case-by-case basis. Because the agency regulates only one kind of activity, only the need for facilities of the kind regulated by that agency are under consideration at a single time. Long-term alternative uses of the land are frequently not considered. Activities licensed by agencies of the Federal Government are similarly proposed and approved on a single-discipline basis. the result is that economic growth of a particular region or expansion of a particular regulated industry is accorded priority over less immediate, less tangible needs and interests of the people at large. With respect to county and city governments, this tendency is aggravated by their dependence for revenues on property taxation, which is based upon a valuation system scaled according to the economically most productive possible use to which the property could be put by its owners. Local governmental officials thus have an interest in permitting owners to use their property in whatever way will produce the greatest revenue, regardless of environmental values.

In addition, in many areas there is no significant effort even by local government to control land use patterns. In these areas the decisions are left entirely to forces of the marketplace. Even in those areas where there is some governmental regulation, the initiative is frequently in the hands of private interests, who can develop and schedule proposals according to prevailing political winds.

The problems inherent in fragmented control over land use patterns and well-known illustrations of conflict were pointed out by

Senator Jackson in his remarks when he introduced S. 3354:

"Historically the States have delegated their land-use management authority to units of local government—to counties, to cities, to port authorities and to other special purpose units of government. My State, the State of Washington alone has more than 1,600 local governmental entities of which nearly 1,400 have property taxing powers. All of these, and many private groups as well, directly and indirectly, influence land-use doctrine.

"This broad delegation of power in local government is in keeping with the sound philosophy of control by the people at the local level. But, it has also created some very important problems.

"For example, the proposed superjet airport which, if constructed, would have threatened the existency of the Everglades National Park as planned, financed, and scheduled for construction by a unit of local government, the Dade County Port Authority. This raises the following question: Should decisions such as this which clearly involve the life or death of a great national park owned by all of the 200 million people of this country be left to the decision of the commissioners of a local port authority? * * *

"In virtually every community and certainly in every major city, every State, and every region of the country, similar, if less dramatic, land-use conflicts are being faced daily. The continued growth of the Nation in terms of population, expanding urban areas, proliferating transportation systems, a dynamic economy; the growing number of size, scale, and impact of private actions, have created a situation in which many, if not most, land-use management decisions are not being rationally made. Instead, land-use planning and management decisions are being made at all levels of government on the basis of expediency, tradition, archaic legal principles, short-term economic considerations, and other factors which are often unrelated to what the real concerns of National, State and local land-use management should be.

"Many small cities or counties all across the Nation do not have land use management plans. They have not inventoried their land resources or taken action to protect them. When major industries move into these areas, they locate where it is cheapest and most convenient. And often, this means they locate in areas which, with the benefit of planning and foresight, should have been reserved for other uses such as recreation, parks, or low-density housing.

"Industrial development is not, of course, the only problem. A similar situation exists with respect to residential land development, the location of utility and transportation corridors, commercial development, and the siting of public facilities such as thermal power plants.

"Most local instances of poor land-use management and planning do not present critical national, regional, or statewide problems. But sometimes, as in the Everglades, they do. It then becomes a problem of broad public concern when a lack of planning or poor planning causes irreparable damage to assets of statewide, regional, or national importance.

"The Nation's ocean beaches, for example, are such an asset. The American public has a valid interest in how they are developed and managed. The management of areas adjoining and on the periphery of our national parks, forests, and recreation areas greatly affects the value of large national investments in unique natural assets. Should areas be developed according to the unilateral decisions of private developers or the lack of decisions of State and local jurisdictions? Or should these decisions be shared with the State?" (CONGRESSIONAL RECORD, vol. 116, pt. 2, pp. 1759–1760.)

Impact of Federal activities

The land use problems of the States and localities are aggravated by the impact of Federal activities and the lack of institutional means to control and regulate that impact. Senator Jackson, in his statement introducing the bill, commented:

"* * * There are many land use decisions made by the Federal Government which require greater participation by State and local government. Often the Federal Government is seeking the use of a local community's most valuable asset; its land and environment. We must guarantee not only that the use of this asset is necessary, but that it is made in accord with the highest and best standards of land use and environmental management." (CONGRESSIONAL RECORD, vol. 116, pt. 2, p. 1760.)

Senator Jackson's comments were echoed in the June 1970 report of the Public Land Law Review Commission and in the testimony of Russell Train, Chairman of the Council on Environmental Quality on S. 3354. A list of major Federal programs having land use impact which were catalogued in the first annual report of the Council on Environmental Quality is attached to this report as appendix I.

There is a need and a responsibility for improvement in controlling the impact of Federal activities on local land use patterns. There is also a very great need for coordinating the activities of Federal agencies having land use impact with each other. Senator Jackson also discussed this subject at some length in his statement introducing the bill:

"At the Federal level we are already beginning to see and to reap the results of our past failure to have developed a consistent national land-use policy. Increasingly we are finding instances where Federal funds which have been expended to preserve a part of our natural heritage or to create new recreational opportunities are coming into serious and, often, totally unnecessary conflicts with other federally funded programs such as highway and airport construction, communications, national defense facilities, and water resource development.

"I am not too concerned that there is occasional conflict between these different Federal programs. The wide range of goals and objectives which the National Government seeks to achieve will, of necessity, involve some competition and conflict over priorities, over funding, and over the use of a specific land resurces. Our political system was designed to resolve conflicts of this nature. I am confident that it is capable of doing so in an intelligent manner.

"I am, however, very concerned that many of these conflicts which have centered around incompatible uses of the same land resource have been totally unanticipated and unintended. These conflicts have simply been the result of poor planning procedures. They have not placed at issue important questions of national priorities, goals, and objectives. These conflicts have resulted from a lack of coordination; a failure to relate national programs to local aspirations; and an institutional inability to factor in the full range of national and local values as a part of the planning process for specific Federal projects.

The dramatic land-use conflicts we have faced in recent years—the Grand Canyon Dam controversy, the Everglades situation, the proposed trans-Alaska pipeline, the confrontation between highway builders and parks, the issue of reservoirs versus wild and scenic rivers, open beaches versus private and commercial development, industry versus scenic preservation, and commerce versus wilderness—should not have become public *cause célèbres*.

Individual cases should not have occupied so much of the limited available time of the Congress, of the President, and of Cabinet officers. Questions of National and State land-use policy can be, and should be resolved by prior planning based upon national goals, values, and aspirations. They should not be resolved on an expedient, after the fact, case-by-case basis which requires undoing prior decisions and which result in a waste of money and manpower. * * *

"Here are some of the problems seen at the Federal level.

"At the present time a whole host of agencies are deeply involved in land-use planning. For example, the Bureau of Outdoor Recreation, in conjunction with State government, is currently preparing a nationwide recreation plan. Other agencies of the Federal Government are preparing highway plans, airport plans, water resource plans, and navigation plans. The Department of Housing and Urban Development is deeply involved in urban planning. The Department of Commerce is involved in regional planning. Other departments are actively engaged in various aspects of land-use planning related to their areas of program responsibility.

"Most of these plans are necessary and desirable. The problem is this however: To date, no one in the Federal Government has ever put these plans together to see if they are consistent, to see if they make sense, and to see if they are compatible with local goals and aspirations.

"As a result, there are needless and costly conflicts between agencies and departments of the Federal Government, between State and Federal Government, and between State and local government.

"One of the basic problems at the Federal level is that many agencies and departments of the Federal Government are pursuing separate single-purpose missions—highway building, dam construction, urban redevelopment, and others—without adequate land use information, without coordination, without considering alternatives, and without proper environmental and land-use guidelines." (CONGRESSIONAL RECORD, vol. 116, pt. 2, pp. 1757–1759.

Pressing land use conflicts

Some of the most urgent current land use conflicts are those involving facilities for the generation and transmission of electric power. These conflicts and some of the problems associated with them were addressed in the August 1970 report of the Energy Policy Staff of the Office of Science and Technology, Electric Power and the Environment:

"The confrontation between the electric utility industry and those opposing the construction of electric power facilities is perhaps a leading example of the general issue of further development versus preserving the natural environment which in some areas is already approaching crisis proportions. * * *

"Planned utility construction is increasingly being delayed by controversy and litigation over environmental concerns. Such delays combined with shortages of skilled labor, equipment delays and malperformance, and fuel shortages could prevent the industry from meeting the immediate demands for power. Localized "brownouts" have already occurred and are expected to continue in the future. These power shortages seriously reduce the reliability of the nation's power supply. In order to alleviate the effects of these delays, the industry is forced to expedients which may be costly and not in the long-range interests of our economy or of protecting the environment." (Pp. 12.)

In his testimony before the Committee, John Nassikas, Chairman of the Federal Power Commission, discussed how great future demands for electric power are expected to be and the implications of these demands for future land needs:

"The present projected growth of the electric utility industry during the next two decades may require the construction of about 40 new hydroelectric installations of

100 megawatts or more, approximately 50 new pumped storage hydroelectric installations of 300 megawatts or more and about 90 fossil and 156 nuclear steam-electric plants on new sites. * * *

"Regardless of the source of this needed additional generation, vast new areas of land will necessarily be committed to generating, transmitting, and distributing the power produced. To cite an example, the December 27, 1968 report of the Working Committee on Utilities estimated that the new transmission construction between now and 1990 will utilize more than 7,100,000 acres of land for rights-of-way, compared with 4,000,000 acres now used by existing transmission" (*Hearing Record*, pp. 170, 171–173).

S. 3354 as reported by the Committee does not purport to deal with many of the problems posed by powerplant siting conflicts. It does not, for example, deal with the questions of electric power reliability, regional planning, interconnected transmisison grids, the relationship of public and private power or of State and Federal government on the power question, and many other important issues. S. 3354 does, however, deal with one of the most basic and troublesome problems involved in connection with the siting of powerplants or of any other large scale industrial activity: that problem is how to set up functioning democratic institutions of government at the State level which can draw upon the State's basic Constitutional authority to plan and to make land use decisions which will enable society to meet its growing material needs without causing damage to public resources and without flaunting the accumulated lessons which we have gained from the emerging science of ecology. Setting the stage for the creation of new institutions and rechanneling of State powers over land use decisionmaking is needed now, because the demands which Americans are making on their once ample land resources are growing at an ever-increasing rate.

Another of the current groups of conflicts over land use relates to the country's costal zones. The conflict associated with these intensively developed and densely populated areas and the need for improved siting approaches and more rational institutional arrangements are summarized in the report of the Council on Environmental Quality:

"* * * Competition for the use of the limited coastal zone is intense. Shipping activities are increasing, with larger vessels needing deeper channels. Mining and oil drilling in coastal waters grows daily. Urban areas expanding throughout the coastal zone continue to enlarge their influence over these waters. Industrial and residential developments compete to fill wetlands for building sites. Airport and highway construction follows and further directs growth patterns in the coastal zone. Recreation—from enjoyment of the surf and beaches to fishing, hunting, and pleasure boating—becomes more congested as available areas diminish. Since over 90 percent of U.S. fishery yields come from coastal waters, the dependence of the commercial fisheries industry on a stable estuarine system is obvious.

"Although some uses of coastal areas and undoubtedly necessary, many are not. Much industry, housing, and transportation could be sited elsewhere. . . .

"Ownership of the wetlands in many States is a confusing tangle of State, local, and private claims, and in some coastal States valuable State-owned wetlands have been transferred to private interests for the specific purpose of development. Likewise, restrictions on development of the contiguous lands and wetlands are, with some exceptions, inadequate. Only a few States, notably Massachusetts, Connecticut, and North Carolina, have wetlands protection laws which require permits or other controls before alterations can be made to private coastal lands. Even fewer States have exercised any statewide powers over the contiguous dry lands. Hawaii, Wisconsin, and to some extent, Oregon, are among the exceptions (at pp. 540–542).

These and similar conflicts are the result of the population growth and concentration, of the rapidly expanding technology, and of the high standard of living which characterize our nation in the 1970's. While population has been increasing rapidly, social, economic, and cultural pressures have resulted in large urban complexes in a few geographical areas. At the same time, the advanced tecnnology that has accompanied and sustained urbanization has come to produce undesirable by-products in such quantity as to detract significantly from the attractiveness of urban life. Moreover, while transportation, power generation and transmission, mining, and recreation are needed to support a large, technologically and culturally sophisticated society, such developments require extensive commitments of land resources in rural as well as urban areas. No less important is the growing concern for the life support system intimately tied to the land and upon which man's existence is ultimately dependent. Many who have pondered the haphazard and wasteful ways in which man has used nature's resources, point out that unless society provides adequate opportunity for natural ecosystems to maintain themselves, all life on earth may eventually be destroyed.

Needed: A new framework for decisionmaking

The President in his August 1970 message forwarding the report of the Council on Environmental Quality to the Congress underscored the critical need for cooperative development of a national land use policy:

"I believe that the problems of urbanization, . . . of resource management, and of land and water use generally can only be met by comprehensive approaches which take into account the widest range of social, economic, and ecological concerns. I believe we must work toward development of a National Land Use Policy to be carried out by an effective partnership of Federal, State and local governments together, and, where appropriate, with new regional institutional arrangements."

In August 1970 the National Governors' Conference adopted a policy position calling for a national land use policy and outlined a seven-point approach:

"There should be undertaken the development of a national policy, to be known as the National Land-Use Policy, which shall incorporate environmental, economic, social and other appropriate factors. Such policy shall serve as a guide in making specific decisions at the national level which affect the pattern of environmental and industrial growth and development on the federal lands, and shall provide a framework for development of interstate, state and local land use policy.

"The National Land Use Policy should:

"1. Foster the continued economic growth of all States and regions of the United States;

"2. Favor patterns of land use planning, management and development which are in accord with sound environmental principles and which offer a range of alternative locations for specific activities and encourage the wise and balanced use of the Nation's land and water resources;

"3. Favorably influence patterns of population distribution in a manner such that a wide range of scenic, environmental and cultural amenities are available to the American people.

"4. Contribute to carrying out the federal responsibility for revitalizing existing rural communities and encourage, where appropriate, new communities which offer diverse opportunities and diversity of living styles;

"5. Assist State Government to assume responsibility for major land use planning and management decisions which are of regional, interstate, and national concern;

"6. Facilitate increased coordination in the administration of federal programs so as to encourage desirable patterns of environmental, recreational, and industrial land use planning; and

"7. Systematize methods for the exchange of land use, environmental and economic information in order to assist all levels of government in the development and implementation of the National Land Use Policy.

"Intelligent land use planning and management provides the single most important institutional device for preserving and enhancing the environment and for maintaining conditions capable of supporting a quality life while providing the material means necessary to improve the national standard of living."

Attention in Congress and elsewhere has also been directed to the need for a national land use policy. Much of this attention has been focused on population control and distribution, encouragement of new towns and cities, electric power plant siting, coastal zone management, and other areas. It has been pointed out that the immediate need for resolution of conflicts on a comprehensive scale is much greater in some regions of the country than in others. However, even though the urgency may vary, the forces at work in our society and economy suggest that the need for land use planning is national and comprehensive. While the Committee recognizes the importance of solving particular problems, it stresses the importance of a comprehensive national land use policy not only to relate the needs in critical areas to other land use needs, but also to forestall other kinds of land use problems from reaching urgent proportions in the future.

In addition to critical areas of national concern, there are many other problems currently of concern to Congress which are related directly or indirectly to land use management. The Committee believes that the proper resolution of many of these issues could also be effected within the context of a national land use policy. A selected list of bills introduced in the Ninety-First Congress which are germane to the broad subject of land use planning and management is appended to this report as Appendix II to show the extent of Congressional interest in matters pertaining to land use.

DISCUSSION OF PRINCIPAL NEW PROVISIONS

S. 3354 is an amendment in the form of a substitute to the Water Resources Planning Act of 1965 (79 Stat. 244), as amended (82 Stat. 935). That Act is chosen as a vehicle for legislation to establish a national land use policy for several reasons. First, the mutual interaction and impact of land and water resources on each other, as well as their joint importance for the nation's economy and environment, suggest that they be treated together. Second, the Water Resources Planning Act is administered by an interdepartmental Council. Because of the impact that a national land use policy would have on the activities of several departments and agencies of the Federal Government the Committee considers it desirable that it be administered by such a body. Third, an apparatus for regional planning to supplement State land use planning is needed, as land use problems and patterns often do not follow political boundaries. The river basin commissions which have already been established pursuant to the Water Resources Planning Act (the New England River Basins Commission, the Pacific Northwest River Basins Commissions, the Great Lakes Basin Commission, and the Souris-Red-Rainy River Basin Commission), along with the interagency bodies which are acting in the capacity of river basin commissions in each of the other major basins, by bringing together Federal and State officials in a comprehensive,

cooperative planning effort, would provide an excellent nucleus for such a regional land use planning apparatus.

In his remarks introducing the bill, Senator Jackson noted that "the experience, the esttablished communications network, the river basin commission system, and staff organization of the Council will provide an excellent base for the development of this broader function." (CONGRESSIONAL RECORD, vol. 116, pt. 2, p. 1760. Chairman Nassikas of the Federal Power Commission in his prepared testimony on the bill commented, "not only has the Water Resources Council been concerned about land use, but the various river basin commissions established pursuant to title II of the Water Resources Planning Act (42 USC 1962b, *et al.*) have also been actively considering land use problems in their areas." (*Hearing Record*, p. 182). Governor Deane C. Davis of Vermont expressed his view of the Council as the administering agency for a national land use policy in the following terms:

"First, the interagency nature of the Council should encourage meaningful cooperation between Federal agencies. In contrast to this arrangement we have in mind the insular position of a Federal line agency which can develop when it is assigned lead in interdepartmental coordination. For example, the convening authority of the Secretary of the U.S. Department of Housing and Urban Development (HUD) with regard to the Model Cities program seems to have resulted less in interdepartmental cooperation than in assuring that the role of HUD in the Model Cities program is a dominant one and that the role of other Federal agencies is confused.

"Second, the fact of building upon an agency concerned with water is good since the natural environment is composed primarily of water, land, and air. And where air quality is primarily a function of our economic technology, water quality and wise land management are dependent variables of the same ecological phenomena" (*Hearing Record*, pp. 501–502).

While recognizing the advantages of using the concepts and administrative structures established by the Water Resources Planning Act, the Committee acknowledges the administrative shortcomings that have characterized the Water Resources Council. Its duties in the past, while important, have not been sufficiantly important to command the consistent attention of its Cabinet-level members. In addition, the Council has tended to become too closely associated with the agency headed by its Chairman, who nevertheless has not been able to devote sufficient time to the job to serve as a dynamic spokesman for the Council. Finally, the Executive Director of the Council has not had sufficient rank or prestige to speak independently for the Council at the policy-making level of the Federal Government. The bill would make certain changes in the Council's structure designed to eliminate these problems, while retaining the valuable features of the Council as an established interdepartmental administrative body.

[From the Wall Street Journal]

NIXON TO ASK "NATIONAL LAND USE POLICY" GIVING STATES WIDE CONTROL UNDER HUD

(By Monroe W. Karmin)

WASHINGTON.—President Nixon will propose to the new Congress a "national land use policy" that would give the states broad powers to control the use of, and conserve, land within their borders. The best planners would be rewarded financially; laggards would be penalized.

Mr. Nixon may preview the policy in his State of the Union address Friday night. The President's Council on Environmental Quality, headed by Russell E. Train, designed the land-use strategy, but the major responsibility for carrying it out would go to Secretary Romney's Department of Housing and Urban Development.

The President promised in his State of the Union address a year ago, a "national growth policy," which is still being worked out. This policy, according to some sources, will attempt to use Federal resources to induce part of the population growth of the future to settle in areas that are now lagging economically.

Mr. Train's council argued that the land-use and growth policies should be kept separate to help the environmental proposal's chances of winning acceptance in Congress. "A land-use policy is designed to deal first with the populated areas where major growth is projected to take place," a confidential report to the White House declares, "possibly offering greater attractiveness at this time than a policy which involves favoring the growth of some areas over others."

JULY 1, 1974 DEADLINE

Under the proposed land-use legislation the 50 states would be asked to develop "state land planning and conservation programs" by July 1, 1974. These would consist of methods and processes for:

—Inventorying, designating and exercising control over land within areas of critical environmental concern (such as coastal zones, shorelands and river floodplains) and within areas impacted by key facilities (such as airports, highway interchanges and recreational areas).

—Assuring that local regulations don't restrict development and land use of regional benefit.

—Controlling large-scale development.

And assuring appropriate controls over the use of land around new communities.

Beginning Jan. 1, 1975, those states with certified programs would be permitted to share in the Federal aid highway, airport and land and water conservation funds that are diverted from states lacking the land planning and conservation programs.

The amount of money to be withheld from laggard states would be equal to 7% of the highway aid to which a state would otherwise be entitled, 7% of the funds apportioned to a state for airport development and 7% of land and water conservation funds apportioned to a State. Fund withholdings would be increased in each category 7% for each additional year a state failed to produce a planning and conservation program, up to a maximum of 35%.

PROGRAM OF MATCHING GRANTS

Certification of the state programs would be by HUD, which would have primary responsibility for administering the new land-use policy. The department also would manage a new program of matching grants in the amounts of $20 million in fiscal 1972, which begins next July 1, $35 million in fiscal 1973, $40 million in fiscal 1974 and $45 million in fiscal 1975—to help the states meet their new planning responsibilities. The Interior Department would have authority to approve or disapprove that portion of a state's program dealing with areas of critical environmental concern.

The proposal carves out wide territory for state control by defining "areas of critical environmental concern" as coastal zones and estuaries; shorelands and floodplains of rivers, lakes and streams of statewide importance; lands of special importance for particular agricultural uses near or in the path of new urban development; rare or especially valuable ecosystems; scenic and historic areas, and any other area that a state deems to be of critical environmental concern.

The land around "key facilities," also subject to state control under the new policy, is defined as the area surrounding any major airport; interchanges of interstate highways and limited-access highways; major recreational facilities, and any other facilities deemed by a state to be of public value.

Such broad powers are sure to stir up major controversy, both because much of the property that would come under state control is considered prime commercial property by private developers and because local political jurisdictions will fight any diminution of their powers over the same property.

BROADER VIEW ADVOCATED

But the confidential report to the White House meets these anticipated objections by urging a broader view in the public interest. A major concern of land-use policy, the report declares, should be to "overcome restrictive or exclusionary land-use policies of some local jurisdictions in favor of land use and development needed by the larger region, that is, nonresident public access to municipally owned beaches, multi-family dwellings, publicly assisted housing, educational institutions and hospitals and so forth."

"Institutionally," the report continues, "many of the small units of government which exercise land-use planning and regulation in the states are no longer capable of taking the large perspective or of acting in the regional interest, either to conserve critical environmental areas, or to insure that regionally needed development is accommodated. The perspective of a locality generally is no larger than its jurisdiction, although most serious land-use problems are larger than the jurisdiction of any one city or town."

In choosing the states to exercise the proposed new land-use controls, the Nixon Administration rejected other possibilities, such as regional commissions, counties and metropolitan council of governments agencies. The confidential report notes that the states already have full Constitutional powers to control land use and that over the past few years there has been a movement to exercise these powers to deal with major problems.

For example, the report notes that Vermont has created district environmental commissions with concurrent regulatory authority over large-scale development; Minnesota has regional planning and shoreland zoning agencies; Wisconsin has shoreland zoning; New York has a state development corporation with zoning override powers; Massachusetts has enacted an "antisnob" zoning law for the Boston metropolitan area; New Jersey has assumed planning and regulatory powers over key areas of the Meadowlands; Maine regulates new commercial and industrial development; Colorado has a state land inventorying and planning commission, and Hawaii plans and zone statewide.

S. 635—INTRODUCTION OF A BILL TO AMEND THE NATIONAL MINING AND MINERALS POLICY ACT BY PROVIDING FOR MINERAL RESOURCE RESEARCH

Mr. ALLOTT. Mr. President, I introduce for appropriate reference a bill to amend the Mining and Minerals Policy Act of 1970.

As I stated when my bill to establish a national mining and minerals policy was reported from the Senate Interior Committee:

The declaration of a national minerals policy would not be a panacea to all our minerals problems. It would, however, be an important first step. Such a declaration of policy can serve as a springboard from which solutions to the myriad of minerals problems could unfold. It would serve as a beacon for both legislative and administrative

efforts to deal with these problems, and it would put the world on notice as to what our intentions are.

I have always viewed the national mining and minerals policy, as established by Public Law 91–631, as the cornerstone upon which can be built a rational program through which this Nation can develop and sustain the necessary capability to provide for our enormous mineral requirements.

Virtually all great civilizations have developed around or near natural resources, and the United States is no exception. In the past, the uneven distribution of natural resources has been the cause of international conflict and still remains a major factor in international relations today. The current negotiations in London with the Organization of Petroleum Exporting Countries is mute evidence of this fact. It has always been difficult for any country to raise itself above the subsistence level without the means to provide tools, raw materials, and natural energy to extend the scope of human and even animal muscle energy. As societies become more industrialized their dependence upon natural resources accelerate. In time, nearly all industrialized societies have had to look to sources outside their geographic boundaries to supply their needs.

As other societies or nations become more affluent the competition for raw materials increases, and with this increased competition come problems of economics. The industrialized nation either pays the price, engages in extensive searches for suitable substitutes, or may be forced to succumb to competitive economic pressures forcing it to rely on imports of the manufactured product, unless that nation is lucky enough to discover or develop a new domestic source of a needed raw material. Minerals are, of course, a basic raw material of industry.

As the Assistant Secretary of the Interior, Hollis Dole, pointed out during the hearings on S. 719, this country is now producing about $25 billion worth of primary minerals annually, but it is consuming approximately $32 billion worth. By the end of the century, our production may increase to about $66 billion worth annually, but our consumption will increase to approximately $135 billion annually. As Assistant Secretary Dole put it:

> In other words, the present annual deficit of 7 billion dollars will increase to 69 billion dollars by the year 2000. Our current production deficit is about 22 percent of consumption requirements. It was only 9 percent in 1950, and if present trends continue it will rise to more than 50 percent in the next 30 years.

The trend is clear, we are becoming more and more dependent upon foreign sources for minerals important to our industry and security. This increase dependence tends to encumber our foreign policy and limit our freedom of movement within the family of nations. While it may not be possible for us to be totally self-sufficient and it may not be even desirable with respect to certain mineral commodities, it is in the long-term national interest that our ability to domestically produce important mineral commodities be improved and maintained.

It is almost axiomatic that as we become more dependent upon foreign sources, we not only loose the physical plans for production and beneficiation of minerals, but we also loose our reservoir of skilled personnel essential to a stable mining industry. Virtually no mineral deposits will economically yield all of their values, and many will give up only 50 percent of their values with present technology. The wise use of our natural resources requires that we improve our technology in these fields, and future demands for these resources require that every aspect of finding, mining, processing, and recycling be improved.

In addition, new and more restrictive requirements with respect to environmental protection will impose upon the operator not only new costs but also the need for new technology. We have been wasteful in the past and we have mined our nonrenewable resources with little regard for future needs and have done much violence to our environment. Many of our mining regions are plagued with ground subsidence, stream pollution, and fires in waste materials and abandoned mines. We have disasters and teams of experts rush in to find out what happened and even congressional committees may hold field hearings. Everyone is very sorry about the disaster and some are intent upon fixing blame, but seldom does this produce the technology and new equipment essential to prevent or at least lessen the chances of a future similar disaster. Unless there is long-range research and training conducted on continuing basis to deal with these many problems, disasters will not only be inevitable but will probably grow worse.

The best hope for achieving all of these objectives is through technological advancement and the training of scientists, engineers, and technicians. Radically new approaches may be necessary, and research is the logical path to such new technology. Our continued progress as a society depends upon it. As the former Director of the Office of Science and Technology, Dr. Lee A. DuBridge, pointed out in his report to the committee on the minerals policy legislation:

> I believe that the minerals industries can also expect to participate in an improved standard of living, but we must devote a great effort to the need for better technology in order to meet our future needs.

The purpose of the bill I introduce today is to support, enhance and stimulate research necessary to achieve the new technology required by our increased demands for minerals and by new environmental requirements associated with the production of minerals. But new technology cannot be developed nor utilized without trained personnel. Therefore, it is the intent of the bill that I introduce to not only support, enhance, and stimulate research in these areas, but also, to train an adequate supply of qualified personnel to conduct the research and also to implement the results of such research. Section 3 sets forth this policy.

Under the provisions of section 4 each State could establish an institute or research center in one of its tax-supported colleges, preferably its school of mines or its college or university having a department of mining and minerals. The grants would be on a matching basis requiring at least half of the support to come from non-Federal funds. Each State is eligible provided it meets the requirements of the act.

As was pointed out by Dr. Osborn, who is now the Director of the Bureau of Mines, during the hearings on the minerals policy legislation:

> Every State has important, essential mineral resources—sand, gravel, building stone, industrial minerals, etc., and in addition may have one or more metallic ores, petroleum, natural gas, or coal.

Section 5 authorizes special mineral resource research projects to be conducted under the direction of the Secretary of the Interior. These projects would be of high priority to meet certain urgent needs, and would normally be conducted by the institutes established under section 4 of the act.

In order to assist the States in establishing a research institute, section 6 provides for grants of up to 75 percent of the cost of purchasing equipment, facilities, and library materials. None of this money can be used for providing buildings or land.

Section 7 provides for an annual report to the Secretary and other housekeeping measures.

Section 8 requires that the results of all research conducted under this act and financed by grants under this act shall be promptly available to the general public. It also provides for the publishing and printing of research results. The purpose here is to insure that new technology and improved methods are made available to the mineral industry at the earliest possible date, and that where applicable they may be employed as widely as possible.

Section 9 places the Secretary of the Interior in charge of the program and gives him the responsibility for coordinating research and maintaining cooperation between the institutes, Federal research organizations, and other research establishments. He shall also act as a central clearinghouse for the results of such research.

Section 10 provides for an annual report to the Congress by the Secretary.

Section 11 prevents the act from impairing or modifying the legal relationship between the situs college and university and the State.

Section 12 includes Puerto Rico within the definition of "State."

Mr. President, the maximum appropriation authorized under this bill would be $23,750,000 after the fifth year, but that small investment can yield benefits many times as great to the Nation. I am convinced that a long-term research program as envisioned by this legislation is essential to the resolution of our mineral resource problems and the environmental problems associated with them. I urge that the Congress, in its wisdom, act favorably on this legislation at an early date.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred.

The bill (S. 635) to amend the Mining and Minerals Policy Act of 1970, intro-

duced by Mr. ALLOTT (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

S. 636—INTRODUCTION OF A BILL TO PERMIT EARLY RETIREMENT OF FEDERAL EMPLOYEES

Mr. CASE. Mr. President, last December I introduced legislation (S. 4584) to permit the early retirement of Federal employees during major reductions in force by a Federal department or agency. Since time did not permit the 91st Congress to act on the measure prior to adjournment, I am reintroducing the bill today. Senator MONTOYA is joining in as a cosponsor.

Last year more than 120,000 civilian employees of the Department of Defense were involuntarily released from service as the result of reductions authorized by Congress and personnel reductions ordered by the administration. The Civil Service Commission estimates that reductions will continue to occur in Federal agencies through at least fiscal year 1972, with the major impact being felt in defense and space programs.

The continuing nature of these reductions makes the need for congressional action urgent. Legislation should be passed before the next round of layoffs in order to ease the impact of job loss upon individuals who are separated and on the operations of the agency undergoing the reduction.

Some employees are young enough to relocate and find new employment. For many others, the hardship of finding another job after years of Federal service can be severe. The latter situation becomes particularly acute when these employees face the prospect of seeking employment in today's depressed labor market.

Reductions in force also take their toll on agency management. The "bumping effect," that is, the displacement of employees with lower retention rights by those with higher retention rights, frequently results in the permanent loss to Federal service of capable younger employees. These include those whose jobs are abolished as well as those who see no opportunity for advancement because middle- and upper-level positions are retained by persons with longevity rights.

In view of the need to ease as much as possible the personnel dislocation caused by changing Federal priorities, our bill would permit Federal employees who are at least age 50 and have 20 years service, or who have 25 years service regardless of age, to retire early during major reductions in force, even though their specific jobs are not abolished by the cutback.

The bill requires the Civil Service Commission to determine when a reduction in force is major and to fix the time within which employees could exercise the option to retire.

While the Civil Service Commission permitted early retirements at some defense installations last year, this was done administratively on a limited basis. Our bill would write the authority into the Civil Service Retirement Act and would make it applicable government-wide.

I would point out, too, that the bill in no way diminishes the responsibility of the Civil Service Commission or the agency to insure that an early optional retirement is the result of the employee's voluntary action. In other words, it is not to be used by an agency to get rid of certain employees. Also, the bill does not change the agency's responsibility to help employees involuntarily separated to try to find other Federal employment if they wish to continue to work.

The prospect of reductions in force during a period of high unemployment makes the need for action on this bill imperative. Accordingly, I intend to request the chairman of the Senate Post Office and Civil Service Committee to hold hearings as soon as possible.

The bill has been endorsed by the Civil Service Commission, the Department of Defense, and the White House. In light of the gravity of the current unemployment situation, I hope the Senate and House will give prompt attention to the measure.

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

I also ask that there be printed in the RECORD two articles from the Washington Post pointing out the need for early retirement legislation.

The PRESIDING OFFICER (Mr. CHILES). The bill will be received and appropriately referred; and, without objection, the bill and articles will be printed in the RECORD.

The bill (S. 636) to permit immediate retirement of certain Federal employees, introduced by Mr. CASE (for himself and Mr. MONTOYA), was received, read twice by its title, referred to the Committee on Post Office and Civil Service, and ordered to be printed in the RECORD, as follows:

S. 636

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8366(d) of title 5, United States Code, is amended to read as follows:

"(d) An employee who is separated from the service—

"(1) involuntarily, except by removal for cause on charges of misconduct or delinquency; or

"(2) while his agency is undergoing a major reduction in force, as determined by the Commission;

after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to a reduced annuity.".

The articles, presented by Mr. CASE, are as follows:

PENTAGON IS PLAGUED BY OLD AGE

(By Mike Causey)

Old age is catching up with the Pentagon, which is anticipating a decade-long shortage of middle- and top-level management people.

At the same time, Defense Department economizers, worried about short-range money problems, are preparing layoff lists that could hit as many as 200,000 civilian jobs. That announcement from Secretary Melvin Laird is expected by mid-month.

The split personality problems of the world's largest business point up the administrative nightmare of trying to see into the future and dealing with it through annual appropriations.

Worldwide, Defense has a million-plus civilians, and is the biggest employer here. About 40,000 area people get their paychecks from Navy; 32,000 work for the Army, nearly 10,000 for Air Force and about 9,000 are lumped into the Office of the Secretary of Defense.

An anticipated exodus of "old-timers," those 55 and older, is expected to reach its peak during the mid-1970s. That is because the bulk of the middle- and top-grade civilians now in the department came in during the big buildup that started with World War II.

In 1930, the entire Department of Defense had only 103,000 employees. That's about the number of Army, Navy and Air Force civilians in the Washington area today.

By 1940, Defense's civilian population had grown to almost 260,000 and at its war peak, 1945, the number of civilians was up to 2.6 million. Now it stands at around 1.3 million, with big layoffs on the way.

The upcoming reduction in force isn't expected to hit too many of the old-timers, because of its last-hired, first-fired regulations. So the RIF will have the effect of cleaning out thousands of younger workers in the lower and middle grades.

The forced departure of the younger workers will be followed by ever-increasing voluntary retirements (and deaths) in the older brackets.

What Defense will be doing, in effect, is eliminating much of its potential management talent at a time when age is catching up with its present crop of bosses. Added to this, most Pentagon agencies have either cut back or eliminated major college recruiting efforts for money reasons.

Even if the Pentagon continues to scale down the size of its work force, it will still come up with a shortage of management talent in the next few years. That will, at some point, force it into a crash recruiting drive much like the Vietnam buildup period. When that happens, Defense will be looking for many of the younger people it fired in 1971. The question is whether the young people, who will probably be rather disillusioned by the firing ordeal, will want to start out in a second career.

UNITED STATES SEEKS JOBS FOR LAID-OFF WORKERS

(By Mike Causey)

Hampered by the depressed job market and upcoming Defense manpower cuts, the government is still at the difficult chore of finding jobs for 6,500 hard-to-help "displaced employees."

The workers are all victims of economy cuts made last year by Army, Navy and Air Force. They range from blue-collar workers at the low end of the salary scale to scientists and engineers who now find themselves surplus in both the government and private industry.

Through mid-December 17,000 had registered for jobs under the so-called Displaced Employee Program run by the Civil Service Commission. The DEP is supposed to help workers who got the ax through no fault of their own.

A pre-Christmas check showed that 4,254 of the DEP's got other jobs, mostly in government, and another 6,700 dropped out either because they declined "legitimate" job offers, lost interest or became disillusioned with the runaround some agencies have been giving DEPs.

The low water mark of 6,500 will be swelled, when the Pentagon announces new cutbacks in February.

If the cuts are severe enough, hiring and promotions in most agencies will be frozen until all the present and proposed DE's got a crack at jobs.

The track records of agencies have been spotty in making openings available to the Defense cut victims. CSC is now evaluating

their performance and that recheck could lead to the job freeze, either by selected agencies or government-wide.

Of the 6,500 job hunters in the DEP pool, about 40 percent are blue-collar people. They are especially hard to place because many of them have specialized skills. About 11 percent of the pool is made up of professionals in the $10,470 to $24,000 pay range—most of them scientists and engineers.

Many federal officials have privately asked for an overhaul of the Reduction-force (RIF) rules. They say the present system gives ousted workers little more than a "hunting license" to find another job. They argue that the government has a moral obligation to help find work for people fired solely for economy reasons.

A number of bills that would have liberalized retirement rules for workers facing RIFs died in the last Congress. This Congress could ease the impact of the upcoming RIFs a great deal, if it would authorize a one-shot retirement bonus that would be generous enough to persuade eligible "old-timers" it would be worthwhile to quit, easing layoffs which hit short-service people hardest.

ADDITIONAL COSPONSOR OF A BILL

At the request of the Senator from New York (Mr. JAVITS), the Senator from Ohio (Mr. SAXBE) was added as a cosponsor of S. 558, the Motor Vehicle Disposal Act.

ADDITIONAL COSPONSORS OF JOINT RESOLUTIONS

SENATE JOINT RESOLUTIONS 2 AND 3

At the request of the Senator from North Carolina (Mr. ERVIN), the Senator from Alabama (Mr. SPARKMAN), and the Senator from North Carolina (Mr. JORDAN) were added as cosponsors of Senate Joint Resolutions 2 and 3, proposed constitutional amendments to reform the electoral college.

SENATE RESOLUTION 46—SUBMISSION OF A RESOLUTION TO REFER SENATE BILL 634 TO THE CHIEF COMMISSIONER OF THE COURT OF CLAIMS FOR A REPORT THEREON

Mr. ALLOTT submitted the following resolution (S. Res. 46); which was referred to the Committee on the Judiciary:

S. RES. 46

Resolved, That the bill (S. 634) entitled "A bill for the relief of Michael D. Manemann", now pending in the Senate, together with all the accompanying papers, is hereby referred to the Chief Commissioner of the Court of Claims, and the Chief Commissioner of the Court of Claims shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States and the amount, if any, legally or equitably due from the United States to the claimant.

SENATE RESOLUTION 47—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY TO ALLIE B. VANCE

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported the following original resolution (S. Res. 47); which was placed on the calendar:

S. RES. 47

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Allie B. Vance, widow of Joe Vance, Sr., an employee of the Senate at the time of his death, a sum equal to six and one-half months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 48—ORIGINAL RESOLUTION REPORTED AUTHORIZING THE REVISION AND PRINTING OF THE SENATE MANUAL FOR USE DURING THE 92D CONGRESS

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported the following original resolution (S. Res. 48); which was placed on the calendar:

S. RES. 48

Resolved, That the Committee on Rules and Administration be, and it is hereby, directed to prepare a revised edition of the Senate Rules and Manual for the use of the Ninety-second Congress, that said Rules and Manual shall be printed as a Senate document, and that two thousand additional copies shall be printed and bound, of which one thousand copies shall be for the use of the Senate, five hundred and fifty copies shall be for the use of the Committee on Rules and Administration, and the remaining four hundred and fifty copies shall be bound in full morocco and tagged as to contents and delivered as may be directed by the Committee.

ORDER FOR EXTENSION OF PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the period for the transaction of routine morning business, with statements therein limited to 3 minutes, be extended for an additional 15 minutes.

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

Mr. BYRD of West Virginia. 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. CHURCH. 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.

AMENDMENT OF RULE XXII OF THE STANDING RULES OF THE SENATE—NOTICE OF INTENTION TO SEEK CLOTURE

Mr. CHURCH. Mr. President, on January 25, 10 session days ago, the distinguished Senator from Kansas (Mr. PEARSON) and I, on behalf of a total of 51 Senators whose names were affixed as cosponsors, introduced Senate Resolution 9, to modify the cloture rule of the U.S. Senate by reducing the present two-thirds voting requirement to three-fifths.

Each day since, proponents of the change and, to a far greater degree, opponents of the change have stood on the floor of the Senate and discussed the matter. The history of restraints on debate since the first day of the first sitting of the First Congress have been reviewed and analyzed. The history of rule XXII itself, which established the present two-thirds formula, has been reviewed and discussed. Opponents of change have spoken for many hours in order to present their views.

This is certainly visible and audible proof that the Senate is a truly deliberative body—a unique distinction among legislative assemblies of the world. I take pride in this distinction, as do all Senators.

Additional days will be devoted to this matter, so that every Senator wishing to speak may have ample opportunity to do so. Accordingly, I wish to announce at this time that the filing of a cloture motion will be delayed until Thursday, February 11. That is the last business session before the Lincoln-Washington recess. By so doing, the cloture motion will be voted upon 1 hour after the Senate convenes on Thursday, February 18.

ORDER OF BUSINESS

Mr. CHURCH. 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. BYRD of West Virginia. 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.

ORDER TO PERMIT THE TRANSACTION OF ROUTINE MORNING BUSINESS ON MONDAY NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Monday next, following recognition of the majority leader or the minority leader or their designees under the order of January 29, there be a period for the transaction of routine morning business, not exceeding 30 minutes, with statements therein limited to 3 minutes.

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

ADDITIONAL STATEMENTS BY SENATORS

A STUDY BY THE CITIZENS CONFERENCE ON STATE LEGISLATURES

Mr. CHILES. Mr. President, I have just received a copy of the report of the Citizens Conference on State Legislatures based on an exhaustive study of 50 State legislatures' organization, staffing, pay, and effectiveness. Having come directly to this body from 12 years' involvement with the workings and problems of the Florida Legislature, I find this to be a meaningful study containing information and guidelines which can be of great benefit to our States.

Only in the last few years have State

governments awakened to the need to make more meaningful strides in strengthening their State and local governmental structure. In a time when sincere efforts are being made to bring government closer to the people and allow them more say-so in control of their affairs, reports such as this go a long way in providing a measuring tool for State legislatures to better judge themselves. In addition, studies such as this provide incentives for our citizens to be aware of pressing governmental needs and serve as a basis from which constructive action can be taken.

The State legislatures were rated in five different categories: First, on their functional capabilities; second, on their level of pay to legislators to attract men of ability; third, on how well they account for their performance to the public; fourth, on their degree of independence of the executive branch and of lobbyists, together with safeguards against conflict of interest; and, fifth, on the quality of actual representivity of the people of the State.

With great pleasure and pride I noted that in the overall ranking my home State of Florida was fourth behind California, New York, and Illinois, in that order, and that in the category of independence of the legislature from the executive branch, of autonomy over its activities and of safeguards against conflict of interest, Florida was rated No. 1. I would hope that this study would be given serious consideration by the legislatures of all our States.

Mr. President, I ask unanimous consent that the study be printed at this point in the RECORD.

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

REPORT ON AN EVALUATION OF THE 50 STATE LEGISLATURES

(This is a summary report on the Legislative Evaluation Study conducted by the Citizens Conference on State Legislatures)

FOREWARD

As citizens of the United States, we share in a precious inheritance—the legislative form of government. We have a virtual patent on this system of self-rule, but we do not fully understand it, nor do we use it well.

A powerful and independent, creative and competent legislature distinguishes a democratic system from more authoritarian forms of government. Although elected assemblies exist in some totalitarian societies, they are devoid of power and influence, and they exist merely to provide the appearance of popular participation in government—but not the substance.

The legislative form of government would offer advantages even in a homogeneous society; in a large, complex and disparate society like that of the United States it is essential.

As arenas for the orderly resolution of conflict, legislatures offer the only real hope of reversing the trend toward social disintegration in this country. Our problems are not so much the result of technical difficulties as they are the product of deficiencies in our policy-making system. We lack the ability to make authoritative decisions because our principal instruments of decision-making—our fifty state legislatures—are in disarray.

It is the conviction of those of us who comprise the Citizens Conference on State Legislatures that the fifty state legislatures are the heart of the governmental system of the United States. After four years of working with legislators, citizens groups, the media and the academic community in an intensive program aimed at the strengthening and modernization of the state legislatures, we confronted in 1969 the fact that although progress was being made two main barriers stood in the way of rapid progress toward legislative reform. Not enough was known about individual state legislatures—often even by their own members—and information comparing one legislature to another or to all of the others was totally nonexistent. In addition, the terminology used by legislators, the press and academics when they attempt to compare legislative procedures is entirely misleading. A public hearing on a bill in California bears no resemblance to an activity called by the name of "public hearing" in Massachusetts.

The void of reliable information, the absence of standards and the disparity of terminology has hampered the effort of all who are concerned with legislative reform, including legislators themselves.

A legislator attending a conference hears his colleagues from other states describe some procedure and concludes that his own legislature's method of handling that matter is better. He says to himself, "Well, if that's the way they do it, we must have a pretty good little ol' legislature." What he does not realize is that he is comparing his system to abject failure!

In the absence of standards, the average becomes the norm; and, as we know, the average is far too low.

In response to this need, the Citizens Conference on State Legislatures set out to develop a yardstick by which to measure the fifty state legislatures. Since legislatures are pre-eminently decision-making bodies, the yardstick would have to be able to measure their decision-making capabilities as governed by their structure, organization, rules, procedures and practices. The Legislative Evaluation Study is the result.

Before we undertook this task, we were aware of many of the potential difficulties. To say that the project turned out to be more difficult and more complex than our most skeptical estimation would constitute gross understatement.

It should be clearly understood we did not intend the study to be an exercise in social science research. It is entirely normative, and depends heavily upon judgments and preferences.

In carrying out this study we have tried to use the most sophisticated tools available to make it reasonable, accurate and honest, and to connect it with the real problems of the structure, processes and operations of the state legislatures as institutions.

This project has been fourteen months in the making at a total cost exceeding $175,000. During the past year it has drained the resources of the Citizens Conference and tested the talents and energies of our staff, but we believe the result has been worth it. There now exists, for the first time, a massive body of valuable information concerning the systems and operations of the fifty state legislatures. This information is on record and is organized in a manner that is useful for comparison and analysis. It exists as a benchmark from which to measure more sophisticated and refined studies following after it.

A book based on this project and made available to the American public will be published and distributed by Bantam Books late this Spring.

Most of the literature commenting on state legislatures in recent years has been in the form of polemics designed to ridicule the institution and its members. The magazine articles and books in this category are notably weak in their factual content and offer no identification of specific weaknesses, strengths, or remedies. These wholesale indictments are usually based upon a parade of anecdotes and horror stories designed to play upon the public's natural distrust of anything governmental and its abysmal ignorance of the workings of our political system. This style of reporting and the attitudes to which it appeals has been likened to the rage of Caliban on seeing his own reflection in the water.

State legislatures, more than any institution in our society, truly reflect ourselves. They exhibit our strengths and weaknesses in all too familiar a fashion. The image is not a pretty one, and it is well that it makes us angry. It should, but we must be clear about where we direct that anger.

In a project as large as this one, there are certain acknowledgements which must be made, not out of duty, but because so many people helped so valuably in what is a groundbreaking effort.

Without the support of the Ford Foundation, this study would not have been possible. A grant from that institution for basic research in this subject area enabled us to undertake the massive collection of information and analysis which comprise the bulk of the project.

Serving as technical consultants to the project, the firm of Baxter, McDonald and Company rendered invaluable assistance. The contribution of Alfred W. Baxter, Jr., was most notable in this regard.

CCSL staff members who contributed most directly and diligently to the project with their seemingly endless labors and remarkable talent include Karsten Vieg, the CCSL's Director of Research and Program Development; Donald Glickman, Deputy Director of Research and Program Development and Project Director of the Legislative Evaluation Study; Zale Glauberman, Associate in Research and Program Development; Albert de Zutter, CCSL Publications Editor, who wrote this summary report; and other members of the CCSL staff whose dedication and skills provided invaluable support.

In any recitation of acknowledgements, credit must be accorded the impressive cooperation given to the project by leading members of many state legislatures. Legislative leaders, rank and file legislators, and legislative staff members gave us hours of time and wealth of experience, knowledge, review, verification and assessment of the data. Without their help the project would have suffered. In a similar way we have had the sound advice and counsel of many expert observers of the legislative process. Here I refer to the many political scientists, journalists, leaders of civic organizations and the membership of the Citizens Conference Board of Directors and our Program Development Committee. Their interest and concern has assisted the staff in the completion of this work.

The reader will find no juicy anecdotes—no monkey stories—in the Technical Report on the Legislative Evaluation Study. Nor will he find any in the Bantam book based on the Study's findings. He will find, instead, a clear identification of what, in our best judgment, is wrong; where it exists and in what measure; and, most importantly, what should and can be done to correct it.

The Legislative Evaluation Study is a detailed description of the conditions which the citizens of our states have imposed upon their legislatures and the difficulties under which their lawmakers are compelled to try to work. It is also a detailed prescription of remedies available to improve these conditions—a means for channeling our anger into constructive action. (Larry Margolis, Executive Director, Citizens Conference on State Legislatures.

INTRODUCTION

America today is beset by crisis after crisis. The list is familiar. The crisis of authority.

The education crisis. The urban crisis. The racial crisis. The environmental crisis. The generation gap. The communications gap. Dissent. Drugs. The blue-collar revolt. The student revolt. The radical movement of the left and right. Organized crime. Crime in the streets. The intellectual revolt. The dropout. The growing gap between affluence and poverty.

Underlying each crisis and feeding it like oxygen feeds fire is the biggest crisis of them all: the crisis in confidence. Americans in alarming numbers are losing confidence in the ability of their institutions to deal with the problems that they perceive with growing clarity.

State legislatures stand high on the list of institutions that need reform. Because of their central role in the American system, reform efforts among state legislatures also hold the promise of high returns.

The Citizens Conference on State Legislatures has completed a study showing the need for legislative reform and suggesting what can be done about it. The study provides the first systematic evaluation of the organization and procedure of all 50 state legislatures.

This summary report describes how the study was done. It discusses the judgments and criteria that were used in making the evaluations. And it provides the final rankings of all fifty state legislatures based on these judgments and criteria.

I. WHY A STUDY WAS NEEDED

The state legislature is the keystone of the American federa' system. The state has life and death powers over its cities. Only the state can coordinate urban and rural interests. The problem of central cities versus suburbs is largely attributable to the policies (or lack of them) of the state. Federal policies succeed or fail largely on the basis of state action or inaction. In fact, there is hardly an issue of public life that is not affected by what the states do or don't do.

State legislatures are heavily involved in making state policy. It seems fairly obvious that, by and large, they have not been doing their job satisfactorily. The evidence is in the many "crises" that beset American society. The fact that few people think of the state as a real source of answers to their problems presents further evidence. The state government is a gray area in the minds of most Americans. Citizens generally know more about their federal and local governments than they know about their state government.

Supreme Court decisions beginning in 1962 have sparked a counter trend. The "one man, one vote" doctrine has highlighted the importance of state legislatures. The makeup of state legislatures is becoming more representative of the people. In the midst of the 1970 "off-year" elections, several press and media observers took note of the importance of the races for state legislatures. The political parties paid more attention to these races than ever before in recent times. Control of state legislatures, they realized, could substantially affect the future makeup of the United States Senate and House.

The one man, one vote rulings, the resulting "new blood" in state legislatures, the growing awareness of the general failure of the states on the one hand, and of the importance of the states on the other hand, gave rise to the state legislative reform movement.

In the few years of its existence the movement has scored some notable and some moderate successes. But it has been hampered by a lack of hard knowledge about the actual condition of the 50 state legislatures. Two state legislators getting together to compare notes could come to the conclusion that "we've got a pretty good little legislature compared with 'so-and-so.' "

Without hard facts and with no way of knowing whether the words they used meant the same thing in another state, they had no real basis for comparison. "Staff" in one state may be poorly educated, nepotistic and partisan. In another state it could be well trained, professional and issue-oriented. One state's committees may exist merely to permit a leader to reward members with chairmanships of "paper" committees. Another state's committees may be powerful elements of the decision-making process, led by experts and supported by professional staff.

Some studies have already concluded that legislatures need more and better staff, better pay, more time and better facilities. But because there has been no information which was applicable across-the-board, there was no way of knowing which of these improvements, or in what combination, would do the most good in a particular state.

More than any other single factor, the lack of public concern has acted as a brake on legislative reform. Not enough people are aware of the crucial effect of the legislature on the quality of life in their state. The better informed, whether they were members of the general public or specialized groups or directly involved with the legislature itself, didn't know what, if anything, they could do. The end result is that the movement has been unable to mount a strong drive for reform.

In 1969, the Citizens Conference on State Legislatures set about to remedy that situation. With a grant from the Ford Foundation the Citizens Conference began to gather information which would reveal for the first time how well each of the 50 state legislatures was set up to do its job.

The Citizens Conference proceeded as follows:

1. It decided what kind of information would show how well state legislatures were doing.

2. It then collected that information for each of the 50 states.

3. Finally, it is ranking the states from 1 to 50, from best to worst, according to how they measure up on the questions or criteria.

The Citizens Conference had four goals in mind:

1. To attract the attention of legislators and the public to the plight of the legislatures.

2. To show the strong and weak points of every state legislature as a basis for practical improvment programs.

3. To provide a base point and yardstick to measure future progress.

4. To stimulate further discussion of how a legislature should be organized and how it should conduct its business.

II. WHAT THE STUDY DOES AND DOES NOT DO

The Legislative Evaluation Study (LES) sets up a valid formula for measuring or "predicting" how well a legislature can do its job. The formula can be used in the same way that an automotive engineer can predict the potential performance of a race car. Combining information on engine displacement, gear ratio, compression ratio, overall weight and body design, he can tell within a few percentage points what the top speed of the car will be.

The study applies the formula to all 50 states. The result is a clear indication of the ability of each state legislature to perform in a functional accountable, informed, independent and representative manner.

On the basis of how well each state is set up to function effectively, to account to the public for its actions, to gather and use information, to avoid undue influence and to represent the interests of its people, the study ranks the states from 1 to 50. The Citizens Conference makes no claim that every possible factor has been taken into account in evaluating the operational capability of the states. The ranking, therefore, must be applied cautiously. While it would be safe, for example, to conclude that the state legislatures ranked sixth through tenth are "better" than those ranked thirty-sixth through fortieth, it would be risky to say that the seventh-ranked is "better" than the ninth, or that the fortieth is "worse" than the thirty-seventh.

Taken in groups, however, the rankings do clearly indicate the stronger and weaker legislatures across the nation. In addition, they show the strong and weak points of each legislature's operational set-up.

The rankings measure state legislatures on a curve. The "best" state does not receive a grade of 100 per cent, nor does the study establish that the "worst" is 40 per cent below the "best."

No doubt many other ways could be devised to evaluate state legislatures. One way might be to list a number of issues in the order of their importance, set up standards of "good" and "bad" legislative response to those issues and then grade the legislatures on how well they dealt with them. The resulting ranking might be very different from those produced by the CCSL study. But it would in no way invalidate the CCSL ranking.

The American system of democracy lays heavy stress on due process. The "best possible" legislation is desirable. But structures and procedures which safeguard the rights and freedoms of the people are *necessary*. Although some other governmental approach might yield short-term gains in efficiency, the American people have placed their trust in the democratic wager: that due process will result in better legislation over the long run for more people.

The CCSL study, while not measuring output, does evaluate each legislature's ability to operate with due process. The forms, organizational structure and procedures which the study measures are vital to the quality of legislative performance. Poorly organized, inadequately staffed and underpaid legislatures may come up with enlightened laws and competent reviews of executive programs and public expenditures. But the odds are against that possibility.

III. HOW THE STUDY WAS DONE

Analysis of state legislatures revealed that their ability to do their jobs hinged on nine components: time, staffing, compensation, committee structure, facilities, leadership, rules and procedures, overall legislative structure and ethics.

The Citizens Conference prepared a questionnaire seeking detailed information on these nine components These proposed questions and nine criteria they were intended to support, were submitted to a nation-wide panel of expert advisors—legislators, including leaders, senior staff members, journalists and political scientists.

Taking their advice into account, the study group prepared a questionnaire comprising 156 questions, many with several parts. CCSL staff members and representatives then interviewed legislative leaders. members and senior staff members in each of the 50 states. The information gathered in those interviews was supplemented from published documents. Completed questionnaires were then sent to at least five legislative leaders and senior legislative staff members in each state for verification.

After the information was collected and verified, the Citizens Conference saw that it could go a step beyond scoring the state legislatures on the nine component parts of its operational mechanism. We decided the information provided a basis for making relevant value judgments about each legislature.

The following question was posed: Given the prevalent understanding of the American system, what major characteristics can the citizenry reasonably expect their legislatures to display?

The conclusion was that legislatures must be *functional, accountable, informed, independent* and *representative* as necessary conditions of fulfilling their responsibilities.

These characteristics, then, become the five major criteria for evaluating state legislatures. (They are explained in more detail in the next section.) The 156 questions were further broken down into 196 question units and reordered under five conceptual schemes corresponding to the five major characteristics or criteria. Groups of questions were formed into 73 "sub-criteria" which, when used in various combinations, would show how well each legislature was set up to achieve each of the five major objectives.

A high score on the major objectives does not mean that a legislature approaches the ideal. It means that a legislature fulfills the *minimum* requirements to act in a responsible, democratic manner. Nor does a high score guarantee a high level of quality output. All it means is that a legislature has the necessary operational equipment to do its job.

The final step in setting up the evaluation process was to decide how important each question was in scoring a legislature on each of the five major objectives. Again, the advice of outside experts was taken into account in setting up the preference rules.

One of the questions regarding time, for example, asks if there are limitations on session length. The "preferred" answer is "No." If there are limitations, however, the following order of preference is applied: (1) limitations by rules; (2) limitations by statute; (3) limitations set in the state constitution.

Another step in setting up the evaluation was to decide the relative importance of each piece of information for each of the five major objectives. A question asking whether a legislature is made up of single-member or multiple-member districts is more important in determining how *representative* a legislature is than the question of whether or not each member has a private office. The same question about districts is also a factor in determining how *accountable* a legislature can be, but it carries more "weight" when used as evidence of representativeness.

Each question, therefore, was given a numerical "weight" according to its relative importance in scoring a legislature on each of the five major objectives.

The final step in setting up the evaluation process was to test the sensitivity of the system. The goal was to make sure that minor changes in the facts, weights or preference rules would not make a major change in the overall standing of a state legislature.

IV. THE "F.A.I.I.R." SYSTEM

In a government of, for and by the people, a citizen may expect his legislature to be Functional, Accountable, Informed, Independent and Representative. The first letters of these major desirable characteristics of a legislature form the acronym "F.A.I.I.R." A legislature which is clearly deficient in any of these major characteristics can hardly be expected to operate fairly and effectively.

The information that is used as evidence of a legislature's ability to achieve each of these objectives is examined in the following paragraphs.

A. The functional legislature

Certain activities are basic to legislative performance. They are suggested by questions like these:

How well equipped is a legislature to deliberate? To design programs and draft them into bills? To review and evaluate programs and administrative proposals? To settle differences effectively? To formulate public education policies?

Evidence of a legislature's functionality includes the availability of time and the freedom to use it as needed; adequate staff support; adequate facilities; manageable structures; workable rules and procedures; effective management, and observance of appropriate order and decorum.

1. Time and its Utilization

Enough time and the ability to use it efficiently are critical to the functional capability of a legislature. States like Wisconsin, New York and California which have unrestricted annual sessions have a clear advantage in this respect over those whose sessions are straightjacketed into 60 or 90 days every two years.

But time can be wasted. So it is important to know what tools are available to promote the efficient use of time. States which authorize the use of pre-session time for bill drafting, filing, and printing, and for assignment of bills, members and work to committees, are in a better position to get their work done during the session than those which make no use of pre-session time. Michigan and New Mexico are among the former, while Tennessee, South Carolina and Louisiana are among the latter.

The amount of work that gets done is affected by deadline demands. Illinois and Massachusetts are among those states which tend to improve their efficiency by requiring that certain things be done by specified times, while New Jersey, Georgia and Alabama make few demands.

2. Multi-Purpose Staff Support

To be fully effective, the members of a legislature need the support of competent aides who can help them with the many duties of office, including those that are not strictly legislative. Staff support for speech writing, constituent relations and agency liaison can substantially improve a legislator's performance. This is recognized in such states as Hawaii, Florida and California where not only leaders, but *all* members of the legislature are given staff support. Many states have yet to recognize the value of staff support for individual legislators. These include Indiana, Colorado, North Dakota and Virginia.

3. Facilities

If legislators have to meet their constituents in the hall or lobby, there can be little doubt that the functional capability of the legislature as a whole suffers.

Industry has recognized that decision-makers by and large perform better if they have an office of their own in which to work. A number of state legislatures have also taken that into account, including Texas, North Carolina, Hawaii, Florida and California.

Several others, including New York, Michigan and New Mexico, at least provide their legislators with office space shared with other legislators. Some states, among them Iowa, Ohio, Utah and Indiana, offer their legislators no office space at all.

Size, heating, cooling, lighting, furnishings in house and senate chambers all have a bearing on how well a legislative body can do its work. It may not be necessary for all legislatures to match the new or remodeled chambers of Arizona, Nevada, North Carolina or New Mexico, but the chambers provided in Vermont, Connecticut, New Hampshire, Kansas and Kentucky have to be rated low in most respects.

Other factors which add to a legislature's functionality are committee and hearing rooms and accessories like public address systems.

4. Structural Characteristics Related to Manageability

The size of legislative houses, the number of committees and the number of committee assignments per member are all indicators of how well a legislature can function. There can be little doubt that the Pennsylvania house, with 203 members, and the New Hampshire house with 400 members, have problems not experienced by houses of 100 members. Once the number of legislators is high enough to insure equitable representation, any increase in membership can only make it harder to make sound decisions.

Competent committees are necessary to the function of a legislature. The "right" number of committees is hard to pin down, but a reasonable number might be 12 to 15 in each house, with parallel jurisdictions. Some states clearly have too many. Texas, for example, has 45 in the house and 27 in the senate. Missouri has 40 in the house and 31 in the senate. Mississippi has 48 in the house and 42 in the senate.

5. Organizational and Procedural Features To Expedite Work Flow

Where bills may come from and what happens to them, how committee reports are treated, how joint committees are used and what can be done in an emergency are questions which help answer whether a legislature can operate effectively.

Committees can provide the setting for creative action. But committees in Colorado, Texas and Wyoming do not propose legislation. They can only react.

Joint senate-house committees eliminate duplication and speed the legislative process. But no joint joint committees are used in Hawaii, Texas, Oklahoma, Indiana or South Carolina. Connecticut is on the other end of the spectrum: its legislature has nothing but going committees. The desirable standard falls somewhere in between.

Maine, Maryland and Washington are among those states which conserve their legislators' valuable time and spare them the tedium of hearing bills read aloud. But legislators in Kansas, Arizona and Nebraska are legally required to sit in session while bills are read in their entirety.

Electronic voting devices, used in Florida, Utah and Maryland, are also time savers. So is the consent calendar which allows noncontroversial bills to pass automatically unless an objection is raised. Some states, however, and they include Michigan, Ohio and Vermont, don't use that device.

Deliberation and debate are essential conditions of responsible law-making. The process is thwarted if bills can be relegated to a silent death. That is less likely to happen where legislative rules say that bills will be taken up automatically. Among the legislatures which use that practice are those of California, Iowa and New Mexico. States which don't have such "anti-limbo" rules include New Jersey, Ohio and Texas.

Sometimes, however, bills can be caught in the squeeze of time even in those states where they are automatically put on the calendar. Florida, Hawaii and Iowa allow a bill to be carried over to the next session, but California does not.

6. Management and Coordination

Dispersal of power is an essential part of the American system of checks and balances. It is generally desirable within the legislature, as it is between branches of government. Yet legislative effectiveness depends upon responsible leadership exercised with due authority. Provision for continuity in leadership encourages good management. Bipartisan participation in scheduling, space assignment, inter-house coordination and personnel management also adds to the smooth functioning of a legislature.

Leadership continuity is denied in those states which, like Florida, North Dakota and Wyoming, do not permit the presiding officer to serve a second term.

In addition, a legislature derives functional benefits from joint senate-house rules

like those in effect in Wisconsin, Georgia and Massachusetts, as well as from minority participation in inter-house coordination.

7. Order, Decorum, Dignity of Office

Salary is, in all probability, the clearest practical indicator of how highly the legislative function is regarded in a given state. The salary of $200 a session which prevails in New Hampshire certainly adds little to the "dignity of office." Given the heavy responsibilities of a legislator, his compensation should match that of a professional in his area.

Other questions relevant to order and decorum bear on the respect displayed for the legislative process and whether the house leader may succeed to the governor's chair.

The following shows the criteria and subcriteria used in evaluating state legislatures' potential for meeting their responsibilities under the American system of government. The lettered headings (A, B, C, D, etc.) are the criteria, and the numbered headings are the sub-criteria. The 10 sub-criteria under Representativeness, for example, make up the three criteria of "Identification," "Diversity," and "Member Effectiveness." Information supplied by state legislators and staff members on the basis of a questionnaire was used in determining the content of the numbered sub-criteria. The sub-criteria, in turn, were used to determine a score for a state on each of the criteria. Combined and weighted scores on the criteria then yielded a state's score on a major characteristic. A final, overall ranking for a state relative to the other 49 was derived from its combined scores on all five major characteristics. The result is a clear indication of how well each legislature is equipped to be functional, accountable, informed independent and representative.

General structure of the evaluative apparatus

Functionality

A. Time and its Utilization:
1. Restrictions on the Frequency, Length and Agendas of Sessions, and Interim Periods.
2. Techniques for the Management of Time Resources.
3. Uses of presession Time.
B. General Purpose Staff:
4. Personal Aides and Assistants to Leaders and Members.
C. Facilities:
5. Chambers.
6. Leader's Offices.
7. Committee Facilities.
8. Facilities for Service Agencies.
9. Member's Offices.
D. Structural Characteristics Related to Manageability:
10. Size of Houses.
11. Standing Committee Structure.
E. Organization and Procedures to Expedite Flow of Work:
12. Origination and Sponsorship of Bills.
13. Joint Committee Usage.
14. Treatment of Committee Reports.
15. Anti-Limbo Provisions.
16. Emergency Procedures.
17. Bill Carry-over.
F. Provisions for Management and Coordination:
18. Continuity and Powers of Leadership.
19. Inter-House Coordination.
G. Order and Dignity of Office:
20. Order and Decorum.

Accountability

A. Comprehensibility in Principle:
1. Districting.
2. Selection of Leaders.
3. General Complexity.
4. Explicit Rules and Procedures.
5. Anti-Limbo Provisions.
6. Planning, Scheduling, Coordination and Budgeting.
B. Adequacy of Information and Public Access to it (Comprehensibility in Practice):
7. Public Access to Legislative Activities.
8. Records of Voting and Deliberation.
9. Character and Quality of Bill Documents.
10. Conditions of Access by Press and Media.
11. Information on Legislators' Interests.
12. Information on Lobbyists.
C. Internal Accountability:
13. Diffusion and Constraints on Leadership.
14. Treatment of Minority.

Information handling capability

A. Enough Time:
1. Session Time.
2. Presession Activities.
B. Standing Committees (as Information Processing and Applying Units):
3. Number of Committees.
4. Testimony.
5. Facilities.
C. Interim Activities:
6. Interim Activities.
7. Structure and Staffing.
8. Reporting and Records.
D. Form and Character of Bills:
9. Bill Status and History.
10. Bill Content and Summaries.
11. Quantity and Distribution.
12. Timeliness and Quality.
E. Professional Staff Resources:
13. General Research Coverage.
14. Legal.
F. Fiscal Review Capabilities:
15. Fiscal Responsibility.
16. Staff Support for Fiscal Analysis and Review.
17. Fiscal Notes.

Independence

A. Legislative Autonomy Regarding Legislative Procedures:
1. Frequency and Duration of Sessions.
2. Expenditure Control and Compensation-Reimbursement Powers.
3. Reapportionment.
B. Legislative Independence of Executive Branch:
4. Access to Information and Analysis.
5. Veto Relationships.
6. Lieutenant Governor Problem.
7. Budget Powers.
8. Miscellaneous.
C. Capability for Effective Oversight of Executive Operations:
9. Oversight Capabilities.
10. Audit Capability.
D. Interest Groups:
11. Lobbyists.
E. Conflicts and Dilution of Interest:
12. Dilution of Interest.

Representatives

A. Identification of Members and Constituents:
1. Identification.
B. Diversity:
2. Qualifications.
3. Compensation.
4. Voting Requirements.
C. Member Effectiveness:
5. Size and Complexity of Legislative Body.
6. Diffusion and Constraints on Leadership.
7. Access to Resources.
8. Treatment of Minority.
9. Known Rules.
10. Bill Reading.

B. The accountable legislature

In the American system, the government exercises power which is entrusted to it by the people. A legislature, therefore, is not fulfilling its duties unless it accounts to the people for its actions.

The CCSL's evaluation looks for evidence of a legislature's ability to fulfill the duty of accountability.

Accountability is examined under the three main headings of comprehensibility. adequacy of information and public access to it, and internal accountability.

1. Comprehensible Forms

The organizational structure, forms and procedures of the legislature must be understandable. If they are too complex for the public to understand, or even too complex for a new legislator to grasp, a legislature is less likely to be accountable.

A fundamental consideration is whether a member of the public can know clearly who his legislator is. The optimum of one legislator per district for each house is achieved by New York, Iowa and Nebraska, among other states. Florida, Hawaii, South Carolina and Arizona permit the confusion of multi-member districts.

Once elected, it is important for the constituent to know how much influence his legislator will have. Specifically, he must be able to understand how leaders are chosen. The preferred answer would be by election of the entire house or, at a minimum, by the majority caucus.

The general complexity of the legislature's structure is another factor of accountability. The size of the houses of the legislature and the number of committees are again considered here as they were in scoring functionality.

A legislature is likely to be less accountable if the rules are known to, or can be changed by, only a select few. States which score high on uniformity of committee rules, for example, include Colorado, Illinois and Ohio, while Nevada and New Jersey have no published committee rules. Also considered for this purpose are joint rules like those prevailing in Connecticut, Indiana and New Hampshire.

"Anti-limbo" provisions for bills are again considered here as they were in functionality.

Provisions for regulating the work flow, deadlines, use of interim time and inter-house coordination all play a part in the information capability of a legislature as they do in functionality. States like Maine, New York and Ohio, which practice extensive inter-house coordination, for example, are at a advantage over states which do not, like Delaware, South Carolina and Wyoming.

2. Public Access to Information

Understandable forms and procedures are a start. But they can do little good unless information about them is available to the public. There must be advance notice of meetings and advance agendas. Meetings must be open to the public and rooms must be big enough and equipped properly for the smooth conduct of meetings.

Accountability is encouraged in states where a week's notice or more is given on public meetings, as is done in Connecticut and Idaho, but not in Louisiana or Delaware.

Other important considerations include working space and facilities for the press and media and whether the media is allowed in the legislative chamber; regular publication of records of discussion, debate and voting; timely publication of enough bill documents to supply all interested persons, and availability of information about legislators' private interests and about the activities of lobbyists.

3. Internal Influence of Individual Members

Internal factors are crucial in judging the accountability of a legislature. If power is so concentrated in a few hands that an individual legislator has little influence on what happens to bills, it makes little sense to talk about his accountability.

Questions of internal accountability focus on how much influence members have on leadership decisions. It is important to know how leaders are selected as well as the rules and traditions which set the powers of members in relation to committee chairmen, minority leadership and management agencies.

C. The informed legislature

State legislatures are policy-making institutions whose success depends upon their ability to collect analyze and use information. A legislature which can get information only from interest groups or executive agencies has compromised its independence as a separate branch of government.

Many of the same factors used in determining functional and accountable characteristics of a legislature are applicable in evaluating how well it can deal with information. These include how much time is available, how it is used, the number of committees and committee assignments per member, advance notice of meetings and agendas, advance written testimony from organized groups and, again, the size and character and availability of meeting rooms and offices.

A specific test of a legislature's ability to get information is whether committees have subpoena power. In some legislatures, and those of New York, Ohio and Arizona are examples, that power is available to all committees. Committees in other legislatures can get subpoenas by special action of their house. Others don't have the power at all.

Standing committees can be powerful instruments for gathering and handling difficult information, especially if they have year-round status, as such committees do have in California, Florida and New York.

Many states, including Michigan, Arizona and Georgia, require reports of interim activities, which is a positive factor in gauging information capability.

Electronic data processing showing bill status and history is becoming more widespread, but states like Texas, New Jersey and Idaho still do without it.

Intelligent handling of complex legislation is supported by the publication and wide distribution of well-printed bill summaries incorporating statements of the legislator's intent. Negative effects result from situations like those in Ohio, Alabama and Montana where bills are not printed in quantity; or in Nebraska, South Dakota and Utah where amendments are not published; or in South Carolina where there is no central distribution point for printed bills.

Specialized staffs, including legal, fiscal and research experts who are encouraged by pay and other factors to develop in their jobs, add greatly to a legislature's competence.

D. The independent legislature

The main criteria of a legislature's independence are its control over its own activities, its independence of the executive branch, its review and oversight powers, control of lobbyists and safeguards against conflicts of interest.

1. Autonomy over legislative activities

A legislature should decide how often and how long it will meet. It should decide what subjects it will consider. It should make its own plans for districting and apportionment. It should have a lot to say about the budget for legislative activities.

At least 33 of the 50 state legislatures must be faulted on the question of independence because they lack the power to call a special session. Of those that have the power, the highest score is given to legislatures which can do so by a simple majority, like those of Connecticut, Hawaii and West Virginia.

The ability to expand the agenda set by the governor for a special session which he called is also a strong indicator of legislative autonomy as a separate branch of government. North Dakota and Wisconsin are among the states that can do so. Mississippi and Wyoming cannot.

Constitutional limitations over salary and expense allowances are considered more harmful to a legislature's independence than salaries set by statute, as they are in Kansas, Colorado and Washington.

2. Independence from the executive branch

Access to information, professional staff, budget powers and subpoena powers are crucial considerations in a legislature's independence. But the issue of independence can perhaps be best spotlighted by the question of veto relationships. The availability to a governor of a "pocket veto" which gives the legislature no chance to override it, clearly short-circuits the legislative process. Legislatures in Illinois, Nevada and Missouri have no recourse from such vetoes. It is best if sessions to consider vetoes are provided by law but, at the very least, a legislature should have the power to convene a veto session.

A real legislative role for the lieutenant governor is also viewed as detracting from legislative independence from the executive branch. The lieutenant governor plays a legislative role in Colorado, Alabama and Georgia, but not in Hawaii, Utah or Massachusetts.

Other considerations of independence are whether a legislature takes part in budget development and analysis before a budget is submitted, as it does in New York, Iowa and New Mexico, and whether anyone but a legislator may introduce bills.

A legislature with powers and the ability to review programs and audit expenditures is also adding to its independence.

3. Lobbyists and Conflicts of Interest

A legislature's ability to shield itself from undue external influence is enhanced when information about lobbyists is made available to legislators, the public and the press. Ability to avoid conflict of interest is indicated by rules covering such things as the employment of relatives, holding multiple public offices and the possibility of a legislator's doing paid work for state and local agencies or non-governmental clients.

E. The representative legislature

The voters' opportunity to elect the man of their choice to a legislature is an obvious and important step in achieving a representative body. But election is only one of the steps involved in the process.

Before it can be concluded that the voters elected the man of their choice several other questions must be asked. Two of these questions are: Who was allowed to run? Who was financially able to run?

After the election the voters may or may not be represented in the legislature depending on how effective the legislative system allows their man to be.

Clear identification and good lines of communication between legislators and their constituents are primary factors in the development of a representative legislature.

Voters are more likely to know who their legislator is and vice versa when senators and representatives are elected from "single-member districts." Identification (and the legislator's responsibility) tends to become confused if voters in each district must elect more than one representative to each house.

An office for the legislator within his district also encourages identification, communication and accountability between the people and their representative.

Restrictions on age and residency, to the extent that they limit the number of possible candidates, generally tend to discourage representativeness. Another factor with similar effects is compensation. Unrealistically candidates to those who can support themselves from other sources, and may encourage conflicts of interest.

An adequately diverse and therefore representative legislature will have young, old and middle-aged members who reflect a variety of commitments to social, economic or ethnic groups, and who come from a variety of backgrounds.

Strong identity between legislators and constituents and accurate reflection of the diversity of the state's population are a good start toward a representative legislature. But representation can approach its full potential only to the extent that every legislator has the opportunity to do his job effectively.

The remainder of the CCSL's evaluation of a legislature's ability to be representative, therefore, is drawn from a long list of questions on whether a legislator can be truly effective. In many instances they are the same questions that were asked in considering other major objectives, especially functionality, accountability and information capability.

Evaluation of a representative legislature must include consideration of the size of house and senate; number of standing committees; selection of leadership; whether a majority of the members of various committees have the power to act without the chairman; the provision of staff; office space; minority membership on various committees; powers of minority leaders; published rules, and clearly defined committee jurisdictions.

V. HOW THE STATES RANKED

The following table shows the results of the first systematic analysis of how the fifty state legislatures measure up to minimum standards of legislative capability.

The overall rankings arrived at in the Legislative Evaluation Study come from a combination of factors considered under the five major castegory groupings of functional, accountable, informed, independent and representative. The chart also how how each legislature fared on each of the five major criteria which made up its final standing.

Reading the rankings

Both the overall ranking and the rankings in each of the five categories are general in nature. They show that one legislature is "better" or "worse" than another, but not how much better or worse. The differences between adjoining states—say between the tenth and eleventh ranked, and the twenty-fifth and twenty-sixth ranked—are sometimes very small.

It must also be emphasized that these rankings do not portray the sometimes dramatic changes that have taken place, and are taking place, in a number of state legislatures. They are like a "stop-action" photograph: they show only where states stand at a particular moment (mid-1970), and not where they are going or how far they have come.

The table shows the rank order of the states by the five F.A.I.I.R. criteria and the overall ranking. From this the variously ranked states can be "profiled" across the F.A.I.I.R. system to see how they ranked within each of the individual criteria categories. So, the first-ranked California shows up as having ranked first in functional, third in accountable, second in informed, third in independent, and second in representative. This kind of a profile is not surprising just as the case of the lowest ranked state, Alabama, shows a consistency across the F.A.I.I.R. system. Alabama ranks fiftieth overall, forty-eighth in functional, fiftieth in accountable, forty-ninth in informed, fiftieth in independent, and forty-first in representative.

Finally, the rankings—both overall and in each category—show where states stand in relation to minimum rather than ideal standards of legislative capability. The state that ranks first according to our minimum standards would rank much lower—somewhere perhaps, in the bottom half or third—on any ideal or objective scale. There is no "perfect" state. Even the best needs improvement.

RANK ORDER OF STATES BY OVERALL RANK AND F.A.I.I.R. CRITERIA

Overall rank	State	Functional	Accountable	Informed	Independent	Representative
1	California	1	3	2	3	2
2	New York	4	13	1	8	1
3	Illinois	17	4	6	2	13
4	Florida	5	8	4	1	30
5	Wisconsin	7	21	3	4	10
6	Iowa	6	6	5	11	25
7	Hawaii	2	11	20	7	16
8	Michigan	15	22	9	12	3
9	Nebraska	35	1	16	30	18
10	Minnesota	27	7	13	23	12
11	New Mexico	3	16	28	39	4
12	Alaska	8	29	12	6	40
13	Nevada	13	10	19	14	32
14	Oklahoma	9	27	24	22	8
15	Utah	38	5	8	29	24
16	Ohio	18	24	7	40	9
17	South Dakota	23	12	15	16	37
18	Idaho	20	9	29	27	21
19	Washington	12	17	25	19	39
20	Maryland	16	31	10	15	45
21	Pennsylvania	37	23	23	5	36
22	North Dakota	22	18	17	37	31
23	Kansas	31	15	14	32	34
24	Connecticut	39	26	26	25	6
25	West Virginia	10	32	37	24	15
26	Tennessee	30	44	11	9	26
27	Oregon	28	14	35	35	19
28	Colorado	21	25	21	28	27
29	Massachusetts	32	35	22	21	23
30	Maine	29	34	32	18	22
31	Kentucky	49	2	48	44	7
32	New Jersey	14	42	18	31	35
33	Louisiana	47	39	33	13	14
34	Virginia	25	19	27	26	48
35	Missouri	36	30	40	49	5
36	Rhode Island	33	46	30	41	11
37	Vermont	19	20	34	42	47
38	Texas	45	36	43	45	17
39	New Hampshire	34	33	42	36	43
40	Indiana	44	38	41	43	20
41	Montana	26	28	31	46	49
42	Mississippi	46	43	45	20	28
43	Arizona	11	47	38	17	50
44	South Carolina	50	45	39	10	46
45	Georgia	40	49	36	33	38
46	Arkansas	41	40	46	34	33
47	North Carolina	24	37	44	47	44
48	Delaware	43	48	47	38	29
49	Wyoming	42	41	50	48	42
50	Alabama	48	50	49	50	41

VI. THE IMPLICATIONS FOR THE FUTURE

Reform is possible and within reach. That much, we feel, is an evident and fair conclusion to be drawn from the CCSL evaluation study.

A second conclusion that seems valid is that any competent and sincere effort at reform that meets with some success holds promise of a high return. The reason is that many of the reformable factors involved in the operation of a state legislature have widespread effects.

Strengthening the staff, for example, holds the promise of improving an under-staffed legislature in all five of the major objectives delineated in this report: functionality, accountability, capacity for information, independence and representativeness.

Providing enough time to deal with the legislature's business would have similar multiplying effects. Improving rules and procedures for bill handling would tend to make a legislature more functional, better informed and more representative.

Bringing committee structure and leadership requirements up to the minimum standards has clear implications for functionality, accountability and representativeness.

Further examination reveals that some improvements are attainable by a legislature which has the will to pursue them. Other reforms will require, in addition, a commitment to spend more money on the legislative process. A third group will require constitutional amendments.

Improvements which, in most cases, are subject primarily to legislative action include those on committee structure, leadership, bill handling and ethics. Their yield will be in terms of functionality, accountability, information capability, independence and representativeness—all five of the "major objectives."

Improvements which will require the expenditure of money include better staffing, more realistic levels of salaries and expenses for legislators, and better facilities. The yield, again, is in terms of all five major objectives.

Reforms which will require action on constitutions in many cases would address time, size of legislative bodies and, in some instances compensation.

Improvements that fall under all three classifications are happening now but slowly—too slowly in terms of the multiplying numbers of issues that require creative planning and action.

Many of these issues must be dealt with at the state level if they are to be dealt with effectively. Reform does carry a price tag in terms of time effort money skill and political risk. But the return in terms of more responsive government effective handling of issues and a sounder social and political climate, is far greater than the cost.

THE TEACHER CORPS

Mr. HARRIS. Mr. President, a bureaucratic struggle is developing within the administration over the fate of the Teacher Corps. If the Congress says nothing, I fear we may see yet another example of an administration making decisions which greatly affect youth but which give adequate consideration neither to their views nor their interests.

The Teacher Corps is now part of the Office of Education. Reportedly the Office is resisting efforts to include the Corps in the new youth agency which the President proposed in his January 14 speech at the University of Nebraska. Leading those who believe the Teacher Corps must play a major role in the new youth agency is Peace Corps Director Joseph Blatchford. A January 29 article in the New York Times reports that "literally at the last minute" the White House deleted from the President's speech any reference to the Teacher Corps as one of the programs to be included in the new agency.

In my view there is an overriding reason why the Teacher Corps should be part of the new agency. If the President's proposal to American youth is to succeed, it must appeal to all American youth—white and nonwhite. In this area the Teacher Corps has the place of pride—more than 50 percent of those in the Corps are from minority groups. By contrast, only 3.1 percent of Peace Corps volunteers are nonwhite. It would be a great mistake to exclude from the new youth agency the one Federal youth program that has demonstrated great attractiveness among minority groups.

Other reasons for the merger can be cited, however. The Peace Corps and the Teacher Corps already are attempting to work together. The Peace Corps has wanted experienced teachers and could use more minority participation. With this in mind, the Peace Corps and the Teacher Corps recently signed a joint agreement to assist locally developed plans for educational innovation in the United States and overseas. This is the first time the Peace Corps has integrated its operational programs with the operational programs of a domestic agency.

In light of this existing cooperation, I urge the administration to give favorable consideration to the merits of including the Teacher Corps in the new youth agency.

Mr. President, the January 29 New York Times article raises another issue of great importance. According to his report, the administration's Office of Management and Budget is proposing that the total budget of the new youth agency be set at a figure $30 million less than the combined budgets of the various youth programs to be merged.

This would be a major error. The President has made an eloquent promise. If the administration proceeds to group all youth programs under one umbrella and then to cut the total youth budget, I predict the response of young people will be one of immense skepticism, and rightly so.

Another issue is involved in the funding decision. The Times article reports that the administration is considering favorably the adoption of a proposal which, in fact, I have made repeatedly in the past—the creation of a National Foundation on Youth Participation. A foundation could stimulate institutions throughout the country to give more attention to youth's needs. But the success of such a foundation will depend upon the amount of money placed at its disposal.

In the near future I plan to reintroduce legislation for the establishment of a National Foundation on Youth Participation. In the meantime I urge the admintration in its own planning to provide adequate financial support for the foundation in any proposal it sends to the Congress.

Mr. President, I ask unanimous consent that the New York Times article of January 29, 1971, be printed at this point in the RECORD.

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

SERVICE CORPS STRUGGLE: IN FIGHT OVER PROPOSED AGENCY'S ROLE A PRESS RELEASE CONSTITUTES BOLD SALVO

(By Jack Rosenthal)

WASHINGTON, January 28.—In a seemingly routine press release issued late yesterday, the Office of Education announced the appointment of an acting director of the Teacher Corps, which sends 3,000 young teachers to help out in schools in poor communities across the country. In fact, the announcement contituted a bold salvo in a high-level, three-cornered internal struggle over the shape and direction of the new national service corps, which President Nixon proposed two weeks ago. Coupled with other recent developments, the press release offers a rare look at how bureaucracies wage war.

ADVERSARIES IN STRUGGLE

The adversaries in this particular struggle are Joseph H. Blatchford, Peace Corps director, who the President said would head the new agency; Sidney P. Marland Jr., the new Commissioner of Education; and officials of the Office of Management and Budget.

At issue are whether the new agency will, as officials of the Peace Corps and Vista have hoped, jump off to a quick start, whether it will in fact encompass volunteer services now scattered through the Federal branch, and whether it will be adequately funded.

Another issue, in the minds of outside critics, is whether the whole idea of a new agency is part of a "hidden" Nixon agenda of nibbling to death programs acclaimed as innovations of the Kennedy and Johnson Administrations.

The issues will probably take weeks to resolve and even then, they may have to be resolved personally by the President. But in the meantime, the parties to the debate appear to be marshaling all the classic bureaucratic weapons in an effort to force the outcomes they desire.

This particular struggle went on quietly for weeks, focused on an interagency task force. But then the President disclosed—with surprising suddenness, in the view of some senior officials—his national service corps proposal.

REFERENCE ELIMINATED

In a speech Jan. 14 at the University of Nebraska, he said he would ask Congress to merge the Peace Corps, VISTA—a Peace Corps-like domestic agency—and a number of other volunteer service agencies now scattered through the executive branch.

His aim, he said, was to "give young Americans an expanded opportunity for the service they want to give," with freedom to serve both at home and abroad.

The battle escalated immediately on the first of two fronts—the Office of Education vs. partisans of the new combined service corps.

The President, officials say, had intended to identify the Teacher Corps in his speech as one of the agencies to be merged. But this specific reference was eliminated "literally at the last minute," says one official, because there had been insufficient notice given to Commissioner Marland.

Mr. Marland had, it is said, already decided to fight to keep the Teacher Corps in the Office of Education. Elimination of the specific reference allowed him to keep this fight alive.

REASON FOR OUSTER

Immediately, also on Jan. 14, he dismissed the director of the Teacher Corps, Richard A. Graham. Mr. Graham had headed the agency almost since its beginning in 1965, having been one of the Peace Corps' early officials.

Both Mr. Graham and Office of Education officials are known to agree on the reason for the ouster. Mr. Graham was a known advocate of moving the Teacher Corps to the new agency, in the belief that it would be more likely to attract spirited, reform-minded young people.

The next step came yesterday, with Mr. Marland's press release announcing the appointment of William L. Smith, a black educator, as acting director of the Teacher Corps.

"It was a splendid bureaucratic ploy," one Federal officials said today. "The location of the Teacher Corps is still up for decision. Three months from now it may all belong to Blatchford [as head of the new joint agency]. But here goes Marland, creating his own momentum for keeping it right where it is."

The official also professed admiration for Mr. Marland's ability to imply Presidential support for leaving the Teacher Corps within the Office of Education. In his press release, Mr. Marland said the work of the Teacher Corps "is essential if we are to fulfill our mandate from the President to reform American education."

A SECOND FRONT

The second front in the in-fighting has developed between partisans of the new merged agency and officials of the Office of Management and Budget.

One issue is how quickly the new agency should be established. Its partisans argue that speed is essential, lest it lose the momentum generated by the President's announcement and by the approving comment his Nebraska speech produced.

Consequently, they favor establishing the agency by a formal reorganization plan, which would take effect in 60 days unless Congress disapproves. To proceed by regular legislation, they say could take months. And in the interim, the morale and "non-bureaucratic spirit" of agencies like the Peace Corps would degenerate.

Officials of O.M.B., however, are said to be insistent that the agency be established by affirmative legislation. Advocates of this point of view believe this to be a necessarily more cautious approach.

"If this approach to voluntarisms turns out to be another house of cards," one said today, "there won't be another house. So we should go slow."

A second issue that has generated considerable heat, officials say, is the proposed funding for the agency. Mr. Blatchford reportedly has proposed nearly $200,-million, about $40-million more than the combined 1971 budgets of the Peace Corp Vista and the Teacher Corps.

But it has been reported that the peace corps budget for 1972 has been sharply reduced and that O.M.B.'s counterproposal for the new agency is only $130-million.

The funding level is regarded as additionally important because of one proposed feature of the new agency that all sides appear to favor. This is the authority to make grants to worthwhile private voluntary undertakings.

But the amount of money for grants would be small, possibly not more than $20-million. And all sides agree that guidelines for its use would have to be drawn with exacting care, for fear of inspiring false hopes among thousands of worthwhile private organizations.

To overcome what he has called the "cookies and rummage sale image of voluntarism," Mr. Blatchford is contemplating possible sabbaticals for service for Federal employees, a deliberate effort to enlist returning veterans, and a possible "environment corps," a prospect raised by the President in his Jan. 14 speech.

EMERGENCY STRIKE LEGISLATION

Mr. GRIFFIN. Mr. President, an editorial in today's Washington Daily News comments most favorably on President Nixon's proposed emergency strike legislation. I ask unanimous consent that the editorial be printed in the RECORD.

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

NIXON'S STRIKE DETERRENT

President Nixon again has asked Congress for a permanent, overall law to deal with labor disputes which threaten the country with emergencies. The law would apply to railroads, airlines, shipping and trucking.

His plan, or something similar, is perfectly logical. It would give unions and management ample time to come to their own terms. But if, after several alternatives had been tried they could reach no settlement, the President could arrange one.

The crux of the plan is called the "last resort" provision.

All else failing, every means of negotiating, a settlement having been exhausted, each side would be required to submit a "final offer." Then an impartial panel would choose one or the other offer. Or, as Mr. Nixon stated it:

"This panel would select, without alternation, the most reasonable of these offers as the final and binding contract to settle the dispute."

The President thinks this would "facilitate" a settlement before this stage was reached, in most cases. And he thinks it is better than compulsory arbitration, which unions violently oppose and most managements disavow. Arbitration, as he says, usually just splits the difference between what the union wants and the management offers. Knowing that probability in advance both sides "persist in unreasonable positions."

Mr. Nixon's proposal is the best formula for avoiding disastrous nationwide strikes that has come along. Its workability can only be proven by trying it but there is no way to try it until Congress passes such a law.

Just last December, a nationwide rail strike was averted only because Congress passed a last-minute, stopgap, temporary law giving the unions a pay raise through February, requiring them to stay on the job meanwhile, and to keep negotiating. That measure expires in March.

Two of the unions since have reached a tentative agreement with the railroads, but three others have not settled.

It is too late for Mr. Nixon's plan to affect this dispute, and Congress may have to push the panic button again next month. But the business of having Congress intervene in every individual dispute could be avoided if the lawmakers would pass the law Mr. Nixon asks.

RULES OF PROCEDURE OF THE COMMITTEE ON RULES AND ADMINISTRATION

Mr. JORDAN of North Carolina. Mr. President, pursuant to section 133B of the Legislative Reorganization Act of 1946, as amended, the Committee on Rules and Administration, at its organizational meeting held this date, adopted rules governing the committee's procedure.

I send a copy of the committee's rules as adopted to the desk and ask that they be reproduced in the RECORD as required.

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

RULES GOVERNING THE PROCEDURE OF THE SENATE COMMITTEE ON RULES AND ADMINISTRATION ADOPTED PURSUANT TO SECTION 133b OF THE LEGISLATIVE REORGANIZATION ACT OF 1946, AS AMENDED

TITLE I—MEETINGS OF THE COMMITTEE

1. The regular meeting dates of the Committee shall be the second and fourth

Wednesdays of each month, at 10:00 a.m., in Room 301, Senate Office Building. Additional meetings may be called by the chairman as he may deem necessary or pursuant to the provisions of Section 133(a) of the Legislative Reorganization Act of 1946, as amended.

2. Meetings of the Committee shall be open to the public except during executive sessions for marking up bills or for voting or when the Committee by majority vote orders an executive session. (Section 133(b) of the Legislative Reorganization Act of 1946, as amended.)

3. Written notices of Committee meetings will normally be sent by the Committee's staff director to all members of the Committee at least three days in advance. In addition, the Committee staff will telephone reminders of Committee meetings to all members of the Committee or to the appropriate staff assistants in their offices.

4. A copy of the Committee's intended agenda enumerating separate items of legislative business, committee business, and referrals will normally be sent to all members of the Committee by the staff director at least one day in advance of all meetings. This does not preclude any member of the Committee from raising appropriate nonagenda topics.

TITLE II—QUORUMS

1. Pursuant to Section 133(d) five members of the Committee shall constitute a quorum for the reporting of legislative measures.

2. Pursuant to Rule XXV, Section 5(a) of the Standing Rules of the Senate three members shall constitute a quorum for the transaction of routine business.

3. Pursuant to Rule XXV, Section 5(b) three members of the Committee shall constitute a quorum for the purpose of taking testimony under oath; provided, however, that once a quorum is established, any one member can continue to take such testimony.

4. Subject to the provisions of Rule XXV, Section 5(a) and Section 5(b), the subcommittees of this Committee are authorized to fix their own quorums for the transaction of business and the taking of sworn testimony.

5. Under no circumstances, may proxies be considered for the establishment of a quorum.

TITLE III—VOTING

1. Voting in the Committee on any issue will normally be by voice vote.

2. If a third of the members present so demand, a record vote will be taken on any question by roll call.

3. The results of roll call votes taken in any meeting upon any measure, or any amendment thereto, shall be stated in the Committee report on that measure unless previously announced by the Committee, and such report or announcement shall include a tabulation of the votes cast in favor of and the votes cast in opposition to each such measure and amendment by each member of the Committee. (Section 133 (b) and (d) of the Legislative Reorganization Act of 1946, as amended.)

4. Proxy voting shall be allowed on all measures and matters before the Committee. However, the vote of the Committee to report a measure or matter shall require the concurrence of a majority of the members of the Committee who are physically present at the time of the vote. Proxies will be allowed in such cases solely for the purpose of recording a member's position on the question and then only in those instances when the absentee Committee member has been informed on the question and has affirmatively requested that he be recorded. (Section 133(d) of the Legislative Reorganization Act of 1946, as amended.)

TITLE IV—DELEGATION OF AUTHORITY TO COMMITTEE CHAIRMAN

1. The chairman is authorized to sign himself or by delegation all necessary vouchers and routine papers for which the Committee's approval is required and to decide in the Committee's behalf all routine business.

2. The chairman is authorized to engage commercial reporters for the preparation of transcripts of Committee meetings and hearings.

3. The chairman is authorized to issue, in behalf of the Committee, regulations normally promulgated by the Committee at the beginning of each session, including the senatorial long-distance telephone regulations and the senatorial telegram regulations.

TITLE V—HEARINGS

All hearings of the Committee shall be conducted in conformity with the provisions of Section 133A of the Legislative Reorganization Act of 1946, as amended. Since the Committee is normally not engaged in typical investigatory proceedings involving significant factual controversies, additional implementory rules for hearing procedures are not presently promulgated.

TITLE VI—SUBCOMMITTEES

1. There shall be seven, three-member subcommittees of the Committee as follows:

Standing Rules of the Senate.
Privileges and Elections.
Printing.
Library.
Smithsonian Institution.
Restaurant.
Computer Services.

2. After consultation with the ranking minority member of the Committee, the chairman will announce selections among the members of the Committee to the various subcommittees (and to the Joint Committee on Printing and the Joint Committee on the Library) subject to Committee confirmation.

3. Each subcommittee of the Committee is authorized to establish meeting dates, fix quorums, and adopt rules not inconsistent with these rules.

4. Referrals of legislative measures and other items to subcommittees will be made by the chairman subject to approval by the Committee members.

THE USO

Mr. HARRIS. Mr. President, 30 years ago, on February 4, 1941, the USO was born. The organization came into being as an outgrowth of long standing American tradition of community and citizen concern for the welfare and morale of our servicemen. Welfare work with servicemen during World War I was mostly entrusted to loosely coordinated agencies. Following that war, the "off post" religious and social welfare needs of the greatly reduced military force were served by some of the present USO members and community centers operated by local religious and civilian groups. "On post," the military chaplains ministered to the servicemen.

World War II, and the advent of universal military service, created a rapid and massive buildup of Armed Forces and the establishment of many military installations both in the United States and overseas. With a growing military body of men and women dislocated from their homes, families, and communities, a positive plan for "off post" welfare, morale, and recreational services became a necessity. Social service agencies, citizens, and Government officials, including President Franklin D. Roosevelt, met to devise a coordinated and noncompetitive program for meeting the "off post" needs of military personnel. The plan called for the creation of a new organization by five voluntary groups—YMCA, YWCA, National Catholic Community Service, National Jewish Welfare Board, and the Salvation Army, later joined by the Travelers Aid Association of America.

This was the birth of the USO—a combined partnership representing the three major faiths. Through their diversity, the member groups could bring to the new organization their distinctive religious and spiritual commitments, their experience, their philosophy, and their historic and traditional reputation for service. The total program and operation of USO was to be wholly supported with funds to be contributed by the public, to carry out its charter purpose "to assist in serving the religious, spiritual, social welfare, educational, and entertainment needs of members of the Armed Forces." The record of the USO throughout World War II stands as a lasting tribute to the efficacy of interfaith action and cooperative social service.

Following World War II, a survey by President Harry S. Truman found an even greater need for USO-type service to combat the isolation and boredom of servicemen in peace time. Today, with many of our young men again in uniform, the USO is continuing its tradition of service. More than 125 facilities in the United States and 62 points of service overseas provide a wide range of services. Assistance in securing housing facilities for military families, help with accommodations for visiting servicemen, airport lounges, personal care facilities—these are only a few of the USO programs. The public support—both financial and in provision of volunteer services—has provided a strong witness to the concern of our Nation for its young servicemen.

Thus, on this 30th anniversary, the United States salutes the USO for its job well done of keeping faith with our military youth, I commend the millions of volunteers and staff for their untiring and effective service to our country.

COUNCIL ON ENVIRONMENTAL QUALITY

Mr. JACKSON. Mr. President, on January 28–31 the American Law Institute, the American Bar Association, and the Smithsonian Institution sponsored an intensive course on environmental law. A great deal of the conference proceedings were devoted to a discussion of various aspects of the operation and administration of the National Environmental Policy Act. Russell E. Train, Chairman of the Council on Environmental Quality, and I were among those who had the honor of addressing the conference. Mr. President, I ask unanimous consent that the text of our remarks be printed in the RECORD.

The Council on Environmental Quality, in its first year of existence, has fulfilled many of the major hopes and expectations of Members of Congress and

the public when the Council was established a little over a year ago. The proposed new guidelines which the Council issued last week are welcome directions to all the Federal agencies which take actions affecting the environment. I also ask unanimous consent that the guidelines be printed in the RECORD.

I am pleased that draft as well as final environmental statements on administrative actions will, under these guidelines, be made available to the public. The requirement that a minimum of 30 days elapse between the release of a final environmental statement and the taking of the proposed action means that there will be time for Congress and the public to look closely at all comments which have been made on a particular proposal, and to review in depth an agency's final decision while there is still time to do something about it. The requirement that draft statements on programs or projects where public hearings are required be made available 15 days prior to the hearing will mean that members of the public can be informed participants in shaping public decisions.

The members and staff of the Interior and Insular Affairs Committee were briefed this week by Mr. Train on the President's 1971 program for the environment and we were pleased to see the leading role which the Council has taken in developing that program. It is fair to say that as a consequence of the establishment of the Council by the National Environmental Policy Act, the environment is receiving much more attention at the highest level of the executive branch. This, of course, is what was intended when the Council was established in the Office of the President. At the conclusion of the Council's first year of existence, I would like to take this opportunity to commend Chairman Train, Mr. Cahn, Dr. MacDonald, and the Council staff for having made an important contribution to the national effort to improve the quality of environment.

The Interior and Insular Affairs Committee will be holding oversight hearings in the near future on the administration of the act, the Council's overall performance, and on the need for any amendments to the act.

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

LAW, LAWYERS AND THE ENVIRONMENT

(Address of Senator HENRY M. JACKSON, to the Course on Environmental Law, Sponsored by the American Law Institute, the American Bar Association and the Smithsonian Institution)

I am delighted to be here. A captive audience of lawyers is hard to find these days. I am particularly glad to have an audience of lawyers involved in the deepening struggle to preserve a liveable environment. There is no more worthy cause, and no group that can do more to advance its ends.

Any objective assessment of our progress in developing a strategy to protect and enhance our environment would have to conclude that we are moving slowly—far too slowly to keep pace with, to stop, and to reverse the relentless degradation of our environment. We are finally beginning to shape programs, to allocate resources and sound the alarm. But the visible results of this effort are, quite frankly, not overwhelming.

One bright spot in this picture is the emergence of law—and lawyers—as a major force for preserving the environment. As public attention and political interest has increasingly centered on environmental issues, lawyers have discovered new ways to use their legal talents in improving the quality of our life and the quality of our surroundings. The early returns from their efforts have been encouraging to all of us who care about our legacy to future generations. Among other things, these lawyer-conservationists have:

Required government officials to consider the environmental implications of their decisions;

They have forced industry to give new weight to the environmental aspects of their operations;

They have effectively forestalled development in both public and private sectors which seriously threatened the environment; and

They have given private citizens new weapons and new opportunities to protect the environment.

The impact of this activity extends far beyond the small number of cases involved. I know from conversations with business executives and government officials that they are conscious, as never before, that they may be held accountable for the environmental consequences of their decisions. Some of them don't like it, but they are learning to live with it. Even the Commissioner of Internal Revenue has learned, the hard way, that public interest litigation to protect the environment is here to stay.

As sponsor of the National Environmental Policy Act, I have watched with interest the growing use of its provisions in suits involving environmental issues. The simple assertion, for the first time in our history, of a national policy toward the environment, has provided lawyers with a potent weapon. As many of you know, the Act was designed with the intent of forcing Federal agencies to consider the impact of their programs on the environment. With this in mind, the Act included such action-forcing provisions as the requirement of the environmental impact statement. While compliance with this requirement during the Act's first year has been less than satisfactory, the picture is improving. One significant factor behind this improvement is the proliferation of private actions to force compliance.

I am convinced that the National Environmental Policy Act can be strengthened by the 92nd Congress. I have already arranged for the Senate Interior Committee to hold hearings on this subject early next month. We will review in detail the operation of the Act in its first year, with special emphasis on the performance of Federal agencies in preparing timely environmental impact statements. The recently published regulations proposing new requirements for early public disclosure of impact statements is a step in the right direction. There are, however, many other areas where improvement is needed.

I would welcome your help in this effort to refine and strengthen the National Environmental Policy Act. Those of us who are confined on Capitol Hill need the help of those at large in the real world. The practical experience of environmental lawyers, both in the courts and before Federal agencies, will be invaluable to the Committee when it considers changes in the Act.

Among other changes, I intend to press for inclusion of a provision recognizing that every American has a fundamental and inalienable right to a healthful environment. Those of you who have studied the history of the Act may recall that such a statement was included in the original bill I introduced. Because of opposition to this language, the final version simply recognizes that everyone "should enjoy a healthful environment." In my view, there is a big difference between the statutory recognition of a basic right and the expression of a pious hope. I believe that we do have the legal right to a healthful environment and that statutory recognition of this right is both necessary and desirable at this point in our history.

I am well aware that broad legislative enactments like the National Environmental Policy Act cannot by themselves resolve our complex environmental problems. For this reason, we must rely heavily on the efforts of lawyers in the private sector to refine and use a new law of environmental protection. It seems clear that the development of common-law rights to clean, healthy and aesthetically pleasing surroundings has lagged behind both public aspirations and public needs. There are valid reasons for the slow development of case law in this area. Not the least of these is the reluctance of judges to usurp the legislative function. The fact remains that legislatures cannot possibly legislate on all matters that are essential to environmental quality. Concerned lawyers and the organizations they represent must move in to protect the public interest in situations where statutory law does not exist.

Recognizing the limitations of legislative action, it is nonetheless true that the judiciary will be more willing to act in specific cases if the legislature has made broad policy decisions. It is also true that only the legislative branch can provide the comprehensive approach required to deal with our most basic environmental problems. The shortcomings of the case-by-case approach and the need for broad leisglative solutions is dramatically apparent in the field of land use planning.

Most of the leading environmental cases of the past five years relate significantly to land use. From the first Storm King case to the Alaska pipeline case, courts throughout the country have been asked to prevent uses of the land which were deemed to be inconsistent with the preservation of the best in our environment. As a result of this litigation, highways have been stopped, power plants halted and industrial developments stalled. Without minimizing in any way the contribution made by these cases, the fact remains that they have not developed a broad, positive approach to land use. They have saved precious fragments of our environment, but they have not forged long-term solutions to our land use problems.

While lawyers have been fighting rear-guard actions in the courts, government has abdicated its responsibility to provide for the orderly development of our most precious natural resource, the land. This is a classic case for the exercise of the legislative power. That is why I have been urging Congress to enact a National Land Use Policy to encourage the development of statewide land use plans. Such plans would include ground rules for the location of power plants, industrial development and the protection of such special resources as parks, lakes and shorelines. They would permit economic development consistent with environmental quality.

Some are suggesting today that we have worshipped economic growth at the expense of our environment. It is undeniably true that our Gross National Product represents an intolerable amount of environmental degradation. It is equally true that the technological explosion of the past quarter century has threatened our environment as never before. With this in mind, some of our evangelical environmentalists are urging a "no growth" policy to protect the environment. In my view, this approach ignores the political and economic facts of life.

It is all very well to advocate that we adopt a new national life style which rejects our materialistic consumptive traditions. But there is little evidence that most Americans are ready and willing to pay this price, on a personal level, to achieve environmental

goals. This is particularly true of the 26 million Americans officially classified as living below the poverty line. They aspire to the material goods and comforts enjoyed as a matter of course by others. Understandably, they don't want to be the first to suffer under some State-backed program of spartan rigor.

I don't mean to suggest that environmental concern is solely a middle-class phenomenon. It is not. What I do want to suggest is that the confrontation strategies which characterize most reform movements and which tend to polarize public opinion around competing goals are, in my view, of only short-range value in dealing with environmental problems. This is because the problems, the challenges and the choices faced are tremendously complicated. They will not yield to simple-minded "demon" theories of culpability.

Let me emphasize that the legal, institutional and social changes required cannot be achieved simply by dramatic confrontations between "good guys" and "bad guys." The issues posed are far too complex. They will instead involve difficult value choices; questions of who pays and who benefits; and agonizing trade-offs between equally valid national goals and objectives.

One element of the "no growth" approach is the disturbing tendency to blame our environmental ills on science and technology. Undoubtedly they constitute an appealing scapegoat. But let us remember that it is our use of science and technology that has created such a threat to the environment. And it is equally possible to use them in different ways to achieve the goals of environmental quality and economic growth. Indeed, we must rely heavily on our scientific and technological talents to solve environmental problems—to generate power more efficiently, to devise pollution-free manufacturing processes, to develop new techniques of recycling and reuse. It would be, in my opinion, a tragic mistake to downgrade science and technology at a time when they must assume a greater role in shaping a better environment.

There is in my view no inherent inconsistency between environmental quality and economic growth. The real issue is—what kind of growth? We need not be committed to the kind of growth that fouls our air, pollutes our water and spoils our land. We can develop new laws and new institutions to guide our growth with new respect for the environment.

In conclusion, I want to invite you, as lawyers and therefore as advocates for particular points of views, to pause from time to time and take a philosophic overview of the important public values which you represent and the directions in which environmental law is moving. In an emerging area of public policy significance, especially one that is charged with righteous indignation generated by past neglect, there is a natural temptation to see things in terms of black and white; to let idealistic concern drift into impractical and sublime answers.

The lawyer's skill, in my view, is first and foremost, the skill of analysis. It is identification of the real issues, the trade-offs and the alternatives in a conflict situation.

The lawyer's responsibility is to resolve conflict, to contribute to social change and to right past injustices.

In carrying out this responsibility the humanist-lawyer operates within the existing social structure and legal order. He seeks to effectuate change in the existing structure in a manner which strengthens institutions and leads to a wider sharing of the freedoms, the amenities and the wealth this nation enjoys.

The lawyer's responsibility cannot be carried out unless he views the problems he faces as they are.

The skills of the humanist-lawyer, the man who sees the problems as they are and who can chart a realistic course toward a better society, are the skills which America needs. The problems generated by years of corporate greed, selfish capitalism, and the misguided use of technology reflect fundamental flaws in our governmental institutions and in the laws and procedures by which we sort out the rights and duties of organizations and individuals in our society. Resolving these problems for human ends—to improve the quality of our life—is the task and the challenge of the humanist-lawyer.

REMARKS OF THE HONORABLE RUSSELL E. TRAIN, CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY, BEFORE THE AMERICAN LAW INSTITUTE—SMITHSONIAN INSTITUTION, CONFERENCE ON ENVIRONMENTAL LAW, WASHINGTON, D.C., JANUARY 29, 1971

THE NATIONAL ENVIRONMENTAL POLICY ACT AND THE ROLE OF THE COUNCIL ON ENVIRONMENTAL QUALITY

President Nixon has asked that I thank you for your invitation to him to address this meeting. As many of you are aware, the President is in the midst of a very heavy schedule of briefings. Many of these briefings, in fact, concern this year's new environmental legislative program. The President assigned to the Council on Environmental Quality the role of pulling together the President's 1971 legislative program for the environment and we have taken a leading role not only in developing new proposals but in drafting the legislation as well.

While my mind is very much on the new programs, I would nevertheless like to address myself to what had happened to last year's legislative program. More specifically, I would like to speak on the National Environmental Policy Act, and the role the Council on Environmental Quality has played in its implementation.

Being handed the National Environmental Policy Act, and being told to make it a part of the nation's life, was not unlike the situation when God handed Moses the Ten Commandments. Both of us encountered less than total enthusiasm from the people that we passed the word along to.

It is my perception that the Ten Commandments still fall short of total acceptance. We can't afford such patience in making the Policy Act a reality.

Yesterday you heard from Senator Jackson, one of the statute's authors. All of us who are interested in a stronger assertion of environmental values in our national life owe a debt to Senators Jackson and Allott of the Senate Interior Committee, and also to Congressmen Dingell and Pelly of the House Merchant Marine and Fisheries Committee for their effective, bipartisan teamwork in putting through this extraordinary piece of legislation.

In one short year, the National Environmental Policy Act has come to play an important and often decisive role in numerous government decisions. It promises to have an even more far-reaching effect on the decision-making process this year under our revised guidelines.

The Act has had an impact outside of government as well. It has given hope to the conservation movement by serving as a tool with which ecology groups have been able to translate swelling public interest in the environment into effective action. It was not until the passage of the Act, for example, that conservation groups made any substantial impact on the rising destruction of wilderness and ecological values involved in the Cross Florida Barge Canal project.

The canal project had been off and on and off and on for almost 30 years. Then, early in 1970, President Nixon signed the National Environmental Policy Act. Within six months an environmental group had brought suit, under Title I of the Act, to enjoin the project pending filing of an environmental impact statement. On another front our Council, which was created by Title II of the Act, recommended to the President that the project be terminated. Last week both developments came to a head. A court granted a preliminary injunction pending the filing of an environmental statement and the President announced his decision to halt the project for good.

In his announcement the President summarized what is the essence of Section 102 of the Act. In the President's own words: "We must assure that in the future we take not only full but also timely account of the environmental impact of such projects, so that instead of merely halting the damage we prevent it."

I know you have given considerable thought to the legal applications of the environmental impact statement procedure in the Act, and I can assure you that we also have. Like any law, the Policy Act is a living, changing thing. It is still a long way from attaining its ultimate effectiveness. I would like to illustrate the role the Council has played in helping to make the Act a reality in the governmental decision-making process by running through twelve actions we have taken in the past twelve months. Our professional staff has been greatly assisted in this effort by our Legal Advisory Committee.

1. At our suggestion, the President issued Executive Order 11514 last March, supplementing the Act by giving our Council authority to issue guidelines on agency compliance with the environmental impact statement requirement and directing all agencies to "develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties."

2. After consulting with over 20 agencies and with the Committees which authored Section 103 (2)(C), we promptly issued interim guidelines on the environmental impact procedure. These interim guidelines are broad. Their inclusion of existing projects, for example, was important in the Cross Florida Barge Canal litigation.

3. Our guidelines called for the agencies to issue implementing procedures and this task has now been largely completed for the major programs. We are in the process of tightening these procedures up. Those of you who are interested will note the very great improvement between the initial and revised procedures adopted by the Corps of Engineers and AEC.

4. We have now started a flow of Section "102" statements, the total of which is now approaching 400. They vary greatly in quality but there are a number of recent examples where we have congratulated the responsible agency for doing a first class job.

5. We accelerated by ten months the requirement in Section 102 of the Act that agencies state what deficiencies or inconsistencies in their authority would prevent their full compliance with the Act. These 103 statements are available to the public and may estop agencies from later pleading legal impediments to compliance with the Act.

6. We undertook the task of identifying the environmentally expert agencies in the Federal Government who might be called upon to comment on various aspects of the environmental impact of an action and they are now handling a growing flow of 102 statements. They will need more staff with more ecological expertise for this purpose, and we have stressed this need to the Office of Management and Budget.

7. We have worked with many of the agencies to improve their response to the National Environmental Policy Act, and in every case, we met with a desire to comply with the Act. As you know, two Departments have now assigned Assistant Secretaries responsibility for the environmental aspects of their operations and a number of other

departments and agencies are considering comparable moves. In December we held hearings with each of the major agencies involved to review their performance.

8. We have made oral or written comments on environmental statements from time to time to various agencies designed to help improve the quality of their procedures and environmental impact statements. Our small staff, by working around the clock and with great dedication, has attempted to review the most significant of the statements we have received but any systematic review must await an increase in our staffing. As you may know, our staff size was essentially frozen during the last six months pending Congressional action on our budget. I am glad to report that action is now completed and we will be getting a number of additional staff (going from a full staff complement of about 43 to 65) who will strengthen our capacity to oversee agency compliance with the Act.

9. We have taken the initiative to keep the public informed on implementation of the Act. By periodic mailings now going to over 600 conservation and environmental groups and others, we have put out information on our guidelines, on agency procedures and on the draft and final environmental impact statements that were available to the public.

10. We have interpreted our mandate broadly in order to give the National Environmental Policy Act maximum effect. Those of you connected with public interest law firms know we played a leading part in persuading the Internal Revenue Service that your role in litigating environmental issues was in the public interest and entitled to charitable status.

11. At the beginning of this week, after having solicited the comments of the agencies, of the public, and of environmental groups, we published proposed revisions of our guidelines on environmental impact statements (copies of which are available to you). We announced last April in our interim guidelines that we would be conducting a full review of their effectiveness and issuing new guidelines early this year. These revisions apply important new rules on public availability of both draft and final environmental impact statements; require distribution to relevant State, regional and municipal clearing houses; and introduce waiting periods after the availability of environmental statements and comments thereon before agencies can take administrative action. In essence, in these cases the public is given access to the draft statements, to the expert agency comments thereon and the final statements at the same time our Council is. After the great interest that has been expressed in public availability of these documents, we look for a round of specific comment on those proposed projects that need a careful look.

12. My twelfth and last point about our efforts to activate the environmental impact statement requirement is the Council's plans to explore with public and private groups with environmental expertise their interest in commenting on the environmental aspects of Federal agency action in areas of concern to them. The Council is charged with this responsibility under Section 205(2) of the National Environmental Policy Act. Thus, for example, the Ecological Society might ask to be given a chance to comment on all 102 statements on stream channelization projects.

Both as a lawyer and as a conservationist, I have a great deal of faith in the National Environmental Policy Act. In the hands of individuals like yourselves, it is one of the strongest tools citizens have for better environmental decision-making.

I do not believe, of course, that laws alone are going to be enough to stop pollution and otherwise protect our environment. Laws, in fact, have been often part of the problem: poor tax laws, for example, that make it more profitable to tear down old buildings rather than restore them. Or zoning laws that allow and encourage industrialization of flood plains.

Like any tools, laws can be no better than the skill of the craftsman that works with them. I am very encouraged by the extremely large number of law schools that have begun environmental programs. And by the extremely large number of young people who have expressed an interest in entering these programs.

Perhaps we are finally learning that in spite of all our cleverness the laws of man will serve to better the human condition only so long as they harmonize with the laws of nature. The National Environmental Policy Act has taken a major step in this direction. It is up to all of us—in and out of government—to insure that this progress continues. We are trying to bring about nothing less than a revolution in the government planning and decision-making process, and, indeed in the way our society looks at problems. Such a change cannot be brought about overnight. It will require the sustained commitment and patient effort of all segments of our society. The law and lawyers has a major role in this task.

I would like to close by reading an early English poetic commentary on the failure of our laws to impose penalties upon those who are responsible for burdening us all with social costs.

The law locks up both man and woman
Who steals the goose from us the common,
But lets the greater felon loose
Who steals the common from the goose
Anonymous English Poem.

COUNCIL ON ENVIRONMENTAL QUALITY

Revision of Guidelines on Statements on Proposed Federal Actions Affecting the Environment.

Notice is hereby given that the Council on Environmental Quality proposes, as provided in the interim guidelines issued April 30, 1970, to revise its guidelines on the preparation of detailed statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment required by Section 102 (2) (C) of the National Environmental Policy Act (42 U.S.C. 4322(2)(c)). The proposed revisions appear in the following text with new language in italics and deletions in brackets.

Prior to the adoption of the proposed revisions consideration will be given to any comments, suggestions or objections thereto which are submitted in writing to the Council on Environmental Quality (722 Jackson Place, N.W., Washington, D.C. 20006), attention General Counsel, within a period of 45 days from the date of publication of this notice in the Federal Register.

Dated: January 22, 1971.

RUSSELL E. TRAIN,
Chairman.

COUNCIL ON ENVIRONMENTAL QUALITY

Statements on Proposed Federal Actions Affecting the Environment.

[Interim] Guidelines

[APRIL 30, 1970].

1. Purpose. This memorandum provides [interim] guidelines to Federal departments, agencies and establishments for preparing detailed environmental statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, as required by section 102(2)(C) of the National Environmental Policy Act (Public Law 91-190) (hereafter "the Act"). Underlying the preparation of such environmental statements is the mandate of both the Act and Executive Order 11514 (35 F.R. 4247) of March 5, 1970, that all Federal agencies, to the fullest extent possible, direct their policies, plans and programs so as to meet national environmental goals. *The objective of Section 102(2)(c) of the Act and of these guidelines is to build into the agency decision making process an appropriate and careful consideration of the environmental aspects of proposed action and to assist agencies in implementing not only the letter, but the spirit of the Act.*

2. Policy. *As early as possible and in all cases prior to agency decision concerning* [Before undertaking] major action or [recommending or making] *a recommendation or* a favorable report on legislation that significantly affects the environment, Federal agencies will, in consultation with other appropriate Federal, State, and local agencies, assess in detail the potential environmental impact in order that adverse e[a]ffects are avoided, and environmental quality is restored or enhanced, to the fullest extent practicable. In particular, alternative actions that will minimize adverse impact should be explored and both the long- and short-range implications to man, his physical and social surroundings, and to nature, should be evaluated in order to avoid to the fullest extent practicable undesirable consequences for the environment.

3. Agency and *OMB* [BOB] procedures. (a) Pursuant to section 2(f) of Executive Order 11514, the heads of Federal agencies have been directed to proceed with measures required by section 102(2)(C) of the Act. Consequently, each agency will establish, *in consultation with the Council on Environmental Quality,* no later than June 1, 1970 *(and, with respect to requirements imposed by revisions in these guidelines, by May 1, 1971)* its own formal procedures for (1) identifying those agency actions requiring environmental statements, *the appropriate time prior to decision for the consultations required by Section 102(2)(C), and the agency review processes for which environmental impact statements are to be available,* (2) obtaining information required in their preparation, (3) designating the officials who are to be responsible for the statements, (4) consulting with and taking account of the comments of appropriate Federal, State, and local agencies, and (5) meeting the requirements of section 2(b) of Executive Order 11514 for providing timely public information on Federal plans and programs with environmental impact *including procedures responsive to section 12 of the guidelines.* These procedures should be consonant with the guidelines contained herein. Each agency should file seven (7) copies of all such procedures with the Council on Environmental Quality, which will provide advice to agencies in the preparation of their procedures and guidance on the application and interpretation of the Council's guidelines.

(b) Each Federal agency should consult, with the assistance of the Council on Environmental Quality *and the Office of Management and Budget* if desired, with other appropriate Federal agencies in the development of the above procedures so as to achieve consistency in dealing with similar activities and to assure effective coordination among agencies in their review of proposed activities.

(c) It is imperative that existing mechanisms for obtaining the views of Federal, State, and local agencies on proposed Federal actions be utilized to the extent practicable in dealing with environmental matters. The *Office of Management and* [*Bureau of the*] Budget will issue instructions, as necessary, to take full advantage of existing mechanisms (relating to procedures for handling legislation, preparation of budgetary material, new policies and procedures, water resource and other projects, etc.).

4. Federal agencies included. Section 102 (2)(C) applies to all agencies of the Federal Government with respect to recommendations or reports on proposals for (i) legislation and (ii) other major Federal actions significantly affecting the quality of the hu-

man environment. The phrase "to the fullest extent possible" in section 102(2)(C) is meant to make clear that each agency of the Federal Government shall comply with the requirement unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible. (Section 105 of the Act provides that "The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.")

5. Actions included. The following criteria will be employed by agencies in deciding whether a proposed action requires the preparation of an environmental statement:

(a) "Actions" include but are not limited to:

(i) Recommendations or reports relating to legislation and appropriations;

(ii) Projects and continuing activities;

Directly undertaken by Federal agencies;

Supported in whole or in part through Federal contracts, grants, subsidies, loans, or other forms of funding assistance;

Involving a Federal lease, permit, license, certificate or other entitlement for use;

(iii) Policy—and procedure-making.

(b) The statutory clause "major Federal actions significantly affecting the quality of the human environment" is to be construed by agencies with a view to the overall, cumulative impact of the action proposed (and of further actions contemplated). Such actions may be localized in their impact, but if there is potential that the environment may be significantly affected, the statement is to be prepared. Proposed actions the environmental impact of which is likely to be highly controversial should be covered in all cases. In considering what constitutes major action significantly affecting the environment, agencies should bear in mind that the effect of many Federal decisions about a project or complex of projects can be individually limited but cumulatively considerable. This can occur when one or more agencies over a period of years puts into a project individually minor but collectively major resources, when one decision involving a limited amount of money is a precedent for action in much larger cases or represents a decision in principle about a future major course of action, or when several Government agencies individually make decisions about partial aspects of a major action. The lead agency should prepare an environmental statement if it is reasonable to anticipate a cumulatively significant impact on the environment from the Federal action.

(c) Section 101(b) of the Act indicates the broad range of aspects of the environment to be surveyed in any assessment of significant effect. The Act also indicates that adverse significant effects include those that degrade the quality of the environment, curtail the range of beneficial uses of the environment or serve short-term, to the disadvantage of long-term, environmental goals. Significant effects can also include actions which may have both beneficial and detrimental effects, even if, on balance, the agency believes that the effect will be beneficial. Significant adverse effects on the quality of the human environment include both those that directly affect human beings and those that indirectly affect human beings through adverse effects on the environment.

(d) Because of the Act's legislative history, the regulatory activities of Federal environmental protection agencies (e.g., the *Water Quality Office* [Federal Water Quality Administration of the Department of the Interior] and the [National Air Pollution Control Administration of the Department of Health, Education, and Welfare] *Air Pollution Control Office of the Environmental Protection Agency*) are not deemed actions which require the preparation of an environmental statement under section 102(2)(C) of the Act.

6. Recommendations or reports on proposals for legislation. The requirement for following the section 102(2)(C) procedure as elaborated in these guidelines applies to both (i) agency recommendations on their own proposals for legislation and (ii) agency reports on legislation initiated elsewhere. (In the latter case only the agency which has primary responsibility for the subject matter involved will prepare an environmental statement.) The *Office of Management and* [Bureau of the] *Budget* will supplement these general guidelines with specific instructions relating to the way in which the section 102(2)(C) procedure fits into its legislative clearance process.

7. Content of environmental statement. (a) The following points are to be covered:

(i) The probable impact of the proposed action on the environment, including impact on ecological systems such as wild life, fish and marine life. Both primary and secondary significant consequences for the environment should be included in the analysis. For example, the implications, if any, of the action for population distribution or concentration should be estimated and an assessment made to the effect of any possible change in population patterns upon the resource base, including land use, water, and public services, of the area in question.

(ii) Any probable adverse environmental effects which cannot be avoided (such as water or air pollution, damage to life systems, urban congestion, threats to health or other consequences adverse to the environmental goals set out in section 101(b) of [Public Law 91–190.] *the Act.*)

(iii) Alternatives to the proposed action (section 102(2)(D) of the Act requires the responsible agency to "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources"). A rigorous exploration and objective evaluation of alternative actions that might avoid some or all of the adverse environmental effects is essential. Sufficient analysis of such alternatives and their costs and impact on the environment should accompany the proposed action through the agency review process in order not to foreclose prematurely options which might have less detrimental effects.

(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. This in essence requires the agency to assess the action for cumulative and long-term effects from the perspective that each generation is trustee of the environment for succeeding generations.

(v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. This requires the agency to identify the extent to which the action curtails the range of beneficial uses of the environment.

(vi) Where appropriate, a discussion of Federal agencies and State and local entities in the review process and the disposition of the issues involved. (This section may be added at the end of the review process in the final text of the environmental statement.)

(b) With respect to water quality aspects of the proposed action which have been previously certified by the appropriate State or interstate organization as being in substantial compliance with applicable water quality standards, *the comment of the Environmental Protection Agency will also be required.* [Mere reference to the previous certification is sufficient.]

(c) Each environmental statement should be prepared in accordance with the precept in section 102(2)(A) of the Act that all agencies of the Federal Government "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making which may have an impact on man's environment."

8. Federal agencies to be consulted in connection with preparation of environmental statement. *At the earliest point at which possible action requiring an environmental statement has been identified but prior to agency decision as to that action, the Federal agency considering the action, on the basis of information for which it takes responsibility, should consult with, and obtain the comment on the environmental impact of the action of, Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved.* [The Federal agencies to be consulted in connection with preparation of environmental statements are those which have "jurisdiction by law or special expertise with respect to any environmental impact involved" or "which are authorized to develop and enforce environmental standards".] These Federal agencies include components of (depending on the aspect or aspects of the environment involved):

Department of Agriculture
Department of Commerce
Department of Defense
Department of Health, Education, and Welfare.
Department of Housing and Urban Development
Department of the Interior
Department of State
Department of Transportation
Atomic Energy Commission
Federal Power Commission
Environmental Protection Agency
Office of Economic Opportunity

For actions specially affecting the environment of their [regional] *geographic* jurisdictions, the following Federal agencies are also to be consulted:

Tennessee Valley Authority
Appalachian Regional Commission
National Capital Planning Commission

Agencies obtaining comment should determine which one or more of the above listed agencies are appropriate to consult *on the basis of the areas of expertise identified in the Appendix to these guidelines.* It is recommended that the above listed departments and agencies establish contact points for providing comments *on the environmental impact of proposed actions described in draft environmental statements* and that departments from which comment is solicited coordinate and consolidate the comments of their component entities. The requirement in section 102(2)(C) to obtain comment from Federal agencies having jurisdiction or special expertise is in addition to any specific statutory obligation of any federal agency to coordinate or consult with any other Federal or State agency. Agencies seeking comment may establish time limits of not less than thirty days for reply, after which it may be presumed, *unless the agency consulted requests a specified extension of time,* that the agency consulted has no comment to make.

[9.] *10.* State and local review. Where no public hearing has been held on the proposed action at which the appropriate State and local review has been invited, and where review of the proposed action by State and local agencies authorized to develop and enforce environmental standards is relevant, such State and local review shall be provided for as follows:

(a) For direct Federal development projects and projects assisted under programs listed in Attachment D of the *Office of Management and* [Bureau of the] Budget Circular No. A–95, review by State and local governments will be through procedures set forth under Part 1 of Circular No. A–95.

(b) State and local review of agency procedures, regulations, and policies for the administration of Federal programs of assistance to State and local governments will be conducted pursuant to procedures established by *Office of Management and* [Bureau of the] Budget Circular No. A-85.

(c) Where these procedures are not appropriate and where the proposed action affects matters within their jurisdiction, review of the proposed action by State and local agencies authorized to develop and enforce environmental standards and their comments on the [draft environmental statement] *environmental impact of the* proposed action may be obtained directly or by [publication of a summary notice in the Federal Register (with a copy of the environmental statement and comments of Federal agencies thereon to be supplied on request). The notice in the Federal Register may specify that comments of the relevant State and local agencies must be submitted within 60 days of publication of the notice.] *distributing it to the appropriate State, regional and metropolitan clearinghouses.*

[10.] *9.* Use of statements in agency review processes; distribution to Council on Environmental Quality.

(a) Agencies will need to identify at what stage or stages of a series of actions relating to a particular matter the environmental statement procedures of this directive will be applied. It will often be necessary to use the procedures both in the development of a national program and in the review of proposed projects within the national program. However, where a grant-in-aid program does not entail prior approval by Federal agencies of specific projects, the view of Federal, State and local agencies in the legislative, and possibly appropriation, process may have to suffice. The principle to be applied is to obtain views of other agencies at the earliest feasible time in the development of program and project proposals. Care should be exercised so as not to duplicate the clearance process, but when actions being considered differ significantly from those that have already been reviewed an environmental statement should be provided.

(b) [Seven (7)] *Ten (10)* copies of draft environmental statements (when prepared), [seven (7)] *ten (10)* copies of all comments received thereon (when received), and [seven (7)] *ten (10)* copies of the final text of environmental statements should be supplied to the Council on Environmental Quality in the Executive Office of the President (this will serve as making environmental statements available to the President).

It is important that draft environmental statements be prepared and circulated for comment and furnished to the Council early enough in the agency review process before an action is taken in order to permit meaningful consideration of the environmental issues involved. *To the fullest extent possible, no administrative action subject to Section 102(2)(C) is to be taken sooner than ninety (90) days after a draft environmental statement has been circulated for comment, furnished to the Council and made available to the public pursuant to Section 12 of these guidelines, or sooner than thirty (30) days after the final text of a statement (together with comments) has been made available to the Council and the public. With respect to recommendations or reports on proposals for legislation to which Section 102(2)(C) applies, the final text of the environmental statement should be available to the Congress and the public in advance of any relevant Congressional hearings.*

11. Application of section 102(2)(C) procedure to existing projects and programs. To the fullest extent possible the section 102(2)(C) procedure should be applied to further major Federal actions having a significant effect on the environment even though they arise from projects or programs initiated prior to enactment of [Public Law 91-190] *the Act* on January 1, 1970. Where it is not practicable to reassess the basic course of action, it is still important that further incremental major actions be shaped so as to minimize adverse environmental consequences. It is also important in further action that account be taken of environmental consequences not fully evaluated at the outset of the project or program.

12. Availability of environmental statements and comments to public.

(a) *In accord with the policy of the National Environmental Policy Act and Executive Order 11514 agencies have a responsibility to develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action.*

(b) The agency which prepared the environmental statement is responsible for making such statement and the comments received available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. sec. 552) *Without regard to the exclusion of inter-agency memoranda therefrom. With respect to recommendations or reports on proposals for legislation, the environmental statement and comments should be made available to the public at the same time they are furnished to the Congress. With respect to administrative actions, except where advance public disclosure will result in significantly increased costs of procurement to the government, the draft environmental statement should be made available to the public at the same time it is circulated for comment and furnished to the Council, and the final text of the statement and comments received should be made available to the public when furnished to the Council. Agencies which hold hearings on proposed administrative actions or legislation should make the draft environmental statements available to the public fifteen (15) days prior to the time of the relevant hearings. Agencies shall institute appropriate procedures to implement those requirements for public availability of environmental statements and comments thereon. These shall include arrangements for availability of the draft and final texts of environmental statements and comments at the head and appropriate regional offices of the responsible agency and at appropriate State, regional and metropolitan clearinghouses.*

[13. Review of existing authority, policies and procedures in light of National Environmental Policy Act. Pursuant to section 103 of the Act and section 2(d) of Executive Order 11514, all agencies, as soon as possible, shall review their present statutory authority, administrative regulations, and current policies and procedures, including those relating to loans, grants, contracts, leases, licenses, certificates and permits, for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of the Act. After such review each agency shall report to the Council on Environmental Quality not later than September 1, 1970, the results of such review and their proposals to bring their authority and policies into conformity with the intent, purposes and procedures set forth in the Act.] [14] *13.* Supplementary guidelines, evaluation of procedures. (a) The Council on Environmental Quality after examining environmental statements and agency procedures with respect to such statements will issue such supplements to these guidelines as are necessary.

(b) Agencies will *continue to* assess their experience in the implementation of the section 102(2)(C) provisions of the Act and in conforming with these guidelines and report thereon to the Council on Environmental Quality by December 1, [1970] *1971*, such reports should include an identification of problem areas and suggestions for revision or clarification of these guidelines to achieve effective coordination of views on environmental aspects (and alternatives, where appropriate) of proposed actions without imposing unproductive administrative procedures.

RUSSELL E. TRAIN,
Chairman.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask that morning business be closed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The time for morning business has expired.

AMENDMENT OF RULE XXII OF THE STANDING RULES OF THE SENATE

The ACTING PRESIDENT pro tempore. The Chair states that the pending question is on agreeing to the motion of the Senator from Alabama (Mr. ALLEN) to postpone until the next legislative day the consideration of the motion of the Senator from Kansas (Mr. PEARSON) that the Senate proceed to the consideration of Senate Resolution 9, a resolution to amend rule XXII of the Standing Rules of the Senate with respect to the limitation of debate.

Mr. BYRD of West Virginia. 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. BYRD of West Virginia. 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. ALLEN. Mr. President, I ask unanimous consent that I may speak on the pending measure at this time, notwithstanding the provisions of rule XIX.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from Alabama is recognized.

Mr. ALLEN. I thank the Chair.

Mr. President, it was necessary that I ask unanimous consent that I be allowed to speak at this time, notwithstanding the provisions of rule XIX, because the junior Senator from Alabama has already spoken twice on this subject during the present legislative day. This legislative day has been in existence since Tuesday of last week, possibly since Monday of last week. At the end of each session of the Senate, at the close of the day, instead of the motion being made that the Senate adjourn to the next day, we have recessed until the next day, thereby continuing the same legislative day in force and effect. So, while the junior Senator from Alabama spoke on this question yesterday and on two occasions before that, all these speeches have been in the same legislative day.

So it was necessary that he ask permission to proceed, notwithstanding the fact that he already has had the allotted number of speeches on this subject.

Mr. JAVITS. Mr. President, is that a unanimous-consent request?

The ACTING PRESIDENT pro tempore. The unanimous-consent request was asked and already has been granted for the Senator from Alabama to be recognized, despite the provisions of rule XIX.

Mr. JAVITS. Mr. President, will the Senator yield to me very briefly?

Mr. ALLEN. For what purpose?

Mr. JAVITS. Simply to make a comment—without losing his right to the floor.

Mr. ALLEN. A germane comment?

Mr. JAVITS. Yes.

Mr. ALLEN. Mr. President, I yield, provided I do not lose my right to the floor and that the resumption of my remarks will not be considered a second speech.

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

Mr. JAVITS. The Senator from New York gathered that the unanimous consent was to be made. He did not gather that it had been made. But the Senator from New York had no intention to object, except to remind the Senator from Alabama that on a previous occasion he had, quite properly, invoked the rule to put into his seat and take off the floor the Senator from Arkansas (Mr. FULBRIGHT) by the invocation of this rule. I just hope that we have a credit of at least one from the Senator from Alabama.

Mr. ALLEN. I thank the distinguished Senator from New York for his remarks. It was the very incident that the Senator referred to that caused the junior Senator from Alabama to make this request, so that he would be allowed to make his speech. He might state, however, that if unanimous consent had not been granted, it was his intention to withdraw the current motion which he made and substitute a different motion, on which he would be entitled to speak for two additional times. I appreciate the remarks of the distinguished Senator from New York.

Mr. President, I believe the distinguished Senator from Idaho (Mr. CHURCH) said a few moments ago, during the period for the transaction of routine morning business, that on January 25, Senate Resolution 9 was introduced by him and by the distinguished Senator from Kansas (Mr. PEARSON), and it was on the following day that the distinguished Senator from Kansas (Mr. PEARSON) made his motion that the Senate proceed to the consideration of Senate Resolution 9. It was at that time that the junior Senator from Alabama made his motion to postpone consideration of the motion of the distinguished Senator from Kansas (Mr. PEARSON) to the next legislative day.

If we would ever adjourn the Senate, the motion that the junior Senator from Alabama has made would lapse by efflux of time, because the next legislative day would already have arrived. Since we are confined in the same legislative day, even though it has been underway for some 10 or 11 days, it is necessary that we address our remarks to the pending motion.

Mr. President, what is the issue involved in this discussion? Senate Resolution 9 seeks to change rule XXII, to change the requirement that the vote of two-thirds of the Senators present is necessary to stop debate or to invoke cloture, as it is called, to a provision that debate can be cut off and cloture applied by the vote of three-fifths of the Senators present.

Now, Mr. President, make no mistake about it, if three-fifths cloture is adopted by the Senate, then majority cloture is not far behind. Already the Senator from New York (Mr. JAVITS) has sent up to the desk a resolution, printed and placed on the desk of each Senator, proposing an amendment to Senate Resolution 9 which would change the three-fifths cloture requirement to what might be called a constitutional majority of Senators, that being 51 Senators. So the entering wedge in getting majority cloture in the Senate is the passage of Senate Resolution 9 providing cloture by three-fifths of Senators.

Once they get three-fifths, then they will move to the constitutional majority.

Once they get a constitutional majority of 51 as the requirement, then they will move to a simple majority.

Mr. President, the right to extended debate in the Senate is the one attribute of the Senate that sets it apart from other legislative bodies and gives the Senate the claim to the distinction of being the greatest deliberative body in the world.

Mr. President, it is possible for Congress to act most rapidly. Under certain circumstances, it is possible for legislation to be passed in Congress in 1 day and sent on to the President. If a bill is introduced in the House and by unanimous consent brought up for immediate consideration, it could be passed in the matter of minutes and sent over by messenger to the Senate and, by unanimous consent, passed that very same day.

Now, Mr. President, possibly that works well in instances when some phase of the Government of the United States is about to come to a halt by reason of the lapse of appropriation bills. It is possible to pass a continuing resolution on the last day of the fiscal year, or the last day to which the appropriation has been extended by a continuing resolution and thereby continue the appropriation.

The fiscal year of the U.S. Government runs from July 1 through the following June 30. I do not recall that many, if any, appropriation bills in either session of the 91st Congress for the ensuing fiscal year had been passed at the time of the close of the Government's fiscal year for which the appropriations had been made. So, in almost every instance, if not every instance, it was necessary to pass a continuing resolution. That was done in a matter of hours, if not done in a matter of minutes. So it is possible for the Congress to act quickly.

It is possible for bills which are strongly opposed and strongly contested in the other body to be rammed through that body without the membership having an opportunity to vote, or to offer amendments to the pending legislation if the membership votes on themselves a gag rule forbidding the offering of amendments to the pending legislation.

The customary time allowed a Member of the other body to speak is 5 minutes. So on some of these matters of legislation that come before the House, sometimes thicker than this book of Senate rules which I hold in my hand, the Senate manual, an inch and a half thick, they are expected in that body to pass on that legislation without any meaningful debate.

When a measure comes to the Senate, a slowdown is often in the interest of the people of this country, because it gives Senators an opportunity to examine the proposed legislation, an opportunity to study that legislation, and an opportunity to seek modification, compromise, improvements, in that proposed legislation.

Mr. President, as long as the Senate retains unto itself, and the individual Members of the Senate, the right to extended debate limited only by rule XXII, we will have better legislation enacted into law and we will have more careful consideration given to legislation.

Mr. President, I am told that the U.S. Senate actually passes more pieces of legislation even though we have extended debate in the Senate than does the other body, even though they have no right to meaningful debate in the House.

Once a measure comes before the Senate, if there is a substantial minority that takes a different view from the proponents of the legislation, they should have the right, and they do have the right as provided by rule XXII, of discussing that measure at length, and of seeking to convince a sufficient number of the Members of the majority that the views of the minority with respect to that legislation are the proper views so that thereby the minority becomes the majority.

Mr. President, does the present cloture requirement of two-thirds impose an unattainable requirement, an unattainable goal or standard for proponents of legislation? There have been few pieces of legislation killed in the Senate by extended debate that were important to the welfare of this country or that were not subsequently adopted in improved form. At one time under the Senate rule XXII in order to apply cloture and cut off debate, a constitutional two-thirds of the Members of the Senate was required so that in this day it would take, if we had kept that rule, 67 Senators to cut off debate.

And if there were only 66 Senators present at the time of the cloture vote and all 66 of them voted to cut off debate, debate would not have been cut off by the application of cloture because the rule formerly provided that it took a constitutional two-thirds. Of course, with 100 Senators, a constitutional two-thirds, meaning of all Members elected and qualified, would require 67 Senators under that state of affairs.

That rule was amended by the Senate in the exercise of its considered judgment and was cut down to the point

that it took only a two-thirds majority of the Senators present. That changed it a whole lot. It just about cut the theoretical necessity for the number of Senators almost in half because we can now have a vote on a cloture motion if we have a quorum of Senators present. A quorum, of course, of a 100-Member body would mean 51 Senators would be present. So, with 51 Senators present, what is a two-thirds majority? According to my arithmetic, if 34 of those 51 voted to apply cloture and 17 voted against it, cloture would be applied. That is under the existing rule.

Mr. President, 34 Senators, with a bare quorum present, can apply cloture in the Senate under the existing rules. Yet they are not satisfied with such a liberal rule as this. They want to change it to three-fifths of those Members present. They would then want to change it again, and I believe they probably would leapfrog the 51 constitutional majority and just move in the next session of the Congress to a bare majority of the Senators which would permit, in this same hypothetical case of a 51-Senator quorum being present, 26 Senators to invoke cloture.

Mr. President, they say that no other parliamentary body has this right to extended debate. That is the very feature and the very attribute that does set the Senate apart from other bodies and gives it distinction.

Are we going to rob this Senate of this distinction? Are we going to put it on a level with other parliamentary bodies, or are we going to retain some checks and balances against the possibility of hastily considered legislation?

Mr. President, it is the judgment of the junior Senator from Alabama that the question of whether or not this rule should be changed in the manner sought by Senate Resolution 9 is the most important question that is going to come before the Senate in the 92d Congress. It was the most important question that came before the 91st Congress.

Two years ago this same question came up for a vote and 51 Senators voted to apply cloture and 47 Senators voted against it. That is the high water mark of Senators voting in favor of a change in the cloture rule. I believe from what the distinguished Senator from Idaho said earlier this week, the question of cloture will come up Thursday week.

It has been stated that he is going to file the cloture motion on Thursday of next week, and under the rules it must be voted on on the second calendar day thereafter, and I will add parenthetically that that has been interpreted to mean that the Senate is in session. We are going to come back to the Senate following the Washington-Lincoln Birthday recess, and then the vote will be taken on the cloture motion on Thursday, which I believe is the 18th of February.

So we are going to have a cloture vote on the 18th of February as promised by the distinguished Senator from Idaho (Mr. CHURCH). That is going to be the question to be decided, and not this little motion that we have before us now.

Mr. President, it has been stated here, and certainly it is correct because their names appear on the resolution, that 51 Senators are sponsors or cosponsors of Senate Resolution No. 9, that is, the resolution making the change in the Senate rules from two-thirds to three-fifths, or 60 percent. I wish to point out this fact to some of the distinguished Senators who, somewhat to my surprise, have joined as cosponsors of the resolution. That is not the question which will be before the Senate. The resolution itself will not be before the Senate. We will have the question of whether debate on the motion to bring up this resolution shall be cut off.

It would not be inconsistent at all for a cosponsor of the resolution to vote against cutting off debate. Yes, let Senators take the position that if we get to the point where the rules are subject to amendment they favor the amendment, but do not resort to the practice of applying cloture and cutting off the right of any Senator to discuss this question. I would hope that one, two, three, and possibly more of the 51 Senators who have joined in the resolution will not carry their advocacy of the resolution to the point of voting to apply cloture.

Why is extended debate important? Rule XXII does not give the right of extended debate or unlimited debate. It provides a limit to debate, so these people that we hear being critical of rule XXII as providing for extended debate or unlimited debate are certainly incorrect in that feeling because without rule XXII we could have unlimited debate and prior to adoption of rule XXII back in 1917 there was no limit on debate. Those who wanted to limit debate were the ones who put in rule XXII. It was not put in by those who wanted unlimited debate or extended debate; it was put in by those who wanted to limit debate.

Any legislation that can command the support of a two-thirds majority in the Senate can be limited in debate; and if one more than a third want to continue that debate, they should be allowed to do so. Rule XXII has not prevented civil rights measures from being adopted by the Senate; cloture has been applied. I appeal to the Senate to go ahead under the rules if Senators feel that a given piece of legislation should be considered by the Senate and voted on. Go ahead and apply cloture on the specific piece of legislation, but do not apply cloture in an effort to reduce from two-thirds to three-fifths the number of Senators required to apply cloture. Let us have the rule as it is, even though in many instances Senators may want to apply cloture. This does not mean that by voting against applying cloture on the rules change that under certain circumstances a Senator would not be in favor of applying cloture to a specific piece of legislation. But continue the two-thirds requirement, because that is absolutely essential for the balance of powers in our Government.

So why have extended debate? Well, it protects the Senate from a complete takeover by the executive department—and when I speak of the executive department, I am not referring to any particular President or any particular administration, either present or past—but if it is made easier to stop debate in the U.S. Senate, we are going to see the power of the executive, the power of the administration, to influence legislation in this body increased in direct proportion to the degree of modification in the cloture requirement of rule XXII.

Mr. President, we have seen the Congress, the legislative branch of this Government, give up so many of its powers to the executive. We have seen the executive and the Supreme Court just about take over the functions of the three departments of Government.

The Supreme Court and the executive branch will reach out and take hold of any power and authority that they can. They are always seeking to build up their power and authority. Only the legislative branch is willing to see its power and authority eroded, delegated to the executive, interpreted by the Supreme Court contrary to the will of the Congress, and nothing is done about it. Here we are presented another opportunity to further erode the power and authority of the U.S. Senate. That is what we would be doing if we changed the rules of the Senate, making it easier to cut off debate in this body.

Mr. President, it has been suggested that the discussion going on at this time is a southern filibuster. Let us look at the record of the 91st Congress and some of the events that took place at that time in the closing days of Congress, and see who was using the right of extended debate. One of the main discussions was the discussion by the distinguished Senator from Wisconsin (Mr. PROXMIRE), who was debating the conference report on the SST appropriation, which put back the SST appropriation in a slightly reduced amount after the Senate had voted to eliminate it altogether. I joined the distinguished Senator from Wisconsin (Mr. PROXMIRE) in voting against the SST appropriation when he called up his amendment to the Department of Transportation appropriation eliminating the SST appropriation. I did not join him in that discussion, the extended debate. Rarely is an extended debate engaged in by a Senator outside of the South referred to as a filibuster; but this extended debate that the distinguished Senator from Wisconsin was engaged in with regard to the SST conference report was effective, and it has been promised that not later than some time in March an opportunity will be given to the Senate to vote again on the SST appropriation as a separate item.

The reason why the distinguished Senator from Wisconsin did not want the matter to come up was that he could not get a separate vote on the SST. We had to vote on the conference report, take it or leave it, and the report had the appropriation back in there. So the distinguished Senator from Wisconsin could hardly be referred to as a southern conservative. Yet he used this extended discussion, and the junior Senator from Alabama was not willing to support any effort to cut off his right to debate that question, because it was an important question. It deserved full discussion.

We recall, too, that part of the so-called logjam in the late days of the 91st Congress was occasioned by the adding to the social security increase in

benefits legislation the President's family assistance plan and the import quota legislation, also referred to as the trade bill. Mr. President, I do not recall that the distinguished Senator from New York (Mr. JAVITS) or the distinguished Senator from Minnesota (Mr. MONDALE) actually participated in any debate against the import quota legislation, but they served notice that they were going to enage in extensive debate, in an effort to seek to block passage of that legislation in the Senate.

Mr. President, who is going to be the beneficiary of extended debate? Is it going to be Senators from my section of the country or is it going to be Senators from other sections of the country who actually used extended debate in the 91st Congress as much as or more than Senators from my section of the country used it?

Mr. President, I believe that a substantial majority of Senators favor some sort of import quota legislation. And if we ever get 60 percent cloture here in the Senate, there is a good likelihood that that type of legislation can pass, because debate could probably be cut off on it.

All of the civil rights legislation on which in the past, debate has been cut off, as far as I know, has been passed eventually. There has been no difficulty getting cloture on civil rights legislation. What is the use of extended debate today? The public generally thinks that the filibuster is used to block civil rights legislation. That is not correct, because that legislation has already been passed.

What is there left? Mr. President, the use of extended debate in the U.S. Senate is the best protection that a minority in the Senate and in the country have against the tyranny of a ruthless and arrogant majority. And, Mr. President, those who may today be the minority may, next decade or even next year be the majority, and the majority today may be a minority next year or next decade.

The right to extended debate is the best protection we have against a takeover of the Senate by the executive branch of Government. It is the best protection that we have against big government, to keep big government from getting bigger, to at least slow down the mushrooming of the Federal bureaucracy.

Mr. President, the filibuster dates way back to the days of the Roman empire—at least that far, and likely even farther, though, it was not called by that name. Julius Caesar, in the Roman senate, used the filibuster. I guess ancient Rome had its greatest glory in the days of its senate. I remember, as a high-school boy, studying Latin. We had these pictures of the Roman legions, and on one of the banners, I remember they had the letters SPQR—Senatus Populusque Romanus, "The Senate and the People of Rome." That was the heyday of the Roman empire, when the Senate was a free and independent body, before it was taken over by the Caesars.

Julius Caesar used the filibuster, but, when he took over as ruler of Rome, he did not like its use, because it cut down on his power and authority; and I believe it was the younger Cato that he silenced in the senate when Cato was using the filibuster to keep Caesar from taking over the Roman senate.

Mr. ERVIN. Mr. President, will the able and distinguished Senator from Alabama yield to the Senator from North Carolina so that the Senator from North Carolina may propound to him a few questions?

The PRESIDING OFFICER (Mr. CHILES). Does the Senator yield?

Mr. ALLEN. Mr. President, I ask unanimous consent that I may yield for this purpose without losing my right to the floor, and without my subsequent remarks being considered an additional speech.

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

Mr. ERVIN. The Senator from North Carolina would like to ask the Senator from Alabama if, in the ultimate analysis, the demand for an alteration of rule XXII is not based upon the assertion that we need more speed and more efficiency in the Senate.

Mr. ALLEN. I believe that is one of the arguments that they give. I would like to suggest, at that point, that, if the proponents of this resolution have any arguments in its favor, I would like for them to come in and state them to the Senate.

Mr. ERVIN. I ask the Senator from Alabama if he does not agree that there might be some wisdom in the only change that the Senator from North Carolina thinks ought to be made in rule XXII, and that is that no Senator should be allowed to vote for cloture under rule XXII unless he has been willing to listen to some of the speeches made by those of us who believe that rule XXII ought not to be changed.

Mr. ALLEN. That sounds to the junior Senator from Alabama as though it might be a constructive change.

Mr. ERVIN. I ask the Senator from Alabama if William S. White, who has been a commentator on the Washington scene for many years, cannot be rightly numbered among those who understand the real place of the Senate as an institution in our scheme of government.

Mr. ALLEN. Yes, indeed. He is an outstanding authority on the Senate, and of course he wrote "The Citadel" about the U.S. Senate.

Mr. ERVIN. I ask the Senator from Alabama if he does not agree with the Senator from North Carolina that this great commentator, who loves and appreciates the Senate and understands fully its place as an institution in our scheme of government, did not put the position of the Senator from Alabama and the Senator from North Carolina in proper perspective when he said, on pages 18, 19, and 20 of his book "The Citadel":

> The Senate, therefore, may be seen as a uniquely *Constitutional* place in that it is here, and here alone, outside the courts—to which access is not always easy—that the minority will again and again be defended against the majority's most passionate will.
>
> This is a large part of the whole meaning of the Institution. Deliberately it puts Rhode Island, in terms of power, on equal footing with Illinois. Deliberately, by its tradition and practice of substantially unlimited debate, it rarely closes the door to any idea, however wrong, until all that can possibly be said has been said, and said again. The price, sometimes, is high. The time killing, sometimes, seems intolerable and dangerous. The license, sometimes, seems endless; but he who silences the cruel and irresponsible man today must first recall that the brave and lonely man may in the same way be silenced tomorrow.
>
> And those who mock the Institution, and demand of it "speed" and yet more speed and "efficiency" and yet more efficiency, might remember that there is altogether a good deal of both at present in American life. For illustration, those who denounce the filibuster against, say, the compulsory civil rights program, might recall that the weapon has more than one blade and that today's pleading minority could become tomorrow's arrogant majority. They might recall, too, that the techniques of communication, and with them the drenching power of propaganda, have vastly risen in our time when the gaunt aerials thrust upward all across the land. They might recall that the public is not *always* right all at once and that it is perhaps not too bad to have *one* place in which matters can be examined at leisure, even if a leisure uncomfortably prolonged.

Does not the Senator from Alabama agree with the Senator from North Carolina that that is a conclusive argument for the retention of rule XXII in its present form?

Mr. ALLEN. Yes, I definitely think so. I think that Mr. White has stated his views in language much more forceful than the junior Senator from Alabama could use, but certainly no more forceful than the senior Senator from North Carolina can use and does use on many occasions. I would say that any man who can expound a philosophy of that sort would be an outstanding addition to the U.S. Senate, and I wish he were here to help us in person on the floor of the Senate to advance the outstanding argument he has made.

Mr. ERVIN. And does not the Senator from Alabama agree that Mr. White makes a conclusive case for the retention of rule XXII in its present form when he says, in substance, that any rule that the Senate might devise by which it can silence today a troublesome demagog can be used with equal facility tomorrow to silence a brave man fighting for a righteous cause upon which the survival of America might depend?

Mr. ALLEN. Yes. I certainly agree, and I think that is a fine statement.

Mr. ERVIN. Does not the Senator from Alabama recall from the history of the recent past that every time, for years, that a new Congress is assembled in Washington, those who desire to change rule XXII to secure speed—what they call speed and efficiency—have presented such proposed changes to the Senate?

Mr. ALLEN. Yes. It has been happening for a number of years.

Mr. ERVIN. Does not the Senator from Alabama recognize, as does the Senator from North Carolina, that every time a new Congress meets, those fine, but impatient, Senators who want to change rule XXII require the Senate to lay aside its legislative work and waste anywhere from a month to six weeks of the Senate's time seeking the change?

Mr. ALLEN. Yes, indeed. I think it is a waste of time, and I wish that very soon

the majority leader will lay this whole matter aside and let us get to some of the much needed legislation we have before us.

Mr. ERVIN. Does not the Senator from Alabama realize that we could have been dealing with matters of legislation during the past 2 weeks, except for this insistence upon a rule change, which the Senate has refused to make time, time, and time again?

Mr. ALLEN. Yes. That is true.

The Senator will recall that in the closing days of the 91st Congress, we had a great logjam of legislation. These matters had been through the Senate committees—at least, had been considered by the committees. I do not know why they are not able to get those measures out on the floor and get them in the position they were in in the 91st Congress, and let us go ahead and vote on them, rather than to be considering again the matter of amending the Senate rules.

Mr. ERVIN. Will the Senator from Alabama accept the assurance of the Senator from North Carolina that during the 16 or 17 years that the Senator from North Carolina has been a Member of this body, the proponents of change in rule XXII have taken action which resulted in the use of a year of the Senate's time in those 16 or 17 years; whereas, all the filibusters so-called and all the educational debates so-called which have occurred during that time have consumed a very small portion of the Senate's time, as contrasted with the waste of time brought about by a demand for the change in rule XXII?

Mr. ALLEN. I do not know just what the proportion would be, but I do know that we have consumed many months arguing about the change in rule XXII, which seems needless to the Senator from Alabama.

Mr. ERVIN. I ask the Senator from Alabama whether far more of the time of the Senate has not been used in an effort to change rule XXII since the Senator from Alabama came to the Senate than has been consumed by all the alleged filibusters and pseudofilibusters and educational debates against which the proponents of this change inveigh?

Mr. ALLEN. I will have to be frank with the distinguished Senator from North Carolina and state that I do not know the proportion and the relative comparison between the debate on the rules change and the other debates, but certainly we have consumed many months in discussing the rules change.

Mr. ERVIN. Does the Senator from Alabama really know any organizations or individuals, who demand a change in rule XXII except those who are somewhat impatient?

Mr. ALLEN. I know of no others that are demanding it. I do not recall receiving any letters—few, if any, letters have I received urging me to be for the change in rule XXII.

Mr. ERVIN. Does not the Senator from Alabama agree with the Senator from North Carolina that there never was anything truer than what William S. White said on pages 18 and 19 of his book, "The Citadel," when he said:

> The Senate, therefore, may be seen as a uniquely *Constitutional* place in that it is here, and here alone, outside the courts—to which access is not always easy—that the minority will again and again be defended against the majority's most passionate will.

Mr. ALLEN. Yes, indeed. I agree with that statement.

Mr. ERVIN. Considering the way the courts operate, will the Senator from Alabama agree with the Senator from North Carolina that the Senate is the only place in the United States—indeed, the only place in the world—where a substantial majority can engage in reasonable debate and in a reasonable effort to convert itself from a minority into a majority?

Mr. ALLEN. It is the only body with which the junior Senator from Alabama is familiar, and it is one of the great features of this body, and I want to continue that feature.

Mr. ERVIN. I thank the Senator.

Mr. ALLEN. I thank the distinguished senior Senator from North Carolina (Mr. ERVIN) for his most helpful comments and participation in this discussion.

Mr. President, when the distinguished Senator from North Carolina (Mr. ERVIN) engaged me in colloquy, I was discussing the matter of the extended debate which took place in the Roman senate, and the fact that Julius Caesar while a member of the senate engaged in filibustering, but after he became ruler of Rome, while it still had a senate, before they put the senate out of business, was able to silence and did silence the younger Cato, who participated in extended debate in the Roman senate.

Mr. President, I have hardly started my remarks on this subject. I am hopeful that at a later hour, either today or next week, I shall be able to continue my discussions. I never got down to some of the remarks I planned to make.

The distinguished senior Senator from Arkansas (Mr. MCCLELLAN) is present in the Chamber, wishing to discuss this matter, and since I have no prepared remarks and am discussing this issue extemporaneously, I am able to stop at any stage of my remarks.

So, at this time, Mr. President, in order that the distinguished Senator from Arkansas (Mr. MCCLELLAN) may have an opportunity to discuss this matter, I do, at this time, yield the floor.

The PRESIDING OFFICER (Mr. FANNIN). The Senator from Arkansas is recognized.

Mr. MCCLELLAN. Mr. President, I deeply regret that during the past few days my committee duties and responsibilities, together with other pressing matters involving my State and my constituents, have prevented me from being present on the floor to listen to many of my distinguished colleagues who have preceded me in the discussion of this very important issue. I am sure that I cannot match the words of wisdom already spoken by them. I did want, however, to deliver in part this afternoon some remarks that I have prepared on this subject.

Anticipating the probable time of adjournment this afternoon, I shall not have adequate time to complete all that I wish to say in opposition to the change in rule XXII and, therefore, I now ask unanimous consent that my remarks this afternoon be considered only the beginning, or a part of what I anticipate I shall say before this debate shall end, and that my remarks today, and those subsequent thereto the next time I take the floor, all be regarded as one speech.

Mr. President, I ask unanimous consent for that.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Arkansas? The Chair hears none, and it is so ordered.

Mr. MCCLELLAN. Mr. President, once again, as on numerous occasions in the past, we have before us a proposed change in rule XXII. I heard part of the colloquy a few minutes ago between the distinguished Senator from North Carolina (Mr. ERVIN) and the distinguished Senator from Alabama (Mr. ALLEN) regarding the tremendous waste of time that has occurred in this effort over the past several years.

I think it would be of interest, and I think the RECORD should reflect—I notice the distinguished Senator from North Carolina (Mr. ERVIN) has returned to the Chamber—that a survey should be made of the time that has been wasted on this proposal during the past quarter of a century. It is this kind of waste of time that often brings criticism upon this distinguished body, criticism which is often intended and calculated to impair its image as the great institution to which it has often been referred—the greatest lawmaking body in the world.

I would hope that when we finally vote on the issue now before us, that this matter will be settled. I would hope that it be determined that an insufficient number of this body want this rule changed, and that a sufficient number of the Members of this body will continue to oppose this abortive effort and, hereafter, we can proceed with other business in this body without the long interruptions which have been caused by this issue, the proposed change of rule XXII.

I would go further, Mr. President, in saying that if this proposal is adopted, to where 60 percent of 60 Members of the Senate can invoke cloture, that will not end the issue or the argument. Such a change will only inspire, stimulate, and encourage further efforts toward the ultimate goal of the proponents, which is to reduce this body to the subservience of the will of a temporary majority any time that majority expresses itself.

If that ever happens, Mr. President, then it can never again be said, as it has so often been said, that this is the greatest deliberative legislative body in the world.

I think that, as long as that description of the Senate remains true, the Senate will be clothed in the luster of honor, dignity, and character, that not only every Member of the Senate should be proud of, but that every citizen of this Nation should acclaim with pride.

Mr. President, I rise to oppose unequivocally the pending resolution which seeks to amend rule XXII of the Standing Rules of the Senate. This amendment is designed to further liberalize procedures in the U.S. Senate so as to enable slightly more than a bare majority of the membership of this body to compel—not per-

suade, Mr. President, but to compel—in some instances, hasty, ill-advised action on any pending matter before the Senate, no matter how grave the issue, no matter how serious the consequences or ill-advised action may be. Such an amendment would serve to enforce further the will and purpose of a bare majority not only on the Senate, but also on the people of this Nation. This would be done without affording adequate opportunity for the due deliberations of which this body is so capable and which are needed and should be exercised for the people to be sufficiently informed—and they should at all times, Mr. President—be sufficiently informed—on vital issues so as to enable them to formulate their views and in turn make them known to their chosen representatives in this body.

This pending proposal, Mr. President, under a set of circumstances which could reasonably occur would enable as few as 31 Members of the Senate, less than one-third of the elected representatives serving here, by invoking a cloture rule, to cut off debate and silence the remaining 69 Members.

It would enable as few as 31 Members to cut off debate and silence the remaining 69.

Just about 4 years ago, I rose in this Chamber to lend my voice in protest against the same nature of assault on the rights of the American people that is involved here in this debate today. At that time, I called attention to the comments attributed to one of the wisest Americans who ever lived, Thomas Jefferson, relative to debate in the U.S. Senate.

Mr. President, those comments of Jefferson are just as much in point today, and even more persuasive possibly than they were then, if we just listen to them. So, I would like to refer to them and quote them again.

Mr. Jefferson said:

> The rules of the Senate which allow full freedom of debate are designed for the protection of the minority, and this design is part of the warp and woof of the Constitution. You cannot remove it without damaging the whole fabric. Therefore, before tampering with this right, we should assure ourselves that what is lost will not be greater than what is gained.

Mr. President, just as those immortal words illuminated the pathway and gave guidance to our predecessors during that time and since then, so they serve us today.

There are those who insist there are—as they have repeatedly pointed out on the floor in the course of this debate for years while this has been a live issue in the Senate—the alleged advantages that are to be gained by this so-called gag rule. The force of the rule change that is proposed here and the ultimate goal of those who seek a change will be to finally seek a bare majority. Those gains, Mr. President, as Jefferson indicated, are more than offset by the loss to be sustained.

Mr. President, it is generally agreed that Thomas Jefferson was a man of many talents and certainly he was a man of great experience in government. Not only did he understand the true meaning of democracy, and the role of the legislative process in safeguarding individual rights but I believe he had a better understanding of that process than any other man of his time and, perhaps, since then.

During the period of the formation of our Government, in its very infancy, he had a better understanding of the processes then than any other man living. Although much of interest and value has been written and said about him, I do not recall ever having read any reference to this great man as either a "Southern reactionary" or a "conservative" or a "racist" or a 'bigot" or any other derisive or critical terms that are sometimes now applied to those who stand here in this body today and continue to defend the principles that Jefferson espoused, and he was truly a progressive of his time. If he espoused them then and they have served this Nation well for nearly two centuries, and no harm has come to the country because of them, why is it that now those of us who defend the same ideals, the same principles, and the same processes that were designed to protect the minorities and designed to make certain that the American people could be informed on the issues on which their representatives were voting are treated with derision? If they were valid then and if they had the virtue then to command the respect of men like Jefferson who advocated them, what has happened to warrant the change now of condemnation and derision of those of us who stand here to defend the same ideals and principles.

I can tell you, Mr. President. Our Founding Fathers had the depth of wisdom to reject it. I will tell you, Mr. President, what is behind it. It is political expediency. "We can get the power to ram legislation through and once we get a slight majority we can do it."

Mr. President, that is not the way to preserve America and that is not the way to preserve the liberties, the freedom, and the rights, the civil rights, that the liberals profess so much to idolize and serve. Ultimately they will be overridden by some small majority at a given time.

They are taking more risks in this matter than are those of us who are defending and protecting this country from arbitrary decisions and oppressions. Some of them will have an awakening too late, if they happen to get this through at any time. It will be too late then. As we used to try to tell them about some of the proposals that have been before this body, ultimately we told them that they will suffer more ill consequences from it than those sections of the Nation they thought they were chastizing. That is coming true every day—every day. It is happening across the Nation. The very sections of the country they thought they were chastizing are rising above it and the ill consequences of it are visiting them today in their own front yards. There is not a Senator in this body who when he reads these remarks that will not know exactly what I am talking about. Some of them will wince when they read it because it is true.

Yet, those of us who have stood our ground these many years and have fought off nine assault waves in 18 years on one of the most vital institutions possessed by the American people, have been opprobriously referred to in those derisive terms for expressing exactly the same sentiments, and for the very same reasons—love of country and concern for its preservation as the greatest democracy on this earth.

Mr. President, it is, in my judgment, most unfortunate that in 1959, this body, ignoring the wise counsel of that great statesman, Jefferson, saw fit to "tamper with this right" by amending rule XXII so as to permit a two-thirds majority of those present and voting—as few as 34 Senators—to invoke cloture, rather than a two-thirds majority of the full Senate membership—67 Senators, as was provided by the 1949 amendment.

Well, Mr. President, what is happening here today confirms what I said a few moments ago. The adoption of a change to a proposed 60 Senators is not going to satisfy the proponents. This is a whittling away process. We shaved off a little a few years ago; now we will whittle away more. If the Senate agrees to 60 percent, we will shave off some more, and the next round will probably be for 55 percent. That will not satisfy them. They will be back here for 51 percent; and then 26 Senators, if there were only 51 Senators present, would have the power to silence debate because they did not agree with other Senators on a particular issue.

Mr. President, in some fields and in some areas, there is a process of degeneration that applies sometimes by the normal course of nature. Here we are beginning to practice it. We are asked to do these things that would bring about a further stimulation of the processes of deterioration of the strength, the dignity, and the power of the Senate to protect the citizens of this country against the possibly ill-advised, hasty, and rash action of a mere majority of Senators at some given time. It is not a wise course; it is a foolish course. I hope there is yet enough collective wisdom in this body to reject this proposal.

This protective rule of 1949 was further weakened seriously in 1959, and now, in keeping with a steady trend, we are witnessing still another assault on the "full freedom of debate" which, in Jefferson's words, were designed "for the protection of the minority."

It is a strange concidence that those who are here today insisting upon a change in this rule often profess to be the greatest champions of the minority; and when they go out to speak in campaigns they refer to Jefferson, the great Jefferson, father of democracy. And yet they stand here and repudiate him—not only repudiate him but also denounce those of us who defend him by the opprobrious terms to which I have already referred.

Mr. President, from 1806 to 1917, there was free and unlimited debate in the

Senate of the United States. Was our Government destroyed? Did our Nation cease to prosper? The answer is obvious.

The truth is that that was the period of our growth and strength, the strength that gave us the impetus to become the greatest Nation on earth, when men were free. That is what we want to keep.

We grew and prospered and became the greatest Nation on this earth.

Between 1917, when the first cloture rule was adopted, under the pressures of a great war and a national emergency, cloture motions were limited to pending measures and required a two-thirds majority vote of those present and voting. In 1949, rule XXII was amended so as to restore this bulwark of democracy against the oppression and tyranny of the majority, by authorizing cloture only by a two-thirds majority of the entire Senate, but debate could not be limited on any proposal to amend the standing rules of the Senate. However, at that time, the rule was extended to cover, in addition to the pending business, all motions and other matters and unfinished business.

This again bears testimony to and is evidence of what I asserted a few minutes ago—that we are witnessing in this period of time the whittling process, the whittling away a little this year and a little the next session and a little the next year, until ultimately there will be no bulwark against the tyranny of a mere majority.

Then in 1959, the number required to invoke cloture was reduced to two-thirds of those present and voting. The 1959 amendment was simply used as a vehicle to enable a majority to try to appease minority groups for political expediency, without regard to the constitutional rights of the majority of the American people.

Prior to the 1959 amendment, rule XXII was an imposing bulwark of true democracy. Through the years, it served to safeguard the liberties of our people and afforded them the right of thorough and full expression through the medium of their chosen representatives in the U.S. Senate. Although seriously weakened in 1959, rule XXII, in its present form, still stands as a vital safeguard of liberty. Weaken it further—and that is what the proposal will do—and you will strike down and destroy this fortress, this last bastion of free and unlimited debate in the most profound legislative body in the world.

Mr. President, once this rule is destroyed, once this rule is whittled down to where a simple majority can impose its will arbitrarily, this body will no longer be able to boast that it is the greatest deliberative body in the world. I hope we never surrender that great distinction.

Contention is made, with great emphasis, that the present rule XXII permits abuses. It does. Abuses have occurred.

There is hardly a rule of the Senate that does not permit abuses, and we witness them day after day and time after time. One can probably abuse anything he wants to abuse, and I have seen that abuse. I have seen what I thought was an abuse by some of those who now condemn the rule. I have seen measures here that I would like to have voted on. I would like to have seen them disposed of. I was anxious and ready to vote, but I saw a minority of those who stand here and plead to destroy that right exercising that very right on the floor of the Senate, to keep a majority of us from voting on something they did not like. I did not complain. I would like to have seen a vote. But, having a vote on that issue at that time, the gain that would have been made would never have outweighed the loss that would be sustained by a rule that would permit a bare majority to invoke its will and impose its will hastily and arbitrarily on a minority in this body.

I have witnessed some of them since I have been a Member of the Senate, and I have noticed that, in some instances, these abuses have been perpetrated by the very persons who are now clamoring for a change.

However, Mr. President, although free and unlimited debate may have resulted in temporary delay and may, on occasion, have served to inconvenience other Members of the Senate, any harm that may have resulted was infinitesimal in comparison with unwise and unsound legislation that might have been enacted had the rules been different.

The things works both ways, Mr. President. You may be able to impose the will of a bare majority and get some legislation through hastily. That is all right. But there are many times when that kind of operation, that kind of rule, that manner of enacting laws, would be an abuse, because then we would enact legislation without knowing what the consequences of it would be.

We have enacted legislation without understanding its provisions. We have enacted legislation that was not wise, not proved. What do we want, expediency at the cost of wisdom? That is the way to get it. Get you an arbitrary process, where you can force your will, for the sake of expediency, and wisdom is relegated to oblivion.

Mr. ERVIN. Mr. President, I ask the Senator from Arkansas if he will yield solely for a question.

Mr. McCLELLAN. I yield for a question, without relinquishing my right to the floor.

Mr. ERVIN. I ask the Senator from Arkansas if, under rule XXII in its present form, a cloture motion cannot be filed immediately after the Senate takes up a bill for consideration.

Mr. McCLELLAN. The Senator is correct; of course every Senator knows, and those who inveigh against rule XXII know, that the minute a bill is brought up on this floor and made the pending business, if they want to do it, they can file a cloture motion right then, and within—what is it, 48 hours?—two legislative days thereafter, we have to vote on it.

Mr. ERVIN. Yes; it could be less than 48 hours, because a bill might be called up just before midnight. We have had sessions here at midnight.

Mr. McCLELLAN. I seem to recall a few of them, Mr. President, yes.

Mr. ERVIN. Anyway, as soon as a bill is called up, is it not true that a cloture motion could be filed, and then Senators are allowed to debate that bill only for the rest of that day, the next day, and 1 hour on the following day, before cloture is voted on?

Mr. McCLELLAN. That is right. It can be less than 48 hours. We usually think of it in terms of 48 hours, but it could be less.

Mr ERVIN. I ask the Senator from Arkansas if it has not been his experience and observation in the Senate that in those instances where cloture has been voted, although the rule says Senators may each speak for 1 hour after that time, the majority of Senators who have voted for cloture do not come to the Senate Chamber and listen to those Senators who undertake to use an hour, or part of it.

Mr. McCLELLAN. Of course, the Senator is correct. The cloture rule is nothing but a gag rule. That is its true purpose. It is not to serve—to enlighten. If it can have any effect in the world, the cloture rule is to prevent debate and to force a vote for expediency's sake at the time; and there have been times when I know it has been expedient for me and for my cause, because a majority of Senators had the same viewpoint I did with respect to the pending issue, but a minority was able to prevent it. I did not complain about that; they had that right under the rule, and it is that rule they want to destroy and that rule I want to preserve.

Mr. ERVIN. Will the Senator from Arkansas accept the assurance of the Senator from North Carolina that the Senator from North Carolina devoted much time and attention to trying to improve the civil rights bill of 1964 and to make it a more just and workable law, although the Senator from North Carolina was opposed to the bill; that in so doing, the Senator from North Carolina prepared several amendments, such as, for example, an amendment to make the question of whether discrimination existed in federal programs determinable as they should be in judicial tribunals rather than in executive agencies having no rightful judicial power under the Constitution; that after cloture was voted, the Senator from North Carolina used the hour allotted to him to present and explain his just and workable amendments; and that virtually all of the Senators who had voted to impose cloture absented themselves from the Senate where the Senator from North Carolina was explaining his just and workable amendments, and merely came to the floor to vote against such amendments without listening to a single word spoken by the Senator from North Carolina to explain the meaning and wisdom of the amendments proposed by him.

Mr. McCLELLAN. I am sure the Senator had that experience; he observed it, possibly, more keenly than some of us. I observed it; I know that is true, not-

withstanding the fact that the Senator was in good faith with those amendments, and they would have insured the democratic processes where they do not exist now, so that the accused, or the ones charged, would have had a chance to present their case and be heard, whereas they do not have it now; and the very Senators who profess to want the democratic processes and to preserve liberty and protect the minority are the ones who, by that expediency, preferred and by that attitude toward the Senator's amendments prevented those rights from being enacted into law.

Mr. ERVIN. Can it not be reasonably inferred that some Senators vote to impose cloture and thus gag other Senators because they do not want to listen to them and afford them an opportunity to present their views?

Mr. McCLELLAN. That may well be a part of their reason. They also profess to have other reasons.

Mr. ERVIN. The present discussion illustrates this point very well. As the Senator from North Carolina recalls, 51 Senators have joined in a proposal to lower the vote by which cloture can be obtained from two-thirds of the Senators present and voting to 60 percent of them. I am constrained to say that I have strained my eyesight trying to see if any of those Senators who cosponsored this proposal have been here to listen to the arguments against it. They have been conspicuous by their absence.

Mr. McCLELLAN. I do not think they have an open mind. I do not think they are too well informed. They already have fixed opinions.

Mr. ERVIN. And they want to make sure their fixed opinions are not changed by further light on the subject.

Mr. McCLELLAN. They do not want to get confused, let us say, so they avoid being exposed to any logic or wisdom which might inform them and confuse them.

Mr. ERVIN. Does the Senator see any similarity between that situation and that of the North Carolina justice of the peace, who, after the plaintiff had presented his case in justice court, told the defendant, "I would appreciate it very much if you would not offer any evidence, because when I hear only one side of a case I do not have any trouble reaching a conclusion, but when I hear both sides, I get confused, and therefore I would appreciate it very much if the defendant would not offer any testimony."

Mr. McCLELLAN. I think the Senator's story is very apropos to the statement I just made, that they do not want to get enlightened and confused.

Mr. President, we are told that the purpose of the pending amendment to rule XXII is to terminate successful filibustering; to enable the U.S. Senate to discharge its responsibility to the American people in a more democratic and expeditious manner—again I go back to what Mr. Jefferson said about democracy, that this protection of the minority is indispensable to true democracy—and to end the undue power which the rule places in the hands of a minority. In fact, advocates of the proposed change allege that the Senate, because of its tradition of free and unlimited debate, is unable to transact the Nation's business and is derelict in its obligations.

Mr. President, I have only to refer back to the closing days of the last session of this body to point out that the very things that are complained about here were then practiced by the ones who are doing the complaining. But it was expedient for them, from their viewpoint at that time, to do it. Though they condemn it in others, they practice it and take every advantage of the right to do when their ox is being gored.

Mr. ERVIN. Mr. President, I ask unanimous consent that I may describe a cartoon I saw, without the Senator from Arkansas losing his right to the floor or having any subsequent remarks counted as a second speech or it being otherwise prejudicial to his position.

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

Mr. ERVIN. One of our good friends, a very distinguished Member of the Senate, who filibustered against the SST in the closing days of the last Congress, was depicted in this cartoon as coming into the Senate Chamber with a great, big blunderbuss gun called "The Filibuster." In the cartoon, someone said, "Don't you consider this a dangerous weapon?" Our distinguished friend, as depicted in the cartoon, said, "No, except in the hands of southerners."

Mr. McCLELLAN. Except in the hands of southerners.

I do not know whether the Senator was in the Chamber a few minutes ago, when I said for the record—and I hope that some of our good colleagues read it—that we tried to warn them a few years ago, when they were trying to impose some legislation on a certain section of this country, when they were trying to chastise—and I will use the term "South" now—when they were trying to chastise the South, that there was going to be a backlash from it and that they would feel that backlash. Today, they have it in their own front yard, all across this Nation. And I believe they are asking for more of it.

Again, Mr. President, it is not the South—I can say that—that is going to suffer the most serious consequences from what I regard as these rash proposals if they should be adopted. In time, ultimately, it is going to boomerang, and the one who will get injured is the one who threw it, not the target at which it was thrown.

Mr. President, an examination of the record reveals clearly that there is very little, if any, validity to these contentions.

First, we find that rule XXII, in any of its various forms, has never been completely effective in terminating extended debate. Since 1917, when the first cloture rule was adopted, cloture has been invoked 49 times and was successful on only eight occasions, four of which occurred when the rule required only two-thirds of those present and voting to close debate. Now, this fact may be cited as proof that further liberalization of the rule is necessary. However, when Members of this body are ready and willing to cut off debate and resort to "gag rule" on only eight occasions in 53 years, what it really proves is that a substantial number of Senators were not ready and willing to act upon these measures in the form in which they were pending. This is clearly indicated by the fact that on 25 of the 49 occasions, those seeking to invoke cloture not only failed to muster the required two-thirds support for their motion, but also failed to receive the support of even a majority of the authorized membership of the Senate; and of this number, on 15 occasions, they were unable to obtain even a simple majority—a majority of those present and voting.

Those of us who are familiar with the workings of this body know that failure to invoke cloture on 41 occasions over a period of 53 years cannot be attributed to the requirements of the rule alone. It is obvious that Members opposing cloture on those occasions voted against it either because of a deep-seated conviction that "gag-rule" is an affront to our democratic institutions, or because of a similarly deep-seated conviction that further debate was essential and in the best interests of the Nation. I emphasize again the fact that experience has demonstrated beyond any question that when the U.S. Senate is ready to act on a pending measure, it can act, does act, and will act.

The allegation that the Senate, because of its tradition of unlimited debate, is unable to transact the Nation's business and is derelict in its obligations to the American people is clearly refuted by the record. First, despite the provisions of rule XXII, during the past 53 years, Congress has enacted an enormous quantity of legislation. A substantial proportion was transmitted to Congress by the President with a request for action. The product that ultimately emerged in the form of legislative enactments has often been quite different from the original submission—quite different from what the President recommended, from what the administration tried to have enacted. Experience has demonstrated that the ultimate product in those instances was often far better, in form and substance, than the original submission.

That does not apply only to the administration in power. It applies to the administrations over more than a half century. Presidents are no more infallible than Members of Congress.

I hope I will not be taken to task about that statement, because many who have served as President were Members of Congress. I am not sure that always the ablest Member of Congress became President of the United States. I have some reservations about that, though I make no challenge or charge.

So, Mr. President, I think that all deference should be shown to the President's proposals when he sends them down here.

If the President of the United States, regardless of party, is in power, every deference should be shown him. We have a constitutional responsibility. We should weigh the matter, and resolve the doubts with that in mind. Often, maybe, resolve the doubts in deference to his wishes. But, he is not infallible. After all, what the President sends down here most of the time, if not all the time, is prepared by a staff of experts who are never elected to anything. I think their proposals should be meticulously examined. In my judgment that is the better process of democracy.

Mr. ERVIN. Mr. President, will the Senator from Arkansas yield for a question?

Mr. McCLELLAN. I yield gladly to the Senator from North Carolina.

Mr. ERVIN. Is it not a fact that every President we have had since Franklin Delano Roosevelt, except President Eisenhower, went from the Senate to the White House?

Mr. McCLELLAN. I have not counted it, but I will take the Senator's word without making a hasty calculation.

Mr. ERVIN. President Truman had served in the Senate first, had he not?

Mr. McCLELLAN. That is correct.

Mr. ERVIN. President John F. Kennedy had served in the Senate first, had he not?

Mr. McCLELLAN. That is correct.

Mr. ERVIN. And President Johnson had served in the Senate first, had he not?

Mr. McCLELLAN. That is correct.

Mr. ERVIN. And President Nixon had served in the Senate first, had he not?

Mr. McCLELLAN. That is correct. The Senator is correct about that. As I pointed out, we have shown great deference to them, to their ability, their character, to their noble intentions and purposes as well as to their qualities of statesmanship. But again, I point out, all those President who went from the Senate to the White House had around them a staff of so-called experts as their counselors and advisers.

I certainly would not concede that all of them towered in intellect and judgment above the level of the stature of the Members of the Senate. I think it is our duty, an inescapable duty, where legislative proposals come to us, even from the President of the United States, to discharge our duty and carefully examine, assess, evaluate, and make judgments, and correct by amendment by elimination and by additions to those proposals, if necessary, in order to serve the Nation's best interests.

Some Presidential proposals have much merit; others have some merit; and still others have little or no merit at all. So it is in the legislative process that these proposals that come from the President prepared by his advisers should be carefully considered and analyzed. When both Houses of the Congress have considered and acted upon such proposals, they may, and often do, emerge in a form quite different from the original submission, or, in some instances, they may not be acted upon at all. Or they may be acted upon and rejected by affirmative vote of either House or both Houses of Congress. Action in the other body is relatively rapid due, in part, to strict limitations on debate and the party machinery through which it functions. The Senate, however, with its tradition of full and free debate, is in a position to devote more time to legislative proposals, and to keep the American people fully informed with respect to vital pending issues.

Without any reflection upon the other body—and I had the honor to serve in the other body—this is no reflection, Mr. President, they just do not have the time over there to give full debate to any issue.

From which body is it that the country keeps best informed on the issues of our time? It is the Senate. Not because those in the House are not just as able, patriotic, or as dedicated as we are, but because their numbers are so great and time is of the essence so that they can and must often act hastily and without adequate debate. Whereas, Mr. President, this is the only place where there can be adequate debate and where that debate can be carried through the news media to the people of this Nation. The people have the right to know, they are the ultimate judges, who should be informed, so as to weigh and make the judgments upon which they will exercise their franchise at the next election.

Do we want to stop that?

I do not count the gains or count the losses. I have a minus column and a plus column as to evaluating this issue and as to passing judgment on it. For that is the way we often determine the course we should pursue. There is some good and some bad in most legislation that comes before us. I have voted—as does every other Member of this body sometimes—for a bill that has something in it I do not like and I wish it were not in the bill, but I vote for it because I evaluate and strike a balance between that which is good and that which is bad. I balance it all out, and that which outweighs the other is the course that I pursue in voting for legislation.

I think that course is imperative. There is no other way. So why, Mr. President, shall we not be able here to evaluate this proposal on the basis of what we are going to lose and the potential evil consequences if we change the rule, as against what we know the record is now with the experience we have already had? We know. We do not have to guess. We have had 50-odd years of experience with it.

Only eight times has cloture been successful out of 49 times it has been invoked by the Senate. Well, there has not been much lost by that, as in most instances the proponents did not even get a majority. On 15 occasions, they were incapable of finding a simple majority of those present and voting to vote for cloture.

Mr. President, I wish to commend the Senator from North Carolina for calling to the attention of the Senate a while ago, in his colloquy with the distinguished Senator from Alabama (Mr. ALLEN), the great waste of time that has occurred in this body by this whittling away process of trying to reduce the power, the strength, the dignity, and the stature of the U.S. Senate down to the level of political expediency.

I hope that this proposal will not prevail.

Now, Mr. President, the clock indicates 10 minutes past 3. So, with the unanimous-consent request that was agreed to at the beginning of my remarks that this would be considered only the beginning of one speech, that I propose to make on this issue, I am ready to yield the floor.

PROGRAM

Mr. BYRD of West Virginia. Mr. President, for the information of the Senate, the program for Monday will be as follows:

The Senate will convene at 12 o'clock meridian following a recess. Following the prayer and the approval of the Journal, if there is no objection, and the laying before the Senate of the pending business, the able majority leader and minority leader will be recognized under the order entered on January 29. On the conclusion of their remarks, Mr. President, and the call of any unobjected-to items on the legislative calendar, there will be a period for the transaction of routine morning business which will not exceed 30 minutes, with the statements therein limited to 3 minutes.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, for the information of the Senate, what is the pending question before the Senate?

The PRESIDING OFFICER. The pending question before the Senate is on agreeing to the motion of the Senator from Alabama (Mr. ALLEN) to postpone until the next legislative day the consideration of the motion of the Senator from Kansas (Mr. PEARSON) that the Senate proceed to the consideration of Senate Resolution 9, a resolution to amend rule XXII of the Standing Rules of the Senate with respect to the limitation of debate.

Mr. BYRD of West Virginia. Mr. President, I thank the distinguished Presiding Officer for his courtesy.

RECESS TO MONDAY, FEBRUARY 8, 1971

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order of yesterday, that the Senate stand in recess until 12 o'clock meridian on Monday next.

The motion was agreed to; and (at 3 o'clock and 11 minutes p.m.) the Senate took a recess until Monday, February 8, 1971, at 12 o'clock meridian.