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Senate

By Mr. MONDALE (for himself and Mr. SCHWEIKER):

S. 2238. A bill to amend the Internal Revenue Code of 1954 to increase the maximum credit and deduction allowable with respect to contributions to candidates for public office, to make certain changes in subtitle H of such code with respect to the financing of Presidential election campaigns, and for other purposes. Referred to the Committee on Finance.

PRESIDENTIAL CAMPAIGN FINANCING ACT

Mr. MONDALE. Mr. President, I am introducing today, together with the Senator from Pennsylvania (Mr. SCHWEIKER), the Presidential Campaign Financing Act of 1973.

This legislation, which provides for substantial public financing of Presidential primary and general elections while severely limiting the size of private contributions, is designed to free those elections from the corrosive and corrupting influence of big money and return them to the American people.

In my judgment, the enactment of our bill—or of one like it—is the single most important election reform that can emerge from Watergate. It is absolutely essential if we are ever to get money off the backs of American politicians and restore integrity and confidence in our political system.

One of the great ironies of Watergate is that some of those who have been among the staunchest opponents of public financing have, through their blatantly illegal activities, made the strongest possible case for its adoption.

The acceptance of corporate contributions, the widespread use of secret funds, the "laundering" of contributions in foreign countries, the solicitation of funds from businesses with important cases pending before Government agencies, the insistence on dealing in cash, the ambassadorships for sale—these are symptoms of a system that is fundamentally flawed.

Perhaps no incident dramatizes the extent of the flaw as strikingly as that involving American Airlines.

Herbert Kalmbach, one of President Nixon's principal fundraisers approached American board chairman, George Spater, at a time when American had pending before the Civil Aeronautics Board a plan for merger with Western Airlines and indicated that a contribution of $100,000 was "expected."

I knew Mr. Kalmbach to be both the President's personal counsel and counsel for our major competitor (United Airlines).

Mr. Spater said later:

I concluded that a substantial response was called for.

That "substantial response" amounted to a total American Airlines contribution to the Nixon campaign of $75,000, of which $55,000 was in clearly illegal corporate funds.

In short, American Airlines was so determined to advance and protect its corporate interests that it consciously decided to violate the law in order to submit to Mr. Kalmbach's intimidation.

Here's how Mr. Spater himself put it:

Under existing laws, a large part of the money raised from the business community for political purposes is given in fear of what could happen if it were not given.

I cannot imagine a more severe indictment of our political fund-raising process, unless it is the now familiar Vesco affair. That incident dramatized how an individual in apparent trouble with the SEC was solicited for a huge contribution, and how he gained access to one of the highest officials in the Government to discuss his difficulties only 2 hours after delivering the contribution—all in $100 bills.

And there is the ITT incident in which a huge contribution to help underwrite the GOP National Convention mysteriously coincided with an antitrust settlement between ITT and the Justice Department—a settlement highly beneficial to ITT.

Then there is the Ashland Oil contribution and who knows how many more sordid episodes. When they are all revealed, they will portray a story of government virtually up for sale. They will make a mockery of our principles of free and open representative government. They will make us truly ashamed of what we have allowed to happen to our political process, the most precious of all of our national possessions.

As a Democrat, I can take no comfort in these disclosures. My own party's record of political fund-raising—while never in the same league as the Nixon campaign of 1972—has not always been as open and as forthright as I would like it to have been.

The chief fault lies in the system itself—a system which forces candidates to rely on excessively large contributions if they hope to compete effectively in a modern Presidential campaign.

This system, I am convinced, has a great deal to do with declining public confidence in government. People were asked in 1966 by the Harris Poll, "How often can you trust the government?" Two-thirds answered, "most of the time." Recently the question was asked again and less than half—only 45 percent—said they could trust their government most of the time.

The same poll indicated that only 27 percent of the people had "a great deal of confidence" in the executive branch of the Government—a drop from 41 percent in 1966.

If we are to eliminate the corrosive influence of money on the political process and restore public trust in our Government, we must fundamentally change the system by which we finance our campaigns—especially our Presidential campaigns. The only way to do this effectively, in my judgment, is by severely limiting the amount any individual may contribute to a candidate while at the same time providing substantial public funds to help finance the campaigns. Neither of these steps by itself will be sufficient; any effective reform must embody them both.

The costs of running campaigns in this country are rising so rapidly that this question cannot be put off any longer. It is estimated that last year candidates for all offices spent an estimated total of $400,000,000—an increase of one-third over 4 years before. In short, the cost of campaigning is rapidly outstripping the ability of most candidates to raise the necessary funds responsibly.

The United States is one of the few western democracies which provide absolutely no public assistance to candidates in its national elections. As Watergate so vividly illustrates, we cannot afford to postpone further this essential measure.

And if this kind of legislation is not enacted in the wake of Watergate, it may never be enacted. That is why Senator SCHWEIKER and I—together with a bipartisan coalition of Senators—intend to push this matter vigorously in the next few months.

John Gardner has called the way in which our campaigns are financed a "national disgrace," and I agree with him. In our common effort to remove that disgrace, I am grateful to Mr. Gardner and Common Cause for their considerable help in preparing the legislation which we are introducing today.

It is not a perfect bill, and we are not irrevocably wedded to every detail in its present form. After circulating it widely, we will make whatever revisions are necessary to make it the most effective possible bill.

We are committed, however, to the principles contained in this measure. And we believe its basic concepts are sound.

These, Mr. President, are the principal features of our bill:

No individual is allowed to contribute more than $3,000 to any one candidate during an entire Presidential campaign;

Groups which aggregate or "pool" funds are limited to collecting individual contributions of $25 or less and may in turn contribute to any one candidate no more than $25,000;

Cash contributions or transactions in excess of $100 are barred;

The existing tax credit is doubled to make it one-half of any contribution up to $50 for an individual return and up to $100 for a joint return; The present tax deduction for contributions is also doubled;

During the prenomination period, each individual contribution up to $100 will be matched by an equal amount from the Federal Treasury; A candidate must raise $100,000 in matchable contributions in order to qualify for Federal matching funds; The matching funds will be available beginning 14 months before the date of the general election; There is an overall spending limit of $15 million during the prenomination period; Matching funds must be spent during the prenomination period and cannot be carried over to the general election period;

The existing $1 check-off system is retained and strengthened for the general election; Each dollar checked off is matched by another dollar from the Federal Treasury, and the check-off fund is made self-appropriating; For the general election period there is a spending limit of $30 million, roughly two-thirds of which will come from the check-off fund and the balance from private contributions under $3,000; Unlike the present check-off law, there is no incentive not to take advantage of the public funds;

Stiff criminal penalties are provided for misuse of the public funds and other violations of the act.

I ask unanimous consent that an ex-

planation giving more details, together with the text of the bill, be printed at the conclusion of my remarks.

If public financing legislation is to accomplish its intended purpose, it is essential that it apply to the Presidential primary period as well as the general election. If individuals and interests are permitted to contribute huge amounts early in the campaign, it makes no difference that they are prohibited from doing so later; the obligation will have been incurred and the entire purpose of the reform will have been effectively undermined.

And yet, the primary period is the most difficult part of the presidential election process for which to provide public financing. We have concluded that the only way to treat all candidates fairly is by placing a premium on their ability to raise small contributions. The combination of the $3,000 limitation on individual contributions and the availability of matching funds for contributions of $100 and under forces candidates, in effect, to seek as wide a base as possible in financing their campaigns. That, we believe, is what candidates should have to do in seeking nomination to the highest office in the land. Whatever ability they demonstrate in raising small funds from as many individuals as possible is rewarded in direct proportion to their success.

Candidates, in short, will be going to the people instead of to the interests for their financial support. The impact this change will have not only on our political process but also on the executive branch of government will be enormous.

For the general election period, we have retained and tried to strengthen the $1 check-off system, which we believe is a sound and effective system which has not yet been given a fair chance to prove itself. Every dollar which is designated by an individual for the presidential campaign fund is matched by another dollar from the Treasury, creating in effect a $2 check-off which will insure sufficient funds for the general election. These funds would provide approximately two-thirds of what a candidate would be permitted to spend, the balance to be raised in individual contributions of $3,000 and under.

Public financing of campaigns, I am convinced, is an idea whose time has finally arrived. But it is by no means a new idea. In a message to Congress in 1907—nearly 70 years ago—President Theodore Roosevelt proposed this reform, saying:

The need for collecting large campaign funds would vanish if Congress provided an appropriation for the proper and legitimate expenses of each of the great national parties, an appropriation ample enough to meet the necessity for thorough organization and machinery, which requires a large expenditure of money. Then the stipulation should be made that no party receiving campaign funds from the Treasury should accept more than a fixed amount from any individual subscriber or donor; and the necessary publicity for receipts and expenditures could without difficulty be provided.

Public financing of campaigns is the most fundamental and important reform we can adopt in this decade. At stake is nothing less than the integrity of our political system and the kind and quality of government we are going to have in this country.

This is not a very complex issue. It can be reduced to one basic question: To whom do we want the President of the United States indebted after his election—powerful economic interests capable of buying influence with huge contributions, or the American people?

Nor is it a partisan or ideological issue. It is designed to benefit neither Republicans nor Democrats—neither liberals nor conservatives. Rather, it is designed to benefit our system of government and, through it, the American people, by insuring that the President of the United States is responsible to them—and to them only.

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

S. 2238

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 "Presidential Campaign Financing Act of 1973."

INCREASE IN POLITICAL CONTRIBUTIONS CREDIT AND DEDUCTION

SEC. 2. (a) Section 41(b)(1) of the Internal Revenue Code of 1954 (relating to maximum credit for contributions to candidates for public office) is amended to read as follows:

"(1) Maximum credit.—The credit allowed by subsection (a) for a taxable year shall not exceed $25.00 ($50.00 in the case of a joint return under section 6013)."

(b) Section 218(b)(1) of the Internal Revenue Code of 1954 (relating to amount of deduction for contributions to candidates for public office) is amended to read as follows:

"(1) AMOUNT.—The deduction under subsection (a) shall not exceed $100 ($200 in the case of a joint return under section 6013)."

(c) The amendments made by subsections (a) and (b) shall apply with respect to any political contribution the payment of which is made after December 31, 1973.

PRESIDENTIAL ELECTION CAMPAIGN FUND

SEC. 3. Section 9006(a) of the Internal Revenue Code of 1954 (relating to establishment of campaign fund) is amended to read as follows:

"(a) ESTABLISHMENT OF CAMPAIGN FUND—There is established on the books of the Treasury of the United States a special fund to be known as the 'Presidential Election Campaign Fund There is appropriated to the fund for each fiscal year, out of amounts in the general fund of the Treasury not otherwise appropriated, an amount equal to two times the amount designated during the preceding fiscal year (and subsequent to the previous Presidential election) by individuals for payment into the fund under section 6096. Moneys in the fund shall remain available without fiscal year limitation."

EXPLANATORY STATEMENT ON TAX AND PUBLICITY

SEC. 4. (a) Section 6096 of the Internal Revenue Code of 1954 (relating to designation by individuals of income tax payments to Presidential Election Campaign Fund) is amended by adding at the end thereof the following new subsections:

"(d) EXPLANATORY STATEMENT.—The page containing the designation provided for in subsection (c) shall contain the following statement in bold type: 'Designating that $1 (or $2 for a husband and wife filing jointly) shall be paid over to the Presidential Election Campaign Fund will not increase your tax liability, and each $1 you designate will be matched by another $1 from the Treasury.'

"(e) PUBLICITY.—The Secretary of the Treasury or his delegate shall give extensive publicity to the Presidential Election Campaign Fund, including prominent notice in explanatory material sent to individuals, posters, and the use of radio, television, newspapers and other media. This publicity shall emphasize that the designation provided for in subsection (a) does not increase an individual's tax liability, and that each $1 designated will be matched by another $1 from the Treasury."

LIMITATIONS ON GENERAL ELECTION CAMPAIGN PAYMENTS, EXPENSES, AND CONTRIBUTIONS

SEC. 5. (a) Subsection (b) of section 9004 of the Internal Revenue Code of 1954 (relating to entitlement of eligible candidates to payments) is repealed and subsection (c) is redesignated as subsection (b).

(b) Paragraphs (2) and (3) of subsection (b) of section 9007 of the Internal Revenue Code of 1954 (relating to repayments of excess campaign expenses and contributions) are repealed and paragraphs (4) and (5) are redesignated as paragraphs (2) and (3).

ELIGIBILITY FOR CAMPAIGN PAYMENTS

SEC. 6. Section 9003 of the Internal Revenue Code of 1954 (relating to condition for eligibility for payments) is amended by striking out subsections (b) and (c) and inserting in lieu thereof the following:

"(b) Candidates for Election to the Office of President.—In order to be eligible to receive any payment under section 9006, the candidates of a major, minor, or new party in a presidential election shall certify to the Comptroller General, under penalty of perjury, that they and their authorized committees will not incur qualified campaign expenses in excess of the $30,000,000 limit in section 9012(a).

CRIMINAL PENALTIES

SEC. 7. Section 9012 (a) and (b) of the Internal Revenue Code of 1954 (relating to criminal penalties for excess campaign expenses and contributions) is amended to read as follows:

"(a) Excess Campaign Expenses—

"(1) It shall be unlawful for any candidate of a political party for President and Vice President in a presidential election or any of his authorized committees knowingly and willfully to incur qualified campaign expenses in excess of $30,000,000 with respect to such election.

"(2) Any person who violates paragraph (1) shall be fined not more than $25,000, or imprisoned not more than five years, or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $25,000, or imprisoned not more than five years, or both.

"(3) At the beginning of each calendar year (commencing in 1974), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Comptroller General and publish in the Federal Register the per centum difference between the price index for the twelve months preceding the beginning of such calendar year and the price index for the base period. The limit on campaign expenses in paragraph (1) and in section 9003(b) shall be increased by such per centum difference. The limit so increased shall be the amount in effect for such calendar year.

"(A) The term 'price index' means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

"(B) The term 'base period' means the calendar year 1972.

"(b) Contributions—

"(1) It shall be unlawful for any candidate of a major, minor, or new party in a presidential election or any of his authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount greater than that necessary to make up the difference between the payments received from the Fund under Section 9006 and the limit on qualified campaign expenses established by subsection (a).

"(2) Any person who violates paragraph (1) shall be fined not more than $25,000, or imprisoned not more than five years, or both.

PRESIDENTIAL PRIMARY MATCHING PAYMENT FUND

SEC. 8. The Internal Revenue Code of 1954 is amended by adding at the end thereof the following new Chapter:

"CHAPTER 97—PRESIDENTIAL PRIMARY MATCHING PAYMENT FUND

"Sec. 9031. Short title.

"This chapter may be cited as the 'Presidential Primary Matching Payment Fund Act'.

"Sec. 9032. Definitions.

"For purposes of this chapter—

'(1) The term 'qualified campaign expense' means an expense—

"(A) incurred by a candidate for nomination for election to the office of President to further his nomination for such office, or by an authorized committee of such candidate to further his nomination to such office.

"(B) incurred within the matching payment period (as defined in paragraph (2)), or incurred before the beginning of such period to the extent such expense is for property, services, or facilities used during such period, and

"(C) neither the incurring nor payment of which constitutes violation of any law of the United States or the State in which such expense is incurred or paid. An expense shall be considered as incurred by a candidate or an authorized committee if it is incurred by a person authorized by such candidate or such committee, as the case may be, to incur such expense on behalf of such candidate or such committee.

"(2) The term 'matching payment period' means the period beginning 14 months prior to the date of the general election for President and ending on the date on which the national convention of the party for whose nomination the candidate is campaigning nominates its candidate for President.

"(3) The term authorized committee' means, with respect to a candidate for nomination for election to the office of President, any political committee which is authorized in writing by such candidate to incur expenses to further the election of such candidate. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidate with the Comptroller General. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

"Sec. 9033. Creation of fund.

"(a) ESTABLISHMENT OF CAMPAIGN FUND.—There is hereby established on the books of the Treasury of the United States a special funds to be known as the "Presidential Primary Matching Payment Fund" (hereinafter referred to in this chapter as the 'fund'). The fund shall remain available for expenditure without fiscal year limitation and shall consist of such amounts as are appropriated into it as provided in subsection (c).

"(b) REPORT TO CONGRESS.—The Secretary of the Treasury shall be the trustee of the fund and shall report to the Congress not later than March 1 of each year on the operation and status of the fund during the preceding year.

"(c) APPROPRIATION OF FUNDS.—There are hereby appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act.

"Sec. 9034. Entitlements.

"(a) MATCHING PAYMENT FOR CONTRIBUTIONS OF $100 OR LESS.—Any candidate for nomination for President, or his authorized committee is entitled, upon certification by the Comptroller General, to payments from the fund for qualified campaign expenses beginning 14 months prior to the date of the general election for President in an amount equal to the amount of each contribution received by such candidate or committee (disregarding any amount of contributions from any person to the extent that such amount exceeds $100).

"(b) VOUCHER.—To be eligible for the entitlement established by subsection (a), such candidate shall submit to the Comptroller General, at such times and in such form and manner as the Comptroller General may require, a matching payment entitlement voucher. Such voucher shall include the full name of any person making a contribution together with the date, the exact amount of the contribution, the complete address of the contributor and the occupation and principal place of business, if any, for contributors of more than $100.

"(c) DETERMINATION AND CERTIFICATION BY COMPTROLLER GENERAL.—Comptroller General shall—

"(1) make a determination, according to such procedures as he may establish, as to whether each contribution enumerated on such voucher is consistent with the provisions of sections 9034(a) and 9035 of this chapter; and

"(2) certify for payment by the Secretary to such candidate an amount equal to the sum of the contributions enumerated on such voucher which meet the requirements of subsection (c)(1).

"(d) PAYMENT BY SECRETARY.—Promptly upon certification, the Secretary shall make a payment from the fund to such candidate in the amount certified by the Comptroller General.

"(e) AUTHORIZED COMMITTEE.—For the purposes of this section, the authorized committee of any candidate for nomination for President may submit an entitlement voucher pursuant to subsection (b) in behalf of such candidate, listing contributions received by such committee eligible for payment under this chapter.

"Sec. 9035. Limitations.

"(a) CERTIFICATION BY THE COMPTROLLER GENERAL.—The Comptroller General shall not certify pursuant to section 9034(c)(2) any portion of any contribution made by any person to a candidate or committee entitled to payments under this chapter—

"(1) which, when added to other contributions made by such person to such candidate or committee in connection with the nomination of such candidate for President, exceeds $100; or

"(2) if payment from the fund of an amount equal to the amount of such contribution, or portion thereof, when added to any other payment from the fund to such candidate or committee during the matching payment period, is in excess of 5 cents multiplied by the voting age population of the United States (as certified to the Comptroller General by the Secretary of Commerce pursuant to section 104(a)(5) of the Federal Election Campaign Act of 1971).

"(b) PAYMENT BY THE SECRETARY.—The Secretary shall make no payment to a candidate or committee entitled to payments from the fund—

"(1) until the Comptroller General has certified contributions submitted by such candidate or committee, pursuant to section 9034(b), in an aggregate amount of $100,000; and

"(2) earlier than 14 months prior to the date of the general election for President.

"(c) QUALIFIED CAMPAIGN EXPENSES.—A candidate shall be eligible for payments from the fund only—

"(1) to defray qualified campaign expenses incurred by such candidate or his authorized committee, or

"(2) to repay loans the proceeds of which were used to defray such qualified campaign expenses, or otherwise to restore funds (other than contributions to defray qualified campaign expenses received and expended by such candidate or committee) used to defray such qualified campaign expenses.

(d) RETURN OF UNUSED FUNDS.—Amounts received by a candidate from the fund may be retained for the liquidation of all obligations to pay qualified campaign expenses incurred during the matching payment period for a period not exceeding six months after the end of the matching payment period; and all obligations having been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the Fund bears to the total of all deposits made into the candidate's accounts shall be promptly repaid to the fund.

(e) RULES AND PROCEDURES.—The Comptroller General shall make such rules and establish such procedures as may be necessary to carry out the purposes of this chapter. All such rules and procedures shall be published in the Federal Register not less than thirty days prior to their effective date, and shall be available to the general public. The Comptroller General shall publish and make available forms for the making of such reports and statements as may be required, and a manual setting forth uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter.

"Sec. 9036. Examinations and audits; repayments.

"(a) EXAMINATIONS AND AUDITS.—After each matching payment period, the Comptroller General shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates receiving payments from the fund.

"(b) REPAYMENTS.—

"(1) If the Comptroller General determines that any portion of the payments made to a candidate from the fund was in excess of the aggregate payments to which such candidate was entitled under sections 9034 and 9035, he shall so notify such candidate, and such candidate shall pay to the Secretary an amount equal to such portion.

"(2) If the Comptroller General determines that any amount of any payment made to a candidate from the fund was used for any purpose other than—

"(A) to defray the qualified campaign expenses with respect to which such payment was made, or

"(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses,

he shall notify such candidate of the amount so used, and such candidate shall pay to the Secretary an amount equal to such amount.

"(c) NOTIFICATION.—No notification shall be made by the Comptroller General under subsection (b) with respect to a matching payment period more than three years after the end of such period.

"(d) DEPOSIT OF REPAYMENTS.—All payments received by the Secretary under subsection (b) shall be deposited by him in the general fund of the Treasury.

"Sec. 9037. Criminal penalties.

"(a) EXCESS CAMPAIGN EXPENSES.—

"(1) It shall be unlawful for any candidate for nomination for election to the office of President or any of his authorized committees knowingly and willfully to incur any expenses in connection with such nomination in excess of $15,000,000.

"(2) Any person who violates paragraph (1) shall be fined not more than $25,000, or imprisoned not more than five years, or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $25,000, or imprisoned not more than five years, or both.

"(3) At the beginning of each calendar year (commencing in 1974), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Comptroller General and publish in the Federal Register the per centum difference between the price index for the twelve months preceding the beginning of such calendar year and the price index for the base period. The limit on campaign expenses in paragraph (1) shall be increased by such per centum difference. The limit so increased shall be the amount in effect for such calendar year.

"(A) The term 'price index' means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

"(B) The term 'base period' means the calendar year 1972.

"(b) UNLAWFUL USE OF PAYMENTS.—

"(1) It shall be unlawful for any person who receives any payment from the Fund, or to whom any portion of any payment received from the Fund is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purposes other than—

"(A) to defray the qualified campaign expenses with respect to which such payment was made, or

"(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

"(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"(c) FALSE STATEMENTS, ETC.—

"(1) It shall be unlawful for any person knowingly and willfully—

"(A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Comptroller General under this subtitle, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Comptroller General or an examination and audit by the Comptroller General under this chapter; or

"(B) to fail to furnish to the Comptroller General any records, books, or information requested by him for purposes of this chapter.

"(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"(d) KICKBACKS AND ILLEGAL PAYMENTS.—

"(1) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of a candidate receiving payment from the fund or his authorized committees.

"(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of a candidate or his authorized committees shall pay to the Secretary, for deposit in the general fund of the Treasury, an amount equal to 125 percent of the kickback or payment received.

"(e) The table of chapters for subtitle H is amended by adding at the end thereof the following new item:

"Chapter 97. Presidential Primary Matching Payment Fund."

CENTRAL CAMPAIGN COMMITTEES, CAMPAIGN DEPOSITORIES, AND LIMITATIONS ON CASH TRANSACTIONS

SEC. 9. Title III of the Federal Election Campaign Act of 1971 is amended by redesignating sections 308 throgh 311 as sections 311 through 314, and by inserting after section 307 the following new sections:

"CENTRAL CAMPAIGN COMMITTEES

"SEC. 308. (a) Each candidate shall designate one political committee as his central campaign committee. A candidate for nomination for election, or for election, to the office of President, may also designate one political committee in each State in which he is a candidate as his State campaign committee for that State. The designation shall be made in writing, and a copy of the designation, together with such information as the Commission may require, shall be furnished to the Commission upon the designation of any such committee.

"(b) No political committee may be designated as the central campaign committee of more than one candidate. The central campaign committee, and each State campaign committee, designated by a candidate nominated by a political party for election to the office of President shall be the central campaign committee and the State campaign committees of the candidate nominated by that party for election to the office of Vice President.

"(c)(1) Any political committee authorized by a candidate to accept contributions or make expenditures in connection with his campaign for nomination or for election, which is not a central campaign committee or a State campaign committee, shall furnish each report required of it under section 304 (other than reports required by the last clause of section 304(a)) to that candidate's central campaign committee soon enough in advance of the filing dates in section 304(a) to enable the central campaign committee to file its reports on those dates.

"(2) The supervisory officer may, by regulation, require any political committee receiving contributions or making expeditures in a State on behalf of a candidate who, under subsection (a), has designated a State central campaign committee for that State to furnish its statements and reports to that State central campaign committee.

"(3) The supervisory officer may require any political committee to furnish any statement or report directly to him.

"(d) Each political committee which is a central campaign committee shall receive all reports and statements filed with or furnished to it by other political committees, and consolidate and furnish the reports and statements to the supervisory officer, together with its own reports and statements, in accordance with the provisions of this title and regulation's prescribed by him.

"CAMPAIGN DEPOSITORIES

"SEC. 309. (a)(1) Each candidate shall designate one National or State bank as his campaign depository. The central campaign committee of that candidate, and any other political committee authorized by him to receive contributions or to make expenditures on his behalf, shall maintain a checking account at the depository so designated by the candidate and shall deposit any contributions received by that committee into that account. No expenditure may be made by any such committee on behalf of a candidate or to influence his election except by check drawn on that account, other than petty cash expenditures as provided in subsection (b).

"(2) The treasurer of each political committee (other than a political committee authorized by a candidate to receive contributions or to make expenditures on his behalf shall designate one National or State bank as the campaign depository of that committee, and shall maintain a checking account for the committee at such depository. All contributions received by that committee shall be deposited in such account. No expenditure may be made by that committee except by check drawn on that account, other than petty cash expenditures as provided in subsection (b).

"(b) A political committee may maintain a petty cash fund out of which it may make expenditures not in excess of $100 to any person in connection with a single purchase or transaction. A record of petty cash disbursements shall be kept in accordance with requirements established by the supervisory officer, and such statements and reports thereof shall be furnished to the supervisory officer as he may require.

"(c) A candidate for nomination for election, or for election, to the office of President may establish one such depository in each State, which shall be considered by his State campaign committee for that State and any other political committee authorized by him to receive contributions or to make expenditures on his behalf in that State, under regulations prescribed by the supervisory officer as his single campaign depository. The campaign depository of the candidate of a political party for election to the office of Vice President shall be the campaign depository designated by the candidate of that party for election to the office of President.".

"LIMITATIONS ON CASH TRANSACTIONS

"SEC. 310. No political committee shall receive a contribution, or contributions in the aggregate, from any person of $100 or more other than in the form of a check drawn on the account of the person making the contribution. No political committee shall make any expenditure of $100 or more other than by check drawn on the account of that committee and signed by the treasurer of the committee or his delegate."

INCREASED PENALTY FOR VIOLATIONS

SEC. 10. Section 314 (as redesignated by this Act) of the Federal Election Campaign Act of 1971 (relating to penalty for violations) is amended to read as follows:

"PENALTY FOR VIOLATIONS

"SEC. 315. (a) Violation of the provisions of this title is a misdemeanor punishable by a fine of not more than $10,000, imprisonment for not more than one year, or both.

"(b) Violation of the provisions of this title with knowledge or reason to know that the action committed or omitted is a violation of this Act is punishable by a fine of not more than $100,000, imprisonment for not more than five years, or both."

REPEAL OF EQUAL TIME PROVISIONS FOR PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES

SEC. 11. Section 315(a) of the Communications Act of 1934 (47 U.S.C. 315(a)) is amended by inserting after "public office" in the first sentence thereof the following: ", other than the office of President or Vice President,".

LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES AND PENALTY FOR EMBEZZLEMENT

SEC. 12. (a) Chapter 29 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

"Sec. 614. Limitations on Presidential campaign contributions and expenditures by persons not candidates.

"(a) (1) No person may make any contribution during any calendar year to or for the benefit of any candidate for nomination for election, or for election, to the office of President in excess, in the aggregate, of—

"(A) $3,000 to such candidate; and

"(B) $1,000 to a fund maintained by a political party solely to finance the general election campaign of its candidate for President; or

"(C) $25,000 in the case of a political committee registered under section 303 of the Federal Election Campaign Act of 1971 which collects funds from individuals in amounts which do not exceed $25 from any individual in any calendar year.

"(2) For purposes of this section—

"(A) a contribution to a candidate nominated by a political party for election to the office of Vice President shall be considered to be a contribution to the candidate nominated by that party for election to the office of President;

"(B) a contribution made to a political committee or fund authorized by a candidate to receive contributions for that candidate shall be considered to be a contribution to that candidate;

"(C) any contribution made in connection with a campaign in a year other than the calendar year in which the election to which that campaign relates is held shall be taken into consideration and counted toward the limitations imposed by this section for the calendar year in which that election is held; and

"(D) 'political party' means a political party which, in the next preceeding Presidential election, nominated candidates for election to the offices of President and Vice President, and the electors of which party received in such election, in any or all of the States, an aggregate number of votes equal in number to at least 10 per centum of the total number of votes cast throughout the United States for all electors for candidates for President and Vice President in such election.

"(3) The limitations imposed by paragraph (1) shall not apply to contributions from a political party fund maintained in accordance with subparagraph (B) of that paragraph, or to contributions to a candidate from one of his authorized political committees.

"(b) No person who is not authorized in writing by a candidate to make expenditures on his behalf in connection with his campaign for nomination for election, or for election, to the office of President shall make any expenditure on behalf of that candidate (except by contribution made to that candidate or one of his authorized political committees) during any calendar year in excess, in the aggregate, of $1,000.

"(c) As used in this section, the words "contribution" and "expenditure" shall not be construed to include—

"(1) personal services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee,

"(2) communications by any organization, excluding a political party, solely to its members and their families on any subject,

"(3) communications (including advertisements) to any person on any subject by any organization which is organized solely as an issue-oriented organization, which communications neither endorse nor oppose any candidate for Federal office,

"(4) normal billing credit for a period not exceeding 30 days,

"(5) expenditures by a broadcaster regulated by the Federal Communications Commission, or by a periodical publication, in reporting the news or in taking editorial positions, or

"(6) expenditures by any organization described in section 501(c) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code in communicating to its members the views of that organization.

"(d) Violation of the provisions of this section is punishable by a fine not to exceed $25,000, imprisonment for not to exceed five years, or both.

"Section 615. Embezzlement or conversion of political contributions.

"Whoever, being a candidate, or an officer, employee, or agent of a political committee, or a person acting on behalf of any candidate or political committee, embezzles, knowingly converts to his own use, or to any other noncampaign use, or deposits in any place or in any manner except as authorized by law, any contributions or campaign funds entrusted to him or under his possession, custody or control; or

"Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled or converted—

"Shall be fined not more than $50,000 or imprisoned not more than five years, or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1000 or imprisoned not more than one year, or both.

(b) Section 591 of title 18, United States Code, is amended by striking out "and 611" and inserting in lieu thereof "611, 514, and 615".

(c) The table of sections for chapter 29 of title 18, United States Code, is amended by adding at the end thereof the following new items:

"614. Limitations on Presidential campaign contributions and expenditures by persons not candidates.

"615. Embezzlement or conversion of political contributions."

DETAILED EXPLANATION: MONDALE-SCHWEIKER, PRESIDENTIAL CAMPAIGN FINANCING ACT OF 1973

I. PRIMARY ELECTIONS

A. Each candidate in the Presidential primaries is entitled to matching payments from the Treasury for the first $100 or less received from each individual contributor.

1. Payments begin 14 months prior to the date of the general election for President.

2. Any contribution made "in connection with" the candidate's campaign for nomination, in whatever year it occurs, is eligible for matching. However, all such contributions are aggregated, and no more than $100 from any contributor may be matched.

B. Candidates must accumulate $100,000 in matchable contributions before the first Treasury matching payments are made. Thus a candidate would have to accumulate 1000 contributions of $100 each, 2000 contributions of $50 each, etc. Only the first $100 of each contribution counts toward meeting the $100,000 requirement.

C. No candidate may receive total matching payments in excess of 5¢ for each person over 18 in the United States (roughly $7 million).

D. No candidate may spend more than $15 million in his campaign for the Presidential nomination.

E. Matching payments may be used only for legitimate campaign expenses during the pre-nomination period, and unspent payments must be returned to the Treasury.

F. The Comptroller General certifies eligibility for payments, and is responsible for conducting a detailed post-convention audit and obtaining repayments when necessary.

G. There are severe criminal penalties for exceeding the overall primary spending limits, and for unlawful use of payments, false statements to the Comptroller General, and kickbacks and illegal payments.

II. GENERAL ELECTION

A. The existing Presidential Election Campaign Fund Act (the $1 check-off) is retained, with the following amendments:

1. Removes the requirement for a separate appropriation before money from the $1 check-off Fund becomes available.

2. Doubles the amount going into the Fund by providing for a Treasury matching payment of $1 for each $1 designated by a taxpayer.

3. Requires the Internal Revenue Service to give "extensive publicity" to the $1 check-off, emphasizing that using the check-off does not increase a taxpayer's tax liability and that each $1 checked off will be matched by another $1 from the Treasury. Also requires that a bold print one-sentence explanation of the check-off be placed on the return next to the check-off designation.

4. Permits candidates to receive and spend private contributions of $3000 or less (see III, below) to supplement the funds they receive from the $1 check-off, up to a maximum overall spending limit in the general election of $30 million.

a. Under the existing $1 check-off law, major party candidates may not use private contributions at all if they receive their full entitlement from the check-off (15¢ per eligible voter, or roughly $20–22 million), and minor and new Party candidates may use private contributions only to make up the difference between the smaller amount they receive from the check-off and the amount major party candidates are entitled to. (If the funds in the check-off are not sufficient to provide major party candidates with the full amount they are entitled to, they also may raise private money to make up the difference.) All candidates using the check-off money are thus limited to spending no more than $20–22 million in the general election. Those who accept no check-off money, however, may spend an unlimited amount in the general.

b. The $30 million limit on total spending in the general election imposed by this bill applies to all candidates (including those who decline their entitlement from the check-off), and therefore leaves no incentive for a candidate not to use the check-off. The $30 million limit would increase with cost of living increases.

c. The $30 million limit would permit major party candidates to supplement the $20–22 million they receive from the check-off with $8–10 million from private contributions of $3000 or less. This ⅔ public, ⅓ private, ratio would continue as cost-of-living increases raised the $30 million spending limit, and as population increases raise the amount major party candidates may receive from the check-off (15¢ times the voting age population).

d. Minor and new party candidates could receive a larger proportion of their funds from private sources to make up for their smaller entitlement under the $1 check-off, but in no case could their total spending exceed $30 million in the general election.

B. Payments to candidates are distributed in accordance with the existing law, i.e.:

1. Major party candidates (those whose party received 25 percent or more of the vote in the previous election)—15¢ times the 18-and-over population of the U.S.

2. Minor party candidates (those whose candidates received between 5 and 25 percent of the vote in the previous election)—a percentage of the major party candidate entitlement equal to the percentage of the average major party vote their candidate received in the preceding or current election (whichever is larger).

3. New party candidates—if the candidates receives more than 5 percent of the vote in the current election, he is repaid after the election according to the percentage of the average major party vote received.

C. The Comptroller General certifies eligibility for payments and is responsible for conducting a detailed post-convention audit and obtaining repayments when necessary.

D. There are severe criminal penalties for exceeding the overall general election spending limit, and for unlawful use of payments, false statements to the Comptroller General, and kickbacks and illegal payments.

III. CONTRIBUTION LIMITS FOR PRESIDENTIAL CAMPAIGNS

A. No individual, organization, or group may contribute more than a total of $3000 to any Presidential candidate in connection with his campaign, and another $1000 to a fund maintained by a political party solely to finance the general election campaign of its candidate for President.

1. Contributions given in any year "in connection with" the campaign count toward the limits.

B. However, if a political committee registered under the Federal Election Campaign

Act of 1971 aggregates or "pools" individual contributions of no more than $25, it may give up to $25,000 to a Presidential candidate.

C. Individuals or groups acting independently (i.e., without written authorization from the candidate) may spend no more than $1000 on behalf of a candidate.

D. A political party may spend an unlimited amount on behalf of its candidate for President from its special Presidential campaign fund (subject to the overall $30 million spending limit), but the party must receive written authorization from the candidate to spend more than $1000 on his behalf.

IV. MISCELLANEOUS

A. The equal time provisions are removed for Presidential candidates.

B. Each candidate is required to set up a single central campaign committee to handle reporting of receipts and expenditures, and a single campaign depository through which all receipts and expenditures must be channeled.

C. All cash transactions (contributions or expenditures) of $100 or over are prohibited.

D. The existing tax credit is doubled to make it one-half of any contribution up to $50 ($100 for joint returns), and the existing deduction is doubled to $100 ($200 for joint returns).

E. The penalty for misdemeanor violations of the Federal Election Campaign Act of 1971 (now $1,000 and/or one year imprisonment) is increased to $10,000 and/or one year in prison, and knowing violations are made a felony punishable by a fine of up to $100,000 and/or imprisonment for up to five years.

F. Embezzlement or conversion to non-campaign use of political contributions is made a felony punishable by a fine of up to $50,000 and/or imprisonment of up to five years.

OEO LEGAL SERVICES

Equal Justice to All Low-Income Americans

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 93d CONGRESS, FIRST SESSION

Vol. 119 WASHINGTON, TUESDAY, JULY 24, 1973 No. 117

Senate

Mr. MONDALE. Mr. President, 8 years ago, the Federal Government embarked on an experiment to insure equal justice to low-income Americans. That program—the OEO Legal Services program—in those 8 years has proven its effectiveness beyond all doubt.

The Legal Services program has served more than 1 million clients annually, and has performed an outstanding job for those clients. Recent figures show that 83 percent of the matters handled by Legal Services attorneys have been disposed of without litigation and 85 percent of those matters in which litigation resulted have been won for their clients by Legal Services attorneys.

In addition, a GAO survey of Legal Services earlier this year clearly indicated that the vast bulk of Legal Services attorneys' time is spent on handling the day-to-day problems of poor clients. For example, 42 percent of matters dealt with domestic relations, 18 percent with consumer and job-related problems, and 20 percent with housing and welfare problems. And that small proportion of time which has been spent by Legal Services attorneys in attempting to win collective rights for the poor has resulted in hundreds of millions of dollars, as well as expanded human rights—to which the poor were legally entitled—from Federal, State, and local governments which had been violating the law.

I believe this program has demonstrated a greater cost-effectiveness than virtually any other program in Government today. It has prevented unlawful reductions in welfare payments, helped extend the Federal school lunch program, and participated in many other important efforts to enhance the rights of the Nation's poor. It has attracted dedicated, motivated, able lawyers to its programs in a manner which has strengthened our ability to achieve peaceful change within the American system.

Using any standard, this unique program has been an outstanding success. And perhaps the most significant proof of that success has been the fact that the organized bar throughout the country has led the fight to preserve an independent and effective Legal Services program.

Without this leadership by the bar and by the leaders of the organized bar, this program would have been dead long ago.

Yet the sad truth is that despite the success of the Legal Services program it has been subjected from its inception to attacks from those who believe that lawyers should not tbe too aggressive—or too effective—in defending the rights of their clients.

No one who has had contact with the Legal Services program would deny that there have been some abuses in that program over the past 8 years. No one who has maintained any association with any Federal program operating over that period of time could deny that such a program would have some abuses of its own.

Yet the overwhelming record of achievement which the Legal Services program has realized in a short period of time is in danger today. The abuses of a few are being used as an excuse to weaken a program whose only real "problem" is its record of enhancing justice for millions of Americans.

The House-passed Legal Services Corporation bill, is in my view, a hollow shell of what a truly independent and vibrant Legal Services program must be.

The President has recognized the vital role that Legal Services must play. In August of 1969, he stated that—

> It [the Legal Services Program] will take on central responsibility for programs which help provide advocates for the poor in their dealings with social institutions. The sluggishness of many institutions—at all levels of society—in responding to the needs of individual citizens, is one of the central problems of our time. Disadvantaged persons in particular must be assisted so that they fully understand the lawful means of making their needs known and having their needs met.

The House-passed bill makes such assistance virtually impossible. And, this bill substantially changes the debate over legislation to create a Legal Services Corporation.

Twice the Congress has passed Legal Services legislation; neither time has it become law. Yet in those instances there were fundamental differences of policy regarding institutional structuring of the Corporation, differences which prevented the enactment of an independent Corporation bill, but which were nevertheless within the boundaries of genuine political debate.

The recent action on the House floor fails to meet this test, however. For the crippling amendments adopted on the House floor were not the product of those administration officials who maintain an open mind on the most desirable form for the Legal Services program. Indeed, the nominee for the Director of the Office of Economic Opportunity, Alvin Arnett, has told me that he supports the bill which emerged from the House Education and Labor Committee, and which was subsequently gutted on the House floor.

Rather the House floor amendments were the product of days of back-stage whispering by those who have consistently tried to destroy the effectiveness of the Legal Services program. Their chief spokesman was Howard Phillips, former Acting Director of OEO, who at the very time the House bill passed was in his way to being removed from office by a U.S. district court judge.

Those of us who have been through the battle to create an independent and responsible Legal Services program cannot allow that program to be eroded by such tactics. We must repair the damage inflicted by one man who held office illegally and whose view of the world of the poor was as misanthropic as his perceptions of the Legal Services program were inaccurate. We must not let that distorted view of reality undo nearly a decade of responsible activity by Legal Services attorneys on behalf of America's poor.

We cannot allow a program in which backup centers have provided the type of research assistance overworked attorneys in local offices could never hope to provide, to be stripped of its research arm. Yet the House-passed bill would do just this.

We cannot allow a program which has successfully challenged the illegal and arbitrary actions of Federal, State, and local governments to be emasculated by

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allowing these governmental units to maintain political control over or operate Legal Services programs. Legal Services attorneys must be free to adequately represent their clients, and political domination over the program by Government will undoubtedly interfere with this objective. Yet the House-passed bill would do just that.

We cannot allow a program which needs involved and motivated attorneys—to be hampered, because of unreasonable restrictions on the private and personal lives of those attorneys. Yet the House-passed bill would do just that.

Finally, we cannot allow Legal Services attorneys to be restricted in representing the interests of their clients before legislative and administrative bodies. Yet the House-passed bill would do just that.

The bill passed by the House would result in second-class law for the poor, which few corporations or governments would stand for.

A number of crucial issues stand out as deserving the attention of the Senate. These issues must be the cornerstone of our attempt to shape Legal Services Corporation legislation which will meet the goals which the President has set for the program. These issues must take priority if we are to meet this Nation's commitment to equal justice under the law.

These are the goals toward which we must work. Together, we must insure a viable and truly independent Legal Services program.

First, we must eliminate the possibility of State and local governments becoming recipients of legal services funding. Political control at any level of Government is highly dangerous for the Legal Services program, since funds may be controlled by potential defendents in actions initiated by Legal Services attorneys. We need an independent program able to challenge Government illegality wherever it exists.

This, of course, is not to deny elected officials their proper role in consultation on matters in which they are intensely interested. However, to allow Governmental units to operate, or be a funding conduit for, Legal Services programs is to run a grave risk that no effective means of legal redress within our system will be preserved.

For as the President himself noted in 1971:

> "Much of the litigation initiated by legal services has placed it in direct conflict with local and State governments . . . . However, if we are to preserve the strength of the program we must make it immune to political pressures and make it a permanent part of our system of justice.

No clearer evidence could be offered on the need to insure that recipients are truly independent of State and local political and governmental ties, and able to act freely without fear of political reprisal.

Second, we must insure continued operation of backup centers, which were eliminated by the House bill. As Robert Meserve, president of the American Bar Association, stated in March of this year:

> I don't see how with any efficiency the individual lawyers in the field can do all the types of research which these back-up centers can do in specific and particular areas.

These 16 centers provide invaluable assistance to lawyers whom the General Accounting Office earlier this year characterized as overworked with heavy workloads of individual cases. Provision for these centers must be maintained as a part of any independent Legal Services Corporation bill, and Mr. Arnett has indicated his support for this position.

Third, representation by Legal Services attorneys before legislative and administrative forums should not be restricted so as to deny the poor the types of legal assistance which any citizen should be able to obtain. In years past, we have accepted certain compromises on the scope of these vital activities, without which no lawyer can fully serve his clients. But there must be a limit. We must preserve the essential ability of the poor to obtain the same type of legal representation which others in our society can afford.

Testifying in 1971, Edward L. Wright, former president of the American Bar Association, stated that the program must enable a Legal Services lawyer to "serve his clients to the extent of his professional responsibility and the ethical mandates of the profession." In short, we must avoid setting up restrictions on Legal Services attorneys which no large American corporation—whose legal fees are subsidized by the Federal Government through tax deductions—would tolerate for its attorneys, and Mr. Arnett apparently agrees with his position.

Legislative and administrative representation limited to responses to formal request from members of a legislative body is virtually no representation at all. Like any attorney, Legal Services attorneys must be able to carry out legitimate representational activity on behalf of any eligible client before Federal, State or local bodies.

Fourth, we must insure that there are no broad categorical restrictions on the types of cases in which Legal Services attorneys can participate. Such restrictions violate the ethics of the legal profession and place attorneys for the poor in an untenable position.

President Nixon stated in 1971 that—

> The legal problems of the poor are of sufficient scope that we should not restrict the rights of their attorneys to bring any type of civil suit. Only in this manner can we maintain the integrity of the adversary process and fully protect the attorney-client relationship so central to our judicial process.

In short, we should no more attempt to limit the types of cases which a Legal Services attorney can bring than we should attempt to restrict the scope of practice of any attorney admitted to the bar.

Fifh, we must attempt to preserve the constitutional rights of Legal Services attorneys by not placing undue restrictions on their personal lives and off-time activities.

Sixth, we must resist attempts to bankrupt the program by requiring the Legal Services Corporation to pay legal fees and court costs for those cases lost by attorneys employed by the Corporation or a grantee. If these provisions become law, they could well require the Corporation as a matter of financial survival to direct recipients not to engage in any but the safest types of litigation. This would prevent precisely the types of litigation and other representational activity through which legal services attorneys have won many new substantive rights for clients over the years.

Clearly, this provision is an attempt to bankrupt the Legal Services Corporation and is a departure from the principles on which our legal system rests.

Finally, we should maintain in the law the presence of a National Advisory Council, to act as the chief contact point between the program, the organized bar and those affected by the program's activities. The National Advisory Council has played an important part in winning and maintaining acceptance for the legal services program on the part of the local bar. The abandonment and dismantling of the Advisory Council by OEO earlier this year should not be allowed to be perpetuated in our legislation for a Legal Services Corporation.

These are only some of the issues which require the careful attention of the Senate. Together, the many restrictions embodied in the House bill hopelessly impair or prevent much of the most valuable legal services representation. And, if the value of that representation is depreciated, the program can no longer be truly effective in providing the type of service to millions of poor Americans which enables them to find equal justice under our Constitution.

In the coming weeks, the Senate will consider legal services legislation. We must attempt to preserve fully the independence and integrity of legal services lawyers' relationship with their clients, consistent with the requirements of the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association.

In our search to find common principles, we must not be unreasonable, but we must maintain the essential integrity of the program and the integrity of the legal-judicial process.

I hope all those who believe in equal justice under the law, and all those who believe that the poor are entitled to the same standard of justice as all others in our society will join in this search for shared principles.

And I hope and trust that in this search we can breathe new life and a new sense of independence and security into a program desperately in need of our continued support.

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United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 93d CONGRESS, FIRST SESSION

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Senate

Elementary & Secondary Education Assistance Act of 1973 --

By Mr. MONDALE (for himself, Mr. STEVENSON, Mr. JAVITS, Mr. ABOUREZK, Mr. CASE, Mr. GRAVEL, Mr. HUMPHREY, Mr. KENNEDY, Mr. McGEE, Mr. MOSS, Mr. PASTORE, and Mr. WILLIAMS):

S. 2414. A bill entitled "Elementary and Secondary Education Assistance Act of 1973." Referred to the Committee on Labor and Public Welfare.

ELEMENTARY AND SECONDARY EDUCATION ASSISTANCE ACT OF 1973

Mr. MONDALE. Mr. President, I am pleased—on behalf of myself and Senators STEVENSON, JAVITS, ABOUREZK, CASE, GRAVEL, HUMPHREY, KENNEDY, McGEE, MOSS, PASTORE, and WILLIAMS—to introduce the Elementary and Secondary Education Assistance Act of 1973.

Elementary and secondary education in this country is in desperate financial condition. In his state of the Union message to Congress 2 years ago, President Nixon put it this way:

> In recent years the growing scope and rising cost of education has so overburdened local revenues, that financial crisis has become a way of life for many school districts.

Over 50 million American school children and over 2 million teachers are condemned to the way of life the President has described.

This financial crunch has shut teachers out of work, increased class size, slowed new school construction and renovation of existing schools. It has stifled innovative approaches, and slammed the door in the face of parents and educators who are looking for solutions and who can make progress if they have the chance.

As Dr. Mark Shedd, then Philadelphia, Pa., school superintendent, testified to the Senate Select Committee on Equal Educational Opportunity:

> The simple fact is that at a time when we should be bolstering urban education with new expertise, new programs and new enthusiasm to meet the critical problems that face us, we are constantly cutting back, spending most of our time trying to stem the fiscal flow with bandaids and looking back over our shoulders at the specter of bankruptcy. Perhaps the worst part is the psychological impact on the school district staff as budget cut piles on budget cut, and firings and demotions are the order of the day.

Non-Federal contributions to public elementary and secondary education rose by 37 percent in the 4 fiscal years from 1970 through 1973—reaching a total of nearly $50 billion. And State and local expenditures for education are increasing more rapidly than State and local expenditures as a whole—placing a growing burden on overall public service budgets.

Yet during the same 4-year period the Federal share of education support has actually declined from 7.8 percent in 1970 to 6.2 percent in 1973. Annual Federal expenditures increased by only $294 million—less than 10 percent—over 4 years, to a total of $3.3 billion. Incredibly, education failed even to keep pace with the overall growth in the Federal budget, and Federal education expenditures actually declined last year.

The problems of education finance are not simply a matter of inadequate resources. They are compounded by the wide disparities in financial ability which exist among States, and among school districts within the same State. In 1970–71, per pupil expenditures in Alabama were only $489—far below the national average of $858, and still farther below the level of many States. And expenditures levels within States vary even more widely—in California, for example, school district expenditures in 1969 ranged from a low of $569 to a high of $2,414 per pupil.

In deciding the landmark case of San Antonio Independent School District against Rodriquez in March of this year, the Supreme Court ruled that States have wide discretion to permit continuation of the present inequitable system, or to take action for reform. In the words of Mr. Justice Powell's opinion for the Court:

> The ultimate solutions must come from the lawmakers and the democratic pressures of those who elect them.

Many States are responding to the challenge. A number of States—including Minnesota, Florida, Maine, California and Utah, have enacted comprehensive school finance reforms. The legislatures of other States are now at work. And surely the Federal Government should now meet its responsibilities as well.

The bill which we introduce today moves to meet those Federal obligations. The bill,—which closely follows the recommendations of the Select Committee on Equal Educational Opportunity—would:

Authorize over $4 billion annually in general education aid to States and school districts, with a matching 20 percent State contribution.

Require that these new funds be used by states to reduce disparities in per pupil expenditures among school districts, without lowering expenditures in any district;

Provide urban school districts with sufficient funds to meet the higher cost of education in central cities;

Leave States and local school districts free to determine use of funds.

And our proposal does not simply shift and relabel funds for categorical programs.

Existing programs—such as ESEA title III, for innovation and experimentation; title VI, bilingual education; title VIII, dropout prevention; and title II, libraries will be retained. ESEA title I for the education of the disadvantaged, not only will be retained, but will receive further protection. No funds will be available under this new bill until and unless title I receives at least the same level of funding as during fiscal year 1974.

With exception of only two existing categorical programs—ESEA title V, State department of education; and NDEA title III, science and math—which would be replaced only when this new program is fully funded or incorporated as an earmark in this new bill—our proposal supplements existing programs rather than replacing them.

Our bill recognizes that more money is necessary. It also recognizes that more money alone will not insure improvements in the quality of education.

Too many children are not now acquiring the basic skills necessary for full participation in American life—and too many others fall far short of reaching their intellectual potential. Additional resources for their schools will help. But more is needed than simply increased funding.

For that reason, our proposal includes an experimental voluntary bonus plan to encourage improvements in the quality of education. It will provide financial rewards to school districts that are successful in upgrading the reading and math achievements for disadvantaged children.

We do not pretend to have all the answers. I hope that our proposal will receive thorough review from the Congress, from organizations representing parents and educators, and from individual teachers, parents, administrators, and students; and I know that this review will lead to a stronger bill.

Passage of comprehensive school finance legislation is, I believe essential to the continued vitality of our public schools. As the report of the President's Commission on School Finance said:

> The system which has served our people so long and so well is, today, in serious trouble, and if we fail to recognize it, our country's chance to survive will all but disappear.

Mr. President, I ask unanimous consent that a summary and the text of the Elementary and Secondary Education Assistance Act be printed at this point in the RECORD.

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

S. 2414

A bill Elementary and Secondary Education Assistance Act of 1973

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 "Elementary and Secondary Education Assistance Act of 1973".

SEC. 2. It is the purpose of this Act: (1) to provide increased financial resources of elementary and secondary education; (2) to redress inequitable distribution of resources for elementary and secondary education among States and among local educational agencies within the States; and (3) to improve the educational achievement of educationally disadvantaged elementary and secondary school students and (4) to relieve the pressure for property tax increases to support rising education costs.

TITLE I—GENERAL GRANTS FOR ELEMENTARY AND SECONDARY EDUCATION GRANTS AUTHORIZED

SEC. 101. (a) The Commissioner shall, in accordance with the provisions of this title, make payments to State educational agencies for the federal share of the cost of grants to local educational agencies and for other elementary and secondary education programs and activities. There are authorized to be appropriated to the Commissioner, for the purpose of carrying out this title, $4,500,000,000 annually for the fiscal year ending June 30, 1974, and for each of the two succeeding fiscal years: *Provided*, That no funds

are authorized to be appropriated to carry out the provisions of this title for any fiscal year in which the funds appropriated for title I of the Elementary and Secondary Education Act of 1965 are not at least equal to the funds appropriated for such program for the fiscal year ending on June 30, 1974.

(b) For the purpose of affording adequate notice of funding available under this Act, appropriations under this Act (with the exception of appropriations for the fiscal year ending June 30, 1974) are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation.

(c) From the sums appropriated pursuant to subsection (a) for any fiscal year, the Commissioner shall reserve:

(1) $50,000,000 plus an amount equal to 1 per centum of sums appropriated pursuant to subsection (a) for such year, for the purposes of section 106(c);

(2) 5 per centum for the purposes of section 106(b);

(3) 2 per centum for Office of Education expenses of administration and evaluation, of which not less than 1 per centum shall be expended for evaluation of activities under this title by qualified persons or institutions other than the Department of Health, Education, and Welfare or recipients of assistance under section 106.

APPORTIONMENTS AMONG STATES

SEC. 102. (a) Of the sums appropriated under section 101(a) for any fiscal year which are not reserved under section 101(b), the Commissioner shall apportion not more than 3 per centum among the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territories of the Pacific Islands, according to their respective needs for assistance under this title.

(b) From the remainder of such sums for any fiscal year, the Commissioner—

(1) shall apportion to each State an amount which bears the same ratio to 50 per centum of such remainder as the number of children, aged five to seventeen, inclusive, in such State bears to the number of such children in all States;

(2) shall apportion to each State an amount which bears the same ratio to 17⅓ per centum of such remainder as the need index for such State bears to the total of the need indexes of all States;

(3) shall apportion to each State an amount which bears the same ration to 17⅓ per centum of such remainder as the resource index of such State bears to the total of the resource indexes of all States.

(4) Shall apportion to each State an amount which bears the same ratio to 17⅓ per centum of such remainder as the local property tax index of each State bears to the total of property tax indexes of all States.

(c) The apportionment of any State which declines to participate or fails to meet the qualifications set forth in sections 104 and 105 of this title for the period such apportionment is available, shall be reapportioned from time to time, on such dates during such period as the Commissioner may fix, to other States in proportion to the original apportionment to such States under subsection (b) for such year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum which the Commissioner determines such State needs and will be able to use for such period for carrying out such portion of its State application approved under this Act, and the total of such reductions shall be similarly reapportioned among the States whose proportionate amounts are not so reduced. Any amount reapportioned to a State under this subsection during a year shall be deemed part of its apportionment under subsection (b) for such year.

(d) For the purposes of this section—

(1) the term "need index of a State" for any fiscal year shall mean the product of the inverse of that State's personal income per child, adjusted, according to criteria developed by the Bureau of Labor Statistics of the Department of Labor, for regional differences in purchasing power, and the number of children, aged five to seventeen, inclusive, in such State;

(2) the term "resource index of a State" for any fiscal year shall mean the total expenditures from State and local sources for public elementary and secondary education and from Category A of Public Law 874 ending in the calendar year ending in the fiscal year preceding the fiscal year for which the computation is made in such State, divided by the total personal income, for such calendar year in that State, and multiplied by the number of children in that State aged five to seventeen, inclusive;

(3) the term "local property tax index of a State" for any fiscal year shall mean the amount of revenue raised from local taxes on real property for expenditure on public elementary and secondary education, divided by the total expenditure from state and local sources for public elementary and secondary education, and multiplied by the number of children in that State aged five to seventeen, inclusive;

(4) the term "personal income of a State" for any fiscal year shall mean the total personal income for such State in the calendar year ending in the fiscal year preceding the fiscal year for which the computation was made;

(5) the term "personal income per child of a State" for any fiscal year shall mean the total personal income for which State in the calendar year ending in the fiscal year preceding the fiscal year for which the computation was made, divided by the number of children, age five to seventeen, inclusive, in such State;

(6) for the purpose of subsections (a) and (b) of this section, the term "State" does not include the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territories of the Pacific Islands;

(7) In calculating the resource index for the District of Columbia, total expenditures from State and local sources for public education shall include expenditures from the Federal payment. The resource index for the District of Columbia shall be no smaller than the smallest resource index for any other State.

DISTRIBUTION OF RESOURCES AMONG LOCAL EDUCATIONAL AGENCIES

SEC. 103. (a) Any State desiring to receive financial assistance under this title for any fiscal year shall submit a plan for use of its apportionment under section 102(b), in conjunction with State and local resources, to reduce disparities in per pupil expenditures among local educational agencies within such State so that in such fiscal year:

(1) each local educational agency within such State shall have a per pupil expenditure for elementary school students not less than 80 per centum of the target per pupil expenditure for elementary school children in such State, and each local educational agency serving an urban center shall have a per pupil expenditure for elementary school students not less than 100 per centum of the target per pupil expenditure for elementary school children in such State;

(2) each local educational agency within such State shall have a per pupil expenditure for secondary school students not less than 20 per centum of the target per pupil expenditure for secondary school students in such State, and each local educational agency serving an urban center shall have a per pupil expenditure for secondary school students not less than 100 per centum of target per pupil expenditures for secondary school students in such State.

(b)(1) For any State, the target per pupil expenditure for any fiscal year for elementary school children shall be the per pupil expenditure for elementary school children during the previous fiscal year of that local educational agency within such State with a per pupil expenditure for elementary schoolchildren exceeded by no more than 10 per centum of the local educational agencies in the State;

(2) For any State the target per pupil expenditure for any fiscal year for secondary school students shall be the per pupil expenditure for secondary school students during the previous fiscal year of that local educational agency within such State with a per pupil expenditure for secondary school students exceeded by no more than 10 per centum of the local educational agencies in the State;

(3) For purposes of this section, "urban center" shall mean the central city of standard metropolitan statistical area; and "local educational agency serving an urban center" shall mean a local educational agency serving not less than one-third of the children in an urban center, and serving no fewer than twenty-five thousand students; and

(4) The number of children, aged five to seventeen, inclusive of a State and of all States shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

(c) Prior to receiving its apportionment under this title in the second year and each year thereafter, each State shall present data to the Commissioner demonstrating that, in the previous year, all local educational agencies in the State had per pupil expenditures above the required level for elementary and secondary school children respectively, as set forth in section 103(a). Any State unable to meet the requirement set forth in the preceding sentence and desiring to continue participating under this title shall, prior to receiving its apportionment, submit a new application as set forth in subsection (a), except that no State shall receive an apportionment if it fails for two consecutive years to meet the requirements set forth in the preceding sentence, until such year as the requirement shall have been met during the preceding year.

(d) Funds apportioned to a State under section 102(b) and not allocated to local educational agencies in order to meet the target levels set forth in subsection (a), shall be distributed by apportioning to each local educational agency:

(1) an amount which bears the same ratio to 50 per centum of such unallocated funds as the average daily membership of that local educational agency bears to the average daily membership of all local educational agencies in the State; and

(2) an amount which bears the same ratio to 50 per centum of such unallocated funds as the number of children in low-income families (as defined in sections 103 (c) and (d) of the Elementary and Secondary Education Act of 1965) residing in that local educational agency bears to the total of such families in the State.

STATE APPLICATIONS

SEC. 104. (a) The chief State officer of any State desiring to participate under this title shall submit annually to the Commissioner an application in such detail and containing or accompanied by such information as the Commissioner deems necessary, which provides satisfactory assurances—

(1) that the State will pay from nonfederal sources, a State share equal to 20 per centum of the costs of grants, programs, and activities undertaken by the State pursuant to this Act.

(2) that the State will make payments under this title only to local educational agencies which have satisfied the provisions of section 105(a) where applicable, and will in all respects comply with the provisions of this title, including the rejection of any application which does not meet the obligations imposed upon a local educational agency under section 105(a);

(3) that the State will, to the extent consistent with State law, meet the requirements of paragraph (2) of secion 105(a);

(4) that the State will distribute State and Federal financial assistance to local educational agencies within the State so as to insure that the requirements of section 103 are met; and

(5) that such fiscal control and fund accounting procedures, in accordance with criteria established by the Commissioner by regulation, will be adopted to assure (A) proper disbursement of, and accounting for, Federal funds paid to the State (including such funds paid by the State to local educational agencies) under this title and (B) that Federal funds received under this title are not commingled with State funds;

(6) that the State will make available to the Commissioner (A) annual reports, which shall include the results of objective measurements required of local educational agencies by paragraph (4) of subsection 105, annual reports of local educational agencies required to carry out paragraph (5) of subsection 105, descriptions of the purposes for which payments under this title were utilized, and evaluation of the effectiveness of payments under this title and of other Federal payments expended pursuant to the Elementary and Secondary Education Act of 1965, and (B) such other reports as may be reasonably necessary to enable the Commissioner to perform his duties under this title;

(7) that the State will keep such records and afford such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports; and

(8) that the State will make application, reports, and all documents pertaining thereto readily available to the public.

(b) Each State shall reserve a portion of its apportionment which bears the same ratio to such apportionment as the number of children, aged five to seventeen, enrolled in private nonprofit elementary and secondary schools bears to the number of children, aged five to seventeen, enrolled in private and public elementary and secondary schools. The funds set aside by this subsection shall be used only for the purposes set forth in section 105(a)(2)(A).

(c) If a State is not authorized by law to provide the programs and activities set forth in subsection (b) of this section, if a State does not pay out the full portion of the funds set aside under subsection (b) of this section, the unused funds shall revert to the Commissioner for use as set forth in section 105(c) without regard to the provisions of section 101 or 102.

(d) The Commissioner shall not approve an application unless it meets the requirements of this section and section 103, but he shall not finally disapprove an application except after reasonable notice and opportunity for a hearing to the State educational agency.

LOCAL EDUCATIONAL AGENCY APPLICATIONS

SEC. 105. (a) A local educational agency may receive a grant from the appropriate State educational agency under this title for any fiscal year only upon an application approved by the appropriate State educational agency, upon its determination consistent with such basic criteria as the Commissioner may establish—

(1) that the programs and activities for which the assistance is sought will be administered by or under the supervision of the applicant;

(2)(A) that, to the extent consistent with the number of children in the school district of the local educational agency who are enrolled in private nonprofit elementary and secondary schools, such agency, after consultation with appropriate private school officials, will make provisions for the benefit of such children in such schools of secular, neutral, and nonideological educational services, materials, and equipment, including such facilities as necessary for their provision, consistent with subparagraph (B) of this paragraph, or, if such are not feasible or necessary in one or more of such private schools as determined by the local educational agency after consultation with the appropriate private school officials, such other arrangements, as dual enrollments, which will assure adequate participation of such children; except that no provision shall be made for the benefit of children attending a private school operated on a racially segregated basis as an alternative to persons seeking to avoid attendance in desegregated public schools, or which otherwise practice discrimination on the basis of race, color, or national origin;

(B) that the control of funds provided under this section and title to property acquired therewith shall be in a public agency for the uses and purposes provided in this section, and that a public agency will administer such funds and property; and that the provision of services pursuant to subparagraph (A) shall be provided by employees of a public agency or through contract by such public agency with a person, an association, agency, or corporation who or which in the provision of such services, is independent of such private school and any religious organization, and such employment or contract shall be under the control and supervision of such public agency;

(3) that local educational agencies receiving grants under this title shall maintain their previous year's per pupil expenditures from local sources; except that, with the approval of the appropriate chief State school officer, additional State funds for general education support may be used to replace an equal amount of locally raised funds;

(4) that effective procedures pursuant to criteria established by the Commissioner by regulations will be adopted for evaluating at least annually the effectiveness of the local educational agency's programs and activities in meeting educational needs of its students;

(5) that the local educational agency will make an annual report and such other reports to the State educational agency, in such form and containing such information (which in the case of reports relating to performance is in accordance with specific performance criteria related to program objectives), as may be reasonably necessary to enable the State educational agency to perform its duties under this title, which annual report shall include school-by-school information relating to educational achievement, and will keep such records and afford such access thereto as the State educational agency may find necessary to assure the correctness and verification of such reports;

(6) that applications, reports, and all documents pertaining thereto shall be made available to parents and other members of the general public, and that all evaluations and reports required under paragraph (5) shall be public information, except that information relating to the performance of an individual student shall in no circumstances be made public; and

(7) that the local educational agency will cooperate with the appropriate State educational agency in carrying out the provisions of this title.

(b) The State shall not finally disapprove in whole or in part any application for funds under this title without first affording the local educational agency submitting the application reasonable notice and opportunity for a hearing.

(c) In the case of a local educational agency which is located in a State in which no State agency is authorized by law to provide, or in the case in which there is a substantial failure by a local educational agency approved for a program or activity under this section to provide the educational services and arrangements set forth in subparagraph (2)(A) of subsection (a) on an equitable basis to children enrolled in private nonprofit elementary or secondary schools located in the school district of such agency, the Commissioner shall arrange for the provision, on an equitable basis of such services and arrangements and shall pay the costs thereof for any fiscal year from funds which have reverted to him pursuant to section 104(c). The Commissioner may arrange for such programs through contracts with institutions of higher education or other competent nonprofit institutions or organizations.

(d) In the case of a local educational agency which has submitted no application for funds under this section, or whose application for funds is disapproved, the State, in consultation with appropriate private school officials, shall make arrangements for carrying out the provisions of subparagraph (2)(A) of subsection (a) in that district, except that if the circumstances set forth in subsection (c) of section 104 obtain, then the Commissioner shall make such arrangements as that subsection authorizes.

PAYMENTS

SEC. 106. (a)(1) The Commissioner shall pay to each State which has established eligibility under sections 103 and 104, in advance or by way of reimbursement, the amount of such State's apportionment under section 102.

(b) From funds reserved pursuant to section 101(b)(2), the Commissioner shall pay an additional 5 per centum of its apportionment under section 102 to any State for any fiscal year in which such State conducts a comprehensive assessment, pursuant to criteria established by the Commissioner by regulation, of the quality and equality of public elementary and secondary educational programs and opportunities within its jurisdiction which shall include, but shall not be limited to, an analysis of educational achievement by school, and an evaluation of the effectiveness of school programs within the State in meeting the educational needs of children from varying social and economic backgrounds, including the special educational needs of minority groups, bilingual and educationally disadvantaged children. Such funds may be expended to support the costs of such assessment, including costs of administration and distribution; remaining funds shall be expended in accordance with subsection (c). Funds reserved for use under this subsection but not alloted shall revert for use as specified in section 102(b).

(c) From funds reserved pursuant to section 101(b)(1), the Commissioner is authorized to pay each State an amount equal to the amount expended by such State for the proper and efficient performance of its duties under this title, for provisions of technical assistance to local educational agencies within its jurisdiction, and for model innovative programs designed to increase academic achievement of educationally disadvantaged children.

(d) From funds paid pursuant to subsection (a), each State shall distribute to each local educational agency which has submitted an application approved under section 105(a) the amount for which such application shall have been approved.

(e)(1) No payments shall be made under this title to any State for any fiscal year in which per pupil expenditures for elementary and secondary education (as determined in accordance with criteria established by the Commissioner by regulation) for the preceding year from State sources (but excluding any funds received from the Federal Government) and also excluding the payment of the State share for grants, programs, and actiivties undertaken pursuant to this Act are less in such State than such expenditures for the second preceding fiscal year.

(2) No State shall make payments under this title to any local educational agency for any fiscal year in which current per pupil expenditures from local sources are less than such expenditures for the preceding fiscal years, except where, with the approval of the chief State school officer, additional State funds for general education support have been used to replace an equal amount of locally raised funds.

(f) Whenever the Commissioner, after reasonable notice and opportunity for hearing, finds that a recipient of financial assistance under this title—

(1) is in noncompliance with the provisions of this Act; or

(2) has knowingly given false assurances or has not made a good faith effort to establish the accuracy of such assurances,

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

JUDICIAL REVIEW

SEC. 107. (a) If any State or local educational agency is dissatisfied with the Commissioner's final action with respect to the approval of its application submitted under section 103 or 104, or with his final action under section 106, such State or local educational agency may within sixty days after notice of such action file with the United States court of appeals for the circuit for which such agency is located a petition for review of that action. A copy of that petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner shall file promptly in the court the record of the proceedings on which he based his action, as provided for in section 2112 of title 28, United States Code.

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

(c) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner 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.

PROHIBITIONS AND LIMITATIONS

SEC. 108. (a) Nothing contained in this title shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution or school system.

(b) Nothing contained in this Act shall be construed to authorize the making of any payment under this Act for the construction of facilities as a place of worship.

ADMINISTRATION

SEC. 109. (a) The Commissioner may delegate any of his functions under this Act, except the making of regulations, to any officer or employee of the Office of Education.

(b) In administering the provisions of this Act, the Commissioner is authorized to use the services and facilities of any agency of the Federal Government and of any other public agency or institution in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursement as may be agreed upon.

TERMINATION OF PROGRAMS

SEC. 110. (a) Effective July 1, 1973, title V of the Elementary and Secondary Education Act of 1965 is repealed.

(b) Title III of the National Defense Education Act of 1965 is repealed effective the first fiscal year following enactment of this Act in which funds appropriated under section 101(a) for that year equal funds authorized to be appropriated for that year.

DEFINITION

SEC. 111. (a) "Per pupil expenditure" means, for any State or local educational agency, the aggregate current expenditure for elementary and/or secondary education during the fiscal year divided by the number of children in average daily membership to whom such agency has provided free public education. Except for purposes of section 102, such expenditure shall not include the cost of transportation, health, maintenance or construction of physical facilities, or activities related to compensatory education or education of the mentally retarded or physically handicapped, as defined pursuant to criteria established by the Commissioner, nor any financial assistance received by State or local educational agencies under title I of the Elementary and Secondary Education Act of 1965.

(b) for the purposes of this title, the term "State" shall include the District of Columbia.

(c) the Federal share for any fiscal year shall be equal to 80 per centum of the cost of grants, programs and activities undertaken pursuant to this title.

TITLE II—EXPERIMENTAL ACHIEVEMENT PROGRESS TEST

SEC. 201. Title VIII of the Elementary and Secondary Education Act of 1965 is amended by adding at the end thereof the following new section:

"SEC. 812. (a) After consultation with the Director of the National Institute of Education, the Commissioner is authorized and directed, on an experimental basis, to conduct, either directly or by way of grant, contract or other arrangement, a program to demonstrate the feasibility of administering achievement progress tests in reading and mathematics to be given by local educational agencies within a State to the elementary and secondary school children in the schools of such agencies, in order to provide financial assistance to such agencies, in accordance with this Act, based upon the improvement reflected in such achievement progress tests.

"(b) The Commissioner may conduct or provide for the conduct of such achievement progress tests in not more than 15

local educational agencies upon application by such districts. The Commissioner shall select the local educational agencies in which to conduct the experimental programs authorized by this Act so as to assure a wide geographical representation throughout the United States, and an appropriate range of size and types of participating school districts.

"(c) The achievement progress tests in reading and mathematics shall be approved by the Commissioner and shall be administered to the elementary and secondary school children not later than June 1 in each year.

"(d) In carrying out the program authorized by this section, the Commissioner shall establish a minimum satisfactory performance score for elementary and secondary school children for each appropriate grade. In establishing the minimum satisfactory performance score, the Commissioner shall consider the objective to be the necessary progress to enable each such elementary or secondary school child to be able to read and calculate well enough to function as a self-sufficient individual in American society.

"(e) For each fiscal year beginning after June 30, 1974, the Commissioner is authorized to make a payment to the local educational agency in which an achievement progress test in reading and mathematics is being conducted as follows: The amount of such payment to a local educational agency participating in the program under this section shall be equal to an amount not to exceed $300 for each unit of improvement, by an elementary or secondary school child whose score on the achievement progress test in the year preceding the year for which the determination is made was below the minimum performance score set under subsection (d) of this section, the most recent achievement progress test as compared to the test given in the preceding in year: *Provided, however*, That the average of payments for all participating local educational agencies not exceed $200 nor be less than $150 for each such unit of improvement. Payments made under this subsection may be used for any educational program or activity conducted by the schools of the local educational agencies participating in the program under this section.

"(f) No grant may be made and no contract may be entered into under this section unless an application is made to the Commissioner at such time, in such manner, and containing or accompanied by such information as the Commissioner may reasonably require.

"(g) (1) Each fiscal year, the Commissioner shall be authorized to make whatever arrangements are appropriate for conducting achievement progress tests in reading and mathematics of children attending nonpublic elementary and secondary schools in areas under the jurisdiction of the local educational agencies participating in programs under this section.

"(2) For fiscal years beginning after June 30, 1974, a payment may be made to an appropriate local educational agency for additional special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile education.

FACT SHEET ON ELEMENTARY AND SECONDARY EDUCATION ASSISTANCE ACT OF 1973

Sets forth four purposes: (1) provide increased financial resources for elementary and secondary education, (2) redress inequitable distribution of educational resources among school districts within a state, (3) improve educational achievement of educationally disadvantaged children, and (4) relieve the pressure for property tax increases to support rising education costs.

TITLE I

Authorizes $4.5 billion annually for elementary and secondary general education grants to states (more than $4.25 billion of which is new money). Funds available to states on an 80–20 matching basis.

Apportions funds among states on the basis of school-aged population, need, tax effort for education, and reliance on sources other than the local property tax as a means of raising revenue for education.

Specifies that, in order to receive funds, a state must submit annually a plan showing how it will distribute the funds, in conjunction with state and local resources, to assure that every school district will spend at least 80% of a target per pupil expenditure. Big city school districts, where the cost of education is higher, will spend 100% of the target expenditure.

The target expenditure for each state is the per pupil expenditure the previous year of the school district in that state at the 90th percentile in per pupil expenditure.

The effect is to place a floor under the per pupil spending of all school districts in the state while still permitting any school district to spend as much as it wishes.

Federal general education grants above the amount necessary to meet above criteria will be allocated by the state to local school districts—50% on the basis of student enrollment and 50% on the basis of low-income population.

Local school districts receive funds, which may be used for any educational program or purpose, through state education agencies.

Funds must be provided for benefit of students attending private non-profit schools for secular, neutral, and non-ideological educational services, materials, and equipment (language from most recent Supreme Court decision relating to aid to children attending private schools).

Includes maintenance of effort requirements on both state and local education agency recipients—but provides state may assume all or part of LEA responsibility.

Requires that achievement program by school be made public, protecting individual test scores from disclosure, and provides state with 5% bonus if it adopts or has adopted a comprehensive assessment program including an analysis of academic achievement by school and other appropriate factors specified by the Commissioner of Education.

Terminates present ESEA Title V (Aid to improve state education offices) but sets aside greater amount of funds for similar purposes.

Terminates Title III (grants for equipment and minor remodeling) upon full funding of the Act.

Safeguards existing compensatory education programs under Title I, ESEA by requiring at least continued funding at FY 1974 levels.

TITLE II

Sets up an education achievement grant experiment for no more than 15 school districts. Experiment will be carefully evaluated to determine whether the concept can be extended to a national program.

Districts selected to participate would give annual tests in reading and math to all Title I ESEA students in the State. A school district would receive a $150 Achievement Progress bonus for each Title I student whose test score showed achievement progress of at least one year. The achievement progress bonus could be used by the school district for general education aid. Receipt of funds under the present Title I program would not be affected by the new program.

Protects individual test scores from disclosure except to parents, but requires public disclosure of test scores aggregated by school, local education agency and State.

Authorizes for appropriation such sums as may be necessary.

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Senate

THE PRESIDENCY AND WATERGATE: AN AGENDA FOR REFORM

Mr. MONDALE. Mr. President, for nearly a month now, President Nixon has "counterattacked" on Watergate. He has tried hard to convince the American people that Watergate is paralyzing both the Congress and the Nation.

The President believes that in order to tend to the Nation's business, we must move beyond Watergate—and perhaps forget it in the process.

I believe the President has misread the will of the people, and misrepresented the actions of the Congress.

The American people want to get on with the Nation's business, but they also want desperately to uncover the lessons of Watergate. To do that, we need a continuation of the factfinding process which has been underway in the Senate.

The Congress also wants to move beyond Watergate. But we have been tending to the Nation's business while Watergate has been investigated. And we will continue to act responsibly while this investigation continues.

What unites the Congress and the American people is a desire not to simply prolong Watergate, but to learn from it; not to immobilize the country, but to spur it to action; not to devote less attention to the pressing issues facing the Nation, but to guarantee that never again will we have a wholesale violation of the liberties of American citizens resulting from a lawless abuse of power.

At the heart of this shared concern is a desire to turn our Government away from lawlessness, and back to freedom.

Almost 200 years ago, Thomas Jefferson foresaw the problem. He said:

> The natural progress of things is for liberty to yield and government to gain ground.

I strongly believe that Watergate has given the American people the will to reverse this trend, and the desire to recapture our liberty from a White House all too ready to suppress basic freedoms.

The American people want an end to illegal bombings carried out for over a year with no knowledge of the Congress or the people.

The American people want an end to illegal contributions exacted from corporation presidents, to financially overwhelm the political opposition.

The American people want an end to wiretapping without court orders, and burglarizing of the homes and offices of private citizens.

The American people want an end to spying and espionage which sacrifice our liberty to a conception of national security which bears no relationship to reality.

The American people want an end to the transformation of Government agencies into illegal arms of a few powerful men in the White House.

The American people want an end to Presidential campaign spying and sabotage which destroys the fair chance of the people to choose their leaders in free elections.

In short, Watergate has given us a new resolve both to meet the problems we face as a nation, and to realize that the greatest problem we face is protecting our liberty against a government which would erode, and in the end, destroy it.

The changes that are required will not come easily. For what we will need are reforms to insure that those who govern can never again, through their power, strip away the freedom which has made our Government unique.

This is the urgent business which we must attend to. These are the concerns that must take us beyond Watergate.

Central to maintaining our freedom, and returning accountability of government to the people, are changes in the institution of the Presidency.

Yet we must act carefully. If we do not, Watergate could mark the unfortunate beginning of a steep and disastrous decline in the prestige and power of that office.

While we need reform, we do not need retribution.

We need a strong Presidency. But we also need an open and legal Presidency, with strong safeguards to protect against the abuses of Presidential power.

For every abuse of Presidential power we have witnessed, there are easy solutions which would both cure the immediate problem, but emasculate the Presidency in the process.

This possibility is made more real by the bloated state in which we now find the Presidency.

In recent years, in both Democratic and Republican administrations, the American people seem to have gone beyond simple respect for the office of the Presidency. Instead, we have begun to create a monarchy out of an office intended to be the bulwark of a democracy.

Sensing this feeling, recent Presidents have found it hard to resist the temptation—often aided by a weak Congress—to accrue more and more power, and the perquisites which go along with that power.

Now, the Presidency has become larger than life, and larger than the law.

We have created an office whose only restraint is the collective consciences of the men who occupy positions of power.

We have created an office so seriously at variance with many of our democratic ideals and traditions that it marks itself as an easy target.

We have allowed modern-day Presidents to flee from reality, shielded by perquisites that may cost the American taxpayer $100 million per year.

No one knows the exact cost in dollars. The White House would not tell us.

But we do know this. Today, when the President wishes to travel, a fleet of 27 planes valued at more than $80 million awaits his command. Four more, costing between $5 and $8 million each are now being purchased.

When he wishes to talk with advisers from anywhere in the world, a communications network estimated to cost $35 million per year to operate is at his command.

When he travels on world diplomacy, the trips can cost $5 to $10 million each. And his travels to San Clemente this year alone have cost the American taxpayer over $1 million.

When he wishes his homes appointed in the style befitting a royal head of state, it is done, and we are only now learning how many millions it has all cost.

And when he wants to equip White House police in uniforms worthy of a Gilbert and Sullivan comic opera, it is done without question.

Obviously, the President must be able to communicate instantly, in case of emergency. He must have adequate security. He must be able to travel on important official business.

But the extravagance of the Presidential "establishment" breeds isolation. And, in the wake of Watergate, this isolation may in turn breed anger on the part of the American people, who may wish to eliminate not only the frills, but also much that is necessary.

We are in danger of public sentiment confusing travel that is essential with needless pleasure trips to "southern" or "western" White Houses, and reacting against both equally strongly.

And we are in danger of a public confused and disturbed with politics in general, seizing on the overblown sense of Presidential self-importance and condemning not only the excesses, but also the essence of the Presidential office.

There obviously are excesses which should and must be eliminated.

In particular, in Congress we must insure accountability in the expenditure of public funds, so that we will not suffer further erosion in public respect for the Presidency.

But there is a much more fundamental accountability which hangs in the balance today. It is nothing less than the mutual respect which makes our democracy possible.

This accountability thrives on an active, honest relationship between the President, the Congress, and the people. It needs the constant test of political reality—the clash of opinions, in full view of the American public, which should mark effective political give-and-take in a democracy.

This is the openness which creates strength for the office of the Presidency.

This is the candor which breeds respect for the head of our Government.

But this respect can only come from a sense of trust felt by the American people. And this trust can only exist when the people believe that the President is open in his dealings and accountable for his actions.

This openness has become more and more difficult with the passage of time. In recent years, the physical isolation of the President from the people has of necessity increased, because we still bear in our collective consciousness the tragic events of Dallas almost a decade ago.

Physical isolation has made it more difficult for any President to get the feel of the American people. Yet this contact is essential. As George Reedy has observed:

> The most important problem of the Presidency is that of maintaining contact with reality.

Maintaining this contact is a difficult, constant struggle, but a struggle richly worth the effort.

In recent years, Presidents have relied on the media and the Congress to provide them with a sense of reality.

Yet President Nixon has sought refuge in the comforting atmosphere of a White House where political expediency seemed to make reality a luxury.

He has shunned the news media and has had little but contempt for the Congress.

As John Gardner stated recently:

> President Nixon has created a curious and unprecedented one-way communication with the American people. He can reach us but we can't reach him. We can see him but he can't hear us. He is always with us but there is no dialogue.

And this is precisely why we now face the crisis of confidence produced by Watergate. For there has never existed the sense of mutual trust and respect between this President and the Congress, and between this President and the people, which makes effective Presidential leadership possible.

We need this leadership today.

We are living in an age of instant communication, with the threat of instant annihilation. No one wants to deny the President the right to respond in case of external attack, or the right to manage an ever-more unmanageable Government.

But we must insist with greater frequency than ever before that those who exercise this trust are accountable to the people through the Congress and through responsible executive branch officials.

This will not be easy. But, as Anthony Lewis recently remarked:

> The framers of the American Constitution did not design our system for the convenience of the governors. They were interested in the governed—in their right and duty to participate in the decisions of public life.

The need for accountability is particularly important as the White House staff continues to grow—and continues to take over functions previously exercised by the Cabinet agencies.

It may surprise many Americans to know that only since 1939 has there been a formal White House office. By statute, Presidents through Herbert Hoover were permitted only one administrative aide. And, only in 1937 did President Roosevelt seek to reorganize the White House staff. The President's Committee on Administrative Management, in recommending greater staff assistance, stated:

> These assistants probably not exceeding six in number would have no power to make decisions or issue instructions in their own right. They would not be interposed between the President and the heads of his departments. They would remain in the background, issue no orders, make no decisions . . . emit no public statements.

How far we have come in only 30 years. Take, for example, the Domestic Council. Created in 1970—not by statute, but by Executive order and reorganization plan—the Domestic Council was to provide policy advice to the President on a variety of domestic issues.

The President asked for and received funds to run the office with no oversight by Congress. John Ehrlichman was made Director of the Council, without requiring his confirmation. He proceeded to displace agency heads and Cabinet officers as the chief domestic policymaker to the President. And, we now learn, using the Domestic Council payroll, he hired Egil Krogh and Gordon Liddy to undertake illegal activity connected with Watergate, and the reprehensible break-in of Daniel Ellsberg's psychiatrist's office.

All of this was done without congressional scrutiny. It was a shocking example of illegal conduct initiated by the White House, and implicitly sanctioned by a docile Congress.

And the Domestic Council is merely one part of an ever-increasing White House staff.

From 1955 to 1970, the Executive Office of the President grew by about 24 percent. In just 3 years—from 1970 through 1972—it grew by 25 percent.

And we still really do not know how many hundreds of detailees from Cabinet agencies are working in the White House.

While the President was calling for economy in Government, the cost of running the Executive Office of the President was increasing from $47 million in 1971 to $64 million in 1973.

While the President was calling for greater accountability in Government, the number of special "ungraded" personnel not accountable under civil service regulations—increased from 113 in 1970 to 281 in 1973.

As a House subcommittee recently noted:

> Historically, these ungraded jobs have been restricted to, and used primarily in, the housekeeping functions of the executive residence . . . The current Administration has made a basic policy change in the use of this authority. Now many high level policy employees are being employed without regard to civil service regulation.

Since 1970, nine new offices within the Executive Office of the President have been created. They have usurped power from existing agencies and departments, and have done so with an arrogance that has often astounded longtime observers of the White House.

Most importantly, this has resulted in power flowing away from executive agencies and officers accountable to the Congress, and being exercised by White House aides not accountable either to the Congress or the people, shielded by so-called executive privilege, and not subject to confirmation.

Any President should be applauded for efforts to bring an essentially unmanageable Government under control.

But no attempt to improve management can be allowed to jeopardize our democracy.

No rationale of efficiency can be allowed to decrease the accountability of those to whom power is given.

This President, and any other President, needs a group of advisers who are his own people, who can exist outside the normal agency structure and provide advice directly from a White House staff.

But when those people cease giving advice, and begin to usurp power from the Secretary of State or the Secretary of Health, Education, and Welfare or the Attorney General, we have sacrificed accountability on the altar of expediency.

This is the type of "efficiency" which led to Watergate.

And this is the type of government which can never win the confidence of a free people.

For without the accountability of those who manage, freedom may be lost forever. Without the restraint which responsibility creates, "management" may succeed democracy as the ethic of our Government.

Two weeks ago, I offered a number of amendments to the White House budget appropriations bill which sought to foster this sense of accountability.

These amendments attempted to express in one tangible way a congressional desire to regain access to the decision-making apparatus in the executive branch. They were not vindictive, nor did they attempt to "punish" the President for Watergate.

Instead, they sought to advance a sense of responsibility to the American people, which has steadily declined in the White House for decades. As George Reedy recently put it:

> The trouble with the White House is that in the past few decades it has grown into an institution which felt it did not have to take other people into account.

We must regain this sense of accountability, and the Congress, while rejecting the amendments I offered, should realize that we must find other means of achieving this end.

First, we need a series of laws to end forever the abuses of power which Watergate has revealed. We need stiff legislation to prohibit law enforcement agencies from violating the civil rights of individuals, and to prohibit any spying or wiretapping or espionage for political ends.

And we need laws to prevent the corruption of agencies of the Federal Government by those in positions of power. We must insure that the most sensitive agencies in Government—the FBI, the CIA, the Internal Revenue Service, and the Justice Department—are never again used for political purposes. I will be introducing legislation to accomplish this purpose.

In short, we need legislation to reaffirm our Nation's commitment to the law, and to express our belief that this respect for the law must apply to even the most powerful.

Only if those in the highest positions of power must obey the law can we ever hope to raise our children with respect for our country and her laws. These are the principles which have made our Nation great, and we must use the lessons of Watergate to renew that commitment and restore that faith.

Second, we must require confirmation by the Senate of every important officer within the Executive Office of the President.

Legislation we have passed—but which is not yet law—will help to accomplish that end by requiring confirmation of the head of OMB and the Council on International Economic Policy.

However, we also need a systematic review of every other important policy-related position within the Presidential establishment to determine those for which Senate confirmation would be appropriate.

We must condition confirmation on the pledge that these officials will appear before Congress to testify and will produce appropriate documents which Congress requests.

And we should consistently stress the important difference between advice—which the President certainly needs from officials in the Executive Office of the President—and the type of illegal operational control which the Office of Management and Budget has exercised.

Third, we need legislation which I have already introduced to provide for a question and report period, during which the Senate would be able to question key executive branch officials—on radio and television—concerning vital matters of public policy.

At the present time, Cabinet officers and many agency heads have lost much of their authority to officials within the White House. Only if the Cabinet officials and agency heads are required to defend their actions on the floor of the Senate—in full view of the American people—will we be able to reassert these officials' rightful responsibility.

If a Cabinet officer must defend policy before the Nation, he will insist that he has a role in the formulation of that policy from the outset.

It is Congress, along with the Cabinet agencies, which must assert its power. Not to strip the President of his power to govern, but to insure the ultimate strength of that Presidential authority by increasing public respect for the equality and openness of both the legislative and the executive branches.

The American public cannot be deceived either by Presidential statements proclaiming his responsivness to the Congress or congressional statements proclaiming our willingness to strengthen our own role in Government, unless real action is forthcoming from both branches.

Fourth, we must therefore reassert the constitutional responsiblities of the Congress over warmaking, the execution of treaties, and the budgetary process.

We must use many of the substantive powers which we have always possessed, but often failed to exercise.

This year, both Houses of Congress have moved to regain the warmaking power of Congress. Without depriving the President of the power to react in emergency situations, these bills seek to assure that never again will the President—without consultation with the Congress—commit American resources and American troops to extended combat. The 55,000 deaths of the Vietnam war have shown us vividly the results of a presidency unchecked in its power and

a Congress unwilling to apply such a check.

We must reassert the power of the Senate to advise and consent in the making of treaties by the American Government. In recent years, executive agreements have been used by every President not only to dispose of routine diplomatic matters, but to bypass the constitutional provision requiring Senate ratification of all treaties. In 1930, our Government entered into 30 treaties and only 11 executive agreements. In 1972, we entered into only 30 treaties, but 287 executive agreements.

This dramatic shift toward the use of executive agreements to bypass the Senate must be stopped. Legislation we have passed would give us this powegr. This legislation must be approved and signed by the President.

We must also reassert congressional oversight in the entire budget process.

We need strong anti-impoundment legislation to insure that the will of Congress is not thwarted by arbitrary executive branch action.

And, we must open up the Office of Management and Budget to insure cooperation with the Congress.

The Office of Management and Budget was created as the successor of the old Bureau of the Budget. But while the Bureau of the Budget was responsive and accessible to Congress, OMB was created without formal statutory authorization. Its head has not been subject to confirmation by the Senate, and it has expanded its role constantly to include the type of management functions which the Bureau never undertook.

Any reassertion of congressional power will not be without struggle. In fact, Congress may often be forced to go to the courts, as we have done with increasing frequency in recent months, to insure that Presidential and executive branch actions are not above the law.

Fifth, to aid in this process, we need an Office of Congressional Counsel, similar to the GAO. This office would give Senators and Congressmen an in-house capability to bring suit against illegal executive branch actions. I will shortly introduce legislation to create such an office.

In recent months, just on the impoundment question alone, over 20 cases have been decided. These cases have dealt with housing funds, with OEO funds, with funds appropriated under the Water Pollution Control Act amendments, with Agriculture Department emergency loan funds, with veterans cost-of-instruction funds, with Indian education and mental health and Neighborhood Youth Corps and library services funds.

In virtually every instance the outcome has been the same—ruling after ruling has held that the impoundment of funds appropriated by the Congress was contrary to law.

Yet these lawsuits had to be brought using private lawyers. These lawyers have performed magnificently, but to fully use the court process to insure compliance with the law, we need an Office of Congressional Counsel.

We need this congressional counsel to insure that no officer required to be confirmed by the Congress can exercise authority until his name has been sent to the Senate and confirmed.

We need this counsel to put legal muscle behind congressional actions, when these actions are thwarted by a Presidency which has little respect for the law.

This congressional counsel is just one of the new tools needed to right an executive-legislative branch imbalance which has become so great that it endangers both the effectiveness of the Congress, and the trust of the people in the Presidency.

Unfortunately, we run the risk of having this reassertion of congressional power seen by the Nation as a challenge to strong Presidential leadership. This is a risk we must take.

We must accept the challenge of Executive illegality and act effectively to meet it. But over the long term, our efforts should be designed to increase executive-legislative branch cooperation, through a thoughtful study of the institution of the Presidency.

Therefore, we need a Commission on the Office of the Presidency, to reexamine the institution of the Presidency.

The commission's overriding purpose should be to examine what has happened to the office, why it has happened, and what can be done to insure that the Presidency remains open and accountable to the American people and Congress.

This investigation should attempt to bring about a permanent realinement of Government. Its central focus should be to increase the accountability of the executive branch and the Office of the Presidency, without hampering the strength of the Presidency or his ability to manage a complex government and an even more complex Nation.

This commission would be composed of members of the legislative and executive branches, and distinguished private citizens. I am introducing a resolution to create such a commission today.

Its charter should be broad, as broad as the needs of the Nation for responsible government dictate.

The commission should not be viewed as an excuse to delay the many important reforms which we need now, and which I have discussed earlier.

Rather, it would offer a longer term view, a chance for the executive and legislative branches to reason together on the basis of mutual respect, and arrive at a working concept of the Presidency which is strong, yet legal; capable of leading, but without dictating.

In short, we need a life-size Presidency—with its faults recognized, its virtues praised, and its interaction with Congress and the courts one of mutual respect. This should be the broad goal of this commission on the Office of the Presidency.

Hopefully, some of its recommendations may result in legislation.

But we cannot legislate an awareness of the importance of constitutional principles. We cannot legislate a fundamental regard for the intelligence of the American people. We cannot legislate greater Presidential involvement with the Congress or the public.

Yet we can use every resource at our command to make the American people aware of the dangers in an isolated Presidency. We can inform the people of the need for greater face-to-face dialog with the Congress, the press, and the people.

We can attempt to make the President aware that challenges to his authority and his wisdom can be made in good faith and need not tear down the Republic.

We must preserve the Presidency as the leader of a democracy, willing to observe the liberties of a free people, and eager to involve the Nation in the constant recreation of the American ideal.

But above all, we must heed Jefferson's warning, and insure that liberty for the American people is never again sacrificed to a government all too eager to destroy basic personal freedom in order to preserve its own political power.

For it is precisely the democratic ideal, and the freedom which it creates, that has kept the American experiment thriving for 200 years. As John Gardner has noted:

> When our nation was founded there was a holy Roman emperor, Venice was a republic, France was ruled by a King, China and Japan by an emperor, Russia by a czar and Great Britain had only the barest beginnings of a Democracy. All of these proud regimes and scores of others have long since passed into history and among the world's powers the only government that stands essentially unchanged is the federal union put together in the 1780's by 13 states of the east coast of North America.

Ours is a unique legacy. It has been created by a respect for the laws and institutions of this country which has insured our survival as a republic.

Together, we must safeguard this heritage, without which our democracy cannot stand.

Together, we can bring reform out of tragedy, and create a new respect for Government which will strengthen our Nation as we enter our third century of democracy.

By Mr. MONDALE:

S.J. Res. 153. Joint resolution establishing an independent commission to conduct a study of the Executive Office of the President and to make recommendations for reforms to increase cooperation between that Office and the Congress, to restore a balance of power between the executive and legislative branches of the Government, and to increase the accountability of the Executive Office of the President to the Congress and the public. Referred to the Committee on Government Operations.

Mr. MONDALE. Mr. President, today I am introducing a joint resolution to establish a Commission on the Executive Office of the President.

In remarks earlier today, I outlined the reasons why I believe this commission is essential to take a careful, long-range view at the institution of the Presidency and recommend reforms which will make the institution of the Presidency more responsive and responsible to the Congress and the people.

I ask unanimous consent that the text of this resolution be printed in the RECORD at the conclusion of my remarks.

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

S.J. RES. 153

Whereas, our Constitutional government relies on a balance of power between the various branches of government; and

Whereas, this balance fosters the accountability of both the Executive and Legislative branches to the American people; and

Whereas, in recent years substantial questions have been raised relating to the need for means to assure the preservation of the balance of power among the branches of government; and

Whereas, the Legislative and Executive branches must cooperate effectively to maintain this balance; and

Whereas, the growth in size and power of the Executive Office of the President has been a major factor in causing an imbalance of power between the Executive and Legislative branches; and

Whereas, participation from the Legislative and Executive branches, as well as from the general public, is advisable to assess the need for reforms to restore a balance of power between the Executive and Legislative branches and to insure the accountability of the Executive Office of the President to the public; Now, therefore, be it

Resolved, by the Senate and the House of Representatives of the United States of America in Congress assembled, That this joint resolution may be cited as the "Commission on the Executive Office of the President Act of 1973".

SEC. 2. There is hereby established an independent commission to be known as the Commission on the Executive Office of the President (hereinafter referred to as the "Commission").

SEC. 3. The Commission shall—

(1) examine the historical growth of the Executive Office of the President, the reasons for such growth, and the effects thereof on the relationship between the Executive and Legislative branches of government;

(2) analyze the current functioning of the Executive Office of the President as it relates to the Cabinet departments, the other components of the Executive branch, and the Congress;

(3) examine the historical and current extent of the use of the doctrine of executive privilege by members of the Executive Office of the President, in particular as it relates to refusals to testify before the Congress, and the effect of such usage on the relationship between the Executive and Legislative branches of government;

(4) evaluate those offices within the Executive Office of the President for which it would be advisable to seek, by legislation, the requirement of advice and consent of the Senate of the United States;

(5) evaluate the use by the Executive Office of the President of individuals detailed from Executive branch departments and agencies, and the impact of individuals so detailed on the growth in personnel and power of the Executive Office of the President; and

(6) inquire into such other matters relating to the structure and functioning of the Executive Office of the President as the Commission deems advisable.

SEC. 4. The Commission shall, in accordance with section 10(a), make recommendations for such legislation, constitutional amendments, or other reforms as its findings indicate, and in its judgment are desirable, to promote cooperation between the Executive Office of the President and the Congress, to restore a balance of power between the Executive and Legislative branches of the government, and to insure the accountability of the Executive Office of the President to the Congress and the American people.

SEC. 5. (a) The Commission shall consist of the following members:

(1) four Members of the Senate, two from each of the major political parties, appointed by the President of the Senate, as recommended by the majority and minority leaders;

(2) four Members of the House of Representatives, two from each of the major political parties, appointed by the Speaker of the House of Representatives; and

(3) eight individuals appointed by the President of the United States—

(A) two of whom shall be individuals currently serving in the Executive Office of the President, and two of whom shall be individuals who have served in that Office but are no longer serving as an officer or employee of the government; and

(B) four of whom shall be selected from the general public on the basis of their experience and expertise in public service or political science.

Not more than two of the four individuals appointed pursuant to paragraph (A) or (B) of paragraph (3) shall be members of the same political party.

(b) The Chairman and Vice Chairman, who shall not be affiliated with the same political party, shall be designated by the Commission from among the members of the Commission.

SEC. 6. (a) Members of the Commission who are Members of Congress or are officers or employees in the Executive Office of the President shall serve without compensation in addition to that received for their services as a Member of Congress or as such an officer or employee; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(b) Each member of the Commission who is appointed by the President (other than a member to whom subsection (a) applies) is entitled to pay at the daily equivalent of the annual rate of basic pay of level III of the Executive Schedule for each day he is engaged on the word of the Commission, and is entitled to travel expenses, including a per diem allowance in accordance with section 5703(b) of title 5, United States Code.

SEC. 7. The Commission shall adopt rules of procedure to govern its proceedings. Vacancies on the Commission shall not affect the authority of the remaining members to continue with the Commission's activities, and shall be filled in the same manner as the original appointments.

SEC. 8. (a) the Commission, or any members thereof as authorized by the Commission, may conduct hearings anywhere in the United States or otherwise secure data and expressions of opinion pertinent to its study. In connection therewith the Commission is authorized to pay witnesses travel, lodging, and subsistence expenses.

(b) The Commission may acquire directly from the head of any Federal executive department or agency or from the Congress, available information which the Commission deems useful in the discharge of its duties. All Federal executive departments and agencies and the Congress shall cooperate with the Commission and furnish all information requested by the Commission to the extent permitted by law and the Constitution of the United States.

(c) The Commission may enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

(d) The Commission may delegate any of its functions to individual members of the Commission or to designated individuals on its staff and make such rules and regulations as are necessary for the conduct of its business, except as otherwise provided in this joint resolution.

SEC. 9. (a) The Commission may, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service but otherwise in accordance with General Schedule pay rates, appoint and fix the compensation of such additional personnel as may be necessary to carry out the functions of the Commission.

(b) The Commission may obtain services in accordance with section 3109 of title 5 of the United States Code, but at rates for individuals not to exceed the rate authorized for GS-18 under the General Schedule.

(c) Financial and administrative service. (including those related to budgeting and accounting, financial reporting, personnel, Commission by the General Services Administration, on a reimbursable basis, from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator of General Services. The regulations of the General Services Administration for the collection of indebtedness of personnel resulting from erroneous payments apply to the collection of erroneous payments made to or on behalf of a Commission employee, and regulations of that Administration for the administrative control of funds apply to appropriations of the Commission.

SEC. 10. (a) The Commission shall submit to the Congress and the President such interim reports and recommendations as it considers appropriate, and the Commission shall make a final report of the results of the study conducted by it pursuant to this joint resolution, together with its findings and such legislative proposals as it deems necessary or desirable, to the Congress and the President at the earliest practicable date, but no later than January 1, 1975.

(b) Ninety days after submission of its final report, as provided in subsection (a) above, the Commission shall cease to exist.

SEC. 11. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this joint resolution. Any money so appropriated shall remain available to the Commission until the date of its expiration, as fixed by section 10(b).

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Senate

By Mr. MONDALE:

S. 2443. A bill to amend the Wild and Scenic Rivers Act by designating a segment of the Upper Mississippi River in the State of Minnesota as a study river for potential addition to the Wild and Scenic Rivers System. Referred to the Committee on Interior and Insular Affairs.

Mr. MONDALE. Mr. President, I am today introducing a bill to designate the Upper Mississippi River in the State of Minnesota for study as a potential addition to the National Wild and Scenic Rivers System.

Originating at Lake Itasca in northwestern Minnesota, the Mississippi flows 2,350 miles south to the Gulf of Mexico. Its importance to the history and economic development of the United States is unsurpassed by any other river in our country, and the Mississippi has also won a special place in the hearts of all Americans through the celebrated writings of Mark Twain.

Since the early voyages of Lewis and Clark and the later stories of life on the river authored by Samuel Clemens, pioneering vessels have given way to the legendary paddlewheelers and today to modern ships and barges hauling millions of tons each day in cargo.

Nevertheless in Minnesota today, it is possible to canoe down stretches of the Mississippi's still serene waters to enjoy untouched forests and plains and to swim and fish without fear of pollution.

With fast mounting pressures for development, however, the scenic and recreational values of the Upper Mississippi may soon be lost. Potential threats to the river include the physical destruction of the river shorelands, especially the loss of protective vegetation, overdevelopment resulting from the construction of industries and housing projects along its banks, and the discharge of harmful effluents into its waters.

In recognition of these dangers, the State of Minnesota has adopted legislation such as the 1969 Shoreland Management Act, the Flood Plain Management Act, and most recently the 1973 Minnesota Wild and Scenic Rivers Act. Through a combination of these measures the State and local jurisdictions are making every effort to provide essential interim protection for the Mississippi River. But with heavy pressures for development, rising land values, and limited State and local resources, without Federal help there is a growing danger that critical stretches of the Upper Mississippi may soon be lost.

The National Wild and Scenic Rivers System was created to preserve rivers of outstanding historic, scenic, recreational, geologic, and other values. Utilizing a combination of zoning, easements, and and land acquisition, the system provides the financial and management tools needed to safeguard America's endangered wild, scenic, and recreational riverways.

I believe that there is ample evidence to show that the Upper Mississippi is worthy of addition to the National Wild and Scenic Rivers System. The bill I introduce today is designed to provide for a study to evaluate the qualifications of the riverway and to develop a preliminary plan for its preservation. This proposal includes the segment of the Upper Mississippi from its source at Lake Itasca to the point where it borders the city of Anoka.

From nearly every standpoint in the criteria set forth in the 1968 Wild and Scenic Rivers Act, the Upper Mississippi merits national protection.

Winding from its source at Lake Itasca to the point where it meets the Crow Wing River, much of the Mississippi is forested with jack pine and hardwood forests with excellent stands of white and Norway pine in the heavier soils. Included in this region are three-fourths of the Chippewa National Forest, parts of 12 State forests, and the Leech Lake Indian Reservation. Itasca State Park embraces roughly 50 square miles of scenic wilderness at the source of the Mississippi. Downstream near McGregor, the river passes the Rice Lake Federal Wildlife Refuge. Existing parklands provide opportunities for hiking and camping; and the Chippewa National Forest is one of the finest recreational areas in the country, offering miles of clear northern water, excellent stands of pines, and an abundance of wildlife.

Downstream from Lake Itasca, the Mississippi crosses Winnibigoshish Lake, encompassing an area of 114,800 acres. On the shore are the Turtle and Snake Indian Mounds, the site of ancient battles between the Chippewa and Sioux in 1748.

Southeast of Lake Winnibigoshish, the Mississippi passes Ball Club Lake and then changes in character, becoming exceedingly tortuous. A double stream of water encloses a series of large islands in its sinuous folds.

Below White Oak Point, the Mississippi enters Schoolcraft State Park, named for Henry Schoolcraft, who on July 13, 1832, first discovered the source of the Mississippi at Lake Itasca.

Moving past Lake Pokegama, down Pokegama Falls and through the Kabikons Rapids, the Mississippi reaches Grand Rapids, the historic site of Grant's Northwest Company, and the ghost town of La Prairie. It next traverses the ancient bed of glacial Lake Aitken, where the river meanders widely across a broad, alluvial plain. The Aitkin area is famous for the steamboats that provided passenger and freight service from 1870 to 1920.

Near the point where Sandy Lake discharges into the Mississippi, the old Northwest Company trading post and an Indian village were located. This area was a region of utmost importance connecting closely with a branch of the St. Louis River that links the Mississippi with the Lake Superior Basin. This route was used by the early voyagers, and further south remains of ancient settlements can still be found. The area was a point of major commercial and even political importance long before the 1800's—and it was such at the pivotal date, 1763, in the history of the French-English occupancy of the Upper Mississippi.

Below Aitkin, the river channel is straight and the valley deeper, running parallel to the Cuyvna Iron Range. Just south of the Mississippi's confluence with the Crow Wing River is the old site of the town of Crow Wing, one of Minnesota's oldest ghost towns. Here were located the crossing of the Red River Oxcart Trail and a fur trading post, dating back to the 1700's.

Glacial till stretches along the Mississippi from this area south. Downstream the river reaches the site of Fort Ripley, Minnesota's second oldest military post, built in 1848.

At St. Cloud the banks of the river are more developed. The community's rich history provides more evidence of the early commercial importance of the Mississippi. St. Cloud was a crossing where fur traders rested their oxen, built campfires and spent evenings sharing stories of the adventures and perils of pioneer life in America. A stageline first operated in this area in 1851, and by 1859 it was extended west to the Red River country. Furs were loaded on steamboats after supplies had been discharged for the wilderness forts and distant Canadian posts of the Hudson Bay Co.

Downriver, the Mississippi meets the Elk River, named by Zebulon Pike for the herds of elk he sighted there. It passes within view of the Anoka Sand Plain, where fine sand through the years has formed dunes up to 20-feet high and is preserved today in the Sand Dunes State Forest and Game Refuge.

The area around Anoka is interspersed with groves of native timber, and here the Mississippi is crossed by the Rum and Sunrise Rivers. The Rum provided an important water route for Jonathan Carver, Sieur du Luth, and Father Hennepin.

Thus, bound in the grandeur of the Upper Mississippi is the ancient history of Minnesota, its glacial origins, Chippewa and Sioux cultures, early exploration, settlement and burgeoning new industries.

Today, the Mississippi carries canoeists through parts of 10 counties in north central Minnesota, offering opportunities for excellent fishing, swimming, powerboating, and for those who like to hike, camp, or simply enjoy the beauty and serenity of this magnificient river.

Mr. President, to prevent the loss of this remarkable resource, I am hopeful that the Upper Mississippi will be added to the National Wild and Scenic Rivers System, for I believe it is without a doubt one of the most priceless symbols of our Nation's great heritage.

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

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

S. 2443

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding at the end thereof the following:

"(28) Upper Mississippi River, Minnesota: The segment beginning at its source at the outlet of Itasca Lake to the point where it meets the Northern and Western Boundary of the City of Anoka."

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Senate

By Mr. MONDALE (for himself, Mr. MAGNUSON, and Mr. JACKSON):

S. 2462. A bill to regulate commerce and improve the efficiency of energy utilization by consumers by establishing the Energy Conservation Research and Development Corporation, authorizing the establishment by States of energy conservation councils, and for other purposes. Referred, by unanimous consent, jointly and simultaneously to the Committees on Commerce and Interior and Insular Affairs with the proviso that when one committee reports the bill, the other will have 45 days to report or the other committee will be deemed discharged from said bill.

Mr. MONDALE. Mr. President, I am today introducing a measure to aid in the long-term effort to promote energy conservation in the United States.

The bill I am submitting should be referred jointly to the Committee on Commerce and the Committee on Interior and Insular Affairs. I have talked to the chairmen of both committees and the ranking members of both committees, and they agree to the following unanimous-consent request.

I ask unanimous consent that the bill I introduce be referred jointly and simultaneously to the Committee on Commerce and Interior and Insular Affairs with the proviso that when one committee reports the bill, the other will have 45 days to report or the other committee will be deemed discharged from said bill.

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

Mr. MONDALE. Mr. President, today I am introducing legislation to aid in the long-term effort to promote energy conservation in the United States. I am pleased to be joined in this effort by both distinguished Senators from Washington (Mr. MAGNUSON and Mr. JACKSON).

Only recently have we recognized the dimension of the long-range energy problems our Nation faces. Only recently have we focused on the fact that the United States, with 6 percent of the world's population, is consuming almost 40 percent of the world's energy. And as a part of this realization has come the recognition that both the supply and demand sides of the energy problem must be confronted. As the President stated in his energy message of June 29:

> The conservation of existing energy resources is not a proposal; it is a necessity. It is a requirement that will remain with us indefinitely, and it is for this reason that I believe that the American people must develop an energy conservation ethic.

We all now know that energy conservation is indeed a real necessity. However, what is needed along with an ethic of energy conservation is a vastly expanded conservation research and development effort to make energy conservation a full-fledged partner in the energy research and development field.

Unfortunately, while the President has given us a good deal of rhetoric on the need for energy conservation, he has given us little else. His recent message to the Congress dealt heavily with energy matters, but barely mentioned energy conservation. And, the thrust of all his recent energy messages has emphasized supply side problems to the virtual exclusion of conservation.

It is my view that unless we create a body whose sole task is to focus attention on research and development in the energy conservation field, we stand in danger of the vast bulk of Federal and industry funds being spent solely on the supply side of our energy problems, without adequately meeting the crucial need to use our energy resources more efficiently.

POTENTIAL FOR ENERGY CONSERVATION

The potential for savings of energy resources through energy conservation is vast. A recent staff study undertaken by the Office of Emergency Preparedness stated that—

> Energy conservation measures can reduce U.S. energy demand by 1980 by as much as the equivalent of 7.3 million barrels per day of oil (equal to about two-thirds of projected oil imports for that year).

Prominently mentioned in the OEP study as offering the greatest potential in this area were improved insulation in homes; adoption of more efficient air-conditioning systems; a shift of less energy-consumptive methods of transporting both people and goods; and introduction of more efficient industrial processes and equipment.

The need for conservation in each of these areas is great and increasing daily.

Household and commercial. This sector of the American economy, according to "Conservation of Energy," a study prepared in 1972 for the national fuels and energy policy study, consumed over 35 percent of all energy demand in 1970. This sector covers a wide range of uses including heating and cooling of homes, offices, and factories; heating of hot water; and the electricity needed for the wide range of uses found in homes and office buildings. Indeed, a recent study by the Stanford Research Institute indicated that 29 percent of all energy consumed in the United States went for the needs of residential and commercial buildings.

This massive use of energy in the residential and commercial sector points up the need for intensive research and development to develop means of conserving energy in this area. Among the most promising potential areas for savings in this sector are:

First, improvement in materials for and the design of buildings, to bring about reduction in energy consumption;

Second, improvement in the design of urban living areas to reduce the energy needs in urban communities; and

Third, improvement in the energy-utilization efficiency of electrical appliances, with particular emphasis on the fast-growing consumption of electricity by air-conditioning systems throughout the country.

The potential for energy savings in these areas is most significant. A recent study done by the Rand Corp. for the California State Legislature estimated that better insulation in new housing could cut heating and cooling requirements by 40 to 50 percent, which would amount to a very considerable saving in total energy consumed in the United States.

Industrial. The industrial sector, in 1968, was the largest single user of energy in this country, consuming just over 40 percent of the total energy demand. As Conservation of Energy illustrates, there is a high degree of concentration of energy-intensive industrial processes within a relatively small number of industries. These are primary metals—21.5 percent of total energy demand; chemicals and allied products, 15.4 percent; food and kindred products, 8.5 percent; stone, clay, and glass processing, 8.3 percent; and paper and allied products, 7.4 percent.

Together, these 5 industry groups use 61.1 percent of the total energy demand in the industrial sector. It therefore is of utmost importance to focus research and development work on improving the energy-utilization efficiency of industrial processes, giving particular emphasis to those industries which are heavily dependent on the use of energy resources.

Transportation. Transportation in the United States consumed 24 percent of the total amount of energy used in 1968. This figure, large in itself, does not totally reveal the importance of cutting back demand in this sector, because the transportation sector of the economy is unique in its almost total reliance on petroleum. In 1970, automobiles consumed 66 billion gallons of gasoline, which represented 54 percent of the fuel used in all forms of transportation and 13 percent of the total energy consumption in the Nation.

The place of the passenger automobile thus occupies a central position of concern in our efforts to conserve energy resources. Consumer Reports recently gave us some indication of the extent of the savings that even a limited improvement in gasoline mileage for automobiles would bring about:

> If only the automobiles used in urban driving (two-thirds of total usage) had gotten 20 miles to the gallon instead of the 1970 average of 11.4 mpg, and if those cars had hauled an average of 2 passengers rather than 1.4 they did, about 26 billion gallons of gasoline would have been saved in 1970. That would have reduced urban automobile gasoline consumption 60 percent for that year.

Savings of billions of gallons a year of oil can be realized if we can increase the efficiency of automobiles on American roads. To do this, we need research and development for new designs in transportation vehicles and more efficient engine designs.

Emphasis should be placed on the improvement in the design of transportation vehicles and power systems for these vehicles—with particular emphasis on small cars and alternatives to the internal combustion engine, as well as improvement in the design of total transportation systems. By improving the energy consumption patterns of the automobile and by improving the mass transit alternatives available to the automobile driver, we can make a major contribution toward reducing the need to import large quantities of petroleum and petroleum products.

LEGISLATION IS NEEDED

These are some of the goals which an energy conservation strategy must pursue. We must recognize, however, that in the past, energy conservation research and development has often been regarded as the poor stepchild in the general area of energy research and development. The temptation is too great to focus attention on the development of alternative energy sources and supplies—an area where work is urgently needed—to the exclusion of energy conservation activities.

Without a separate entity whose sole focus would be to concentrate on efficient use of our natural resources we may never realize the great potential of the full use of the broad spectrum of energy conservation strategies.

This effort cannot be a Federal effort alone, of course. It must involve a partnership between the Federal Government and the States which places maximum emphasis on development of an energy conservation mentality, of new technology to foster energy conservation, and which helps educate the American people on the need for care in the use of resources which through much of our history we have thought to be limitless.

Therefore I am introducing today the Energy Conservation Research and Development Act of 1973. This legislation would set up an independent corporation to carry out research and development into particularly promising areas of energy conservation technology, and attempt to bring about implementation of those strategies. It would also provide for the funding of State energy conservation councils, whose task will be to perform a wide variety of informational and consulting services for State and local governments and industry, to aid in energy conservation at the State and local levels.

The Energy Conservation Research and Development Corporation which would be established under this act would be governed by a Board subject to Senatorial advice and consent. It would have authority to conduct research and development in areas which offer substantial potential for the conservation of energy resources, including:

First, improvement in materials for, and design of, buildings to conserve energy resources;

Second, urban area design which serves to reduce community energy needs;

Third, improvement in design of transportation vehicles, and the power systems therefor, with emphasis on small cars and alternatives to the internal combustion engine;

Fourth, improvement in design of transportation systems so as to minimize transportation energy demands, consistent with goals of clean air and convenience in transportation services;

Fifth, improvement in the energy-utilization efficiency of industrial processes, with particular emphasis on those industries heavily dependent on use of energy resources for processing;

Sixth, research into decentralized energy systems for residential, commercial and industrial uses, such as fuel cells, total energy systems, district heating systems, fuel from organic waste, and solar space conditioning;

Seventh, research on regulatory and taxation policies that would have the effect of curbing energy demand; and

Eighth, research on increasing the efficiency of electrical appliances, with particular emphasis on air conditioning systems.

The Corporation would also be empowered to cooperate with and make recommendations to Federal agencies for the maximum possible utilization of the results of the research and development undertaken by the Corporation, including experimental and demonstration projects.

The activities of the National Corporation must be augmented at the State level, and the legislation I am introducing seeks to do that.

The bill would provide funding to State energy conservation councils to complement the activity of the National Corporation at the State level. These State councils, which must meet guidelines established by the National Corporation, could be either new or existing agencies. They would be empowered to coordinate energy conservation efforts on a State level; to disseminate the results of energy conservation activities carried out by the National Corporation; to provide advice to State and local governmental units and private industry on energy research and development, including consulting and technical services; and to advise the Corporation with respect to areas the State deems to be of high priority for research by the Corporation.

Funding would be provided by the National Corporation at a level of 50 cents per capita in each State per year.

FUNDING

The Corporation, and through it, the State energy conservation councils, would be funded up to a level of $200 million for fiscal 1974, $300 million for fiscal 1975, and $500 million per year for each of the next 8 fiscal years. The initial life span of the Corporation would be for 10 years, with Congress retaining the authority either to extend funding beyond that date, or at some earlier date to terminate the Corporation or transfer it to an existing agency.

Funding for the Corporation would be derived from revenues under the Outer Continental Shelf Lands Act. These revenues are derived from bonuses, rents, and royalties from Federal lands leased to private corporations on the Outer Continental Shelf—OCS. Payments to the Corporation would be through a trust fund, and payments to the trust fund from OCS revenues would be made only after payments had first been made to the land and water conservation fund, which now is the prime recipient of OCS funds.

Mr. President, I ask unanimous consent that a chart showing the past and projected income from the Outer Continental Shelf fund be inserted in the RECORD at this point.

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

BUREAU OF LAND MANAGEMENT

SOURCE AND DISTRIBUTION OF OUTER CONTINENTAL SHELF RECEIPTS

[In thousand of dollars]

	Source				Distribution		
	Bonuses and rents [1]	Royalties [2]	Release from escrow [3]	Total	General fund [4]	Land and water funds [5]	Total
Fiscal year:							
1971 actual	890,634	159,915		1,050,549	842,966	207,583	1,505,549
1972 actual	28,030	251,323		279,353	55,676	223,677	279,353
1973 estimated	2,752,000	300,000	1,123,000	4,175,000	4,007,501	167,499	4,175,000
1974 estimated [6]	1,800,000	300,000		2,100,000	1,879,000	221,000	2,100,000
1975 projected [6]	4,200,000	350,000		4,550,000	4,325,000	225,000	4,550,000
1976 projected [6]	4,200,000	400,000		4,600,000	4,375,000	225,000	4,600,000

[1] Bonuses are amounts paid by successful high bidders at lease sales to secure leases; charged at $3 per acre are a relatively insignificant amount of the totals shown. Both bonuses and rents vary substantially from year to year based on many factors including number of sales, acres leased, old leases abandoned, known or expected potential of areas leased, general economic conditions, litigation, etc.

[2] Royalties are charged at the rate of 16⅔ percent of the value of production and are increasing at a relatively predictable rate of about $50,000,000 per year.

[3] Amount of receipts formerly in dispute between the United States and the State of Louisiana and released from escrow as a result of Supreme Court decree.

[4] Amount deposited to general fund receipts of U.S. Treasury.

[5] Amount of receipts utilized to make up deficit in land and water conservation fund. Projections for 1975 and 1976 assume continuation of $300,000,000 total LWCF authorization level.

[6] Projected receipts are based on an accelerated leasing schedule including 3 general sales per year. Estimates are subject to revision due to changes in leasing schedule and other factors.

Mr. MONDALE. As this chart shows, the OCS fund should be more than sufficient to provide the funding required by the Corporation. Funding is provided from the OCS fund both because it utilizes an existing source of revenue which currently is reverting to general Treasury revenues, and, more importantly, as a means of expressing concern that income from the depletable resources of the Outer Continental Shelf be put to a purpose which will help all of us enjoy the benefits of these resources for a longer period of time. By employing these funds derived from use of our energy resources, to help conserve those same resources, we will insure that our dependence on foreign nations as sources for energy supplies will be reduced to the maximum extent possible.

Over 60 years ago, the great conservationist Gifford Pinchot stated that:

When the natural resources of any nation become exhausted, disaster and decay in every department of national life follow as a matter of course. Therefore the conservation of natural resources is the basis, and the only permanent basis, of national success.

Today, these words have a new and more urgent ring. We must not delay in finding new means of conserving our existing energy sources, to insure that the national welfare will not be imperiled by waste of resources we now know to be our most precious national asset.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD at the conclusion of my remarks.

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

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 "Energy Conservation Research and Development Act of 1973."

SECTION 2. (a) There is hereby established the Energy Conservation Research and Development Corporation (hereinafter in this Act referred to as the "Corporation"). The Corporation shall have a Board of five Directors consisting of individuals who are citizens of the United States, of whom one shall be elected annually by the Board to serve as Chairman. Members of the Board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall serve for terms of four years. Three members of the Board shall constitute a quorum for the purpose of conducting the business of the Board. The President of the United States shall call the first meeting of the Board of Directors. Each Director of the Board not employed by the Federal Government shall receive compensation at the rate of $300 for each meeting of the Board he attends. In addition, each Director shall be reimbursed for necessary travel and subsistence expenses incurred in attending the meetings of the Board.

(b) The Board of Directors is empowered to adopt and amend bylaws, consistent with the provisions of this Act, governing the operation of the Corporation.

(c) The Corporation shall appoint an executive director who shall be the chief administrative officer of the Corporation, and such other officers and employees as may be named and appointed by the Board. The rates of compensation of all officers and employees shall be fixed by the Board.

SEC. 3. (a) It shall be the function of the Corporation, from moneys available to it in the fund established by section 10 of this Act, to conduct research and development in, and contract with any State or political subdivision or agency thereof, Federal agency, or any private corporation or other entity, for the conduct of research and development in, areas which offer substantial potential for the conservation of energy resources, including but not limited to—

(1) improvement in materials for, and design of, buildings to conserve energy resources;

(2) urban area design which serves to reduce community energy needs;

(3) improvement in design of transportation vehicles, and the power systems therefor, with emphasis on small cars and alternatives to the internal combustion engine;

(4) improvement in design of transportation systems so as to minimize transportation energy demands, consistent with the goals of clean air and convenience in transportation services;

(5) improvement in the energy-utilization efficiency of industrial processes, with particular emphasis on those industries heavily dependent on use of energy resources for processing;

(6) research into decentralized energy systems for residential, commercial, and industrial uses, such as fuel cells, total energy systems, district heating systems, fuel from organic waste, and solar space conditioning;

(7) research on regulatory and taxation policies that would have the effect of curbing energy demand; and

(8) research on increasing the efficiency of major energy consuming household products.

(b) With respect to any contract, arrangement or other agreement entered into by the Corporation with any private corporation or other entity pursuant to this Act, the Corporation, if it determines that such contract, arrangement, or agreement involves a project which has promise of a commercial potential, is authorized to require such corporation or entity to participate in the funding of such project. Such participation shall be in such manner and to such extent as the Corporation shall prescribe.

SEC. 4. In utilizing the results of such research and development carried out pursuant to this Act, the Corporation shall have authority to—

(1) enter into and direct arrangements with any State or political subdivision or agency thereof, Federal agency or any private corporation or other entity to utilize, on an experimental or demonstration basis, the results of activities carried out pursuant to section 3 of this Act;

(2) enter into agreements, by contracts or otherwise, with any State or political subdivision or agency thereof, Federal agency, or any private corporation or other entity for long-range implementation of new energy conservation technologies;

(3) take such other action as may be necessary to fully implement the results of activities authorized under section 3, including the power to sell, on a fee basis, either exclusive or nonexclusive patent rights on all patents growing out of its research and development efforts or those of its contractees;

(4) make recommendations to appropriate Federal agencies and departments, including regulatory agencies;

(5) provide energy conservation information to any Federal or State executive or legislative body, including a State Energy Conservation Council established or designated pursuant to section 9 of this Act; advise any such body or Council on energy conservation policies; and formulate and carry out, in cooperation with such State Energy Conservation Councils, public education programs relating to energy conservation opportunities available to citizens.

SEC. 5. In carrying out its functions under this Act, the corporation is authorized to enter into contracts, leases, or other arrangements; to make grants; to conduct or cause to be conducted research and development related to its mission; and to acquire by construction or purchase, or to contract for the use of, physical facilities, equipment, patents, and devices which it determines necessary in carrying out such functions. To carry out its functions, the Corporation shall have, in addition to the powers conferred by this Act, the usual powers conferred upon corporations by the District of Columbia Business Corporation Act. Leases, contracts, and other arrangements entered into by the Corporation, regardless of the place where the same may be executed, shall be governed by the laws of the District of Columbia.

SEC. 6. (a) The Corporation shall transmit to the President of the United States and the Congress, annually, commencing one year from the date of the enactment of this Act, and at such other times as it deems desirable, a comprehensive and detailed report of its operations, activities, and accomplishments under this Act, including a statement of expenditures for the previous year. At the time of its annual report, the Corporation shall submit such legislative recommendations as it deems desirable.

(b) All reports, plans, specifications, cost and operating data of the Corporation acquired by it in connection with the carrying out of its duties under this Act, shall be made available by the Corporation in accordance with the provisions of section 552 of title 5 of the United States Code.

(c) The Corporation shall make annual reports available to interested parties on the progress of its operations. Such reports shall be in sufficient detail so that independent engineering and economic judgments can be made based on such reports.

SEC. 7. On or before the expiration of ten years following the date of the enactment of the Act, the Board of Directors, unless the Congress, by legislation enacted after the date of the enactment of this Act shall otherwise provide, shall take such action as may be necessary to dissolve the Corporation. The assets of the Corporation on the date of its dissolution, after satisfaction of all its legal obligations, shall be made available to the United States and deposited in the United States Treasury as miscellaneous receipts. All unobligated moneys in the fund established by section 10 of this Act shall, on such date of dissolution, be transferred to miscellaneous receipts of the Treasury. All patent rights of the Corporation shall, on such date of dissolution, be vested in the Administrator of General Services.

SEC. 8. (a) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Corporation, upon its request, any information or other data which the Corporation deems necessary to carry out its duties under this Act.

(b) The Corporation is authorized to utilize, on a reimbursable basis, the services of any personnel made available by any department, agency, or instrumentality, including any independent agency, of the Government.

(c) The Corporation may procure the services of experts and consultants without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may compensate such experts and consultants without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, in accordance with section 3109 of that title.

SEC. 9. (a) Notwithstanding any other provision of this Act, the Corporation shall not extend any assistance, financial or otherwise, to, or enter into any agreement with, any State or political subdivision thereof or any agency or institution of such State or subdivision, unless such State has first entered into an agreement with the Corporation pursuant to which such State agrees to establish, or designate an existing State agency as, an Energy Conservation Council whose functions, among others, shall be to (1) coordinate energy conservation efforts on a State level; (2) disseminate the results of energy conservation activities carried out under section 3 of this Act; (3) provide advice to State and local governmental units and private industry on energy research and development, including consulting and technical services; and (4) advise the Corporation with respect to areas the State deems to be of high priority for research by the Corporation.

(b) Each State Conservation Council shall submit annually to the Corporation a report on its activities for the previous fiscal year.

(c) Any agreement entered into pursuant to subsection (a) of this section shall provide that the Council so established or designated shall meet guidelines and standards established by the Corporation.

(d) Nothing in this Act shall be construed as prohibiting any such Council from imposing certain charges or other fees in connection with the dissemination, to nongovernmental entities, of the results of energy conservation activities carried out under section 3 of this Act, or the rendering of other assistance to such entities.

SEC. 10. (a) There is hereby established in the Treasury of the United States the Energy Conservation Research and Development Fund (referred to in this Act as the "fund"). The fund shall consist of such amounts as may be appropriated or credited to it as provided in this section. Moneys appropriated or credited to the fund pursuant to this section are hereby made available to the Corporation for carrying out the purposes of this Act without fiscal year limitation including the funding of State energy conservation councils established or designated pursuant to section 9.

(b) Subject to the payments required under the provisions of section 2(c)(2) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–5) to be made from the Outer Continental Shelf Lands Act, there shall be credited to the fund, from revenues due and payable to the United States for deposit in the Treasury as miscellaneous receipts under the Outer Continental Shelf Lands Act, the remainder of such revenues, up to $200,000,000, for the fiscal year ending June 30, 1974; $300,000,000 for the fiscal year ending June 30, 1975; and $500,000,000 for each of the next following eight fiscal years.

(c) In addition to the moneys credited to the fund pursuant to subsection (b) of this section, there is authorized to be appropriated to the fund, for the fiscal year ending June 30, 1974, and for each of the next following nine fiscal years, such amount as is necessary to make the income of the fund $200,000,000 for the fiscal year ending June 30, 1974; $300,000,000 for the fiscal year ending June 30, 1975; and $500,000,000 for each of the next following eight fiscal years.

(d) The Corporation, from moneys appropriated or credited to the fund, is authorized and directed to extend financial assistance for the purposes of fnding State Energy Conservation Councils established or designated pursuant to section 9 of this Act to any State in an amount for any fiscal year not to exceed 50 cents multiplied by the population of that State.

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