

S 18356

## CONGRESSIONAL RECORD — SENATE

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American Express cards have to keep prices high enough to cover that company's commissions or 3 to 6 per cent. Gas prices have to reflect credit-card service charges reported as high as 7 per cent, plus the cost of bad debts and administration. Take away all those hidden costs, and we might get a breather in the price rise.

Credit? Good people, we are \$185 billion in hock for TV sets and airplane rides and other consumer stuff. We take out \$14.5 billion in consumer loans every month, but took out only \$6.9 billion in new mortgage loans in the month of June. Cut back on those consumer loans, even briefly, even partially, and there would be billions of dollars worth of credit sloshing around to bail out the housing industry and expand factories and create jobs and boost the supply of goods enough to stop inflation in its tracks.

Interest? If you turn billions of dollars worth of credit loose like that, interest rates just have to fall.

The cost? It wouldn't come out of your pocket. You might have to defer some purchases, but take away that credit card and you would have more money instead of less. Not just because you wouldn't be tempted to buy so much, but because you wouldn't be tempted to buy so much, but because you wouldn't have to pay as much for what you did buy. A \$400 freezer costs about \$440 if you pay for it over one year, \$480 if you spread the payments over two years.

The free market? This panacea doesn't call for credit allocators or price controllers. It might even make it possible to get rid of the tax breaks and gimmicks by which the Government currently tries to shift money into productive investment.

The poor? Because they have the toughest time getting credit in the first place, they would be the least affected by a credit-card crunch. If it's true that they get snagged into paying exorbitant interest rates, they would save the most. And let's face it, the temptations of easy credit mean nothing but trouble for a lot of poor people.

Restraint? You betcha. Implusse buying would be a lot harder if you didn't have that little plastic card burning a hole in your pocket.

Psychology? Because it would affect our buying habits so directly, a credit-card crunch would do more than a million Presidential warnings to convince us that this inflation really is a serious business.

Well, nothing's perfect, and you could argue that a crackdown on consumer credit would cut spending so much that businessmen would have to cut production and lay off workers. But right now our problem is shortages, and when a credit-card crunch eased the shortages, we could ease the crunch. In the meantime, prices could be stabilized, interest rates lowered, young couples could afford mortgages again, the home builders could go back to work, industry could expand and create new jobs, the free-market system would be preserved, the sacrifices would be spread with reasonable fairness, and the basis would be laid for another era of prosperity. And all this could be done by putting money in your pocket, instead of taking it out.

Restriction on consumer credit was one of the tools that was used, successfully, to prevent inflation during World War II. The laws permitting it have lapsed, but they could be passed again. In the meantime, we noted recently [The Observer, Sept. 28, 1974] that a minister and his flock got together in Iowa to fight inflation by burning their credit cards. Anybody got a match?

## NATIONAL EMERGENCIES ACT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No.

1136, S. 3957, with the approval of the distinguished Senator from Idaho (Mr. McClure).

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 3957) to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

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

There being no objection, the Senate proceeded to consider the bill.

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

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

The legislative clerk proceeded to read the amendment.

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

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

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "National Emergency Act".

## TITLE I—TERMINATING EXISTING DECLARED EMERGENCIES

SEC. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any Executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect immediately prior to one year after the date of enactment of this Act are terminated one year from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" mean a general declaration of emergency made by the President pursuant to a statute authorizing him to declare a national emergency.

## TITLE II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

SEC. 201. (a) In the event the President finds that a proclamation of a national emergency is essential to the preservation, protection and defense of the Constitution or to the common defense, safety, or well-being of the territory or people of the United States, the President is authorized to proclaim the existence of a national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

SEC. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) Congress terminates the emergency by concurrent resolution; or

(2) the President issues a proclamation terminating the emergency. At the end of each year following the declaration of an emergency which is still in effect, the President shall publish in the Federal Register and transmit to the Congress a notice stating that the emergency is still in effect. Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) of this subsection, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

(c) (1) A concurrent resolution to terminate or continue a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(2) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(3) Such a concurrent resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and section 602(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect

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history has amnesty been as hot a political item as it is today. "My impression," says Prof. Arthur S. Link of Princeton University, "is that we didn't normally have the terribly deep feelings on both sides of the issue . . . in the past."

That isn't surprising. The Civil War was unique in American history in terms of the bitterness Americans felt for each other. And the Vietnam War was the first time the country's leaders attempted to wage a foreign war in the face of substantial opposition at home.

## PRECEDENTS SINCE 1794

But the amnesty issue has generated political heat at other times as well. Consider, for example, Woodrow Wilson's reply when he was asked about amnesty for Eugene V. Debs, the Socialist leader who was jailed during World War I for violating wartime sedition laws: "I will never consent to the pardon of this man. . . . Were I to consent to it, I should never be able to look into the faces of the mothers of this country who sent their boys to the other side. . . . This man was a traitor to his country." (Wilson's successor, Warren Harding, finally pardoned Debs and hundreds of other dissenters.)

The amnesty question, as James F. O'Neill will tell you, also kicked up some political dust following World War II. "The issue wasn't as controversial in those days as it is now," says O'Neill, the only surviving member of the three-man Presidential Amnesty Review Board created by Harry Truman in 1946. "But there were organizations at that time putting pressure on the White House and Congress, and I surmise that President Truman got exercised by this."

The Truman board eventually reviewed 15,805 individual cases and recommended amnesty for 1,523 draft evaders. That number was added to 1,618 ex-convicts who served at least a year in uniform and were granted amnesty by Truman when honorably discharged from the service.

Truman's case-by-case program was the last of 37 separate grants of amnesty issued by 15 Presidents since George Washington first used the President's Constitutional power "to grant reprieves and pardons." These grants have ranged from the Civil War amnesties, which affected millions, to James Madison's pardon of a band of Gulf Coast pirates who ravaged U.S. shipping but later joined the American effort during the War of 1812.

The word amnesty derives from the Greek *amnestia*, forgetfulness. It is a "class action" pardon that erases from a government's official memory acts that are technically illegal but toward whose perpetrators the government wishes to display compassion.

Washington's precedent-setting amnesty was granted to several thousand Pennsylvania farmers who had participated in the famous Whiskey Rebellion of 1794. In explaining his action, the President eloquently summed up the spirit of the act. "Though I shall always think it a sacred duty to exercise with firmness and energy the constitutional powers with which I am vested," he wrote, "yet it appears to me no less consistent with the public good . . . to mingle in the operations of Government every degree of moderation and tenderness which the national justice, dignity, and safety may permit."

## COMPASSION VS. VENGEANCE

Sixty-eight years later, Abraham Lincoln had more in mind than moderation and tenderness when he offered a "full pardon" to most Southerners who would quit the rebel cause and sign an oath of loyalty to the Union. One of his major aims, historians agree, was to weaken the South's resolve to fight.

"Of course there was a certain amount of expediency in that move," says E. B. Long,

associate professor of American studies at the University of Wyoming and author of several books on the Civil War era. "I happen to think Lincoln was the greatest American human being, but you can't take the soft, soapy, ultrahumanitarian view of everything he did. He had a war to win, for heaven's sake."

Nevertheless, adds Long, Lincoln's wartime moves were made in the context of his humanitarian plans for restoring the Union. Those plans called for what has become known as the "henceforth oath," meaning those who would renew their allegiance to the Union would not be punished. But the Radical Republicans favored the "ironclad oath," which would have excluded from the governmental process anyone who had supported the Confederate war effort in any way.

According to Professor Long, this was one of the issues at the root of the nation-wrenching debate on Reconstruction, and even in Lincoln's time opposition to his compassionate approach was brewing among hard-line Republicans in Congress. Later, after Johnson became President, the debate on how to deal with the defeated South became a power struggle between the executive and the politically potent Congress. But there is no doubt—in Long's view, at least—that the debate was also the product of some Radical Republicans' vindictive feelings toward the South.

Andrew Johnson harbored certain vindictive feelings of his own, though, and these gave an interesting twist to his postwar amnesty program. It excluded, for example, all Southerners whose net worth exceeded \$20,000. "Johnson was a plebeian boy," says Long. "He represented the poor white, the small dirt farmer, the yeoman class of the South and North. And I think he wanted to get at the wealthy and make them crawl a little bit."

Johnson did permit the South's wealthy class to apply for individual pardons, though, and he spent long—some say enjoyable—hours passing judgment as the Southern aristocracy passed by to plead forgiveness. "As far as I know," says Long, "he never turned down a single petition."

Johnson issued another amnesty proclamation on Christmas Day of 1868 that was close to a universal grant of amnesty for Southerners. But by this time Congress had taken control of suffrage and office-holding under the Fourteenth Amendment, and Congress kept about 150,000 Southerners disfranchised. Not until 1872 did Congress remove the restriction for all but about 600 former Confederate, and the final restrictions weren't erased until 1898—33 years after cessation of hostilities.

During the Civil War, Lincoln issued pardons for deserters who would return to their units within 60 days and make up the time spent in desertion. Johnson issued a similar proclamation a year after the war ended. Draft evaders were not prosecuted to any significant extent, according to historian Long. "The draft laws were just too loose."

But the draft laws enacted 75 years later in the face of European turmoil were much stricter, and the number of known Selective Service violators during World War II approached 16,000 when Truman created his Presidential Amnesty Review Board in late 1946. More than 4,300 of these cases were Jehovah's Witnesses who refused both military service and alternate civilian service. The board rejected amnesty in these cases unless the subjects could meet the Government's definition of "minister" as someone whose service to his church was fulltime.

In addition, the board rejected amnesty for most persons who objected to participation in the war effort because of secular beliefs. "We have not felt justified," it reported, "in recommending those who . . . have

set themselves up as wiser and more competent than society to determine their duty to come to the defense of the nation."

If such a test were applied today, says James O'Neill, the board's surviving member, most of those who refused to serve in Vietnam for secular philosophical reasons—such as the war's "immorality"—would never be pardoned. "But," the former national commander of the American Legion hastens to add, "I wouldn't want to set up the standards for deciding amnesty in the case of the Vietnam War."

That task will fall to Gerald Ford's new Presidential Clemency Board, which will administer the President's plan for granting amnesty to Vietnam War resisters who reaffirm their allegiance to the United States and serve up to 18 months in public service. For many of those eligible for that program, though, the conditions may be meaningless. At a recent conference of war resisters in Toronto, Canada, almost 60 delegates voted unanimously to reject Ford's amnesty offer, especially the "earned re-entry program." This was labeled "farcical, worthless, phony, unacceptable, and a total affront."

## AT LAST, A PANACEA FOR OUR ECONOMY

Mr. MANSFIELD. Mr. President, I have an article from the National Observer of October 12, 1974, under "Observations," entitled "At Last, a Panacea for Our Economy," by Michael T. Malloy. It has to do with the huge extension of credit in this country. It is a most worthwhile article. I ask unanimous consent that it also be printed in the RECORD.

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

## AT LAST, A PANACEA FOR OUR ECONOMY

(By Michael T. Malloy)

The economic summitry of recent weeks churned up a tidal wave of conflicting advice on how to handle inflation, but no panacea. I have the panacea.

Before unveiling it, though, let's look at what the economic summitteers were trying to do, why they gave conflicting advice, and what the areas are in which they actually did agree.

What they (and the rest of us) want is to check the rise in prices, reduce the rate of interest, and divert more credit toward building houses and expanding industrial production.

They (and the rest of us) disagree on how to do this because we don't want the cost to fall on our own pocketbooks. Business doesn't want profits hurt; labor doesn't want to sacrifice income. Also, traditional economists don't want the free market messed up by price controllers and mandatory allocation of credit. But liberals fear that the traditional free-market medicine, which means cutting Government programs and boosting unemployment, would hit hardest at the poor.

There is agreement, though, that we should all fight inflation together by showing restraint in the way we spend money and sometimes waste it. And a lot of economists and officials wish for something dramatic (another boring Presidential speech?) to get public psychology ready to make moderate sacrifices.

Okay, here is the panacea. Stamp out credit cards, sock it to the charge accounts, crack down on go now-pay later. Not overnight maybe, and not 100 per cent, but enough to push our buying habits back to where they were, say, a decade ago.

Prices? All that easy credit is added to the price of the stuff you buy, whether you use the credit or not. Merchants who accept

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to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

#### TITLE III—DECLARATIONS OF WAR BY CONGRESS

Sec. 301. Whenever Congress declares war, any provisions of law conferring powers and authorities to be exercised during time of war shall be effective from the date of such declaration.

#### TITLE IV—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

Sec. 401. When the President declares a national emergency no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

#### TITLE V—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

Sec. 501. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each such Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within 30 days after the end of each 3-month period after such declaration, a report on the total expenditures incurred by the United States Government during such 3-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than 30 days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

#### TITLE VI—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

Sec. 601. (a) Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481 (a)) is amended—

(1) at the end of paragraph (9), by striking out “; or” and inserting in lieu thereof a period; and

(2) by striking out paragraph (10).

(b) Section 2667(b) of title 10 of the United States Code is amended—

(1) by inserting “and” at the end of paragraph (3);

(2) by striking out paragraph (4); and

(3) by redesignating paragraph (5) as (4).

(c) The joint resolution entitled “Joint Resolution to authorize the temporary continuation of regulation of consumer credit”, approved August 8, 1947 (12 U.S.C. 249), is repealed.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831d(m)) is repealed.

(e) Section 1363 of title 18, United States Code, is repealed.

(f) Section 6 of the Act entitled “An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes”, approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

(2) any action or proceeding based on any act committed prior to repeal; or

(3) any rights or duties that matured or penalties that were incurred prior to repeal.

Sec. 602. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken, thereunder:

(1) Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95 (a); 50 U.S.C. App. 5(b));

(2) Section 673 of title 10, United States Code;

(3) Act of April 28, 1942 (40 U.S.C. 278b);

(4) Act of June 30, 1949 (41 U.S.C. 252);

(5) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(6) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15).

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) (1)–(6) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions it may have, to its respective House of Congress within 270 days after the date of enactment of this Act.

Mr. MATHIAS. Mr. President, I offer this amendment in behalf of my distinguished colleagues and cochairman of the Special Committee on National Emergencies and Delegated Emergency Powers (Mr. CHURCH), and in behalf of the members of the special committee—Mr. HART, Mr. CASE, Mr. PEARSON, Mr. PELL, Mr. STEVENSON, and Mr. HANSEN.

Very briefly, some of these are amendments which have been suggested in behalf of the President by the Office of Management and Budget. They make certain technical changes in the bill as it was originally approved by the Special Committee, and thereafter approved by the Committee on Government Operations. They have been cleared with the distinguished chairman of the Committee on Government Operations (Mr. ERVIN).

What they do is very simple. They extend the grace period provided in the bill from 9 months to a year.

They provide that while Congress can terminate a national emergency at any time by concurrent resolution, there will be no automatic termination after 6 months if there is no affirmative action. This has been replaced by a requirement for the Congress to meet every 6 months to consider whether to terminate an emergency. An expedited privileged procedure would assure consideration and a vote should the Congress so decide.

We have reduced the list of statutes to be repealed. In working with the other body, partially as a result of special committee studies, most of the provisions that have been deleted from our original list are to be taken care of in various deadwood projects by the Cod-

ification Committee of the House of Representatives.

There are six statutes which are to be exempted from the provisions of this act. These statutes include Trading With the Enemy Act, a Ready Reserve provision, purchasing contract lease and claims authorities believed by the executive branch to be absolutely essential for the operation of government. There is a requirement that the committees with jurisdiction over these provisions must make a study and report recommendations within 9 months about modifications or any other changes to be made.

Finally, the requirement for accounting of expenditures incurred under the authority of emergency powers statutes suggested by Senator McCLELLAN has been included.

Mr. President, over 2 years ago, the Senate created the Special Committee on the Termination of the National Emergency to examine the state of national emergency the United States was operating under and to make recommendations of how to best terminate the emergency and to provide for a regular and consistent procedure by which future emergencies could be met.

Soon after the bipartisan committee composed of four Democrats and four Republicans, with cochairmen one from either party, began its work it was evident that there were four states of national emergency in force and not just one as many in the Congress had assumed. The national emergency declared by President Franklin D. Roosevelt in March 1933 to meet the problems of the Great Depression has not yet been terminated.

The national emergency declared by President Truman in December 1950, to better prosecute the Korean conflict, is still in force. The national emergency proclaimed by President Nixon on March 23, 1970, to handle the Post Office strike, and the August 15, 1971, national emergency to meet balance of payments and other international economic problems of that time are still in force.

A majority of the people of the United States have lived all of their lives under emergency Government. For four decades normal constitutional processes have not been the rule. The wars, emergencies, and crises of various kinds of the past 40 years, in addition to the growth of the executive branch bureaucracy under the leadership of strong Presidents, and the diminished role of the Congress in the making of policy—these factors have all contributed to the erosion of constitutional government.

There is no valid reason for emergency rule to continue. We are not at war anywhere in the world and there are no other conditions that requires the continued existence of a state of national emergency. Our Government would be strengthened by bringing to an end all states of national emergency now in existence, and this termination should take place as soon as possible.

One course of action that seemed at first to be the simplest solution; namely,

to end the existing states of emergency forthwith and to repeal all emergency statutes was rejected by the special committee after intensive study, because it was clear that such drastic action could cause serious disruption of governmental processes. Some of the departments and agencies have used emergency authorities as basic everyday law. In the view of the special committee it would be unwise to abruptly halt these operations without providing a reasonable period of time to make a transition from emergency law to permanent law.

An example of this everyday use of emergency authority is the so-called section 5(b) of the Trading With the Enemy Act. This provision which dates back to World War I and 1917 has been in constant use as a means to regulate many aspects of foreign trade and international monetary controls. Partially because of the prospect that the states of national emergency would be terminated, the Treasury Department has already begun to adjust to doing its business without the broad open-ended authorities contained in the section 5(b) provisions. The special committee has taken into account the need for a period of time to make the adjustment with the least possible disarray. For almost 2 years the Treasury Department has been aware that the states of national emergency would be terminated. The germane committees are aware of the problem. The committees of Congress with assigned jurisdictions and the executive branch agencies should properly decide through the regular legislative process the provisions of any new or modified legislation. In order to assure an orderly transition, the special committee's view that a grace period of 1 year after date of enactment should be given to the executive branch has been incorporated in the legislation now before the Senate.

Section 602(a) of the bill now before the Senate contains six provisions of law which the executive branch has strongly urged continue in force. The special committee has concurred in this request. Section 602(b) would require the standing committees with jurisdiction over these statutes to study provisions and make a report to the Senate which would include recommendations and any proposed revisions. A similar process would be undertaken by the germane committees in the House. With the informed awareness now available to both the legislative and executive branches of provisions of law that have been used to meet emergency situations, it is reasonable to assume that some modifications will be made in some, if not all of the statutes contained in section 601 after further study in the coming 9 months by both the executive branch and the committees of the Congress. In the view of the special committee the most effective way to resolve this kind of outstanding issue can best be done by the two branches working through the regular legislative process. But the burden to remove these exceptions lies most heavily upon the Congress.

The special committee wanted to be certain that the executive branch of the U.S. Government would have the proper legal authority to act effectively to meet

any future emergencies. To this end, the special committee asked every Department and agency of the executive branch and every standing committee of the Senate to evaluate the emergency powers statutes now in force as to their utility for use in any future emergency. This evaluation provides the basis for the repealer section of the National Emergencies Act, section 601. The statutes contained therein are considered obsolete by both the executive branch agencies and by the committees. There is no disagreement between the branches that these obsolete provisions should be repealed.

There are other statutes among the 470 statutes that the respective standing committees may wish to repeal or modify at some future time should they so decide. The special committee now has in the process of being printed by the Government Printing Office, a committee print in the form of a handbook for use by departments and agencies of the executive branch and the committees of Congress containing a listing of all statutes with the evaluation made of these statutes by the legislative and executive branches.

The special committee understands that the Department of Defense may have special problems with regard to officer appointments, promotions, distribution in grade, separation and retirements that may not be resolved by the Armed Services Committees of the Congress and the Department of Defense by the time the termination of the national emergencies takes effect. I am confident that the Congress would look sympathetically upon any request to meet any unresolved problem should there be any after the states of national emergency are terminated.

There is one statute the special committee believes strongly should be repealed; namely, 18 U.S.C. 1383 which gives the President, the Secretary of the Army, or any general the authority to declare any part or even conceivably all of the United States a military zone. People in such zones can be put in jail for a year for violating any "Executive order of the President."

At the present time, only a small portion of the 470 delegated emergency powers is being used. This is one significant proof that there is no longer an "emergency" that requires extraordinary delegations of power. In the view of the special committee, permitting this body of potentially authoritarian power to continue in force in the absence of a valid national emergency situation poses a hazard to democratic government.

It is important to understand how the present state of emergency rule has come about. The failure to place emergency rule under firm constitutional guidelines must be considered as a failure by all three branches to carry out their respective constitutional responsibilities. Aggressive Presidents, permissive Congresses, and a long series of successive crises, have all contributed to the erosion of the structure of divided powers, the bedrock of our constitutional system of government.

The studies undertaken by the special

committee of how the four states of national emergency came into being, and how the over 470 emergency statutes became the law of the land, provide a disturbing explanation of the deterioration of the constitutional responsibility for lawmaking during the past four decades.

In the particular area of emergency powers statutes, the constitutionally prescribed roles of the legislative and executive branches have been reversed. The special committee's studies show that in far too many instances, the executive branch itself drafted the laws and cast them in such form as to give itself maximum flexibility. It is understandable that the executive branch, in drafting laws granting power to itself, did not provide either for oversight or for termination by Congress. It is also not surprising that most of these laws were passed in times of crisis, when because of the urgency, Congress acted hastily without real scrutiny, without thorough hearings, and without the deliberation that such legislation should have demanded. For these reasons, Congress has not exercised its responsibilities prudently; it has not even reserved for itself the means to take back its delegated powers.

Now in a time of relative world peace, Congress has the opportunity to draw back and reexamine how profligate we have dealt with war and other emergencies. Our sobering experience with the undeclared Korean and Vietnam wars heightens the necessity to understand the means available within the Constitution, to meet crisis situations affecting our national security.

The special committee has held extensive hearings seeking the views and advice of the country's most distinguished authorities on constitutional government in time of crisis. In addition to scholarly authorities in the fields of political science and the law, the special committee sought the counsel of all the former Attorneys General and two former Supreme Court Justices, as well as many distinguished lawyers.

The special committee has sought to obtain the views and opinions of each of the three branches about how to best meet the problem of emergency rule. The special committee thought it was particularly necessary to obtain not simply the present day perspective, but also the perspective of those who have served in successive administrations, Congresses, and courts over the past 41 years of emergency rule. It was particularly helpful to have views of those who have served as both Attorney General and Supreme Court Justice. We have the opinions, of course, of Justice Jackson in the most important *Youngstown Steel* case. We are fortunate to have a number of Attorneys General who have served in many capacities and not only in the executive branch. A number of this country's most distinguished law schools have on their faculties men who have served their Government in the executive branch or in the judiciary or as staff consultants to congressional committees. In the view of the special committee, this broad perspective over the four decades of emergency rule was absolutely vital in order to consider the problem in a con-

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text that of course would include the immediate concerns of the respective branches but also the test of history and considered reflection on the part of those who have been through the experience and could objectively judge. Many of these views and opinions are contained in the published hearings of the committee. Considerable valuable advice was given in study sessions at law schools or at private meetings held by members of the committee over the past 2 years.

On the basis of the suggestions and perspective gained from these hearings, and from two intensive staff studies of emergency power statutes and Executive orders, and upon the basis of the data, advice, and counsel supplied by the executive branch, the special committee, working with the executive branch at every step, drafted the legislation now before the Senate which would provide:

First. The termination of the present states of national emergency;

Second. The establishment of a regularized procedure for the use of delegated emergency power in future emergencies. The President could declare a national emergency and in his public proclamation would cite the specific statutory powers he requires to meet the emergency. A state of national emergency could be terminated at any time either by concurrent resolution or by a Presidential proclamation. The Congress would meet under a privileged expedited procedure by the end of 6 months to consider whether to continue a state of national emergency. If, by the end of 6-month intervals, Congress takes no action the state of national emergency would continue;

Third. A means of providing accountability for actions taken pursuant to emergency power statutes in any future emergency; and

Fourth. A listing of those statutes which both the executive branch and the respective standing committees of the Senate agree can be repealed because they are obsolete.

Fifth. A listing of six statutes which will continue in force until such time as the Congress might act to modify or repeal them.

The special committee has been careful to consider the needs of the executive branch to act promptly and effectively in a time of national emergency. From the outset, almost 2 years ago, we sought the advice of all the available former Attorneys General, former Supreme Court Justices including the late former Chief Justice Earl Warren. We have consulted with the departments and agencies led by a succession of Cabinet officers.

It is not surprising that there were, of course, different points of views on matters of detail. Understandably, officials in any present administration would like more flexibility rather than less. But over the past 2 years the executive branch and the special committee have worked together to resolve differences. The bill now before the Senate is the result of 2 years of joint effort. We have sought to provide means to permit the legislative and executive branches to carry out their constitutional responsibilities

as well as possible and in accord with the means prescribed by the Constitution to the respective branches.

In general the record of cooperation over the past 2 years between the legislative and executive branch in working toward a legislative remedy has been exemplary. Every department and agency of the executive branch has cooperated with requests from the special committee for information in their areas of jurisdiction. This cooperation has been a model of how the two branches can work together. The special committee, for example, would be laboring through 87 volumes of the statutes at large to find out exactly what laws were involved, were it not for the assistance provided by the U.S. Air Force which had fortuitously put the United States Code into its LITE computer system located at a base in Colorado. The General Services Administration and particularly the Federal Register of the National Archives, provided invaluable help in bringing substance and understanding into the shadowy world of Executive orders issued pursuant to states of emergency. The Justice Department, largely through the counsel of Attorneys General themselves and the Office of Legal Counsel, have given expert advice to the special committee and we gratefully acknowledge the importance of their assistance.

The Office of Management and Budget has helped the special committee by providing a detailed evaluation of the current utility of emergency statutes now in force. The executive branch's coordinated evaluation of these statutes and a parallel evaluation by the standing committees assisted the special committee greatly to prescribe a remedy in accord with the constitutional responsibility of Congress to make laws. The special committee urges the Congress to proceed forthwith to end the four existing states of national emergency, repeal certain laws that both the executive branch and the Congress believe obsolete, and to legislate a regular procedure to be used in the event of future national emergencies.

It has been an underlying premise of the special committee that the findings contained in the Youngstown Steel case of 1952, particularly the opinion of Justice Jackson, provide sound and pertinent guidelines for the governance of emergency powers. Justice Jackson, supporting the majority opinion that the "President's power must stem either from an act of Congress or from the Constitution itself," wrote:

Emergency powers are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them. That is the safeguard that would be nullified by our adoption of the "inherent powers" formula. Nothing in my experience convinces me that such risks are warranted by any real necessity, although such powers would, of course, be an executive convenience.

In the practical working of our government we already have evolved a technique within the framework of the Constitution by which normal executive powers may be considerably expanded to meet an emergency. Congress may and has granted extraordinary authorities which lie dormant in normal times but may be called into play by the Executive in

war or upon proclamation of a national emergency. . . .

In view of the ease, expedition and safety with which Congress can grant and has granted large emergency powers, certainly ample to embrace this crisis, I am quite unimpressed with the argument that we should affirm possession of them without statute. Such power either has no beginning or it has no end. If it exists, it need submit to no legal restraint. I am not alarmed that it would plunge us straightway into dictatorship, but it is at least a step in that wrong direction.

But I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems. A crisis that challenges the President equally, or perhaps primarily, challenges Congress. If not good law, there was worldly wisdom in the maxim attributed to Napoleon that "The tools belong to the man who can use them." We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.

With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations.

In our view, Congress should provide statutory guidelines to assure the full operation of constitutional processes in time of war or emergency. This is the best prescription to avoid any future exercise of arbitrary authoritarian power. For as the Youngstown case decided, where there is a statute, the Executive is obliged to use the statutory remedy; where there are no lawful statutory guidelines is to invite so-called inherent powers to come into play. There is without question a need, in view of the special committee, to provide the executive branch with an effective, workable method for dealing with future emergencies in accord with constitutional processes. The special committee has sought to do this in fulfillment of its mandate.

During the past year, the special committee requested the assistance of the majority and minority leaders in the preparation of guidelines for procedural actions to be taken on the part of the Senate in possible future emergencies. Because it is clear that if Congress is to fulfill its responsibilities to act in time of emergency, it must make preparations in advance to do so. The actions already taken by the leadership, in the view of the special committee, meet the needs that might reasonably be required by future emergencies.

Senator CHURCH, the cochairman of the special committee and I met with President Ford on August 22, to discuss the National Emergencies Act. He agreed in principle with the purposes contained therein. We were much encouraged by his understanding of and support for a solution to this most important question that confronts our constitutional system of government.

In addition, we have delayed action on this bill in order to permit the executive branch to give us some further suggestions. We thought many of the proposals were helpful to the overall purpose and have included them as perfecting amendments to the bill.

We believe that the National Emergencies Act, now before the Senate, if enacted, would remove one threat to constitutional government by placing the exercise of emergency powers under a regular and consistent procedure consistent with the constitutional responsibilities of the separate branches. We urge the Senate to vote affirmatively for this proposal to strengthen constitutional processes.

While it is important to stress that provisions of the National Emergency Act affect only those provisions of law which are specifically triggered by war or a state of national emergency, there are a number of other statutes not specifically cast in the form of emergency powers statutes, some of which are far-reaching in nature that are a part of the history of emergency rule. Some of these provisions have been referred to on pages 2 and 3 of the interim report of the Special Committee on National Emergencies and Delegated Emergency Powers in support of a recommended National Emergencies Act of September 24, 1974, Report No. 93-1170. It is the intention of the special committee in a final report to indicate those provisions of law that the regular standing committee should, in the view of the special committee examine carefully and consider whether changes would be warranted in the light of the present situation.

The special committee wishes to stress that the six statutes contained in section 602 deserve the most careful consideration by the committees with jurisdiction over these provisions. I ask unanimous consent that the texts of these provisions be printed in the Record at this point in my remarks.

There being no objection, the statutes were ordered to be printed in the Record, as follows:

12 U.S.C. 95a. REGULATION OF TRANSACTIONS IN FOREIGN EXCHANGE OF GOLD AND SILVER; PROPERTY TRANSFERS; VESTED INTERESTS, ENFORCEMENT AND PENALTIES

(1) *During the time of war or during any other period of national emergency declared by the President*, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit any transactions in foreign exchange, transfers of credit or payments between, by, through or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or

otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this section either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this section, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this section.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this section or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this section, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this section the term "United States" means the United States and any place subject to the jurisdiction thereof: *Provided, however*, That the foregoing shall not be construed as a limitation upon the power of the President, which is conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this section, for any or all of the terms used in this section. Whoever willfully violates any of the provisions of this section or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this section the term "person" means an individual, partnership, association, or corporation. (Oct. 6, 1917, ch. 106, § 5(b), 40 Stat. 415; Sept. 24, 1918, ch. 178, § 5, 40 Stat. 968; Mar. 9, 1933, ch. 1 title I, § 2, 48 Stat. 1; May 7, 1940, ch. 185, § 1, 54 Stat. 179; Dec. 18, 1941, ch. 593, title III, § 301, 55 Stat. 839; Proc. No. 2695, eff. July 4, 1945, 11 F.R. 7517, 69 Stat. 1362.)

NOTE—TRADING WITH THE ENEMY ACT OF 1917

The Trading with the Enemy Act of 1917 has been amended frequently, and in the process its original purpose and effect have been altered significantly. The Act was originally intended to "define, regulate and punish trading with the enemy." 40 Stat. 415. Directed primarily to meeting the exigencies of World War I, its drafters intended the Act to remain on the books for future war situations. 55 Cong. Rec. 4908. Accordingly, when other war powers were terminated in 1921 an exception was made for the Act and

it remained valid law. 41 Stat. 1359 (the Knox Resolution).

On March 5, 1933, President Roosevelt relied on Sec. 5(b) of the Trading with the Enemy Act as authority for his Proclamation 2039 which closed all banks for five days. This was clearly a time of financial crisis, not of war, and hence was not within the literal terms and purposes of the Act. Congress rectified the situation five days later when it ratified the President's proclamation and amended Sec. 5(b) to give the President the broad wartime powers of that section in times of declared national emergency as well, 48 Stat. 1. The desperate economic circumstances of the time dictated the passage of this sweeping change—after only eight hours of Congressional consideration.

Roosevelt relied on Section 5(b) again in 1939 when he restricted all transfers of currency and credit between the United States and German-occupied Denmark and Norway. Executive Order 8389. This action was subsequently approved and the President's exact powers clarified by Congress, resolving whatever questions may have remained about Congressional intentions to restrict the application of 48 Stat. 1 to either the economic emergency or to actual wars. 54 Stat. 179. This set the legal stage, then, to invoke presidential powers under the Trading with the Enemy Act in wartime or pursuant to any declaration of national peacetime emergency.

The next time these powers were involved was during World War II (with a slight Congressional modification—see 55 Stat. 833). A major expansion of Presidential authority was effected with the imposition of consumer credit controls (Executive Order 8843) by interpreting "banking institutions" as used in Sec. 5(b) to include any person engaged in the business of making extensions of credit. Subsequent Congressional action has reaffirmed this power, too, in times of war or national emergency. 12 U.S.C. 249.

Another declaration of national emergency was made in Proclamation 2914 of December 16, 1950 during the Korean War. Trading with the Enemy Act powers were exercised pursuant to this proclamation throughout the war. Because the state of emergency so declared has never been terminated, however, this proclamation has continued to serve as the basis for invocation of powers under the Act. Most notably, President Johnson used Sec. 5(b) as authority for Executive Order 11837 of January 1, 1968, imposing controls over transfers of private capital to foreign countries. (On the validity of this action, see *Opinion of the Attorney General*, February 3, 1968.)

On August 15, 1971, President Nixon, in Proclamation 4074, declared an emergency concerning America's declining worldwide economic position. He imposed an import surcharge and devalued the dollar, among other things. One year later, when the Export Control Act lapsed for a month, he invoked Sec. 5(b) to regulate exports, basing his authority to do so both on his Proclamation 4074 and on President Truman's proclamation of 1950.

The current law, which has those accreted over a period of 50 years, gives the President a wide range of powers, but only in time of war or declared national emergency. Although the Korean war has ended, these powers are being exercised solely on the basis of the 1950 emergency; or, on the basis of the President's unilaterally designating as "emergencies" situations which have only the most tenuous relationship to the serious national crises for which the Trading with the Enemy Act was originally intended. The President, with the approval of Congress, has thus used as authority for extraordinary actions laws which have no real relationship whatsoever to existing circumstances. As a consequence, a "national emergency" is now a practical necessity in order to carry out

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what has become the regular and normal method of governmental action. What were intended by Congress as delegations of power to be used only in the most extreme situations and for the most limited durations have become everyday powers; and a state of "emergency" has become a permanent condition.

[Note]

DEPARTMENT OF JUSTICE,  
May 21, 1973.

MEMORANDUM FOR THE SPECIAL COMMITTEE ON  
THE TERMINATION OF THE NATIONAL EMERGENCY

Re: Emergency power under § 5(b) of the  
Trading With the Enemy Act

During the course of hearings held by the Committee frequent mention has been made of the Trading With the Enemy Act ("the Act"). Section 5(b) of the Act has been the statutory foundation for control of domestic as well as international financial transactions and is not restricted to "trading with the enemy." Its use over the years provides an interesting study in the evolution of a statute as a result of continuing interplay between the Executive and Congress. Of all the emergency statutes under study by the Committee, it has the most complex and varied history. This paper does not make any recommendations or draw any conclusions but presents a short legal chronology of § 5(b) to assist the Committee in understanding its background and present status.

## I. ORIGINAL ENACTMENT—WORLD WAR I

The Act was passed in 1917 to "define, regulate, and punish trading with the enemy." 40 Stat. 415. Section 5(b) gave the President power to regulate transactions in foreign exchange, the export or hoarding of gold or silver coin or bullion or currency and transfers of credit in any form "between the United States and any foreign country, whether enemy, ally of enemy, or otherwise." 40 Stat. 415 (1917) as amended by 40 Stat. 966 (1918). Section 5(b), at that time, exempted "transactions to be executed wholly within the United States," thus appearing to limit its use as a basis for domestic controls. It did not include a provision permitting use of the Act during periods of national emergency nor was its use restricted by its terms to the duration of the First World War or any specified term after the end of the War. A law passed in 1921 terminating certain war powers specifically exempted the Act from termination because of the large amount of property held under the Act by the Alien Property Custodian at that time. See Ellingwood, *The Legality of the National Bank Moratorium*, 27 Nw. U.L. Rev. 923, 925-26 (1933).

## II. DEPRESSION BANKING EMERGENCY

Upon taking office in March 1933 President Roosevelt was pressed to deal promptly with a nationwide panic that threatened to drain the liquid resources of most of the banks in the country. *The Public Papers and Addresses of Franklin D. Roosevelt*, pp. 24-29 (1933) [hereinafter "Roosevelt Papers"]. He therefore invoked the "forgotten provisions" of § 5(b) on March 6, 1933 to declare a bank holiday and control the export of gold. Schlesinger, *The Coming of the New Deal* 4 (1959). The bank holiday proclamation noted that there had been "heavy and unwarranted withdrawals of gold and currency from our banking institutions for the purpose of hoarding" and that increasing speculation abroad in foreign exchange had resulted in severe drain on domestic gold supplies, thus creating a "national emergency." Therefore it was "in the best interests of all bank depositors that a period of respite be provided with a view to preventing further hoarding of coin, bullion or currency or speculation in foreign exchange." In order to prevent export or hoarding of bullion or currency a bank holiday was

therefore proclaimed from March 6 through March 9, 1933. Executive Proclamation No. 2039. March 6, 1933, 48 Stat. (Part 2) 1693.

By invoking § 5(b) as authority, President Roosevelt was, of course, using that provision for a different purpose than the one for which it was enacted in 1917. However, as one writer noted, closing the banks was "one of the surest and quickest ways" to prevent transactions in foreign exchange and the exportation of gold and silver coin, bullion and currency. Section 5(b) had, as noted, given the President power to regulate such matters. Ellingwood, *The Legality of the National Bank Moratorium*, 27 Nw. U.L. Rev. 923, 925 (1933).

Congress was called into session within days of the Proclamation. Roosevelt Papers 17. As soon as Congress was convened on March 9, 1933, it approved the bank holiday by passing the so-called Emergency Banking Act or Bank Conservation Act, 48 Stat. 1. That Act provided that the actions and proclamations "heretofore or hereafter taken . . . or issued by the President of the United States . . . since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed." (48 Stat. 1; 12 U.S.C. 95b (1970)). Congress thus "spread its protective approval over executive acts the legality of which was uncertain." Ellingwood, *op. cit. supra* at 27 Nw. U.L. Rev. 929 (1933). Congress also amended Section 5(b) to provide, among other things, that "[d]uring time of war or during any other period of national emergency declared by the President, the President may . . . regulate, under such rules and regulations as he may prescribe . . . transfers of credit between or payments by banking institutions as defined by the President. . . ." 48 Stat. 1. In the enactment clause Congress declared "that a serious emergency exists." 48 Stat. 1. The exclusion of domestic transactions, formerly found in the Act, was deleted from § 5(b) at this time.

The legislative history of the Emergency Banking Act is short; only eight hours elapsed from the time the bill was introduced until it was signed into law. There were no committee reports. Indeed, the bill was not even in print at the time it was passed. 77 Cong. Rec. 76, 80 (1933); Schlesinger, *The Coming of the New Deal* 8.

The abbreviated history shows Congress recognized that the powers conferred on the President by the Act were great. In the debate preceding the bill's passage those supporting it made such remarks as:

" . . . in time of storm there can only be one pilot. In my judgment, the House of Representatives realize that the pilot in this case must be the President of the United States, and they will steer their course by him (Rep. Goldsborough, 77 Cong. Rec. 81).

"It is a dictatorship over finance in the United States. It is complete control over the banking system in the United States. (Rep. McFadden, 77 Cong. Rec. 80).

"I realize that in time of peace we have perhaps never been called upon to vest such transcendent powers in the Executive as are provided for in this bill. . . . It is an emergency which can be adequately dealt with only by the strong arm of Executive power, and therefore I expect to vote for the bill, though it contains grants of powers which I never before thought I would approve in time of peace." (Sen. Connally, 77 Cong. Rec. 65).

The courts later upheld the validity of the bank holiday under the Act as amended, *E.g., Smith v. Witherow*, 102 F.2d 638, 641 (3d Cir., 1939); *Hardee v. Washington Loan & Trust Co.*, 91 F.2d 314 (D.C. Cir. 1937). Because of the prompt action taken by Congress in ratifying the March 6 proclamation, no judicial decisions were rendered on the

question of whether the President's action, if taken alone, would have been lawful.

Subsequently in 1933-34, acting under § 5 (b), President Roosevelt issued a series of orders which prohibited the hoarding of gold and directed that all gold bullion certificates be deposited with the Federal Reserve Banks and which regulated transactions in foreign exchange:

(1) Executive Order 6073 of March 10, 1933, prohibited the export or removal of gold from the United States, except as authorized by the Secretary of the Treasury, and banks were prohibited from making transfers of foreign exchange except in connection with certain described transactions. This order did not specifically refer to a national emergency.

(2) Executive Order 6102 of April 5, 1933, generally required holders of gold coin, gold bullion, and gold certificates to surrender their holdings to Federal Reserve Banks. This Order stated "By virtue of the authority vested in me by Section 5(b) . . . as amended by Section 2 of the Act of March 9, 1933, . . . in which amendatory Act Congress declared that a serious emergency exists, I . . . do declare that said national emergency still continues to exist."

(3) Executive Order 6111 of April 20, 1933, authorized the Secretary of the Treasury to regulate transactions in foreign exchange and the export or withdrawal of currency from the United States. The emergency basis for E.O. 6111 was stated in the same language as the language of E.O. 6102, quoted immediately above.

(4) Executive Order 6260 of August 28, 1933, was issued to supplant Executive Orders 6102 and 6111. This order prohibited the holding or export of gold, except under license issued by the Secretary of the Treasury, and authorized the Secretary to regulate or prohibit transactions in foreign exchange. In E.O. 6260 the President stated "I . . . do declare that a period of national emergency exists." Executive Order 6260 was confirmed and amended by Presidents Eisenhower and Kennedy. 31 CFR Part 54. See 42 Op. A.G. No. 35, p. 9.

(5) Executive Order 6560 of January 15, 1934, authorized the Secretary of the Treasury to regulate transactions in foreign exchange, transfers of credit from American to foreign banks and export of currency or silver coin. This order is still on the books today. See 31 CFR Parts 127-128. In this Order, the President declared that "a period of national emergency continues to exist."

In January 1934 Congress ratified all acts which had been performed under the Emergency Banking Act, 48 Stat. 343 (1934); 12 U.S.C. 213 (1970).

## III. WORLD WAR II ALIEN PROPERTY FREEZE

Following the invasion of Norway and Denmark by Germany in April 1940 President Roosevelt acted to protect funds of residents of these countries in the United States from withdrawal under duress by issuing an order freezing those assets except as authorized by the Secretary of the Treasury. Executive Order No. 8389 (April 10, 1940). The order referred to authority under § 5(b) but did not specifically mention the existence of a national emergency. The President had proclaimed a national emergency only months before in September 1933; Proclamation No. 2352 noted the neutrality of the United States in the war and stated:

"Whereas measures required at this time call for the exercise of only a limited number of the powers granted in a national emergency:

"Now, therefore, I . . . do proclaim that a national emergency exists in connection with and to the extent necessary for the proper observance, safeguarding, and enforcing of the neutrality of the United States and the strengthening of our national defense within the limits of peacetime authorizations."

Subsequently on May 7, 1940, Congress passed a resolution "to remove any doubt" that § 5(b) authorized certain aspects of the freeze order. The Report of the Senate Banking Committee noted that when Congress passed the Emergency Banking Act, "it intended to grant to the President all of the powers conferred upon him by section 5(b) of the Act of October 6, 1917, and to authorize him to exercise all of such powers not only in time of war, but during any other period of national emergency." S. Rep. No. 1496, 76th Cong., 3d Sess. 1 (1949). By joint resolution, Congress thus approved and confirmed the order and amended § 5(b) to clarify the President's freeze power over alien property. 54 Stat. 179 (1940). See *United States v. Von Clemm*, 136 F. 2d 968, 970 (2d Cir. 1934), cert denied, 320 U.S. 769 (1943) upholding the retroactive validity of the 1940 joint resolution of Congress).

The original freeze order was an amendment to Executive Order No. 6560 of January 1934 regulating foreign exchange and the export of coin and currency and the controls were somewhat similar to those exercised during the First World War and during the banking crises of 1933. This order, covering Norway and Denmark, was followed by similar executive orders after other nations were invaded or subjected to Axis domination. Eventually Germany, Japan and Italy were themselves covered in June and July 1941. The purpose of the orders was to keep the Axis from using billions of dollars of assets in the United States. Roosevelt Papers (1940 vol.), p. 133-34. Regulations issued by the Secretary of the Treasury, pursuant to a general delegation of Presidential authority under § 5(b) made in 1942, continue to this date to serve as the basis for blocking trade and financial transactions with North Korea, Cuba and North Vietnam. See 31 C.F.R. part 500 et seq.; Executive Order 9193, sec. 3, July 6, 1942, 7 Fed. Reg. 5205, and Executive Order 9889, Aug. 20, 1948, 13 Fed. Reg. 4891.

#### IV. CONSUMER CREDIT CONTROLS

Four months before the United States entered World War II, President Roosevelt issued Executive Order No. 8843, which directed the Federal Reserve Board to impose consumer installment credit controls as a measure to fight inflation. 6 Fed. Reg. 4035 (1941). The order was issued on August 9, 1941, under § 5(b) "in order, in the national emergency declared by me on May 27, 1941 to promote the national defense and protect the national economy. . . ." 6 Fed. Reg. 4035 (1941). On May 27, 1941, the President had issued Proclamation No. 2487 which proclaimed that "an unlimited national emergency confronts this country, which requires that its military, naval, air and civilian defense be put on the basis of readiness to repel any and all acts or threats of aggression directed toward any part of the Western Hemisphere."

In Executive Order 8843 the term "banking institution" as used in § 5(b), was defined to include any person engaged in the business of making extensions of credit whether as a vendor of consumer durable goods or otherwise. The Federal Reserve Board was authorized, in order to prevent evasion of the order, to regulate any other extension of installment credit, any credit for the purpose of purchasing or carrying any consumers' durable good or any other extension of credit in the form of a loan (other than loans to businesses or agricultural enterprises). 6 Fed. Reg. 4036.

There was some suggestion at the time that the definition of banking institution to include vendors of "consumer durable goods" was beyond the power conferred by § 5(b). One writer noted that the President had "disclosed hitherto unsuspected potentialities" in § 5(b) by using this definition of banking institutions and that a clearer statutory basis would be desirable for such controls. Note, *Federal Regulation of Consumer*

*Credit by Executive Order*. 41 Colum. L. Rev. 1287, 1289 (1941). See also *Price Control Bill, Hearings on H.R. 5479 before the House Banking and Currency Committee*, 77th Cong., 1st Sess., pp. 116-117 (1941). Nevertheless, the controls were accepted once the order was issued and never challenged in court. In December 1941 Congress passed the First War Powers Act (55 Stat. 839) which included a provision approving and ratifying actions which had been taken under § 5(b), thus apparently approving Executive Order No. 8843.

After World War II, Congress on four occasions took legislative action concerning imposition by the Federal Reserve Board of consumer credit controls pursuant to § 5(b). The four actions by Congress are as follows:

(1) The Congress passed a joint resolution in 1947 which provided that after November 1, 1947, the Federal Reserve Board was not to exercise consumer-credit controls pursuant to Executive Order No. 8843. 61 Stat. 921, 12 U.S.C. 249. The joint resolution also provided that no "such consumer credit controls" could be exercised except during wartime or any national emergency thereafter declared by the President.

The legislation took this form because President Truman had decided to place the issue of the continuation of controls "in the laps of Congress" rather than rescind the controls himself by revoking the Executive order. 93 Cong. Rec. 9757. The legislative history of the 1947 resolution shows that Congress intended that the President have the power, if needed, to make such controls effective against the day after the resolution by declaring a new national emergency. See 98 Cong. Rec. 9753, 9758-59.

(2) On August 16, 1948, Congress changed its policy and authorized the Federal Reserve Board, "notwithstanding" the 1947 joint resolution, to exercise "consumer-credit controls in accordance with and to carry out the purposes of" Executive Order No. 8843. 62 Stat. 1291.

The legislative history of the 1948 act again affirms congressional intent that the President retain his authority under Executive Order No. 8843 to exercise consumer credit controls thereafter during time of war or national emergency. It also made clear that he could have reimposed them on his own without the 1948 resolution. The House report noted:

"When the Congress terminated the controls over consumer credit pursuant to the provision of [12 U.S.C. 249], it specifically provided that such termination did not affect the authority to reimpose such controls during the time of war or any national emergency declared by the President. The President has evidently not seen fit to use this authority to reinstate the regulation of consumer credit and henceforth the committee proposes in this joint resolution for congressional enactment of such powers for a temporary period with respect to consumer installment credit and at the same time reserve the authority to exercise consumer-credit controls thereafter during the time of war or declaration of any national emergency by the President H.R. Rep. No. 2455, 80th Cong. 2d Sess. 5-6 (1948).

The 1948 authority expired June 30, 1949.

(3) In § 601 of the Defense Production Act of 1950, using language patterned closely on that of the 1948 enactment, Congress again gave the Federal Reserve Board authority to exercise consumer credit controls under Executive Order No. 8843 "notwithstanding" the 1947 joint resolution. 64 Stat. 812.

(4) In June 1952, while extending other parts of the act, including § 602, Congress repealed § 601. 66 Stat. 305. Repealing § 601 appeared to restore the provisions of the 1947 joint resolution (12 U.S.C. 249) authorizing the impositions of consumer credit controls again during a war or a period of national emergency.

#### V. FOREIGN DIRECT INVESTMENT PROGRAM

Section 5(b) was also used as authority for the Foreign Direct Investment Program in 1968. Under E.O. 11387 of January 1, 1968, controls were imposed by President Johnson over transfers of capital to foreign countries by substantial investors in the United States. A formal opinion was issued by Attorney General Ramsey Clark upholding the program. The opinion reviews the history of § 5(b). It also discusses the continuation of the national emergency declared by President Truman in Proclamation 2914 of December 16, 1950, which referred to the hostilities in Korea and the world menace of the forces of communist aggression. 42 Op. A.G. No. 35. The order relies on the continuation of this emergency.

In March 2, 1973, a federal district court judge ruled orally that § 5(b) did not authorize an indictment charging a violation of the foreign direct investment program. The existence of a national emergency was not raised, however. An appeal is now being prepared. *United States v. Ryan*, Crim. No. 2038-78 (D.D.C. 1973). E.O. 11387 continues in effect today.

#### VI. EXPORT CONTROLS

Most recently, § 5(b) was used for a month in 1972 when it was invoked by President Nixon as authority for the regulations of exports. E.O. 11677 of August 1, 1972. Section 5(b) was used in this situation because the existing law authorizing export controls, the Export Administration Act of 1969, 83 Stat. 841, as amended by 86 Stat. 133, had expired. When export control legislation was re-enacted, E.O. 11677 was revoked by E.O. 11683 of August 29, 1972.

The executive order imposing controls recited the continued existence of the national emergencies declared by Proclamation No. 2914 of December 16, 1950, referred to above, and by Proclamation No. 4074 of August 15, 1971, which imposed a supplemental duty on imports for balance of payments purposes. on imports for balance of payments purposes.

#### 50 U.S.C. APP. 5. SUSPENSION OF PROVISIONS RELATING TO ALLY OF ENEMY; REGULATION OF TRANSACTIONS IN FOREIGN EXCHANGE OF GOLD OR SILVER, PROPERTY TRANSFERS, VESTED INTERESTS, ENFORCEMENT AND PENALTIES

(a) *The President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this Act [sections 1 to 6, 7 to 39 and 41 to 44 of this Appendix] so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof [section 4(a) of this Appendix], and to perform any act made unlawful without such license in section three hereof [section 3 of this Appendix], and to file and prosecute applications under subsection (b) of section ten hereof [section 10(b) of this Appendix]; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this Act [sections 1 to 6, 7 to 39 and 41 to 44 of this Appendix]; and the President may exercise any power or authority conferred by this Act [said sections] through such officer or officers as he shall direct.*

*If the President shall have reasonable cause to believe that any act is about to be per-*



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formed in violation of section three hereof [section 3 of this Appendix] he shall have authority to order the postponement of the performance of such act for a period not exceeding ninety days, pending investigation of the facts by him.

(b) (1) *During the time of war or during any other period of national emergency declared by the President*, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving any property, in which any foreign country or a national thereof has any interest.

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof: Provided, however, That the foregoing shall not be construed as a limitation

upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall upon conviction, be fined not more than \$10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term "person" means an individual, partnership, association, or corporation. (Oct. 6, 1917, ch. 196, § 5, 40 Stat. 415; Sept. 24, 1918, ch. 176, § 5, 40 Stat. 966; Mar. 9, 1933, ch. 1, § 2, 48 Stat. 1; May 7, 1940, ch. 185, § 1, 54 Stat. 179; Dec. 18, 1941, ch. 598, title III, § 301, 55 Stat. 839; Proc. No. 2695, July 4, 1946, 11 F.R. 7517, 60 Stat. 1352.)

[See 12 U.S.C. 95 and 95a. *Supra.*]

10 U.S.C. 473. READY RESERVE

(a) *In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law*, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty (other than for training) for not more than 24 consecutive months.

(b) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to—

(1) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;

(2) family responsibilities; and

(3) employment necessary to maintain the national health, safety, or interest.

The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection. He shall report on those policies and procedures at least once a year to the Committees on Armed Services of the Senate and the House of Representatives.

(c) Not more than 1,000,000 members of the Ready Reserve may be on active duty (other than for training), without their consent, under this section at any one time. (Aug. 10, 1956, ch. 1041, 70A Stat. 28; Sept. 2, 1958, Pub. L. 85-861, §§ 1 (14), 33(a) (5), 72 Stat. 1441, 1564.)

NOTE—EXCERPT FROM HOUSE REPORT 1066, 82D CONG., 2D SESS. (1952)

NATIONAL EMERGENCY DECLARED BY THE PRESIDENT

*In time of national emergency proclaimed by the President, or when otherwise authorized by law*, any member of the Ready Reserve may be ordered to active duty without his consent for such period of time not to exceed 24 consecutive months, but no member could be ordered to active duty, under the committee amendment, until the Congress had determined the number of members needed for the national security. Members may be ordered as individuals or as units, but as in the previous subsection the committee has provided a safeguard against the ordering of individual members of units organized to serve as units. This provision would apply only in a future national emergency proclaimed by the President but would retain in effect the authority to order such members to active duty under section 21 of the UMTS Act with the limitations contained therein.

At present time all members of the Naval Reserve, Marine Corps Reserve, and the Coast

Guard Reserve, may be ordered to active duty in time of Presidential emergency for the duration of the emergency and for 6 months thereafter. In addition, the President may, at any time, call out the National Guard and Air National Guard to enforce the laws of the United States, to quell insurrection, and in case of actual or threatened invasion. As far as the Naval Reserve, Marine Corps Reserve, and Coast Guard Reserve are concerned, this subsection represents a substantial decrease in the number and the period of service of reservists liable to be ordered to active duty in time of Presidential emergency.

NOTE—EXCERPTS FROM HOUSE REPORT 1066, 82D CONG., 2D SESS. (1952)

THE READY RESERVE

The Ready Reserve defined by this section would contain those portions of the reserve components which would be most liable for active duty and which would be subject to call in time of war, or national emergency declared by the President or the Congress, or when otherwise authorized by law. The last phrase includes authority to order reservists to active duty pursuant to section 21 of the Universal Military Training and Service Act which is not affected by this bill.

Note, however, that under section 234(b), which authorizes the ordering of the Ready Reserve to active duty in time of national emergency declared by the President, the Congress must first determine the number of members who may be so ordered.

The Ready Reserve would be the only part of the reserve components which could be used in a Presidential emergency without further congressional action. At the present time, all of the Naval Reserve, Marine Corps Reserve, and Coast Guard Reserve could be called to active service in a Presidential emergency. In addition, the entire National Guard and the entire Air National Guard is now callable by the President in case of threatened or actual invasion, insurrection, or to execute the Federal laws.

NOTE

Under this provision 1,000,000 men can be called to active duty. In addition the National Guard can be federalized in a national emergency, which adds several thousand men to the total. In time of national emergency, therefore, in addition to existing armed forces at least eight divisions of troops, over 100 squadrons of aircraft and 55 ships can be activated by order of the President.

40 U.S.C. 278b. SAME; EXCEPTION OF CERTAIN VITAL LEASES DURING WAR OR EMERGENCY

The provisions of section 278a of this title shall not apply during war or a national emergency declared by Congress or by the President to such leases or renewals of existing leases of privately or publicly owned property as are certified by the Secretary of the Army or the Secretary of the Navy, or by such person or persons as he may designate, as covering premises for military, naval, or civilian purposes necessary for the prosecution of the war or vital in the national emergency. (Apr. 28, 1942, ch. 249, 56 Stat. 247.)

NOTE—EXCERPT FROM HOUSE REPORT 2029, 77TH CONG., 2D SESS. (1942)

The Committee on Expenditures in the Executive Departments, to whom was referred the bill (S. 2212) to suspend during a national emergency declared by Congress or by the President the provisions of section 322 of the act of June 30, 1932, as amended, having considered the same, report favorably thereon with recommendation that it do pass with amendments.

The purpose of the proposed legislation is to render inapplicable to leases entered into

by the Government for national defense purposes the present restrictions of section 322 of the act of June 30, 1932, as amended (40 U.S.C. 278A), that the annual rental of properties leased may not exceed 15 percent of the market value of the premises on that date of the lease, and the further restriction that alterations, improvements, and repairs may not be made in an amount in excess of 25 percent of the amount of the rent for the first year of the rental term, or for the entire rental term if the lease runs for less than 1 year.

Testimony given by witnesses from the War Department indicates that these restrictions are impracticable in connection with leases of premises for the establishment of information and filter centers as part of aircraft warning service installations, and also in many other types of national defense leases, as, for example, the leasing of properties for use as offices and warehouses, for storage or manufacturing purposes. Navy Department expressed concurrence in these observations.

The committee concurs in the view that all leases which are to be exempted from the provisions of section 322 of the act of June 30, 1932, as amended, should be certified by the Secretary of War or the Secretary of the Navy, or their authorized representatives, as covering premises necessary for the prosecution of the war or vital in the national emergency. The bill, as introduced, was amended by the Senate by insertion of appropriate language to this effect. This language will require executive departments or establishments other than the War and Navy Departments to obtain a certificate from an authorized representative of the Secretary of War or the Secretary of the Navy to the effect that the lease in question is necessary for the prosecution of the war or vital in the national emergency. If no such certificate is obtained the existing restrictions which, in the judgment of the committee, are desirable where prosecution of the war effort is not involved, will be applicable.

#### 41 U.S.C. 252. PURCHASES AND CONTRACTS FOR PROPERTY

(a) Applicability of chapter; delegation of authority.

Executive agencies shall make purchases and contracts for property and services in accordance with the provisions of this chapter and implementing regulations of the Administrator; but this chapter does not apply—

(1) to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration; or

(2) when this chapter is made inapplicable pursuant to section 474 of Title 40 or any other law, but when this chapter is made inapplicable by such provision of law, sections 5 and 8 of this title shall be applicable in the absence of authority conferred by statute to procure without advertising or without regard to said section 5 of this title.

(b) Small business concerns; share of business; advance publicity on negotiated purchases and contracts for property.

It is the declared policy of the Congress that a fair proportion of the total purchases and contracts for property and services for the Government shall be placed with small business concerns. Whenever it is proposed to make a contract or purchase in excess of \$10,000 by negotiation and without advertising, pursuant to the authority of paragraph (7) or (8) of subsection (c) of this section, suitable advance publicity, as determined by the agency head with due regard to the type of property involved and other relevant considerations, shall be given for a period of at least fifteen days, wherever practicable, as determined by the agency head.

(c) Negotiated purchases and contracts for property; conditions.

All purchases and contracts for property and services shall be made by advertising, as provided in section 253 of this title, except that such purchases and contracts may be negotiated by the agency head without advertising if—

(1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress;

(2) the public exigency will not admit of the delay incident to advertising;

(3) the aggregate amount involved does not exceed \$2,500;

(4) for personal or professional services;

(5) for any service to be rendered by any university, college, or other educational institution;

(6) the property or services are to be procured and used outside the limits of the United States and its possessions;

(7) for medicines or medical property;

(8) for property purchased for authorized resale;

(9) for perishable or nonperishable subsistence supplies;

(10) for property or services for which it is impracticable to secure competition;

(11) the agency head determines that the purchase or contract is for experimental, developmental or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test;

(12) for property or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;

(13) for equipment which the agency head determines to be technical equipment, and as to which he determines that the procurement thereof without advertising is necessary in special situations or in particular localities in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interest;

(14) for property or services as to which the agency head determines that bid prices after advertising therefor are not reasonable (either as to all or as to some part of the requirements) or have not been independently arrived at in open competition: *Provided*, That no negotiated purchase or contract may be entered into under this paragraph after the rejection of all or some of the bids received unless (A) notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head to each responsible bidder and (B) the negotiated price is the lowest negotiated price offered by any reasonable supplier; or

(15) otherwise authorized by law, except that section 254 of this title shall apply to purchases and contracts made without advertising under this paragraph.

(d) Bids in violation of antitrust laws.

If in the opinion of the agency head bids received after advertising evidence any violation of the antitrust laws he shall refer such bids to the Attorney General for appropriate action.

(e) Exceptions to section.

This section shall not be construed to (A) authorize the erection, repair, or furnishing of any public building or public improvement, but such authorization shall be required in the same manner as heretofore, or (B) permit any contract for the construction or repair of buildings, roads, sidewalks, sewers, mains, or similar items to be negotiated without advertising as required by section 253 of this title, unless such contract is to be performed outside the continental United States or unless negotiation of such contract is authorized by the provisions of paragraphs (1)—(3), (10)—(12), or (14) of subsection (c) of this section.

(f) Carriage of cargo; specification of container size.

No contract for the carriage of Government property in other than Government-owned cargo containers shall require carriage of such property in cargo containers of any stated length, height, or width. (June 30, 1949, ch. 288, title II, § 302, 63 Stat. 393; July 12, 1952, ch. 703, § 1 (m), 66 Stat. 594; Aug. 28, 1958, Pub. L. 85-800, §§ 1-3, 72 Stat. 966; Nov. 8, 1965, Pub. L. 89-343, §§ 1, 2, 79 Stat. 1303; Nov. 8, 1965, Pub. L. 89-348, § 1(2), 79 Stat. 1310; Mar. 16, 1968, Pub. L. 90-268, § 4, 82 Stat. 50.)

NOTE—EXCERPTS FROM HOUSE REPORT 670, 81ST CONG., 1ST SESS. (1949)

#### TITLE III. PROCUREMENT PROCEDURE

This title follows in structure, and is identical in language with, the Armed Services Procurement Act, with a few appropriate changes and omissions.

Section 301. Declaration of purpose—

This section states that the purpose of title III is to facilitate the procurement of supplies and services.

Section 302. Application and procurement methods—

(c) Initially, this subsection reaffirms the basic principle that purchases and contracts shall be made by advertising. Negotiation is made permissible in certain excepted cases, however, to provide flexibility in Government procurement.

(1) This paragraph would permit automatic and immediate transition from more rigid peacetime advertising procedures to a completely flexible system if the President or the Congress declares the existence of a national emergency.

#### 31 U.S.C. 203. ASSIGNMENTS OF CLAIMS; SET-OFF AGAINST ASSIGNEE

All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, except as hereinafter provided, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Each transfers assignments and powers of attorney must recite the warrant for payment and must be acknowledged by the person making them before an officer having authority to take acknowledgements of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgement, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. The provisions of this section shall not apply to payments for rent of postoffice quarters made by postmasters to duly authorized agents of the lessors.

The provisions of the preceding paragraph shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof under a contract providing for payments aggregating \$1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency: *Provided*,

1. That in the case of any contract entered into prior to October 9, 1940, no claim shall be assigned without the consent of the head of the department or agency concerned;

2. That in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment;

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3. That unless otherwise expressly permitted by such contract any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made in one party as agent or trustee for two or more parties participating in such financing;

4. That in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and (c) the disbursing officer, if any, designated in such contract to make payment.

Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section, shall constitute a valid assignment for all purposes.

In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.

*Any contract of the Department of Defense, the General Services Administration, the Atomic Energy Commission, or any other department or agency of the United States designated by the President, except any such contract under which full payment has been made, may, in time of war or national emergency proclaimed by the President (including the national emergency proclaimed December 16, 1950) or by Act or joint resolution of the Congress and until such war or national emergency has been terminated in such manner, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or set-off, and if such provision or one to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract, whether during or after such war or emergency, shall not be subject to reduction or set-off for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of (1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract, (2) fines, (3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract), or (4) taxes, social security contributions, or the withholding or nonwithholding of taxes or social security contributions, whether arising from or independently of such contract.*

Except as herein otherwise provided, nothing in this section shall be deemed to affect or impair rights or obligations heretofore accrued. (R.S. § 3477; May 27, 1908, ch. 206, 35 Stat. 411; Oct. 9, 1940, ch. 779, § 1, 54 Stat. 1029; May 15, 1951, ch. 75, 65 Stat. 41.)

NOTE—EXCERPT FROM SENATE REPORT 217, 82D CONG., 1ST SESS. (1951)

The purpose of this enactment was to encourage the participation of banks in the financing of Government contractors under the defense program of that time. It per-

mitted contractors to assign to financing institutions moneys due or to become due under their Government contracts, and it assured the assignee banks that, when payments were made to them by the Government pursuant to such assignments, such payments would not be subject to reduction or set-off on account of any claims the Government might have against the contractor arising independently of the assigned contract.

Enactment of S. 988, with committee amendments, would make it clear that a bank or other financing institution taking an assignment of claims pursuant to the act would not be subject to later recovery by the Government of amounts previously paid to the bank as assignee, except, of course, that it would not prevent the Government from obtaining restitution of amounts which may have been paid as the result of fraud.

Second, the amendment would continue the provision of the present law that, if an assigned contract contains a "no set-off" clause, payments made by the Government to the assignee bank will not be subject to reduction or set-off because of any claims of the Government against the contractor which arise independently of the contract, but it would also be made clear that the assignee would be protected against set-off on account of claims of the Government against the contractor arising from renegotiation, fines, and penalties—claims which are ordinarily regarded as arising outside of the assigned contract. In any event, however, where the Government has claims against the contractor, the Government would be allowed to withhold, out of payments due to an assignee bank, any amounts in excess of the bank's interest in loans secured by such assignments.

Finally, the authority for including the "no set-off" clause in Government contracts, which is now restricted to the Departments of the Army, Navy, and Air Force, would be extended to contracts entered into by the General Services Administration, the Atomic Energy Commission, and such other agencies of the Government as the President may designate. However, authority for the inclusion of the clause would not be mandatory—it would be permissive in all cases at the discretion of the Government agencies concerned.

#### 41 U.S.C. 15. TRANSFERS OF CONTRACTS; ASSIGNMENT OF CLAIMS; SET-OFF AGAINST ASSIGNEE

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

The provisions of the preceding paragraph shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating \$1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency: Provided, 1. That in the case of any contract entered into prior to October 9, 1940, no claim shall be assigned without the consent of the head of the department or agency concerned; 2. That in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment; 3. That unless otherwise expressly permitted by such contract any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee

for two or more parties participating in such financing; 4. That in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and (c) the disbursing officer, if any, designated in such contract to make payment.

Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section, shall constitute a valid assignment for all purposes.

In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.

*Any contract of the Department of Defense, the General Services Administration, the Atomic Energy Commission, or any other department or agency of the United States designated by the President, except any such contract under which full payment has been made, may, in time of war or national emergency proclaimed by the President (including the national emergency proclaimed December 16, 1950) or by Act or joint resolution of the Congress and until such war or national emergency has been terminated in such manner, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or set-off, and if such provision or one to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract, whether during or after such war or emergency, shall not be subject to reduction or set-off for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of (1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract, (2) fines, (3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract), or (4) taxes, social security contributions, or the withholding or nonwithholding of taxes or social security contributions, whether arising from or independently of such contract.*

Except as herein otherwise provided, nothing in this section shall be deemed to affect or impair rights or obligations heretofore accrued. (R. S. § 3737; Oct. 9, 1940, ch. 779, § 1, 54 Stat. 1029; May 15, 1951, ch. 75, 65 Stat. 41.)

NOTE—EXCERPT FROM SENATE REPORT 217, 82D CONG., 1ST SESS. (1951)

The Committee on Banking and Currency, to whom was referred the bill (S. 998) to facilitate the financing of defense contracts by banks and other financing institutions, to amend the Assignment of Claims Act of 1940, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

Enactment of S. 998, with committee amendments, would make it clear that a bank or other financing institution taking an

assignment of claims pursuant to the act would not be subject to later recovery by the Government of amounts previously paid to the bank as assignee, except, of course, that it would not prevent the Government from obtaining restitution of amounts which may have been paid as the result of fraud.

Secondly, the amendment would continue the provision of the present law that, if an assigned contract contains a "no set-off" clause, payments made by the Government to the assignee bank will not be subject to reduction or set-off because of any claims of the Government against the contractor which arise independently of the contract, but it would also be made clear that the assignee would be protected against set-off on account of claims of the Government against the contractor arising from renegotiation, fines, and penalties—claims which are ordinarily regarded as arising outside of the assigned contract. In any event, however, where the Government has claims against the contractor, the Government would be allowed to withhold, out of payments due to an assignee bank, any amounts in excess of the bank's interest in loans secured by such assignments.

Finally, the authority for including the "no set-off" clause in Government contracts, which is now restricted to the Departments of the Army, Navy, and Air Force, would be extended to contracts entered into by the General Services Administration, the Atomic Energy Commission, and such other agencies of the Government as the President may designate. However, authority for the inclusion of the clause would not be mandatory—it would be permissive in all cases at the discretion of the Government agencies concerned.

Mr. ROTH. Mr. President, as a sponsor of the National Emergencies Act, I am pleased with the rapid consideration which the Senate is giving to this important legislation. I strongly urge its passage today.

This bill represents another effort by Congress to insure that Congress and the President share equally the responsibility for major national policy decisions. This bill, for the first time, will establish criteria under which a national emergency can be declared by the President and provides for its automatic termination unless extended by congressional action.

It also terminates four national emergencies which are still in effect. Most Americans do not know that since March 6, 1933, the United States has been in an official state of national emergency. The 1933 emergency was declared to deal with the Depression. In addition, three other national emergencies are concurrently in effect—the December 16, 1950 emergency in connection with the Korean war, the March 23, 1970 emergency to handle the Post Office strike, and the August 15, 1971 emergency to carry out certain currency restrictions to help our balance of payments.

Because Congress has been remiss in not terminating these emergencies, many outdated statutes designed to give the President wide-sweeping powers to meet the emergency situations of those times remain on the books. It is my understanding that in its almost 2 years of diligent work, the Special Committee on the Termination of the National Emergencies compiled some 470 provisions of the United States Code which in some way or another delegate extraordinary powers to the President in times of war or national emergency.

It is important and essential that in such times, the President does have the powers needed to deal with the situation. But it is also essential that when the emergency is over, the emergency powers either terminate or are carefully reviewed to insure that they make sound and responsible permanent legislation.

In times of emergency, important legislation does not receive the time and attention which it would in normal times.

One provision that this bill would repeal gives the President, the Secretary of the Army, or any general the authority to declare any part or all of the United States a military zone, within which any act he designates may be punished as a crime. Such a sweeping provision represents a potential threat to American liberties and should certainly be struck from the books.

In my judgment, this bill devises a sensible way of insuring that rapid action can be taken to meet an emergency situation while safeguarding against the arbitrary and irresponsible use of such power by a future President. Under the bill, the President is authorized to declare a national emergency whenever he believes it "essential to the preservation, protection, and defense of the Constitution, and is essential to the common defense, safety, or well-being of the territory and people of the United States."

However, the emergency could be terminated by Congress by concurrent resolution and, if not, would expire at the end of 6 months unless explicitly continued by Congress. Moreover, the President would be required during the emergency to keep a list of all Executive orders, promulgations, rules, et cetera, made with respect to the emergency and transmit the texts to Congress. This provision will provide a comprehensive overview of all extraordinary acts taken during an emergency and a measure of congressional oversight over such acts.

I believe that this bill strikes a careful balance between the need for the President to act in the case of war or another kind of national emergency and the requirements of shared powers and responsibilities between Congress and the President. I hope it will be passed today and speedily acted upon by the other House and signed into law by the President.

Mr. MATHIAS. Mr. President, I urge the adoption of the amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment in the nature of a substitute.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3957

An act to terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That this Act may be cited as the "National Emergencies Act".

**TITLE I—TERMINATING EXISTING  
DECLARED EMERGENCIES**

Sec. 101. (a) All powers and authorities possessed by the President, any other officer

or employee of the Federal Government, or any Executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect immediately prior to one year after the date of enactment of this Act are terminated one year from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" mean a general declaration of emergency made by the President pursuant to a statute authorizing him to declare a national emergency.

**TITLE II—DECLARATION OF FUTURE  
NATIONAL EMERGENCIES**

Sec. 201. (a) In the event the President finds that a proclamation of a national emergency is essential to the preservation, protection and defense of the Constitution or to the common defense, safety, or well-being of the territory or people of the United States, the President is authorized to proclaim the existence of a national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

Sec. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

(1) Congress terminates the emergency by concurrent resolution; or

(2) the President issues a proclamation terminating the emergency.

At the end of each year following the declaration of an emergency which is still in effect, the President shall publish in the Federal Register and transmit to the Congress a notice stating that the emergency is still in effect. Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) of this subsection, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

(c) (1) A concurrent resolution to terminate or continue a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall

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be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(2) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(3) Such a concurrent resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference is filed. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)-(4) of this subsection, subsection (b) of this section, and section 602(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

#### TITLE III—DECLARATIONS OF WAR BY CONGRESS

Sec. 301. Whenever Congress declares war, any provisions of law conferring powers and authorities to be exercised during time of war shall be effective from the date of such declaration.

#### TITLE IV—EXERCISE OF EMERGENCY POWERS AND AUTHORITIES

Sec. 401. When the President declares a national emergency no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

#### TITLE V—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

Sec. 501. (a) When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant

orders of the President, including Executive orders and proclamations, and each such Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within thirty days after the end of each three-month period after such declaration, a report on the total expenditures incurred by the United States government during such three-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than thirty days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

#### TITLE VI—REPEAL AND CONTINUATION OF CERTAIN EMERGENCY POWER AND OTHER STATUTES

Sec. 601. (a) Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481 (a)) is amended—

(1) at the end of paragraph (9), by striking out “; or” and inserting in lieu thereof a period; and

(2) by striking out paragraph (10).

(b) Section 2667(b) of title 10 of the United States Code is amended—

(1) by inserting “and” at the end of paragraph (3);

(2) by striking out paragraph (4); and

(3) by redesignating paragraph (5) as (4).

(c) The joint resolution entitled “Joint resolution to authorize the temporary continuation of regulation of consumer credit”, approved August 8, 1947, (12 U.S.C. 249) is repealed.

(d) Section 5(m) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831d(m)) is repealed.

(e) Section 1383 of title 18, United States Code, is repealed.

(f) Section 5 of the Act entitled “An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes”, approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).

(g) Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.

(h) This section shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;

(2) any action or proceeding based on any act committed prior to repeal; or

(3) any rights or duties that matured or penalties that were incurred prior to repeal.

Sec. 602. (a) The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken, thereunder:

(1) Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95(a); 50 U.S.C. App. 5(b));

(2) Section 673 of title 10, United States Code;

(3) Act of April 28, 1942 (40 U.S.C. 278b);

(4) Act of June 30, 1949 (41 U.S.C. 252);

(5) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(6) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15).

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) (1)-(6) of this section shall make a complete study and investigation concerning that provision

of law and make a report, including any recommendations and proposed revisions it may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this Act.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MATHIAS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MANSFIELD. I thank the Senator from Idaho.

#### ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Nebraska (Mr. CURTIS) is recognized for not to exceed 15 minutes.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order of recognition be shifted, so that the Senator from Idaho may be recognized at this time.

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

Under the previous order, the Senator from Idaho (Mr. McCLURE) was recognized for not to exceed 15 minutes.

#### WE CANNOT SPEND WHAT WE DO NOT HAVE

Mr. McCLURE. Mr. President, for many years economists, Congressmen, and just plain people have objected to deficit spending on the simple basis that you cannot spend what do do not have. The counter-argument has run: We can do it because we are doing it. They pointed to the fact that the economy was growing over the years of continual Federal overspending. Anybody who suggested that in the future there would be a time for reckoning was treated like a prophet of doom—a spoil sport who could not enjoy a good time and did not want anyone else to either.

Today the principle is staring us in the face. You still cannot spend what you do not have and we still cannot legislate away the facts of life. If we could, I might begin a new legislative career with a bill providing for the rounding off of pi to 3.0. I never did like that fraction.

We have to legislate within the facts of life which include simple ones which every child with a piggy-bank would understand. If you spend more than you have, you must borrow it. If you borrow it, that action itself will cost you money. Soon you are borrowing more at higher rates not to pay off the original debt itself, but the compounded interest on the debt. Why is something so simple lost on many of those responsible for our economy?

At the Economic Summit Conference many voices were raised to insist that the share of the Federal pie not be cut from the budget. What they were really worried about was recession—not inflation. What they fail to understand is that fair prices, decent wages, low interest rates, a broad range of consumer products, and high employment are the results, not the causes, of a healthy econ-

omy. They fail to understand that only a healthy economy can provide the budget surplus out of which may come those Federal funds necessary to help those who cannot help themselves. And the healthy economy itself is the effect, not the cause of a balanced budget, and the effect of a sound monetary policy.

There were some at the Summit Conference, specifically those who participated in the financial section of the conference, who did make the case for fiscal responsibility. And I think that it is important to emphasize that these were not people who in any way could be characterized as "special interest groups." Their conclusions, as expressed in prepared summary, read as follows:

"There was virtually unanimous opinion, that much greater reliance needs to be placed upon fiscal restraint, and that this should take the form of cuts in Federal expenditure.

Those conferees did not make specific suggestions as to where the cuts should come. This is, of course, the business of the Congress. But they were earnest enough about the importance of controlling spending to suggest that the Executive might for the short term be empowered to reduce spending up to 150 percent to achieve the desired cuts in Federal expenditures.

Now this does not mean that I am suggesting an immediate cessation of Government aid to those most in need. After all Congress is not just a spending machine. We are empowered with oversight responsibility as well as the devising of a delivery system which made some sort of sense. It is perfectly legitimate to object here that 100 or even 535 men cannot even know where the Government billions are spent, much less how. But it seems to me that we do not even pay any attention to the results when somebody else does the work for us.

For example, the GAO published a report on the administrative functions and their abuses in OEO which, had anyone bothered to read it, should have caused a major scandal in this country. (I would venture to suggest that concentration on some scandals to the obliteration of others is primarily a political decision.) Nevertheless, the malfunctioning of the system, even the blatant theft involved in OEO, caused no disturbance whatever, even on the part of those who most profess their concern with the problems of the poor. The purpose of OEO was not to initiate handouts, which merely perpetuate poverty, but to generate seed money for development, and increasingly to involve the private sector as programs progressed and became stable. An acceptable rate of generation for properly managed seed money is from \$10 to \$20 per dollar invested. OEO's return was 80 cents on the dollar. Seventy-five percent of that was Government cash, 85 percent of which went for staff salaries and administrative expenses. In addition, the GAO furnished example after example of people in the administration of the program who bought houses at enormous prices from members of their own

families for OEO uses and even of employees who simply departed with the poor's money in their own pockets. How this helps the poor I am at a loss to understand. But the fact is that there were members of this very body who worked diligently to perpetuate this system so in opposition to even their own stated goals. I realize that this is just one example and that streamlining one program alone will not save the economy. But by providing a series of such examples, maybe we can show the American public how we ought to begin. Another area to consider would be Federal contracts. Just as cost-plus Government contracts must cease so should the Davis Bacon Act which governs wages paid under Government contracts. There is no sector of Government spending which cannot be cut down, streamlined, and improved.

One area alone should not be burdened with the solution of inflation, least of all the Defense Department. I wonder, Mr. President, if I am beginning to understand the thinking of those who want, in the name of beating inflation, to dismantle our defense system. It may be that their theory is that at the current rate of inflation there will be nothing left to defend.

An unfortunate tendency of Congress is to hasten its abdication of responsibility by the setting up of monstrous bureaucracies. The Congress knows perfectly well what happens next. Although the original purpose of these bureaucracies was to rectify an evil or provide a service, their main function shortly became self-preservation. Some perpetuate themselves by complicating the very problems they were established to resolve. Others are not content to serve those who seek out their assistance, but actively engage in ferreting out new clients. Those which actually get the job done then have to seek out whole new areas of responsibility. And now we have provided them with a legal services corporation which gives lawyers the encouragement and money to bring larger numbers of citizens under the control of more bureaucracies. We recently narrowly defeated an effort to create a superagency in the name of consumers. This agency would presumably have represented everybody in all areas, as it would have had "consumer responsibility" over all other agencies. It is obvious that the answer to the question who is a consumer is the counterquestion, who is not a consumer? Turning the country into a nation of bureaucrats is not the solution to inflation.

I would also like to point out something I expect to see foisted on us. Prior to 1969 the budget was computed under the administrative budget concept. This meant that trust funds, such as social security, were not reflected in the budget. In 1969 for the first time since the Eisenhower administration there was lip service given to the idea of a balanced budget. But the method chosen to accomplish this was neither a curtailing of spending nor an increase in taxes, but an accounting device. The budget went from a deficit of \$27,800,000 to an apparent surplus of something over \$3 million. But

behind the fancy paperwork everything was the same. Now it will be interesting to see what happens when the social security fund cannot begin to make the payments required by the quantum jump in benefits. An admission of bankruptcy will have to be made before the expected run on general revenues occurs.

I have no doubt that the next suggestion will be to return to the administrative budget concept as a way, this time not of creating a budget surplus, but of reducing the deficit. However, elaborate accounting techniques will not save the economy. They will not replace sound fiscal and monetary policies.

I noted in the colloquy between the majority leader and the minority leader there were two areas to which the majority leader referred as causes of the current inflation. One was the war in Southeast Asia, and the second were the current oil price increases.

Mr. President, I would suggest, as I have in the past, that it does no good to seek scapegoats rather than confronting responsibility. The war in Southeast Asia was a creation of and supported by the Congress of the United States. The monies that were spent were appropriated by the Congress of the United States.

Oil prices are the result of congressional action or, perhaps I should say, congressional inaction because of the facts that have been readily apparent to anyone who would be willing to listen for more years than Congress would care to confess, and the inaction of Congress in meeting the emergency energy crisis is the direct cause of the increase in oil prices.

Let us not be deceived that the Congress of the United States can escape responsibility by its failure to act. The responsibility for where we stand now still remains on the shoulders of the Congress of the United States.

The resulting inflation which racks this country is still squarely upon the Congress of the United States and if, as a matter of fact, we are to find a way out of this dilemma it will require affirmative action by Congress as well as by the Executive.

Mr. President, I think it is time for Congress to join with the administration and seek the affirmative and positive programs to work our way out of what is not necessarily an economic collapse but a serious economic problem.

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

#### ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask to be recognized now in place of the Senator from Nebraska.

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

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

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

The second assistant legislative clerk proceeded to call the roll.

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

# Senate Votes Presidential Power Curb

By Stephen Green  
Washington Post Staff Writer

The Senate voted yesterday to take away from the executive branch of the government a variety of emergency powers that had been assumed by three presidents in the last four decades.

Approving the National Emergency Act by unanimous voice vote, the Senate acted to terminate four states of emergency imposed by presidents since 1933, repeal 10 emergency-related laws, and suspend 460 other laws that have given extraordinary powers to the executive branch.

The Senate vote came after brief debate. The measure, if passed by the House and signed into law, would end emergency powers assumed by presidents to deal with the depression in 1933, to mobilize the nation for the Korean War, to deal with a 1970 postal strike and to implement currency restrictions to control foreign trade.

The laws that would be suspended, if the measure becomes law, range from establishing presidential authority to imposing marketing quotas to extending the enlistment periods of military men. They also include such powers as authority to abrogate Indian treaties, to take over power plants and to establish detention camps.

"This will help restore the balance of power between Congress and the executive branch," said Sen. Charles McC. Mathias Jr. (R-Md.), chief

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sponsor of the measure along with Sen. Frank Church (D-Idaho).

Mathias and Church served as cochairmen of a special Senate committee created two years ago to investigate the status of emergency presidential powers. The bill now goes to the House where a similar measure introduced by House Judiciary Committee Chairman Peter Rodino (D-N.J.), is pending.

"In the view of the special committee, permitting this body of potentially authoritarian power to continue in force in the absence of a valid national emergency situation poses a hazard to democratic government," Mathias and Church said in a joint statement yesterday.

"Aggressive presidents, permissive congresses and a long series of successive crises have all contributed to the erosion of the structure of divided powers, the bedrock of our constitutional system of government," they added.

When members of the bipartisan Senate committee began their work they thought the only national emergency still in effect was the 1950 emergency declared by President Truman at the time of the Korean War.

As the committee investigation proceeded, it was learned that still in effect were the 1933 depression state of emergency declared by President Franklin Delano Roosevelt and states of emergency declared in 1970 and 1971 by former President Richard M. Nixon to deal, respectively,

with the Post Office strike and to implement currency restriction to control foreign trade.

In addition, the committee found that Congress delegated emergency powers to presidents in 470 bills that still remained in effect. One of them, among the 10 the Senate voted to repeal, authorized any general to declare any position of the country a military zone, subject to martial law.

"People in such zones can be put in jail for a year for violation of any executive order of the President," Mathias and Church said.

The two senators said that "only a small portion of the 470 delegated emergency powers is being used. This is one significant proof that there is no longer an emergency that requires extraordinary delegations of powers."

However, they said, "some of the departments and agencies have used emergency authorities as basic every day law."

As an example, they cited the Treasury Department, which, they said has used a World War I trading with the enemy law to regulate "aspects of foreign trade and international monetary controls. For example, department used this law in August, 1971, to limit the export of soybeans

Mathias introduced a last-minute, amendment yesterday exempting the trading-with-the-enemy act from the bill, at the request of the Ford administration. He said the administration believes the act to be absolutely essential for the operation of government.

The 460 laws that would be placed in legal limbo by the bill passed yesterday include such measures as authority for the President to take over communications media, shipping and other private property. Under the bill, such powers could not be used unless a new state of emergency was declared.

If president, under the bill, declared a state of emergency, Congress would have to decide within six months whether it should be continued.

Mathias said that before he and Church introduced the bill Aug. 22, they met with President Ford and agreed "to work with the executive branch at every stage and to consider any new proposals that might be made."

The Senate originally was scheduled to vote on the measure last week but delayed action when Ford administration officials asked that some changes be made.

As a result, Mathias yesterday amended the bill to give the executive branch 12 months to end the states of emergency.