



Honorable James H. Scheuer  
Chairman, Subcommittee on Natural  
Resources, Agriculture Research  
and Environment  
Committee on Science and Technology  
House of Representatives  
Washington, D. C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to review and comment on  
H.R. 4836, "Land Remote-Sensing Commercialization Act of  
1984."

H.R. 4836 will achieve the purposes it is intended to  
satisfy, and with minor exceptions I concur with this legisla-  
tion as it is written. Suggested changes are enclosed.

Again, I appreciate the opportunity to comment on this  
important and pertinent matter.

Sincerely,

Enclosure

Comments on H.R. 4836

1. Page 30, Sec 604.

Para (a), line 6: Add the following sentence: Reimbursements for such assistance under the provisions of this Act shall be credited to the appropriations against which charges have been made for providing such assistance.

Rationale: The intention is to ensure that the agency which provides the assistance is credited with the amount of the reimbursement for such assistance.

Page 31, Sec 606.

Para (a), line 4: Add the following sentence: The Secretary of Defense shall determine those conditions necessary to impose on any system operator to meet national security concerns of the United States.

Para (b) (1), line 10: Add the following sentence: The Secretary of State shall determine those conditions necessary to impose on any system operator to meet international obligations of the United States.

Para (c) (1), line 15: Delete entire paragraph.

Rationale: To explicitly state that the Secretary of Defense and Secretary of State are responsible for establishing conditions concerning national security and international obligations, respectively.

Pages 31 and 32, Sec 606, para (c) (2)

Page 31, line 22: Between the words "Secretary" and "determine" insert "in consultation with the Secretary of Defense or the Secretary of State, as the case may be,"

Page 31, lines 23 and 24: Replace the phrase "...investments will be lost to..." with "that past development costs, including the cost of capital, will not be recovered by."

Page 32, lines 1 and 2: After the word "such" change the sentence to read "costs, excluding anticipated profits."

Rationale: To eliminate any ambiguity concerning the use of the word "investment" and to eliminate any suggestion that reimbursement could include an amount for anticipated profits since anticipated market revenues are too speculative for reasonable determination.



Washington, D.C. 20520

Dear Mr. Chairman:

This letter is in response to your request for Department of State comments on HR 4836 "To establish a system to promote the use of land remote-sensing satellite data, and for other purposes." The Bill would guide the United States Government in promoting full, prompt, and proper involvement of the private sector in civil land remote-sensing from space.

The Department of State recommends that this Bill be enacted only if the following modifications to Section 606 are made:

-- -- Section 606 (A) add the following sentence at the close: "The Secretary of Defense shall determine those conditions necessary to impose on any system operator to meet the national security concerns of the United States;"

-- -- Section 606 (B) (1) add the following sentence at the close: "The Secretary of State shall determine those conditions necessary to impose on any system operator to meet the international obligations and foreign policy concerns of the United States;"

-- -- Section 606 (C) (1) delete;

-- -- Section 606 (C) (2) change to read as follows:

"Should the Secretary determine during the lifetime of any agreement made between the Government and private operator(s) arising from this act that a modification of the agreement is required to meet conditions newly imposed by national security and/or foreign policy the Secretary shall obtain the

The Honorable  
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concurrence of the Secretaries of Defense and/or State in determining whether, and to what extent, a reimbursement to a private operator for losses incurred is warranted."

We believe the above changes are required for the following reasons. The addition of language to Sections 606 (A) and (B) (1) setting forth the roles of the Secretaries of Defense and State respectively will clarify their authority and positions within the decision-making process. Section 606 (C) (1) should be deleted because, if enacted, it would withdraw from the Secretaries of State and Defense their fundamental authority to make basic policy regarding national security and international relations. Sections 606 (A) and (B) (1) and (2), with the additions suggested above, clearly and fully set forth the authorities of the Secretaries of Defense and State in the promotion of land remote sensing satellite and data use, as well as their proper and appropriate relationship in this matter to the Secretary of Commerce. Should it be determined that Section 606 (C) (1) must be retained, we would accept a change of text to read as follows: "The Secretary, ~~in consultation with~~ the Secretary of Defense and the Secretary of State, is authorized to determine reasonable and appropriate action on any system operator as described in Section 401 when national security concerns or international obligations are not met".

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position

Section 606 (C) (2) must be revised because, if enacted as is, it would required that if the Secretary of Commerce so determined, the Departments of Defense and State would be compelled to reimburse a private operator for any burdens imposed by the Government in fulfillment of its constitutionally-mandated responsibilities to ensure the national security and to make foreign policy. Section 606 (C) (2), as written, also suggests that in an indirect fashion, a private entity operating the nation's land remote-sensing system could have a kind of veto over both the national security and foreign policy of this country. It also seems to grant the Secretary of Commerce authorities and responsibilities historically exercised by the Departments of State and Defense.

opinion

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

W. Tapley Bennett, Jr.  
Assistant Secretary  
Legislative and Intergovernmental Affairs

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National Aeronautics and  
Space Administration

Washington, D.C.  
20546

Reply to Attn of: C:MAM:tsc:C12638f

Honorable James H. Scheuer  
Chairman  
Subcommittee on Natural Resources,  
Agriculture Research and Environment  
Committee on Science and Technology  
House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This is in further reply to your request for the comments of the National Aeronautics and Space Administration on the bill H.R. 4836, the "Land Remote-Sensing Commercialization Act of 1984."

H.R. 4836 would set forth the framework whereby a contractor would be chosen by the Secretary of Commerce to sell data from the existing Land Remote-Sensing Satellite System and provide the Secretary of Commerce with the authority to license operators of civilian land remote sensing satellites.

NASA supports the general purpose of H.R. 4836; however, we have concerns with several of the bill's key provisions. Accordingly, we do not support the enactment of the bill as presently drafted. Our specific concerns are set forth below.

In general, we note that although the bill specifies "land" remote sensing in the title and purpose sections, this focus is confused by including

"ocean" data throughout the bill. In title V, "Research and Development", the confusion is compounded by including atmospheric research and applications in the subject matter. There is no generally recognized operational capability in ocean remote sensing; including oceans in this bill specifies the conditions for commercialization of ocean remote sensing long before the parameters of any such system have been worked out, thus needlessly inhibiting innovation in the creation of such a national capability. In our opinion, the subject matter of H.R. 4836 should be limited to dealing only with "land" remote sensing.

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Another major difficulty with the bill is that it is fundamentally at odds with certain of the commercialization actions currently underway in the Department of Commerce. The Request for Proposals (RFP) issued by the Department of Commerce on January 3, 1984, specifically rules out proposals for operation of the present Landsat system divorced from future operation of a commercially supplied system, while the bill directs the Secretary of Commerce to do exactly what the RFP disallows. Passage of the bill in this form could force the whole RFP process to be reopened, with consequent major delay in reaching agreement on commercialization between the Department of Commerce and a private sector entity. A frequently repeated goal of the bill is to ensure data continuity, something that is already marginal in technical feasibility, if it is possible at all. The extra delay occasioned by reopening the RFP process could make continuity totally impossible.

We have the following comments on specific sections of the bill.

Section 302(b)(7) provides that the Secretary of Commerce may provide that a contractor utilize, on a space available basis, civilian government satellites as platforms for a civilian remote sensing satellite system only if the contractor reimburses the government for all related costs incurred including "a reasonable and proportionate share of fixed, spacecraft, data transmission, and launch costs." In essence, this provision would authorize the Secretary of Commerce to interfere in joint endeavor agreements between a contractor and NASA and would in effect override NASA's authority under 42 U.S.C. 2473(c)(6) which permits NASA to enter into cooperative arrangements with private entities without reimbursement.

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Section 403(a) authorizes the Secretary of Commerce to license consortia of private sector parties and government agencies to operate civil remote sensing space systems. The effect of this paragraph again would be to authorize the Secretary of Commerce to interfere in the legitimate activities of government agencies to enter into cooperative or other arrangements with private sector parties. This authority of the Secretary of Commerce is further strengthened through section 406(b) wherein Federal agencies are "authorized and encouraged to conduct joint ventures in remote sensing space systems by forming consortia with private firms (which consortia will not compete with other United States private sector activities) in accordance with the provisions of section 402 and 403 of this Act." Thus, Federal agencies could not conduct a joint venture in a



non-operational remote sensing system with a private firm unless the Secretary of Commerce licensed the activity. Such an intrusion in the activities of an agency such as NASA, whose main purpose is research and development, would be unacceptable, in our opinion.

Section 502 is redundant as to its direction to NASA to conduct programs in remote sensing research and development since that is already a part of NASA's mandate. The section's instructions to the National Oceanic and Atmospheric Administration (NOAA) to conduct remote sensing research and development and experimental remote sensing programs is an intrusion into NASA's authority which can only result in a duplication and/or overlapping of activities. Subparagraph (d) joins the programs of NASA and NOAA in research and development which we believe is unacceptable. NASA has many years of experience in research and development of remote sensing programs. NOAA's experience is in the operation of satellites that have been basically developed by NASA. We do not understand why the bill would attempt to establish another separate program of research and development in NOAA and insist that NASA tailor its program to NOAA's program. Such duplicative efforts could result in an unfortunate waste of the taxpayers money.

Section 601 - NASA endorses the requirement that the system operator of a Landsat and/or follow-on Landsat land remote sensing system make data available to all users on a nondiscriminatory basis. This approach would continue the practices initiated and pursued in NASA's experimental Landsat program, as well as other NASA experimental remote sensing missions. This approach is also consistent with the announced policy of the French government to make SPOT (the French earth observation satellite system) data available on a nondiscriminatory basis. Nondiscriminatory data access has been instrumental in preserving U.S. freedom of action in

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the conduct of remote sensing from space and in foster NASA's ability  
to engage in global research and to enjoy uncontested access to data of  
all areas of the world.

Although the bill contemplates sale of remote sensing data on a  
nondiscriminatory basis, it does not appear to prohibit a satellite  
operator from obtaining a license for a civil remote sensing satellite and  
retaining the data for its use only, rather than selling the data. While  
this does not cause a problem for NASA, we are not certain that this is  
what the bill intends. ILLEGIB

Section 602 - The archive of remotely sensed data provided in this section  
should be required to be useful for research and development purposes. To  
that end, we believe it is in the public interest that there be a  
mechanism for interested parties to agree on the scope of the collection  
maintained in the archive. Further, we believe there should be a  
requirement that the archivist ensure a continuing capability to access  
old data in the collection, whether or not such old data is in a format in  
regular, current use.

Section 604(a), in essence would override NASA's authority in 42 U.S.C.  
2473(c)(6) to provide services on a cooperative basis to a system operator  
without reimbursement for launch services. NASA presently has the  
authority to provide launch services on a reimbursable or nonreimbursable  
basis depending on which NASA considers to be in the best interest of the  
government. NASA has not abused this authority. Rather it is through the  
use of this authority in a judicious manner that NASA has been able to  
further the technical competence and ability of the United States in the  
area of space research and development.

Section 606(b)(2) - We assume that the authority given the Secretary of State to provide land remote sensing data, technology and training to developing nations is in addition to NASA's authority presently to provide such aid.

We recognize that section 607 is intended to ensure that existing provisions of law, such as NASA authorities, are not to be replaced by the requirements of this Act. However, in view of some of the requirements of this Act noted above, it is not possible to give effect to those requirements as additions to rather than in place of authorities that NASA has at this time.

Due to the concerns noted above, NASA does not agree with the bill as it is presently written. The Office of Management and Budget advises that there is no objection to the submission of this report to the Congress.

Sincerely,